



THE EFFECTIVENESS OF NATIONALLY DETERMINED CONTRIBUTIONS UNDER THE PARIS AGREEMENT FOR ADDRESSING CLIMATE CHANGE

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Abstract

The legal obligation to protect the environment is one that cannot be overemphasized. This is because the environment provides fundamental resources without which life cannot exist. However, the threat of climate change has continued to challenge existing framework for environmental protection. Of course, failure to adequately address climate change poses great to ecosystem functionality and by extension to the sustainability of human life. This is because of the far-reaching adverse effects of climate change such as increase in global mean temperature, sea level rise, crop failures and alteration of seasons. However, the development of effectiveness framework to address climate change at the global level has remained daunting. Current global response to climate change is hinged on the Paris Agreement 2015 which adopted a framework of nationally determined contributions as the major response mechanism. The aim of this paper was to examine the effectiveness of NDCs under the Paris Agreement 2015 for addressing climate change. The doctrinal methodology of research was adopted; primary and secondary data were subjected to critical textual analysis and logical deductions drawn. In the legal analysis, the scope of the paper covered the following specific areas: legal nature of NDCs, legal effect of climate change obligations under NDCs, global peaking of greenhouse gas emissions, transparency mechanism for implementation of NDCs and the effectiveness of Nigeria's NDCs to tackling climate. It also discussed the legal position in the United Kingdom and draw lessons for Nigeria. The dissertation found that the legal nature of NDCs under the Paris Agreement 2015 is mere statement of national intentions. Accordingly, NDCs do not have any binding legal effect on the Parties. In addition, under the Paris Agreement 2015, there are legal obligations which Parties under or should undertake under NDCs. Furthermore, it was found that the Paris Agreement has a multi-level transparency mechanism to enhance the implementation of NDCs. It was also found that implementation of climate change obligations in Nigeria is ineffectiveness. There is no binding commitment but mere policies statements which have not been implemented and often abandoned by successive governments. The paper concluded that the NDCs is vague and without any particularized commitment. Accordingly, the NDCs mechanism under the Paris Agreement 2015 is ineffective to address climate change. It recommended that Nigeria should adopt a binding legislative approach to climate change like is practice in the United Kingdom. Again, Nigeria should adopt a statutory approach to the development of renewable energy within statutory timeframes. The COP should adopt binding financial obligations for the developed countries. This will ease the financial constraints of developing countries in addressing climate change. It further recommended that to urgently address the adverse effects of climate change, the COP should declare peaking of GHG for developing countries.

Keywords: NDC, Climate Change and Paris Agreement

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1.0 Introduction

Climate change is defined as a change of climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural variability observed over comparable time periods². It could also be seen as a change in the statistical distribution of weather over periods of time that range from decades to millions of years. It can be a change in the average weather or a change in the distribution of weather events around an average, such as greater or fewer extreme weather events. Climate change may be limited to a specific region or may occur across the whole earth. It can be caused by recurring, often cyclical climate patterns. The increase in greenhouse gas concentrations in the atmosphere has led many scientists to conclude that the earth's temperature will keep increasing by several degrees over the next century.³ Climate change has remained one of the complex issues in global environmental priority today. The complexity arose from the uncertainties in the causes, magnitude and cost of mitigation and distribution of warning. Today, the issue of climate change is globally treated as a matter of domestic and international concern. Climate change challenges has moved from being an illusion to being a serious environmental challenge for modern governments across countries, especially in developing societies. Even though, countries in the Global North have been the culprit and those in the Global South have been the victims, trading blames back and forth will only aggravate the damage already done by their various activities over the years. This paper has broadened the climate change discourse by conceptualizing the phenomenon, identifying its effects on the global and domestic environments and mooted remedies to carefully arrest the menace. This paper adopted the doctrinal method of research, with primary sources of information distilled from domestic and international legislations. The primary source of information was derived from United Nations Framework Convention on Climate Change (UNFCCC) 1992, Kyoto Protocol 1997, and the Paris Agreement of 2015. While, the secondary sources of information were derived from newspapers, journal articles, magazines, reported global news, and internet sources. All these Conventions have sharpened global efforts at combating human induced climate change. The paper concluded that until the anthropogenic factors that generate and sustain the climate change menace are addressed, the present generation may not be adequately protected, while there may be nothing to preserve for the future generations. This paper explored data comparatively and made some useful and achievable recommendations.

This paper shall attempt to examine the legal framework at the domestic and international fora, with the aim of appreciating the legislation commitment to climate change mitigation and adaptation.

2.0 General Overview of Climate Change and Global Warming in Nigeria

There is a general consensus that the effects of climate change as a result of human activity, on humans, the environment and ecological processes are negative and will continue to be so.⁴ Some of these include an effective weather conditions, which can reduce agricultural crop yield and aggregate food production.⁵ Scientists also agree that developing countries are likely to suffer more from the adverse

² Article 2 (1) United Nations Framework Convention on Climate Change, 1992.

³ J T Houghton and Others, 'Climate Change', the Supplementary Report to the IPCC Scientific Assessment. WMO/UNEP intergovernmental panel on climate change (Cambridge University Press 1992).

⁴ M Parry and T Carter, *Climate Change and Adaptation Assessment: A Guide to the IPCC Approach* (London: Earthscan, 1998)

⁵ O Adejonwo-Osho, *Effective Fulfilment, Implementation, and Supervision of the Validation and Registration Requirements for Clean Development Mechanism (CDM) Project: A Missing Link in the Achievement of the Sustainable Development Objective of the CDM*. (University of Dundee, Unpublished Ph.D thesis, 2012).

impact of climate change than developed countries.⁶ This is because they have less capacity to mitigate and adapt to the negative effects of climate change and are therefore most vulnerable, despite the fact that they have contributed the least to the challenge.⁷

Beside the challenges facing Nigeria as a country, climate change has arisen as a silent challenge to the country and is believed to be behind certain agitations such as resource control, correction of environmental pollution and degradation of many Nigerian urban and rural areas⁸. Over the past couple of years, there has been consequences of extreme climate change and events due to global warming. These consequences ranges from flooding, desertification, erosion, drought, sea level rise, heat or cold stress, pests and diseases, erratic rainfall patterns, and land degradation.⁹ The South-South geopolitical zone is mainly affected by sea level rise and deforestation induced changes; the Southwest zone by sea level rise and deforestation induced changes; the Southeast by erosion, flooding and land degradation; the North-central by changes due to de-vegetation and overgrazing; the Northeast by drought, desertification and heat stress; and the Northwest by drought, desertification and heat stress.¹⁰

Furthermore, like every other environmental challenge, climate change involves externality, for instance, the emission of greenhouse gases causes damages to other economic agents for which they are not compensated by the agent responsible for the emission¹¹. The threats posed by climate change across the globe with particular reference to developing countries, where agriculture is a dominant sector and in turn depends on weather and climate. The threat of climate change to food security and livelihoods in selected states in Nigeria.¹² Most of the environmental consequences of climate change manifest as physical changes such as sea level rises, higher local temperature and changes in rainfall pattern.

