



# Overview Of The Legal Response To Global Warming And The Greenhouse Effects In Nigeria

Eze Pius Otaka\*

Email: [ezepius14@gmail.com](mailto:ezepius14@gmail.com) Tel: 08037726681

## ABSTRACT

Global warming is affecting Nigeria just as it does to every other country of the world. Its origin is traceable to human-induced activities. Nigeria is a blessed country with immense natural resources and supremely favoured with vast area of land of approximately 924,000 square kilometers. The resources are spread across the length and breadth of the country. They include minerals, forests, energy resources of different variety and a conducive climate for a better life in the society. A sustainable management of these resources has the enormous potential that can sustain the country up to the future generations. Given the explosions of unplanned exploitation of these resources coupled with the ineffectual nature of the extant laws to prevent negative environmental consequences like the global warming, the possibility of attaining the expected potential tapers to a mere pipe dream. These laws were herein subjected to a review with the main aim of highlighting and unlocking their shortcomings so that in the end they could be revived, energized and effectively enforced. It was found that the problem with the laws is their inefficacy to mitigate global warming and, on a more serious note, absence of legislation to regulate certain types of activities that are incompatible with the health of the environment and human well-being. The paper recommended that functional legislation to promote low greenhouse gas emission is imperative in addition to the revision of the extant laws where necessary. The article concluded that human-induced global warming is a violation of the right of citizens as provided in the Constitution of the Federal Republic of Nigeria, “not to be subjected to torture or to inhuman or degrading treatment”.

**Keywords:** Global Warming, Greenhouse Gas, Climate Change, Deforestation, Kyoto Protocol, Intergovernmental Panel on Climate Change (IPCC), United Nations Framework Convention on Climate Change (UNFCCC),

## 1. INTRODUCTION

Responding to the Sixth Assessment Report from the United Nation’s Intergovernmental Panel on Climate Change (IPCC) which holds the position as the conscience of the world on climate science, the United Nations (UN) Secretary General, Antonio Guterres, was very frank and open in his words to asseverate that:<sup>1</sup>

“Humans are responsible for virtually all global heating over the last two hundred years. The rate of temperature rise in the last century is the highest in 2000 years. Concentration of carbon dioxide is at its highest in at least two million years. The climate time bomb is ticking.”

\* **Eze Pius Otaka, Ph.D** in law is the Managing Partner of Emmy Memorial Chambers, a private law firm in Enugu, Nigeria. His research interests cut across Environmental law, Energy and Mineral Resources Law, Human Rights Law, International law and Jurisprudence. He has contributed articles in many international and local journals and attended a number of conferences. He is also an expert in creative writing with a number of books to his credit.

<sup>1</sup> D Standway, “Climate Time Bomb Ticking: Emissions must urgently be cut” – Available at <https://www.reuters.com/business/environment/un-chief-urges-faster-shift-net-zero-after-report-highlights-climate-threat-2023-03-20/> accessed on June 4, 2023.

The above quotation from the UN Secretary General's reaction to the state of the world's climate leaves the world's community with nothing less than a pungent representation of an event that portends gruesome danger to the sustenance of the planet. It is also a highlight on the need for a united front to take sustainable development to the next level with all fairness to the stability of the global climate. Climate Change and the subset, global warming, have over the years become a major issue of concern across all spheres of the global community. Virtually every country has joined in one commitment or another for a fight against the threat of climate change and global warming. If any single event can be said to have brought the entire world together to protect the planet, it is the threat of climate change and global warming.

Climate change is defined by the Nigerian Climate Change Act (NCCA) as "a change of climate that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods."<sup>2</sup> This is a direct translation of the United Nations Framework Convention on Climate Change (UNFCCC) definition of the concept of climate change but the important point worthy of note in the context of the definition is the fact of the presence of human-induced activity constituting the main driving force of climate change. Such human activity like burning fossil fuels, etc is a global phenomena that usually attract heat-trapping gases to the global atmosphere so however that such phenomena are referred to as global warming.<sup>3</sup> Glacier melts, rise in the sea level, species extinction, drought, flooding and other weather extreme events are likewise integral parts of this phenomena. These occur as a result of the greenhouse effects which is the natural process by which the sun's energy is trapped by a layer of gases surrounding the earth to keep it warm.<sup>4</sup> One does not have to look too far away to find that many drivers are responsible for the building-up of greenhouse effects and to mention just two, carbon dioxide and carbon monoxide quickly come to mind.

