

TOWARDS THE IMPLEMENTATION OF THE PARIS CLIMATE CHANGE AGREEMENT 2015: OPPORTUNITIES AND CHALLENGES FOR THE NETWORK OF UNIVERSITIES LEGAL AID INSTITUTIONS (NULAI) NIGERIA

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1. Introduction

Clearly, climate change is the most debilitating global environmental problem of all times.¹ 'From shifting weather patterns that threaten food production, to rising sea levels that increase the risk of catastrophic flooding, the impacts of climate change are global in scope and unprecedented in scale...'² For Nigeria, the negative impacts of climate change are felt in the major sectors of the economy. Persistent flooding, droughts, and severe prolonged dry weather conditions have stifled agricultural friendly seasons into non-existence.³ The implication of the latter is low agricultural productivity and, the attendant risk of hunger in Nigeria.⁴ What is more, severe

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¹ Jon Naustdalslid, 'Climate Change-The Challenge of Translating Scientific Knowledge into Action' (2011) 18(3) *International Journal of Sustainable Development and World Ecology* 243.

² United Nations, 'Climate Change' (2020) <<https://www.un.org/en/sections/issues-depth/climate-change/>> accessed 7th January, 2020.

³ Ann Ogbo and others, 'Risk Management and, the Challenges of Climate Change' (2013) 41(3) *J Hum Ecol* 221, 223. See Pao Odjugo, 'General Overview of Climate Change Impacts in Nigeria' (2010) 29(1) *J Hum Ecol* 47,55.

⁴ Osuafor A M and others, 'The Impact of Climate Change on Food Security in Nigeria' (2014) 3(1) *International Journal of Science and Technology* 209, 212-216. See also Emeka E Obioha, 'Climate

weather conditions occasioned by climate change is exacerbating increased infectious diseases, injury and psychological disorder.⁵ The negative impact of climate change also undermines the supply and availability of electricity in Nigeria.⁶

Scientific data posits that the emission of carbon dioxide is the primary contributor to the global problem of climate change.⁷ The bulk of the emissions arise from the global electricity sector.⁸ In Nigeria, the emission of greenhouse gases (GHGs) from unsustainable practises in land use and through the generation of electricity from fossil fuel sources contributes the most to the global problem of climate change.⁹ Thus, mitigating climate change entails a paradigm shift from fossil fuel-based electricity to cleaner electricity such as renewable energy-based electricity.¹⁰ Also, mitigating climate change will not be complete without emission reduction strategies in the agriculture and land sector.¹¹

Variability, Environment Change and Food Security Nexus in Nigeria' (2009) 26 (2) *Journal of Human Ecology* 107.

⁵ Rasak Bamidele, 'Conceptualizing the Relationship between Climate Change and Human Health in Nigeria' in *Panoply of Readings in Social Sciences; Lesson for and from Nigeria* (Covenant University Press 2013) 5.

⁶ Akinyemi Opeyemi and others, 'Energy Supply and Climate Change in Nigeria' (2012) 7 <https://mpira.ub.uni-muenchen.de/55820/1/MPRA_paper_55820.pdf> accessed 7th January 2020.

⁷ Lamiaa Abdallah and Tarek El-Shennawy, 'Reducing Carbon Dioxide from the Electricity Sector using Smart Electricity Grid' (2013) *Journal of Engineering* 1, 4.

⁸ *Ibid.*

⁹ Stephen Oyedele Adewale and others, 'Electricity Sector's Contribution to Greenhouse Gas Emissions' (2017) 28(6) *Management of Environmental Quality An International Journal* 917, 926. See A I Achike And A O Onoja, 'Greenhouse Gas Emission Determinants in Nigeria: Implications for Trade, Climate Change Mitigation and Adaptation Policies' (2014) 4(1) *British Journal of Environment and Climate Change* 83, 87.

¹⁰ Steven Ferrey, 'The Failure of International Global Warming Regulation to Promote Needed Renewable Energy' (2010) 37(1) *Boston College Environmental Affairs Law Review* 68

¹¹ Sarah J Scherr and Sajal Sthapit, *Mitigating Climate Change through Food and Land Use* (World Watch Institute 2009) 5-38.