Legislatively, the general regulations relating to environment in Nigeria includes, the Constitution of the Federal Republic of Nigeria, 1999 (as amended), the National Environmental Standards and Regulations Enforcement Agency Act (NESREA), 2007, Environmental Impact Assessment Act (EIA) 1992 and the National Oil Spill Detection and Response Agency Act, 2006 and the newly enacted Climate Change Act. The basis of environmental policy in Nigeria can be found in section 20 of the Constitution of the Federal Republic of Nigeria, 1999 which contains provisions for the protection and improvement of the environment and safeguarding of water, air, and land, forest and wildlife of Nigeria¹³.

The above legislations provide for both civil and criminal liabilities for environmental offences, however, the issue of enforceability of these penalties provisions still leaves much to be desired. Ignorance is a major obstacle which had prevented the public from understanding the effects of climate

⁶ B Wilson and M Spannagle, *The Complete Guide to Climate Change* (Abingdon: Rutledge, 2010).

⁷ J Ayers and S Hug, 'Supporting Adaptation to Climate Change: What Role for Official Development Assistance [2007] (27) (6) *Development Policy Review*, 681.

⁸ C M Onuoha, 'Climate Change and Sustainable Development in Nigeria: The Mitigating Role of Green Wall Sahara Nigeria Programme' [2009] (10) *African Institute for Applied Economics (AIAE)*; 25.

⁹ (n 11).

¹⁰ (n 10).

¹¹ (n 10).

¹² S I Efe, 'Climate Change and Food Security in Africa: Delta State Nigeria Experience, in R N C Anyadike and Others (eds.), *Conference Proceeding on Climate Change and the Nigerian Environment*, 2009.

¹³ (n 15).

change. It is submitted here that a lot more has to be done on the area of awareness to make adaptation and mitigation feasible. Therefore, in an effort to tackle climate change, the government must aim towards the local people. This is because, local participation can be strengthened by creating awareness and giving people the necessary incentive to effectively implement climate change policies and legislations.¹⁴ Furthermore, thorough and regular and consistent investigations is required on the impacts of climate change on various environmental attributes and activities such as water accessibility, crop production, human health, animal production and many others. Also, studies should incorporate research into spatial dissemination of relevant and related information that will enhance the understanding of the reality of climate change, especially, among local settings, as obtained through scientific means in good time. Climate change challenges cuts across all sectors of the environment and since Nigeria's major source of revenue is generated from the oil and gas sector which is the highest contributor to climate change, there is a need to have a law which would bring about not only sustainable management of this sector, but at the same time take in hand the menace of climate change.¹⁵

Public and Non-Governmental Organizations (NGO) participation should be encouraged in Nigeria. Projects that will mitigate the effect of climate change should be encouraged. It would also be easier to enforce conformity where there is provision for compensation in the event of breach of climate change regulations. Specifically, in Nigeria, the efforts of NGOs such as the Climate Change Africa is commendable,¹⁶ community Research and Development Centre, Building Nigeria's Response to Climate Change (BNRCC), and many others.

3.0 Climate Change and International Law

a. Legal Nature of NDCs

Nationally Determined Contributions (NDCs) are the nucleus of the Paris Agreement because NDCs are the major mechanism for achieving the Objective of the Agreement. By extension, NDCs are also the fulcrum on which the effectiveness of the Agreement revolves. This is because how Parties develop and implement their NDCs is the final determinant whether the goals of the Agreement will be met. Generally, NDCs are written statements of the efforts a Party intends to pursue towards tackling climate change.¹⁷ Article 4(2) provides:

Each Party shall prepare, communicate, and maintain successive nationally determined contributions that it intends to achieve. Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions.

The trinity obligation to prepare, maintain and communicate successive NDCs is mandatory. This is consequent on the use of the word 'shall'. It appears under the Agreement that this obligation is to continue in perpetuity until the objectives of the Agreement are met. Even then, successive NDCs will still be necessary to consolidate and sustain the achieved objectives. For each Party, what the NDCs

¹⁴ (n 15).

¹⁵ (n 15)

¹⁶ N A Yahaya, 'Nigeria: Representatives Flay Yar' Adua Over Climate Change' <http://allafrica.com/stories/200905250025.html> accessed on 11/11/2019.

¹⁷ B Kat, S Paltsev and M Yuan, 'Turkish Energy Dector development and the Paris Agreement Goals: A GCE Model Assessment [2018] (122) *Energy Policy* 84, 84.

should contain are ‘nationally determined contributions that it intends to achieve.’ This means, intentions determined at national level. Though the Agreement does not provide specific contents of NDCs, it is obvious that its contents will relate to intended contributions of the Parties on the various strands of climate action, like peaking, mitigation, adaptation, climate finance, technology transfer. This is because article 3 refers to NDCs as defined in articles 4, 7, 9, 10, 11 and 13. On each of these strands, Parties are to prepare their intended contributions.