Examples of other factors that trigger global warming are not lacking in the vast literature of climate science. On the other hand, greenhouse gases are beneficial to humans, animals and plants in some way. They are life-enabling if a stable climate level is strictly observed. But lack of clear observation of the necessary weather condition has subjected the global environment to either too hot or too cold condition thereby throwing up extreme weather events that threaten the very existence of humans, plants and animals.<sup>5</sup> To reiterate the fact that global warming is real and life-threatening stands without question here. Research from expert sources have supra abundantly proved that the earth is undergoing global warming.<sup>6</sup> Much more awareness has been created by the IPCC report and other existing facts clarified by scientists in the report that the risks and severity of climate change are even greater now than previously imagined.<sup>7</sup> To sum up this point the scientists, and nearly all of them in the field, agree that the earth's climate has changed, is changing and will continue to change irrespective of any adaptation and /or mitigation measures.<sup>8</sup>

Two sources create the scenarios encountered in the study of global warming. One is natural and the other stands as man-made. When it comes to climatic events that are natural, one begins to think of incidences like volcanic activities, solar variation, ocean current, changes in the earth's orbit. These natural events according to some climate scientists, though hard to form the opinion of others in the field, is beyond human power to bring under control but to allow the earth to heal itself come what may, as it is, in its routine nature without any permission or interference by humans. This is based on the scientific discovery

2. Nigerian Climate Change Act (NCCA) of 2021, Section 35. The NCCA was assented to by the President of the Federal Republic of Nigeria, President Muhammadu Buhari on 17th November 2021.

3. O M Atoyebi, (SAN) "The Nigerian Climate Change Act 2021: Nigeria's Antidote to the Global Climate Crisis" available at <The Nigerian\_Climate\_Change\_Act\_2021\_1 Doc-20230601- WA0007pdf> accessed on June 1, 2023.

4. DS Matawal and DJ Maton, "Climate Change and Global Warming: Signs, Impact and Solutions" [2013] (4) (1) *International Journal of Environmental Science and Development*, 1-6.; (n2).

5. *Ibid.*

6. AB Berlic, "Global Warming: A Review of the Debates on the Causes, Consequences and Politics of Global Response" [2018] (10) (1) *Ghana Journal of Geography*, 144-164.

7. Intergovernmental Panel on Climate Change (IPCC), 2007.

8. *ibid.*

that correlation of sun intensity cycles, orbital variations, and geologic factors are evidences that the earth's climate is fundamentally beyond the influence of humans.<sup>9</sup> A seemingly lyrical equality to the foregoing is that humans can do nothing to control nature except perhaps only to offer some form of moderation through their intervention via emissions generated that are compensated by nature. This aspect is outside the scope of this paper which has its main focus on how humans can offer some form of mitigation to global warming as will be seen later in this study.

There exists overwhelming evidence that human activity is a major factor that contributes to global warming. Such evidences include burning of fossil fuels, land-use, deforestation,<sup>10</sup> as well as the use of electricity, cars, trains, aircrafts, homes, flaring of gas at oil fields among others. The IPCC has shown in its prediction that human activities that continuously warm the planet would persist in being the cause for drought, flooding, sand storm, wildfires, etc.<sup>11</sup> In the same vein, the quotation above as credited to the legendary United Nations Secretary General suggests that no other activities contribute to global warming more than human activities like land use, emission of greenhouse gases from vehicles released from exhaust pipes in form of sulphur dioxide, carbon monoxide and burning of hydrocarbon product which releases other gases into the atmosphere just like industrial emissions which also produce greenhouse gases is not a mince of word in any demonstrable way. These types of human impact steer global warming.

Granted that climate change deniers hold the view that humans have no control over climate change on ground that climate change is something that the earth does as a routine on its own and without human interference, the human-induced global warming is out of it, as it is man-made. In point of fact, it should surprise no one that humans can find solutions to mitigate or eliminate, in its entirety, climate change traced to their own making no matter howsoever. So in this instance this paper sets to have an overview of the legal solutions in Nigeria for mitigating global warming and the greenhouse effects.

## 2. Theoretical Framework

This writer adopts anthropogenic theory to support this study. The thesis of the theory is that climate is altered due to the effects of greenhouse gas that absorbs and emits radiant energy. Following the alteration, parts of the energy balance like solar and thermal infrared radiation are affected which in turn results in the inability of these gases to absorb sunlight leading to global warming. The IPCC in its report shows that the earth has been heating up beyond normal since the 20<sup>th</sup> century. In a similar vein, Berry and others opine that human-induced global warming was as old as the industrial revolution perhaps precisely from the late 18<sup>th</sup> century.<sup>12</sup> However, there exist naysayers which go by the description as deniers who continue to discount human activities as major contributors to global warming. Strauc and Guest attribute the origin of global warming to natural phenomena in which case they are denying anthropogenic global warming as a contributor to global warming.<sup>12a</sup> Wang and Chameides are yet to accept human interference as a cause for global warming.<sup>12b</sup> Beyond the position of the deniers on anthropogenic global warming comes the allegory by Stallinga and khmelinskii which was credited to Blaise Paschal as saying:

“I do not know whether God exists, but I know that I have nothing to gain from being an atheist if he does not exist, whereas I have plenty to lose if he does. Hence this justifies my belief in God.”<sup>13</sup>

9. (n6)153

10. US Onoja and Others, “Climate Change: Causes, Effects and Mitigation Measures: A Review” [2011] (17) (4) *Global Journal of Pure and Applied Sciences*. 469-479.