The Paris Climate Change Agreement (Paris Agreement) 2015¹² is the current international instrument that coordinates global responses to the problem of climate change.¹³ It stipulates ‘long-term global climate goals and short-term procedural steps that outline how these goals should be achieved’.¹⁴ The long term mitigation goal is to ‘strengthen the global response to the threat of climate change . . . holding the increase in the global average temperature to well below 2° C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5° C above pre-industrial levels ... ’¹⁵ Consequently, member states are under obligation to prepare, communicate and implement successive Nationally Determined Contributions (NDCs) to achieve the mentioned objective.¹⁶ It is expected that such communicated NDCs should contain *low greenhouse gas emission strategies* for mitigating climate change.¹⁷

¹² The Paris Climate Change International Agreement 2015 (adopted 12 December 2015, entry into force date is 4 November 2016). It is a treaty within the Context of the Vienna Law of Treaties 1969, Article 2(1). See also Antto Vihma, ‘Climate of Consensus: Managing Decision Making in the UN Climate Change Negotiations’ (2015) 24 (1) *RECIEL* 57, 60; Daniel Bodansky, ‘The Legal Character of the Paris Agreement’ (2016) 2 *RECIEL* 142, 143.

¹³ The United Nations Framework Convention on Climate Change (UNFCCC) 1992 was the first international treaty for addressing the problem of climate change. It is the umbrella agreement that gave birth to the Kyoto Protocol 1997 and, subsequently the Paris Climate Change Agreement 2015. See the United Nations Framework Convention on Climate Change 1992 (adopted 9 May 1992, entered into force 21 March 1994), FCCC/INFORMAL/84(UNFCCC); David Freestone, ‘The United Nations Framework Convention on Climate Change, the Kyoto Protocol, and the Kyoto Mechanisms’, in David Freestone and Charlotte Streck (eds), *Legal Aspects of Implementing the Kyoto Protocol Mechanisms: Making Kyoto Work* (Oxford University Press, 2008) 4.

¹⁴ Sylvia I. Karlsson-Vinkhuyzen and others, ‘Entry into Force and Then? The Paris Agreement and State Accountability’ (2018) 18 (5) *Climate Policy* 593.

¹⁵ The Paris Climate Change Agreement 2015 (n 12) Art 2 (1).

¹⁶ *Ibid*, Art 4 (2).

¹⁷ *Ibid*, Art 4 (19). The use of the word ‘should’ implies that member states are expected rather than mandated to include the low greenhouse gas emission strategies as part of their n their NDCs. See Rajamani writes that the use of the word ‘should’ in the above provision denotes the expectation of performance rather than the creation of a legal obligation. See Lavanya Rajamani, ‘The 2015 Paris

The Nigerian government is a signatory to the Paris Agreement 2015.¹⁸ As such, it has communicated core actions that will precipitate the reduction of GHGs emission in the electricity, agriculture and land-use sector by 2030.¹⁹ While the measures provided for in the Nigerian NDCs are commendable, its efficacy in mitigating climate change is contingent on its actual implementation. The Nigerian government submitted its biennial update in 2018, which shows that little has been done in implementing the proposed measures in Nigerian NDCs.²⁰ On the face of the biennial update, some commentators are pessimistic that the Nigerian NDCs may not be achieved by 2030.²¹

It is fitting to mention that the Paris Agreement does not expressly provide for a punitive enforcement mechanism.²² However, its provisions give rise to some political and legal tools which some authors posit will secure the successful

Agreement: Interplay Between Hard, Soft and Non- Obligations' (2016) 28 *Journal of Environmental Law* 331, 343.

¹⁸ UNFCCC, 'Paris Agreement: Status of Ratification' (2020)

<https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXVII-7-d&chapter=27> accessed 3rd July 2020. See also 'Nigeria is set to implement the Paris Agreement with the Launch of Green Bonds' (January 17th 2017) **Ventures Africa; Abuja** .