Article 2(2) is to the effect that the Agreement will be implemented to reflect equity and the principles of common but differentiated responsibilities and capacities in the light of different national circumstances. Pauw and others,¹⁸ opine that the NDCs regime helps to address the contentious differentiation between Annex 1 and non-Annex 1 Parties under the UNFCCC and the Kyoto Protocol. NDCs downplay the controversy of what should be equitable responsibility for each Party.¹⁹ These are because NDCs are nationally determined. Parties freely reflect their subjective appreciation of equity and national circumstances in their NDCs.²⁰ The above is without prejudice to the limited responsibility of developing countries in some regards of climate action.²¹

This paper submits that allowing Parties to subjectively reflect equity and common but differentiated responsibility in their NDCs is not without setbacks. It is likely to negatively affect the level of ambitiousness of NDCs and even encourage free riding. The question of equity upon which the doctrine of common but differentiated responsibility leans, has always been controversial in climate negotiations.²² Shifting it to the Parties may underplay the controversy but serves to reduce ambitions. This is consistent with the findings of Tribett and others,²³ that for most Developing Country Parties, their NDCs are made conditional on the provision of climate finance. Considering the current global fossil fuel economy and market, Parties are tempted to unduly rely on respective national circumstances to communicate less ambitious NDCs.²⁴ Thus as Dong and others note, many of the NDCs are conservative.²⁵

Notwithstanding, this dissertation submits further that the Agreement strives to make NDCs consistent with its objectives. First, there is a principle against backsliding or stagnation. Article 3 provides that the aggregate efforts of all Parties will represent a progression over time. For this reason, article 4(3)

¹⁸ W P Pauw and Others, ‘Beyond headline Mitigation Numbers: We need more Transparent and Comparable NDCs to Achieve the Paris Agreement on Climate Change’ [2018] (147) *Climate Change* 223, 234

¹⁹ P Castro, ‘Common but Differentiated Responsibilities Beyond the Nation State: How Differential Treatment Addressed in Transnational Climate Governance Initiatives’ [2016] (592) *Transnational Environmental Law* 379.

²⁰ Paris Agreement art 4(6).

²¹ O Woolly, ‘Developing Countries Under The International Climate Change Regimes: How Does The Paris Agreement Change Their Position?’ <https://link.springer.com/chapter/10.1007/978-3-319-55898-1_8> Accessed 14 September 2022.

²² V Torstad and H Saelen, ‘Fairness in Climate Negotiations: What Explains Variations in Parties’ Expressed Conceptions’ [2018] (18) *Climate Policy* 642, 643-645.

²³ W R Tribett and Others, ‘Paris INDCs’ in J Dodson (ed.) *Paris Agreement: Beacon of Hope* (Springer Nature, 2016) 115, 118-119.

²⁴ M Cooper, ‘Governing the Global Climate Commons: The Political Economy of State and Local Action, after the U.S. flip-flop on the Paris Agreement’ [2018] (118) *Energy Policy* 440, 448.

²⁵ C Dong and Others, ‘What is the Probability of Achieving the Carbon Dioxide Emissions Targets of the Paris Agreement? Evidence from the top ten Emitters’ [2018] (622-623) *Science of the Total Environment* 1294, 1295.

requires individual successive NDCs to represent a progression.²⁶ Cooper,²⁷ refers to it as the “common pool resource management”. It is also called the “bottom-up” approach- a pooling together of individual efforts into one aggregate whole. Second, each party’s NDCs is required to be “ambitious” and to represent the highest possible ambition of the respective Party.²⁸ This dissertation argues that the major limitation of the article 3 is that it does not define what is “ambitious” with regards to NDCs or set a template for its evaluation. Much will therefore depend on the good faith of the Parties.

After preparation of the NDCs, the Party has a further duty to maintain and communicate its NDCs. The communication of the NDCs is by filing a copy for recording with the Conference of the Parties at the Registry kept by the Secretariat.²⁹ Successive NDCs are to be communicated every five years.³⁰ In communicating the NDCs, Parties are to supply information necessary for transparency, clarity and understanding of the NDCs.³¹ The communicated NDCs are kept in a public registry maintained by the Secretariat to allow for further public scrutiny.³² While a Party may at any-time adjust its NDCs, it can only be with a view to enhancing its level of ambition.³³ There is a further obligation on the Parties to account for their NDCs in accordance with guidance adopted by the Conference of the Parties.³⁴

b. Legal Effect of NDCs

Article 4(2) of the Paris Agreement 2015 uses the words ‘nationally determined contributions that it intends to achieve’. NDCs are determined at the national level of the Party no doubt. This is opposite to the quantified emission reduction targets under the Kyoto Protocol.³⁵ The issue then arises, are NDCs statements of good intentions that cannot translate to binding legal obligations and cannot be subject to legal compulsion?

Mayer suggests a negative.³⁶ He puts emphasis on the second sentence of article 4(2) which reads, ‘Parties shall pursue domestic mitigation measures, with the aim of achieving the objectives of such contributions. He argues that the use of “shall” creates an international law obligation.³⁷ He argues however that the obligation is one of conduct not of result, requiring measures reasonably calculated to achieve the objectives of the NDCs. It therefore does not mean that the objectives must be achieved.³⁸ Mayer contends further that NDCs may constitute binding obligations under the doctrine of unilateral declarations in international law.³⁹

²⁶ L Rajamani and B Jutta, ‘The legality of Downgrading Nationally Determined Contributions under the Paris Agreement: Lessons from the US Disengagement’ [2017] (29) *Journal of Environmental Law* 537.

²⁷ Cooper (n 8), 442.

²⁸ Paris (n 4), art 4(2).

²⁹ Paris (n 4), art 4(12).

³⁰ *Ibid*, art 4(9).

³¹ *Ibid*, art 4(8).

³² *Ibid*, art 4(12).

³³ *Ibid*, art 4(11).

³⁴ *Ibid*, art 4(13).

³⁵ Kyoto Protocol, art 3.

³⁶ B Mayer, ‘International Law Obligations Arising in Relation to Nationally Determined Contributions’ [2018] (7) *Transnational Environmental Law* 251.

³⁷ Mayer (n 20), 258.

³⁸ *Ibid*, 259.

³⁹ *Ibid*, 262.

This dissertation agrees with Mayer on the effect of the second sentence of article 4(2). In addition, it is important to observe a distinction between the nature of NDCs as provided in article 3 and 4. Article 3 reads *inter alia*:

As nationally determined contributions to the global response to climate change, all Parties are to undertake and communicate ambitious efforts as defined in articles 4, 7, 9, 10, 11 and 13 with the view to achieving the purpose of this Agreement as set out in article 2.