11. (n7).

12. J. Berry and Others, “The Limits of Knowledge and the Climate Change Debate [2016] (36) (3) *Cato Journal*, 589-61

12a. M Strauc and W Guest, “Global Warming too weak to be a theory (2016), A Commentary Paper –available at <[https://www.google.com/ur/?q=https://www.ydr.com/story/opinion/readers/2016/02/02/global-warming-too-weak-theory/79688384/&sa=U&ved=2ahUKewjajJyGuqX\\_AhVIQMAKHQRyC2KQFnoE\\_CAWQAg&usg=AOvVaw27qN-YcfJGX04YMhKRRZaoT](https://www.google.com/ur/?q=https://www.ydr.com/story/opinion/readers/2016/02/02/global-warming-too-weak-theory/79688384/&sa=U&ved=2ahUKewjajJyGuqX_AhVIQMAKHQRyC2KQFnoE_CAWQAg&usg=AOvVaw27qN-YcfJGX04YMhKRRZaoT)> accessed on May 29,2023.

### 3. METHODOLOGY

The writer's choice for this topic is, first and foremost, to recognize the concern attached to global warming across the world since the recent past decades. Secondly, to eliminate the doubts in the minds of those who, if by any reason, are yet to accept the obvious fact that there is anything like global warming induced by human activities. Thirdly, to draw the attention of hydrocarbon producers such as Nigeria, which is used as a case study in this paper, on the dangers of global warming on their immediate environment and to the entire world as a result of their own making through emission of greenhouse gases from their oil production activities

By Nigeria being one of the emitters of greenhouse gas which results in global warming, this study presents an overview, through law, of various mitigation measures to ensure a safe environment for the country. In addition to adopting the citation style of Nigerian Association of Law Teachers (NALT) this paper is based on doctrinal methodology and made use of secondary and primary sources of data such as books, articles in peer-reviewed journals, statutes, case law, conventions among others. It is the belief of the writer that this study will add value to the existing body of knowledge in this area of study and serve as a source of inspiration to many including students, researchers as well as academicians; and also help policy makers and government in their arduous task of reaching sound policy-making decisions.

#### 4. Extant Legal Regime on Global Warming in Nigeria

A number of legal instruments have been promulgated in Nigeria as a check against escalation of global change. These legal instruments include the Nigerian Climate Change Act, Associated Gas Re-injection Act and the related gas planning laws, forestry legal regime, National Environmental Standards and Regulations Enforcement Agency Act, Environmental Impact Assessment Act.

##### 4.1 Nigerian Climate Change Act.<sup>14</sup>

This Act was enacted in 2021 to drive the country through the pathway to achieving Nigeria's net-zero carbon emission targets in line with the initiative embodied in the United Nations Framework Convention on Climate Change (UNFCCC). The Nigerian Act toed the line of the doctrine of covering the field considering the fact that not only that it "provides for an all-inclusive and comprehensive regulatory and legal framework for achieving Nigeria's long-term climate goals"<sup>15</sup> but also extends its scope to cover institutions, agencies of government including the private sector and brought them under strict mandate to observe and comply with all governmental regulations on climate change.<sup>16</sup> The purpose for this quite falls in line with the objectives of the Act to lead the country through the framework to achieving low greenhouse gas emission, inclusive of green growth and sustainable economic growth.<sup>17</sup>

For purposes of meeting the agreement reached at the Conference of Parties (COP26) of the UNFCCC held in Glasgow with a target setting to keep global temperature levels at 1.5 degrees Celsius (1.5<sup>0</sup>C), the Act mandates the Ministry of Environment in consultation with the Federal ministry responsible for national planning to set a carbon budget for Nigeria.<sup>18</sup> The seriousness of the Act shows in the provision to punish any Ministry, Department, Agency (MDA) that fails to meet its carbon emission reduction target.<sup>19</sup> No matter in which form the punishment is directed - whether mere sanction or fine - is out of the question provided that the punishment is meted out as appropriate<sup>20</sup>

12b. [https://www.google.com/url?q=https://www.edf.org/sites/default/files/5279\\_GlobalwramingAttribution.pdf&sa=U&ved=2ahUKEwji-rw-ubx\\_AhUJT8AKHRfnBykaFnoECAEQAg&usq=AOrVaw3Tzn2RB30jyLOmftnvZxp](https://www.google.com/url?q=https://www.edf.org/sites/default/files/5279_GlobalwramingAttribution.pdf&sa=U&ved=2ahUKEwji-rw-ubx_AhUJT8AKHRfnBykaFnoECAEQAg&usq=AOrVaw3Tzn2RB30jyLOmftnvZxp)> accessed on 6th June 2023.