¹⁹UNFCCC, 'Nigeria NDC' (2015)

<www.unfccc.int/submissions/NDC/Published%20Documents/Nigeria/1/Approved%20Nigeria's%20INDC_271115.pdf> accessed 23 February 2020.

²⁰ UNFCCC, 'Nigeria: First Biennial Update Report' (2018) <[www4.unfccc.int/sites/SubmissionsStaging/NationalReports/Documents/218354_Nigeria-BUR1-1-Nigeria%20BUR1_Final%20\(2\).pdf](http://www4.unfccc.int/sites/SubmissionsStaging/NationalReports/Documents/218354_Nigeria-BUR1-1-Nigeria%20BUR1_Final%20(2).pdf)> accessed 11th March 2020.

²¹ Priscilla Offiong, 'Nigeria's Biannual Update Report and Greenhouse Gas Inventory Report Provide Useful Information on the Country's Emission Levels' (2020) <www.climatecorecard.org/2019/06/nigerias-biannual-update-report-and-greenhouse-gas-inventory-report-provide-useful-information-on-the-countrys-emission-levels/> accessed 22nd March 2020.

²² Richard Falk, 'Voluntary International Law and, the Paris Agreement' (2016) <<https://richardfalk.wordpress.com/2016/01/16/voluntary-international-law-and-the-paris-agreement/>> accessed 12th February 2020.

implementation of the NDCs of member states including Nigeria's.²³ The tools are; a global stocktake by the conference of the parties²⁴, a compliance mechanism and, a transparency framework which will generate peer pressure from appropriate quarters including civil societies.²⁵ While the global stocktake and compliance mechanism are powerful in their strength, the transparency framework is reputed to be 'the backbone of the Paris Agreement'.²⁶

The Paris Agreement provides for the establishment of a transparency framework to promote the effective implementation of its provisions.²⁷ A purpose of the framework is to provide an avenue for member states to share such information, necessary to track progress made in the implementation of the NDCs.²⁸ It is anticipated that the information provided in the transparency framework will provide the required arsenal for non-party stakeholders to propel more ambitious

²³ Daniel Gross, 'The Paris Agreement is the Shove the World Needs' (14 December, 2015) <http://www.slate.com/articles/business/moneybox/2015/12/the_paris_agreement_won_t_punish_countries_that_fall_short_but_it_s_still.html> accessed 12th February 2020.

²⁴ The Paris Agreement 2015 (n 12) Art. 7 (14). See also Daniel I Klein and others (eds), *The Paris Agreement on Climate Change: Analysis and Commentary* (Oxford University Press 2017) 79.

²⁵ Romain Weikmans and others, 'Transparency Requirements under the Paris Agreement and their (un)likely impact on Strengthening the Ambition of Nationally Determined Contributions (NDCs)' (2019) *Climate Policy* 2-3.

²⁶ Yamide Dagnet and others, 'Staying on Track from Paris: Advancing the Key Elements of the Paris Agreement' (2016) *World Resources Institute Working Paper* 25 <www.wri.org/ontrackfromparis> (accessed 26 February 2020).

²⁷ The Paris Agreement (n 12) Art 13 (1). See also Harald Winkler and others, 'Transparency of Action and Support in the Paris Agreement' (2017) 7 (17) *Climate Policy* 853.

²⁸ The information is typically shared in the NDC Registry in the UNFCCC website. See UNFCCC, 'Nationally Determined Contribution' <<https://unfccc.int/process-and-meetings/the-paris-agreement/nationally-determined-contributions-ndcs#eq-5>> accessed 14th February 2020.

actions from member states for the implementation of NDCs.²⁹ Notably, the Paris Decision 2015³⁰ was the very apparatus used to birth the Paris Agreement and, it contains a detailing of some of its provisions.³¹ It spells out additional roles for non-party stakeholders, including collaborative actions with member states in the mitigation of climate change.³² They are also expected to scale up their actions in addressing the problem of climate change.³³

The term 'non-party stakeholders' was not defined in the Paris Agreement or the Paris Decision.³⁴ However, the Paris Decision gave examples of 'non-party stakeholders' to include 'civil society (non-governmental organisation (NGO))'.³⁵³⁶ The Network of University Legal Aid Institutions (NULAI) Nigeria is a 'non-governmental, non-profit and non-political organisation committed to promoting clinical legal education, legal education reform, legal aid and access to justice'.³⁷

²⁹ Sylvia Karlsson-Vinkhuyzen and others, 'Entry into Force and then? The Paris Agreement and State Accountability' (n 14) 595.