Article 4(2) provides in part: ‘Each Party shall prepare, communicate and maintain successive nationally determined contributions that it intends to achieve.’ It should be observed that article provides for NDCs as further defined in articles 4, 7, 9, 10, 11 and 13. Consequently, a community reading of article 3 with the other articles mentioned is necessary for a full understanding of NDCs and the legal effects flowing therefrom if any. In fact, it seems that a literal interpretation of article 3 would require that NDCs should at the least cover the respective strands of climate action under articles 4, 7, 9, 10, and 11. On each of these, Parties shall (or ought to) communicate and undertake ambitious efforts.

However, at this stage, focus will be a joint reading of article 3 and 4(2). Interestingly, while article 3 provides that Parties “are” to undertake and communicate ambitious “efforts” as NDCs, article 4(2) is to the effect that each party shall prepare and communicate NDCs what it “intends to achieve” Thus NDCs are not exclusively nationally determined intentions but also nationally determined ambitious efforts. It is for this reason that the second sentence of article 4(2) inputs a binding obligation to pursue measures with the aim of achieving the objectives of the NDCs, of course, in the ultimate aim of achieving the objectives of the Agreement. Consequently, the obligation of conduct (ambitious efforts) is justified also under article 3. To further buttress this point, article 3 also provides that ‘the efforts of all Parties will represent a progression over time’. Emphasis is on “efforts”.

On the perspective of NDCs being binding as unilateral declarations, this dissertation is unable to agree with Meyer.⁴⁰ The International Law Commission has established Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations.⁴¹ Principle 1 provides that the declaration must manifest a will to be bound. Thus it is necessary to take into account the contents of the declaration and its entire circumstances. It must also be stated in clear and specific terms.⁴² This dissertation is mindful that in the Nuclear Tests case of *Australia v France*,⁴³ the ICJ held that declaration of intentions created binding obligations. But can this be applied to NDCs?

Accepted, ratification of the Paris Agreement 2015 by a Party is sufficient expression of intention to be bound by the Agreement. After all, the legal effect of an executed Agreement is clear both in international and domestic legal systems. Article 26 of the Vienna Convention on the Law of Treaties for instance provides: ‘Every treaty in force is binding upon the Parties to it and must be performed by

⁴⁰ Mayer (n 20), 262.

⁴¹ International Law Commission ‘Guiding Principles Applicable to Unilateral Declarations of States Capable of Creating Legal Obligations’ < http://legal.un.org/ilc/texts/instruments/english/draft_articles/9_9_2006.pdf > Accessed 14 September 2022.

⁴² *Ibid*, Principles 3 and 7; *Denmark v Norway*, Judgment, (1933) PCIJ, Series A/E, No. 53, 71

⁴³ ICJ Reports 1974, 253, para 41-43

them in good faith.’ However, it is the submission of this dissertation that this does not translate into intention to be bound by the Party’s NDCs. Moreover, NDCs cannot be understood as binding unilateral declarations under international law without regards to the legal instrument under which they are made and communicated. It is the Agreement creating the system of NDCs that determines its legal nature and effect not an invocation of general rules of international law out of context.

To argue that NDCs may amount to binding unilateral declarations under international law, will radically violate the letter and spirit of the Paris Agreement 2015. The entire approach of the Agreement is facilitative, non-intrusive, non-punitive, respectful of national sovereignty and without placing undue burden on Parties.⁴⁴ Even the UNFCCC 1992 recalls the sovereign right of States under the United Nations Charter to exploit their own resources in accordance with their own developmental and environmental policies.⁴⁵ This is only subject to the responsibility not to cause harm to the environment of other States or the areas beyond national jurisdiction.⁴⁶ This is why under the Agreement as discussed above, Parties have no responsibility to achieve their NDCs. Furthermore, if NDCs become binding as unilateral declarations it will have negative effect on the Agreement. First, Parties will subsequently be reluctant to prepare and communicate NDCs. Second, even where they do, the NDCs will not be ambitious.

Besides, it is worthy of note that what Parties communicate are NDCs that reflect highest possible ambition, not highest possible capacity.⁴⁷ Even then, it deals with possibility not proven ability. Thus, by communicating NDCs, Parties are not holding themselves out as even having the capacity to achieve the NDCs. Consequently, it would have been ridiculous for the Agreement to input obligation to achieve the NDCs. It follows logically that it will be contrary to the intention of the Agreement to hold NDCs binding as unilateral declarations.

Another limitation to NDCs translating to binding unilateral declaration is the content of the NDCs. Parties resort to communicating NDCs that are conservative and vague. The NDCs do not contain particularised intentions and time frames.⁴⁸ This way, even if the NDCs are binding as a document, it will not create any specifically binding obligation capable of being enforced because of its vagueness.

Ironically, this vagueness runs contrary to article 4(8) of the Agreement which provides that in communicating NDCs, Parties shall provide information necessary for clarity, transparency and understanding in accordance with decision 1/CP.21. Under paragraph 27 of the said Decision 1/CP/21, Parties agree that information to be provided “may include” quantifiable information on the reference point, base year, time frames and how the Party considers that its NDCs is fair, ambitious and

⁴⁴ Paris (n 4), art 13(3).

⁴⁵ United Nations Framework Convention on Climate Change 1992, recital.

⁴⁶ Rio Declaration, principle 2.

⁴⁷ Paris (n 4), art 4(3).

⁴⁸ UNFCCC, ‘NDCs of China’

<<https://www4.unfccc.int/sites/submissions/INDC/Published%20Documents/China/1/China's%20INDC%20-%20on%2030%20June%202015.pdf>> Accessed 14 September 2022.

contributes to achieving the objectives of the Agreement. The use of “may”, makes it discretionary. Communicated NDCs reflect the unwillingness of the parties to supply the information.⁴⁹

The totality of the above arguments, demonstrate that NDCs are statements of intentions, not binding pledges. Though NDCs carry a consequential obligation of ambitious efforts especially under article 3, still, NDCs are non-justiciable and cannot be enforced against a Party. It is sufficient that a Party aimed to achieve the objectives of its NDCs under the various strands of climate action specifically defined in articles 4, 7, 9, 10, 11 and 13. But a Party has no obligation to achieve the objectives of its NDCs. Even where a Party fails or maliciously neglects to undertake ambitious efforts aimed at achieving the objectives of its NDCs, the Agreement does not be any stretch of interpretation, envisage a system of compulsion. For this reason, this dissertation submits that NDCS are statements of (good) intentions that are non-binding and cannot be enforced against a Party.