13. P Stallinga and I Khamelinskii, "The Perception of Anthropogenic Global Warming Modeled by Game Theory Decision Tables" [2016] (12) (29) *European Scientific Journal*, 427-450.

14. (n 2)

15. (n 2) Section I (i).

16. *ibid*

17. NCCA, Section I

18. *ibid*, Section 19(I)

The Act establishes the National Council on Climate Change and saddled the body with responsibility to make policies and decisions on all matters relating to climate change in Nigeria.<sup>21</sup> On enforcement of the

Act it empowers the court to assume jurisdiction and make order(s) in matters brought to it concerning climate change or environmental matters.<sup>22</sup>

#### 4.2 Gas Flaring

Gas flaring is a major source of greenhouse gas that contributes to exacerbate global warming in Nigeria. For this reason the legal regime in that direction was enacted to eliminate the menace. The laws ought to be seen as one that can ensure conformance to the provision of the Constitution of the Federal Republic of Nigeria which provides that the State shall protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria.<sup>23</sup>

In 1979 Nigeria enacted the Associated Gas Re-Injection Act<sup>24</sup> for purposes of putting an end to gas flaring in the country. The Act set a time limit of 1<sup>st</sup> January 1984 to end gas flaring.<sup>25</sup> However, the deadline was not achieved as it was found not to be feasible which resulted in the deadline being shifted for a couple of times more, to 2003, 2006, 2008 and also even after the Gas Flaring (Prohibition and Punishment) Act<sup>26</sup> was enacted. This Act had the objective of halting gas flaring on 31<sup>st</sup> December 2010. There are other regulatory measures used to combat gas flaring one of which is the Gas Flaring (Prevention of Waste and Pollution) Regulation.<sup>27</sup> This is a regulation that introduced carbon tax in Nigeria but did not also abolish gas flaring.<sup>28</sup>

Still in another effort to curb gas flaring in Nigeria, the country launched its first National Gas Flare Commercialization Programme (NGFCP)<sup>29</sup> which was an initiative to ensure gas flare out date of 2030 deadline. The objective includes involving off-takers in harnessing gas released as by-product of oil production. The programme is most likely heading for a re-launch very soon by the government to achieve the attainment of net-zero routine gas flaring by 2035 and net-zero emissions by the year 2060 in the country.<sup>30</sup> With this commendable and laudable programme there may be no doubt that Nigeria is heading towards the right direction to meet its target of zero gas flare to achieve its environmental obligations under international agreements such as its obligation under the Paris Agreement<sup>31</sup> which Nigeria is a signatory.

A number of factors were responsible for the desire to launch the NGFCP. Some of these factors among others include lack of ability of previous efforts to curb incidences of gas flaring and the negligible amount provided by Associated Gas Re-Injection Act as penalty for flaring gas<sup>32</sup> as well as the ruling by Tax Appeal Tribunal affirming the provision of Associated Gas Re-Injection Act that levies paid for flaring gas under the Act are tax deductible.<sup>33</sup> However, PIA has reversed the tax deductibility of penalties paid for gas flaring as same would be used for remediation.<sup>34</sup> What is not clear in the Act is whether the amount of penalty would be equal to the cost of remediation

19.NCCA, Section 22(5)

20. *ibid*,

21. *ibid*, Section 3(I)

22. *ibid*, Section 34 (2)

23. Constitution of the Federal Republic of Nigeria (LFN) 2004 as amended, Section 20.

24. Associated Gas Re-Injection Act (Cap A25) LFN 2004 as amended.

25. *ibid*, Section 3(1)

26. Gas Flaring (Prohibition and Punishment) Act, 2016.

27. Gas Flaring (Prevention of Waste and Pollution) Regulation of 2018; PIA, Section 105 (1)

28. G Nwona, "New Policy Regime for Gas in Nigeria: A Perspective on Tax and Related Incentives" [2003] *Journal of Energy and Natural Resources Law*, 285-302.

29. National Gas Flare Commercialization Programme 2016

30. <<https://www.premiumtimesng.com/news/headlines/557821-nigeria-relaunches-gas-flare-commercialization-programme-opens-bid.html?tztc>>

31. The Paris Agreement was adopted at the Conference of Parties on 12<sup>th</sup> December 2015 and opened for signature on April 12, 2016 while Nigeria signed the Agreement in September 2016.

32. OJ Olujobi and T O Olujobi, "Appraisal of Legal Framework Regulating Gas Flaring in Nigeria's Upstream Petroleum Sector: How Efficient? [2019] (10) (3) *International Journal of Advanced Research in Engineering and Technology (IJARET)*, 234-250.

33. *Mobil Producing Unlimited v. Federal Inland Revenue Services* (2017) All FWLR 543.

34. Petroleum Industry Act 2021, Section 104 (2).

### 4.3 Forestry Legal Regime

Forest as a concept is subsumed under the broader concept of environment which is defined as a place where humans, plants and animals live.<sup>35</sup> Forest, being a subset of the environment, is a plant association of woody vegetation consisting of trees, shrubs, vines, among others.<sup>36</sup> They play important roles that sustain human life and the environment by their ability to act as terrestrial sink of carbon and provision of other numerous benefits to mankind.<sup>37</sup> These immense benefits of forest is being eluded humanity due to deforestation.

Deforestation can be explained as an act that entails the conversion of forest to an alternative permanent non-forested use.<sup>38</sup> Deforestation is considered a serious concern for countries like Nigeria which is still developing and has to face increase in greenhouse effects due to limited technology as trees cut reduces the number of trees to play the role in oxygen supply and absorption of greenhouse effects. The trees already cut release carbon dioxide stored in them to exacerbate the level of greenhouse gas released in the atmosphere.<sup>39</sup>

According to Wajim deforestation brings about global change which increases the concentration of carbon dioxide in the atmosphere which in turn affects the thermal infrared radiation in the atmosphere.<sup>40</sup> The implication is a net increase in the global mean temperature due to the loss of the primary terrestrial sink. His research findings from the available report of the Federal Ministry of Environment show that about 400 out of every 1000 of forestland are deforested every year.<sup>41</sup> This has a cataclysmic effect on global change due to its effects on wind flows and absorption of solar energy thus influencing global climate.<sup>42</sup>

Unfortunately, the legal regime for regulation of deforestation in Nigeria is fragmented as same are domiciled in the State governments. There is at present no national forestry Act that has nation-wide application in Nigeria.<sup>43</sup> The old Acts which used to exist in the country for protection of forests no longer applies. Then those laws had salient provisions such as provision for punishment of offenders and penalties of up to some months imprisonment for unlawfully cutting down trees over 6feet or setting fire on the forest.<sup>44</sup> What exactly is available now is the Forest Laws of component States of Nigeria.

The component States are permitted to legislate on forests in their individual States by virtue of the provision of the Constitution of the Federal Republic of Nigeria<sup>45</sup> which enjoins all organs of government, and of all authorities and persons, exercising legislative, executive or judicial powers to conform to, observe and apply the provisions of Chapter 11 of the Constitution.<sup>46</sup> It is based on this premise that the States derive the power to make laws for protection and preservation of forest resources in their respective States. Omon and Ilobekemen opine that the necessity to bind both the Federal and State governments results from the failure of governments obligation to take appropriate steps in matters affecting the environment.<sup>47</sup>

35. C A Omaka, *The Nigerian Conservation Law* (Lagos: Lions Unique Concept) 1.

36. E J Omon and O M Ilobekemen, "Legal and Regulatory Reforms of Forest Resources Conservation in Edo South Edo State Nigeria" [2018] (72) *Journal of Law, Policy and Globalization*

37. Y M Ahmed and E D Oruonye, "Challenges of Enforcement of Forestry Legislation in Taraba State" [2017] (6) (3) *International Journal of Geography and Geology* 48-57 at 48.

38. J Wajim "Impacts of Deforestation on Socio-Economic Development and Environment in Nigeria [2020] (7) (03) *International Journal of Social Sciences and Humanities Invention*, 5852.

39. A.A Adebayo (2010) Federal University of Technology, Yola 8th Inaugural Lecture: Climate Resource and Resistance to Agriculture 48:15-22.

40. J Wajim (n38) 5857.

41. (n 38)

42. K M Chomitz and Others, "At Loggerheads: Agric Extension, Poverty Reduction and Environment in the Tropical Forests" (2007) World Bank Policy Report Research World Bank, Washington DC.

43. FMEnv National Forest Policy 2006 p.21

44. E J Omon and O M Ilobekemen (n 33)38.

45. Constitution of the Federal Republic of Nigeria 1999 Laws of the Federation of Nigeria (2004) as amended Section 13.

46a. *ibid.*

47. E J Omon and O M Ilobekemen (n33) 42

48. (Cap N164) LFN 2004 as amended.