4.0 Climate Change Obligations under NDCs

a. Global Peaking of Green House Gas Emissions

Article 4(1) of the Paris Agreement 2014 provides that to reach the temperature target under article 2, Parties aim to reach global peaking in GHG emissions “as soon as possible” and then to undertake rapid reductions in emissions until there is a balance between anthropogenic emissions by sources and removal by sinks.

Clearly, article 4(1) is expressed as “aim” and does not necessarily translate into binding obligation. However, by article 3, such aim is an inherent part of NDCs. Parties are therefore to undertake ambitious efforts under article 3 to meet this aim of global peaking stated in article 4(1). What article 4(1) envisages as shown in the diagram is continuous increase in emissions from the current level. Such increase is arguably to allow for adaptations and developments until the increase reaches a peak. This is because Parties have right to economic development and there is positive correlation between economic growth and increase in carbon emissions, at least until non fossil sources of energy have been well developed and diffused to become cost effective. Thereafter, Parties are to undertake rapid reductions until balance is reached between emissions by sources and removal by sinks. Such balance is achieved when there is a stabilization of GHG concentrations at a level that prevents dangerous anthropogenic interference with the climate system.⁵⁰

What the article labours to evolve is a system of climate action that prevents economic shock by allowing Parties to adjust naturally over time in accordance with their peculiar national circumstances. This is to ensure that food production is not threatened and to allow development to proceed in a sustainable manner.⁵¹ Thus, peaking is still on the basis of equity and in the context of sustainable development and efforts to eradicate poverty. For this reason, it acknowledges that peaking may take longer for developing countries.⁵² This is consistent with the recital to the UNFCCC 1992 which notes that global share in emissions from developing countries will grow to meet their developmental needs.

⁴⁹ UNFCCC, ‘NDCs of United States of America’

<<https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/United%20States%20of%20America%20First/U.S.A.%20First%20NDC%20Submission.pdf>> Accessed 14 September 2022.

⁵⁰ UNFCCC, (n 29), art 2.

⁵¹ UNFCCC (n 29), art 2.

⁵² Paris (n 4), art 4(1).

However, at closer interrogation, this dissertation submits that article 4(1) seriously undermines the temperature targets of the Agreement under article 2 for the following reasons:

- i) The Agreement does not define ‘global peaking’ of emissions or set a maximum level of emissions that Parties may reach under the global peaking window.
- ii) There is no specific timeframe for Parties to reach global peaking except for the adjectival clauses ‘as soon as possible’ and ‘in the second half of this century’. The last year of this century will still be within the contemplation of the Agreement.
- iii) To further complicate the timeframe, the article acknowledges that peaking of global emissions will take longer for developing countries.
- iv) There is no clear provision on what will amount to ‘rapid reductions’ in emissions after peaking. While it conveys a sharp progressive reduction, there is no template for its assessment on case-by-case bases.
- v) Though all of these are to happen in the second half of the 21st century, there are no intermediate targets or aims at specified intervals towards the achievement of the long-term target.

Very disappointingly, global peaking is stated as “aim” not binding obligation. Since article 3 provides for NDCs as efforts defined inter alia in article 4, it is beyond doubt that the specific provision of article 4(1) overrides article 3. Thus “aim” must mean nothing less than “aim”. A more ambitious and effective approach would be a declaration of global peaking of GHG already, at least for developed country Parties and the fixing of specific date for developing country Parties to reach peaking. The second half of the 21st century is too fluid a timeline for effective climate action. And in the entire circumstances of climate change, arguably, outrageously long.

b. Obligation to Pursue Domestic Mitigation Measures

Whereas under article 3 of the Paris Agreement 2015, Parties are to undertake ambitious efforts with the view to achieving the purpose of the Agreement, under article 4(2), the preparation and communication of NDCs, come with a consequential obligation to pursue domestic mitigation measures with the aim of achieving the objectives of the NDCs.⁵³ Achieving the objectives of the Agreement and of the NDCs are mutually re-enforcing. This is because it is in the achievement of the objectives of the NDCs that the objectives of the Agreement will be achieved. This will however depend on the ambitiousness of the NDCs and consequential efforts.

Agreed, the Agreement is not clear on what specific mitigation measures Parties shall take, however, it can be inferred that the measures required will depend on the intended contributions. This is because such mitigation measures are with the aim of achieving the objectives of the NDCs. This allows for flexibility of the measures in the light of national circumstances and equity. In general, domestic measures will include legal, regulatory, policy, financial and technical frameworks for the purpose of achieving the NDCs.

⁵³ L Rajamani and J Brunne, ‘The legality of Downgrading Nationally Determined Contributions under the Paris Agreement: Lessons from the US Disengagement’ [2017] (29) *Journal of Environmental Law* 537, 541.

c. Adaptation

Adaptation to climate change is now a key issue in international climate governance.⁵⁴ Article 3 of the Paris Agreement also requires all Parties to undertake and communicate ambitious efforts as defined in article 7 which deals with adaptation. What article 7 established for all Parties is a global goal on adaptation.⁵⁵ The four key areas of the goal are enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change. This is in contributing to sustainable development and ensuring adequate response measures in the context of the temperature target in article 2. Thus Parties need to adapt to already occurring change and prepare for change consequent upon the temperature target of the Agreement. As Lyster notes, adaptation is both reactionary and anticipatory.⁵⁶ The goal includes an acknowledgement of the long term importance of adaptation in protecting people, livelihoods and ecosystems and the immediate needs of developing countries that are particularly vulnerable to the adverse effects of climate change.⁵⁷ There is also an acknowledgement that adaptation should follow country-driven, gender-responsive and fully transparent approach.⁵⁸

Article 7(10) and (11) supports the position of this dissertation that adaptation is part of NDCs by article 3. Article 7(10) provides that each Party ‘should’ as appropriate, submit and update periodically an adaptation communication. The communication may include its priorities, implementation, support needs, plans and actions. However, by article 7(11), the adaptation communication may be a component of or in conjunction with other communicated documents including NDCs. Even where the adaptation plan is communicated as independent document, it is still part of a Party’s NDCs. At the least, it is intended contribution with regards to adaptation.