#### **4.4 National Environmental Standards Regulation and Enforcement Agency (NESREA) Act.<sup>48</sup>**

NESREA is the principal enactment that regulate and enforce environmental standards, regulations, laws, policies and guidelines in Nigeria.<sup>49</sup> It has the power to make and review regulations on deforestation and bush burning and the emergence of the National Environmental (Control of Bush Fires and Open Burning) Regulations was as a result of the powers conferred on NESREA. However, notwithstanding that NESREA is the chief enforcer for the protection of Nigerian environment its power does not extend to oil and gas sector.<sup>50</sup> It is equally prohibited from allowing its officer to enter and search all oil and gas facilities even with a warrant issued by court.<sup>51</sup>

#### **4.5 Environmental Impact Assessment (EIA) Act<sup>52</sup>**

The purpose of this Act is to provide for an environmental impact assessment to assess the effects that any proposed project may have on the environment before such project is allowed to be undertaken.<sup>53</sup> If EIA audit finds out that unjustifiable immitigable and significant adverse environmental effects is likely to result from such project, approval will not be granted for such project.<sup>54</sup>

### **5. DISCUSSION AND FINDINGS**

The relationship between emission and renewable electricity generation suggests that renewable electricity deployment rate is minimal despite rising emission. This results in such scenario being part of the effects of resource curse that often crowd out other resources in most fossil fuel rich countries because of the supposedly contentment that such countries have with fossil fuel resources.<sup>55</sup> The scenario is further heightened by the presence of all bark and no bite institutional and regulatory framework. Putting it more succinctly, Olanrele states that emission control measures needed to stimulate emission reduction hardly works for an energy poor nation that places high premium in increased electricity access and economic development far and above carbon reduction plans.<sup>56</sup>

The foregoing is exactly the case with Nigeria, considering the joy of the country about the recent discovery of another oil field at Kolmani and, that notwithstanding, there is still greater interests to discover more oil fields in the country. Nigeria does not need more oil fields to add to the existing ones but to develop new energy sources in the face of climate change and the country's obligation to meet the net-zero emission target by 2050. Nigeria has been reminded that:

“In the next few years the world may not be driven by oil from the Niger Delta region. It may become absolute in the next few years because electric engines are being developed to replace combustible engines. Even for airplane, they may not need fuel. So, what will the Niger Delta become in the next few years? We have to think beyond oil.”<sup>53</sup>

If oil boom makes it hard to see oil production as nothing to worry about, more than half a century of gas flaring in Nigeria has done little to dim the memories of those who can still recall the loss of their loved ones to gas flaring in worst-case scenarios. Such tragic experiences hardly allow the victims have an easy relief of those experiences. But all this pale into insignificance to the authorities which continue to regard oil as the ultimate, unaware that they are indirectly promoting poverty of affluence and ostentation.

Despite the fact that Nigeria signed the global Gas flaring partnership's principles to end global gas flare by 2030 and equally endorsed the Paris Climate Agreement, not much commendable effort to end gas flaring has been achieved. This is not as if to say that there are absence of enough legal frameworks enacted to combat gas flaring and toe the path for sustainable development.

49. (Cap N164) LFN 2004 as amended, Section I

50. (Cap N164) LFN 2004 as amended, Section 7(j).

51. *ibid*, Sections 7 (k), 8(k)

52. (Cap E12) LFN 2004 as amended.

53. N P Anulika and Others, “The Role of Environmental Impact Assessment in Environmental Sustainability of Onitsha Metropolis in Anambra State” [2015] (3) (3) *International Journal of Technology Enhancements and Engineering Research*, 109-114.

54. EIA, Section 63 (1).

55. D Popp and Others, “Technology and the Diffusion of Renewable Energy” [2011] (3) (4) *Energy Economics*, 648-668.

56. I Olanrele, “Assessment of Renewable Electricity Policy for Sustainable Electricity Generation in Nigeria” [2021] Climate Compatible Growth, Version I.

Already, there are laws available in the country to control gas flaring. The main problem lies in lack of implementation of the laws. These, then, has been noted earlier but what can be deduced from the ineffectiveness of the extant laws is not far from lack of government will to enforce the laws which create the impression of one-step forward, two steps backward foxtrot. An illustration is the number of times that the gas flare out deadline set by the Associated Gas Re-Injection Act had been shifted till date in clear departure from the provisions of the Act. The same government's ineffectual measures must have contributed equally to the retaining of the right to flare gas in the recently promulgated Petroleum Industry Act (PIA) which did not out rightly prohibit gas flaring in Nigeria.<sup>58</sup> The Act provided for conditions under which oil producing companies can flare gas from their oil fields.<sup>59</sup> Currently, about 11 percent of gas out of the total production from 139 gas flare locations are flared.<sup>60</sup>

It was thought that Nigeria was going to find a final solution to gas flaring when it promised the United Nations in 2003 that it was going to put a stop to gas flaring in 2021.<sup>61</sup> This promise was not kept, for instead of stopping oil producing companies from flaring gas, the whole thing ended up in giving them conditions under which they can flare gas or pay penalty in consequence.<sup>62</sup> Because of the prohibitive cost of resorting to alternatives, such as re-injecting the gas or other emission-free methods, the companies preferred to pay penalty which is cheaper than re-injecting the gas or applying those other methods especially as any penalty paid is tax deductible.<sup>63</sup> The greatest emission of greenhouse gas in Nigeria comes from oil production activities, and principally as a result of gas flaring. Fundamental among the factors contributing to gas flaring in the country is improper regulation of pollution from oil fields.

The NESREA Act noted above is the principal legislation responsible for the protection and sustainable development of the environment in Nigeria through enforcement of environmental standards, regulations, rules, laws, policies and guidelines.<sup>64</sup> For no reason known to anyone, NESREA is barred from extending its functions to oil and gas sector which is the highest greenhouse gas emitter in the country. Thus, it is this negation of placing the priorities of matching a force with an equal force that one finds a contradiction in our environmental laws.

By failing to use a principal enactment on the environment to regulate a principal polluter of the environment does not make any sense. To make this point clear the position of Gourevich is instructive that "the spectre of an absolute menace that requires absolute eradication binds leader and people in hermetic utopian embrace."<sup>65</sup>

More Like the foregoing is the provision of the Environmental Impact Assessment Act which provides for an assessment of the possible positive and negative impact that a proposed project may have on the environment.<sup>66</sup> A report released by the United Nations Environment Programme (UNEP) in 2011 established that decades of oil and gas exploration and production activities by multinational oil companies have caused severe pollution in Nigeria.<sup>67</sup>

Notwithstanding the provisions of the EIA and observations of experts, some projects are still being allowed to be carried out without passing through the required and/or proper environmental audit with the attendant effect of negative consequences.<sup>68</sup>

57. A Godwin, "Pan Niger Delta Forum (PANDEF) Asks Niger Delta Region to Find Alternative to Oil," The Guardian Newspaper (Lagos, December 1, 2021) 27.

58. Federal Republic of Nigeria Official Gazette No. 142, Vol.108 of 27th August 2021 Petroleum Industry Act of 2021.

59. *ibid*, Section 104 (1).

60. JMC, "Gas Flaring, PIA and Gestation of Acts," The Guardian (Lagos, January 23, 2023) Available at <<https://guardian.ng/opinion/gasflaring-pia-and-gestation-of-acts/>> accessed on May 23,2023.

61. O Fagbohun, *The Law of Oil Pollution and Environmental Restoration: A Comparative Review* (Lagos; Odade Publishers, 2010) 95.

62. (n 59) section.

63. (n 33)

64. NESREA Act, Section 2.

65.P Gourevich, *We Wish to Inform You That Tomorrow We Will Be Killed With Our Families: Stories of Rwanda* (Picardo 1999) 95.

66. EIA, Section 63 (1).

67. C.U Duru, "Environmental Degradation: Key Challenges to Sustainable Economic Development in the Niger Delta" [2014] (1) (4) *Institute of Economic Research*, 88-91

68. EIA, Section 15 (2).



Nigeria is a signatory to the Kyoto Protocol which provides for the promotion of clean development mechanism. The compliance to these provisions in Nigeria is inadequate to meet the objectives of the international body. For instance, forestry management in Nigeria has no federal forestry Act that has nation-wide application. The absence of such Act dwarfs Nigeria's commitment to the provisions of the Protocol which operationalizes the United Nations Framework Convention on Climate Change (UNFCCC). The aim of UNFCCC is to achieve a stable level of greenhouse gases in the atmosphere by reducing human-induced activities or disturbances to global climate. Deforestation is one such human-induced activities especially in the absence – as it is in Nigeria - of commensurate efforts for reforestation.

The animus here is that due to the absence of national forest Act, deforestation is given a free reign. The States Forest Laws do not present adequacy of enforcement that can control the menace of deforestation. The result is that it undermines every other effort to enhance carbon stock to mitigate climate change.<sup>69</sup> This leaves the country with no other option than to rely on the newly enacted Climate Change Act with the expectation that the Act would not turn out to be just a toothless bulldog with all barks and no bite. Nevertheless, the Act contains commendable and laudable provisions which if effectively enforced will uplift Nigeria as one of those nations in the forefront to fight the war against the threats of global change through pragmatic legislation. Noting that promulgating legislation is not the end-point of the matter, it is important to realize that law without enforcement is no law. Neither is law self-enforcing no matter how beautiful the legal draftsmen have couched it: it cannot take the place of enforcement or the will of people in power to work with the law.