d. Climate Finance, Technology Transfer and Capacity Building

It should be recall that one of the sub-objectives of the Paris Agreement is to make the flow of finance consistent with a pathway towards low GHG emissions and climate-resilient development.⁵⁹ It necessarily incorporates flow of finance towards the pathway of the temperature goal of the Agreement.⁶⁰ Two issues can be inferred from the above: availability of finance and flow of the finance in a way that is consistent with the sub-objectives of the Agreement. Article 9 of the Agreement provides that developed country Parties shall provide financial resources to developing country Parties with regards to both mitigation and adaptation. This is in continuation of the already existing obligation under the UNFCCC 1992. For instance under article 4(3) of the Convention, developed country Parties have obligation to provide new and additional finance to cover the full cost of compliance with article 12(1) by developing country Parties.⁶¹

‘Other Parties are encouraged to provide or continue to provide such support voluntarily.’⁶² Developed country Parties ‘should’ continue to take the lead in mobilizing climate finance. The mobilization is to

⁵⁴ A Lesnikowski and Others, ‘What does the Paris Agreement mean for Adaptation’ [2017] (17) *Climate Policy* 825, 826.

⁵⁵ Paris (n 4), art 7(1).

⁵⁶ R Lyster, ‘Climate Justice, Adaptation and the Paris Agreement: a Recipe for Disaster?’ [2017] (26) *Environmental Politics* 438, 441.

⁵⁷ Paris (n 4), art 7(2).

⁵⁸ *Ibid*, art 7(5).

⁵⁹ Paris (n 4), art 2(1)(c).

⁶⁰ A Zahar, ‘The Paris Agreement and the Gradual Development of a Law on Climate Finance’ [2016] (6) *Climate Law* 75, 81.

⁶¹ H Zhang, ‘Implementing Provisions on Climate Finance under the Paris Agreement’ [2019] (9) *Climate Law* 21, 22-23.

⁶² Paris (n 4), art 9(2).



represent a progression beyond previous efforts.⁶³ Developed country Parties have a binding obligation to biennially communicate indicative quantitative and transparent information relating to the above. The information supplied shall also be taken into account at the global stock-take.⁶⁴ The financial mechanism under the Convention serves the financial mechanism under the Agreement⁶⁵

The UNFCCC 1992 in article 11 established a mechanism for provision of finance and transfer of technology. The finance mechanism is under the guidance of the Conference of the Parties (COP) which decides on its policies, priorities and eligibility criteria. The provision of finance is on the basis of grant or concession. Under the Cancun Agreements of the COP, developed country Parties agree to jointly mobilize US\$100 billion per year by 2020 to developing countries.⁶⁶ This timeframe was increased to 2025 by the decision adopting the Paris Agreement. Under article 100 of the Cancun Agreement, Parties decided that a significant share of the multilateral funding for mitigation will flow through the Green Fund established in article 102.⁶⁷

Whereas developing country Parties have joint responsibility to contribute to the Fund, the absence of individual responsibility is disappointing. It follows that it is for each developed country Party to determine nationally, what it intends to contribute to the fund. This will make it difficult to meet the financial goal. Not surprising therefore, the State Bank of India noted that the contributions made by Parties to the GCF was only US\$ 9.9 billion as at 19 May 2016.⁶⁸ Similarly, Georges points out that the US in 2014 pledged 3 billion dollars but delivered only 1 billion and later abandoned the pledge.⁶⁹ This dissertation submits that the finance mechanism is very weak. There is no quantified commitment or clarity as to how finance will be raised. Closely related to finance is the long-term vision of realizing development and transfer of technology. This is to improve resilience to climate change and reduce GHG emissions and promote economic growth and sustainable development. The efforts will include accelerating and enabling innovation and making finance available for such purpose.⁷⁰ The Parties recognize the importance of technology also for mitigation and adaptation. Consequently, the Agreement creates a binding obligation for the Parties to strengthen cooperative action on technology development and transfer.⁷¹

In addition, all Parties enhancing capacity of developing country Parties shall regularly communicate on these actions. Developing country Parties 'should' regularly communicate progress made in implementing capacity building.⁷² Capacity building is to be enhanced through appropriate institutional arrangement. While the institutional arrangement under the Convention is to serve the Agreement, the

⁶³ *Ibid*, art 9(3).

⁶⁴ *Ibid*, art 9(6).

⁶⁵ *Ibid*, art 9(5) and (7).

⁶⁶ COP, 'Decision 1/CP.16 of the Conference of the Parties' <<https://unfccc.int/resource/docs/2010/cop16/eng/07a01.pdf>> Accessed 14 September 2022, para 98.

⁶⁷ *Ibid*.

⁶⁸ Lyster (n 41), 451-453

⁶⁹ G A I Lenfena, 'If you're "Still In" the Paris Agreement, then Show Us the Money' [2018] (21) *Ethics, Politics and Environment* 52.

⁷⁰ Paris (n 4), art 10(1) and (5).

⁷¹ *Ibid*, art 10(3).

⁷² *Ibid*, art 11(4).



COP in its first meeting was obliged to adopt a decision on initial institutional arrangement.⁷³ For an effective financial flow under the Agreement, much will then depend on the effectiveness of the institutional arrangement.

e. Transparency Mechanism for Implementation of NDCs

Article 13(1) of the Paris Agreement 2015 established an enhanced transparency framework. The framework is called 'enhanced' because it builds on the transparency framework under the Convention and the collective experience of the Parties. The framework is in order to build mutual trust and confidence (obviously among the Parties) and to promote effective implementation of the Agreement. Equitable sharing of responsibilities in international climate action has always been controversial. This is further reinforced by the attractiveness of fossil fuel in the global economy. There is also the risk of free riding by other countries. Climate action has therefore often been slow due to mutual suspicion and mutual distrust. It is against this background that the article seeks to build mutual trust and confidence in the implementation of the Agreement. This is even more important where the achievement of the objectives of the Agreement depends largely on Intended Nationally Determined Contributions. Beyond doubt, mutual trust and confidence play crucial role in the ambitiousness of both the NDCs and efforts of the Parties.

The purpose of the transparency framework is to provide a clear understanding of climate action undertaken by the Parties in the light of the objective of the Agreement. This will include clarity to enable tracking of progress in achieving respective NDCs.⁷⁴ It extends to clarity of support provided and received with regards to climate action under articles 4, 7, 9, 10 and 11.⁷⁵ Put differently, the framework is to enable understanding of the NDCs under the different strands of climate action stated in article 3.

The Agreement provides three lawyers of review of the NDCs for transparency:

- i) Technical Expert Review under article 13(11). This review includes assistance in identifying areas of capacity building needs. It considers the areas of support by the Parties, areas for necessary improvements including a review of the consistency of the information supplied with the approved guidelines.⁷⁶
- ii) The Parties shall participate in a facilitative, multilateral consideration of progress made.⁷⁷
- iii) Global stock-take by the Conference of the Parties of the implementation of the Agreement under article 14(1). The first global stock-take will take place in 2023 and thereafter every five years unless decided contrary by the Conference of the Parties. Parties INDCs are then to take

⁷³ *Ibid*, art 11(5).

⁷⁴ Paris (n 4), art 13(5).

⁷⁵ *Ibid*, art13(6).

⁷⁶ *Ibid*, art 13(12).

⁷⁷ *Ibid*, art 13(11).

into account global stock-take.⁷⁸ Savaresi writes that these mechanisms when combined with the non-backsliding clause, ratchets up the level of ambition over time.⁷⁹

The implementation of the transparency framework is on a principle of flexibility in the light of different capacities of the Parties. Such flexibility is to be reflected in the modalities, procedures and guidelines which the COP shall adopt under article 13(13).⁸⁰ In addition, the framework is to be implemented in a facilitative, non-intrusive, non-punitive manner, respectful of national sovereignty, and avoid placing undue burden on Parties.⁸¹

5.0 Effectiveness of Nigeria's NDCs to Tackling Climate

Although section 20 of the constitution of Nigeria 1999 and other laws recognise and provide for environmental protection, climate action under the Paris Agreement is governed by National Climate Change Policy for Nigeria 2021-2030. Nigeria is a Party to the Paris Agreement 2015 and submitted its updated NDCs in 2021.⁸² Nigeria's Nationally determined Contributions update 2021 contains broad and vague statements without specific ambitions and targets. It also fails to address fundamental issues under climate action such as global peaking in GHG, mitigation, adaptation and climate finance. It is reflective of the weak framework of the Paris Agreement for compelling Parties to communicate and implement highest possible ambitions. Nigeria's NDCs states that Nigeria remains fully committed to the unconditional target to reduce GHG emissions in 2030 by 20% below business-as-usual emissions and increases its conditional target to 47% below business-as-usual emissions in 2030, on condition of appropriate support.⁸³ By this, Nigeria avoids assuming particular and quantifiable climate obligations but rather makes its commitment conditional on receipt of support. It is therefore not surprising that although Nigeria estimates that investment required over the implementation period 2021-2030 to deliver the conditional target is 177 billion USD, targeted at the electricity generation sector, energy efficiency, transport, agriculture, and oil and gas. It fails to state how the required finance will be addressed.⁸⁴ The NDCs merely states that to mobilize the required NDC investments, it is crucial to engage with the capital market and that increased private sector investment for NDC-aligned projects and businesses, requires further changes to the enabling environment, and appropriate blended finance modalities that allow concessional finance to de-risk private investment.⁸⁵ Nigeria fails to make any financial commitment to tackling climate change.

Similarly, Nigeria in its NDCs notes that technology transfer has been recognized globally for its critical role in responding to the challenges of climate change. And that there are a number of different aspects to technology transfer, such as the provision of technical and manual skills training, access to scientific and technical information and data and creation of joint R&D projects. It merely states that to support this process, Nigeria created the National Office for Technology Acquisition and Promotion

⁷⁸ *Ibid*, art 4(9).

⁷⁹ A Savaresi, 'The Paris Agreement: A New Beginning?' [2016] (34)(1) *Journal of Energy and Natural Resources Law* 16, 21.

⁸⁰ Paris (n 4), art 13(2).

⁸¹ *Ibid*, art 13(3).

⁸² Nigeria's Nationally Determined Contributions 2021 update, para1.

⁸³ *Ibid*, para5.3.

⁸⁴ *Ibid*, para 7.7.

⁸⁵ *Ibid*.

(NOTAP).⁸⁶ There is no provision to equip and build capacity of the NOTAP and there is no commitment in that regard.

Moreover, the totality of Nigeria's climate action under the Paris Agreement is coordinated through the framework of the National Climate Policy 2021-2030. This is a soft law approach that is weak and has proven ineffective in Nigeria over the years.⁸⁷ The point remains that policy implementation in Nigeria has always been marked by inconsistencies, contradictions, insincerity and corruption which them very ineffective.⁸⁸ Epelle,⁸⁹ submits that policy formulation are not backed by sufficient data and research and therefore their implementation are always unrealistic. The effect is that public policy failure is the usual situation in Nigeria.⁹⁰ In most cases, there is no continuity and accordingly, the policy dies with the administration that introduced it. The above underscores the weak and ineffective nature of policy approach to implementation of NDCs by Nigeria.

6.0 Lessons from the United Kingdom

- i. Binding Legal Approach to NDCS
Unlike Nigeria, the United Kingdom takes a binding legal approach to implementation of its NDCs under the Paris Agreement 2015. Section 1 of the Climate Change Act 2008 sets a very ambitious legal target to ensure that the net UK carbon account for the year 2050 is at least 80% lower than the 1990 baseline.
- ii. Imposition of Legal duty on the Secretary of State to Achieve the target
Section 1 of the Climate Change Act 2008 further imposes a legal duty on the Secretary of State to ensure achievement of the target. Nigeria does not have any such legal duty approach to tackling climate change.
- iii. Reporting Mechanism to the Parliament
Section 16 of the Climate Change Act mandates the Secretary of State to lay before Parliament in respect of each year, beginning with the year 2008, a detailed report of net emissions and removals in line with the target. This is to provide parliamentary oversight in the achievement of the target. The final report is to be given in 2050.
- iv. Creation of the Committee on Climate Change
- v. Section 32 of the Act creates Committee on Climate Change.
The Committee plays both advisory roles and verifies the report of the Secretary of State. This provides a double level check on the Secretary for the achievement of the targets.
- vi. Statutory Impetus for Renewable Energy Research, Development and Deployment
The Energy Act 2020 provides extensive statutory impetus for renewable energy research, development and deployment. It covers all the major sources of renewable energy such as solar,

⁸⁶ Nigeria (n 85), para 7.2

⁸⁷ J A Egonmwan, *Public Policy Analysis: Concepts and Applications* (S M O Aka & Brothers Press, 1991) 1

⁸⁸ G Wilson and A Epelle, 'Public Policy Formulation and Implementation in Contemporary Nigeria' [2018] (8)(6) *International Journal of Research in Social Sciences* 175, 178.