To conclude this section it is also important to point out in a few paragraphs that some of the provisions in the Nigerian Constitution need to be inculcated in the minds of every Nigerian, and the relevant provisions include right to life,<sup>70</sup> respect for the dignity of the human person,<sup>71</sup> and the obligation of the State to protect and improve the environment of Nigeria.<sup>72</sup> The point being established here is that without clean and healthy environment these rights created in the Constitution cannot be actualized and enjoyed by the citizens. These rights have been denied the citizens as shown in the concerned provision of the Associated Gas Re-Injection Act and the PIA whereby the Minister of Petroleum is empowered to grant consent to oil companies to flare gas under certain circumstances.<sup>73</sup> Olujobi and Olujobi criticized such consent to flare gas as being a contravention of the provision of the Constitution.<sup>74</sup> The Constitution provides that if any other law is inconsistent with the provisions of the Constitution, the Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.<sup>75</sup> By that provision the power conferred on the Minister to grant consent to flare gas is by virtue of the inconsistency clause in the Constitution null and void ab initio.<sup>76</sup>

Chapter II of the Constitution also has its own problems because of the non-justiciability clause of that Chapter which provides that except as otherwise provided by the Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law, or any judicial authority is in conformity with the provisions set out in Chapter II of the Constitution. In view of all the above that form part of the findings of this paper, the sincerity of purpose for the extant enactments to help in the mitigation of global warming and the greenhouse effects in Nigeria appears to have put themselves to trial capable of raising probing questions about Nigeria's commitments to national, regional and international obligations towards achieving a long-term climate goals such as the net-zero carbon emission target.

69. Y M Ahmed and ED Oruonye (n37)

70. CFRN, Section 33(I).

71. *ibid*, Section 34(I)

72. *ibid*, Section 20

73. Petroleum Industry Act, Section 104 (1).

74. (n32)

75. CFRN, Section 1(3)

76. *ibid*.

In light of these circumstances, the expectation of the citizens from political leaders is anything but high. They must not turn blind eye when citizens under their watch suffer grave breaches of their human rights and claim ignorant of the happenings,<sup>77</sup> otherwise, they might in the long run be called upon under national and international laws to account for their stewardship in governance.<sup>78</sup>

## **6. RECOMMENDATION**

It is therefore recommended for Nigeria to remember the importance of making sure that environmental policies and other policies that affect the environment are translated into law, laws that are not just mere toothless bulldogs which can only bark but cannot bite by reason of lack of effective enforcement machinery. Law is not self enforcing nor meant to serve as a window dressing but to achieve a designed objective. There must be dedication in applying the implementation aspect of law to its very heart's core with all the necessary backing of the political will.

Another point to keep in mind is the conflict between the quest for economic development and the safety of the environment from the effects of greenhouse gas emissions. Resolving this conflict would quite inevitably entail reduction in emission flows build up into increased concentration of greenhouse gas emission.

The third point to be clear on is how to curb greenhouse gas emission. Again, for this reason, taking such steps like minimizing usage of products that release greenhouse gas becomes imperative. In a country that operates fuel economy like Nigeria, the rate of emission level is always high. This indeed needs to be reduced by introducing low emission alternatives to replace high emission products. Again, this is yet another reason there is the necessity all over the world for economies to adopt sustainable energy sources such as solar, wind, biomass among others. Nigeria cannot afford to be an exception. These sources have proven to be truly green energy and assist in providing green economic growth.

## **8. CONCLUSION**

This paper substantially explained global warming and the greenhouse effects in the way and manner that can admit of clear understanding. Noting that global warming is a hydra headed monster that originates from human activity on earth, its negative effects have become a huge challenge to the very existence of humans, plants and animals. As a consequence of human conduct, no doubt, humanity has found itself subjected under pressure to restore the identity of the planet to the original form it was handed to them. Such activities like pollution of the atmosphere by burning fossil fuels, gas flaring, deforestation that deplete the carbon stock, etc are prevalent in Nigeria and constitute themselves as threats ready to deliver death blows to the health and well-being of the human society. The legal and policy framework as many as they are in Nigeria hardly ever can provide the desired panacea in absence of efficient framework, both legal and policy.

The legal and policy framework for control of global warming fail the text of top-notch to ensure effective implementation. It is in light of the implementation vacuum created in the laws and policies that the rise in greenhouse gas emission continues unabated. These laws have been reviewed and their shortcomings addressed in the recommendations set out above.

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77. P O Eze and E E Eze, "Evaluation of the Role of International Law upon the Impact of Hate Speeches on National Security" [2003] (II) (I) *International Journal of Business and Law Research*, 171-0178 at 177.

78. *ibid*