⁸⁹ A Epelle, 'Public Policy Failure in Nigeria' in F Allen (ed), *Public policy analysis: Themes and issues* (Shapee Publishers 2011) 53-57.

⁹⁰ A T Shehu, 'The Enforcement of Social and Economic Rights in Africa: The Nigerian Experience' [2013] (2)(1) *Afe Babalola University: Journal of Sustainable Development Law and Policy* 101, 117.

wind, geothermal and hydrogen. Alternative renewable energy source is a major sustainable approach to addressing climate change.

7.0 Solving Climate Change Problem

The countries of the world were therefore required to develop mitigation and adaptation measures to combat climate change. Specifically, Article 4(1) (b)⁹¹ of UNFCCC, 1992 commit parties to formulate, implement, publish, and regularly update national and where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change⁹².

i) Mitigation of Global Warming

Mitigation of global warming, simply involves reduction in anthropogenic emissions of greenhouse gas concentration in the atmosphere either by reducing their sources, through emissions reduction or by increasing the capacity of carbon sinks through reforestation.

ii) Adaptation to the Impacts of Climate Change

Developing countries do not have the luxury of deciding whether or not to put up adaptation measures, as this is mandatory as part of a response strategy and more importantly, for their survival. By virtue of Article 4 (1) (e) of the UNFCCC, 1992:

Parties are committed to co-operate in preparing for adaptation to the impacts of climate change; develop and elaborate appropriate and integrated plans for coastal zone management, water resources and agriculture, and, for the protection and rehabilitation of areas, particularly, in Africa, affected by drought and desertification, as well as flood⁹³.

Adaptation is paramount to climate change challenge, because firstly, it is related to the assessment of impacts and vulnerabilities, the other to the development and evaluation of response options. Adaptation is therefore a necessary strategy to complement climate change mitigation efforts.⁹⁴ Thus, adaptation is primarily concerned with how to protect society and ecosystems against the impacts of changes in the climate. Climate change adaptation is important, especially, in developing countries, since they would be worse hit by the adverse impact of climate change.⁹⁵ Adaptation measures will help people cope with the effects of climate change. For instance, construction of dikes and seawalls to protect against rising sea level and extreme weather events such as floods and hurricanes, as well as, changing patterns of land use like avoiding building house on vulnerable areas⁹⁶.

iii) Enhancing Adaptive Capacity

It is necessary that countries of the African continent enhance their adaptative capacities to reduce vulnerability to climate change. This is particularly important because, activities that enhance adaptative capacity are essentially equivalent to activities that promote sustainable

⁹¹ UNFCCC, 1992.

⁹² UNFCCC, 1992.

⁹³ (n 24).

⁹⁴ C Daniel, 'Climate Change, Adaptation, and Development' [2008] (26) *Environmental and Policy Journal*; 20.

⁹⁵ (n 33).

⁹⁶ (n 24).

development.⁹⁷ Enhancing adaptive capacity would require increased spending on irrigation and development of additional strategies to make the most efficient use of water resources⁹⁸. Adaptive capacity can be enhanced by improving agricultural production through the development of drought tolerant crop varieties

8.0 Conclusion

Having appraised climate change phenomenon globally, with reference to Nigeria, very clear that climate change is no more an illusion, but rather a reality today across the globe. Climate change is here in Nigeria, as the recent rise in flooding, environmental degradation and pollution and climate change induced crises all attest to the need to tackle this insidious enemy frontally. Climate change is attributed to the emission of gases known as greenhouse gases. The paper has identified carefully, effects of climate change globally, to include amongst others, flooding, drought, erosion, desertification, sea level rise, heat and cold stress, pests and diseases, and erratic rainfall pattern. These effects will undoubtedly affect the Nigerian society if not reversed and could even lead to armed conflicts, popular uprising and social insecurity. The impacts of climate change in Nigeria such as low agricultural productivity, food insecurity, resource conflicts, poverty, unemployment, environmentally induced migration, health issues and livelihood problems are present challenges that need to be addressed to protect the present generation of Nigerians and preserve the commonwealth for future generations.

9.0 Recommendations

To strengthen the implementation of NDCs under the Paris Agreement and thereby effectively address climate change, this dissertation recommends as follows:

- i. Nigeria should adopt a binding legislative approach to climate change like is practice in the United Kingdom. The Policy approach which Nigeria currently adopts, is too weak to address a serious global issue such as climate change. The legislation should impose a statutory GHG reduction ambition and with a correlation duty on the Ministers of Petroleum to achieve the target.
- ii. It is further recommended that Nigeria should adopt a statutory approach to the development of renewable energy within statutory timeframes. The fossil economy which Nigeria currently operates accounts for the substantial volume of the nation's GHG emissions. Nigeria should therefore explore renewable energy options such as wind and solar. A statutory framework for renewable energy backed by statutory financial commitments will greatly impact the development of the sector.
- iii. The framework for climate change finance under the Agreement is rather weak. This is because although developed country Parties jointly undertook to finance climate change actions in the developing countries, there is the absence of individual binding financial obligations for the developed State Parties. This has made financial flow very difficult. It is therefore recommended that the COP adopts binding financial obligations for the developed countries. This will ease the financial constraints of developing countries in addressing climate change.

⁹⁷ (n 33).

⁹⁸ (n 33)



- iv. It is further recommended that to urgently address the adverse effects of climate change, the COP should declare peaking of GHG for developing countries. This will keep current GHG emission levels stable while developing countries are allowed time to reach peak in GHG due to their economic needs. Developing countries should undertake to support developing countries with green technologies through meaningful technological transfers. This will allow developing countries easily transition from fossil driven economies to renewable energy based economies.