³⁰ The Paris Climate Change Decision, UNFCCC/CP/2015/10/Ad.1. See also Ngozi Chinwa Ole and Ruth Akinbola, 'Addressing the Capacity Deficiency in the Nigerian Off-grid Renewable Electricity: The Place of the International Climate Change Regime' (2019) 2 Redeemer's University Law Journal 35, 51.

³¹ Daniel Bodansky, 'The Paris Climate Change Agreement: A New Hope' (2016) 110 (2) The American Journal of International Law 288

³² The Paris Climate Change Decision (n 30) para 117-118.

³³ *Ibid.*

³⁴ The Paris Agreement (n 12); The Paris Climate Change Decision (n 30) para 117-118.

³⁵ C K Vandyck, *Concept and Definition of Civil Society Sustainability* (Washington DC CFSIS 2017) 1. See also David Lewis, 'Civil Society and the Authoritarian State: Cooperation, Contestation and Discourse' (2013) 9(3) Journal of Civil Society 327.

³⁶ *Ibid.*, Preamble.

³⁷ NULAI, 'About us' (2020) <<https://nulai.org/who-we-are/>> accessed 16th February 2020.

Going by this definition, NULAI readily fits into the meaning of non-party stakeholder under the Paris Decision.

In the light of the above, this paper examines the role that NULAI can play in the successful implementation of the Paris Agreement 2015 in Nigeria, having regard to the recognised role of civil societies in this context. It will be argued that NULAI can use the instruments of litigation, engagement with relevant stakeholders and adoption of mitigation measures to catalyse the successful implementation of the Agreement in Nigeria. On the one hand, there are possible limitations to the role of NULAI in this context. One of such limitations is the absence of any justiciable right emanating solely from the Paris Agreement 2015 and, Nigerian NDCs. Another limitation is the low level of awareness of the needed climate change law among student law clinicians and staff of Nigerian universities. Thus, the paper will conclude by making recommendations on how to surmount the identified problems. One such recommendation will be the use of human right-based approached litigation to secure the enforcement of the provisions of the Paris Agreement and, the Nigerian NDCs.

In the light of the above, the paper is sub-divided into four sections. Section one is the introduction. Section two contains a summarised analysis of the provisions of the Paris Agreement 2015 and its implementation tools. Section three contains an analysis of the role of civil societies in the implementation of the Agreement. Section

four contains an analysis of the possible roles and challenges that NULAI can play in the light of the analysed role of civil societies in the Agreement.

2. The Paris Agreement 2015: Measures and Implementation Tools

The Paris Agreement 2015 was made under the umbrella of the United Nations Framework Convention on Climate Change (UNFCCC) 1992.³⁸ The later was the first international instrument that coordinates the global responses to the problem of climate change.³⁹ Regrettably, the UNFCCC 1992 did not garner the needed responses for the mitigation of climate change.⁴⁰ Under the UNFCCC 1992, the Nigerian government did not commit to any meaningful action for the mitigation of climate change.⁴¹ It was on the later basis among others, that the Paris Agreement was adopted as a part of the Paris Legal Outcome.⁴² The Paris Legal Outcome is a conglomerate of the Paris Agreement and, the Paris Decision.⁴³ The Paris Decision was the resolution of member states of the UNFCCC 1992, which birthed the Paris Agreement.⁴⁴ While the Paris Agreement is a treaty within the context of the Vienna Law of Treaties 1969 with its provisions being fully binding, the Paris Decision is

³⁸ Michele Stua, *From the Paris Agreement to a Low-Carbon Bretton Woods: Rationale for the Establishment of a Mitigation Alliance* (Springer 2017) 10,11.

³⁹ Eike Albrecht and others, *Implementing Adaptation Strategies by Legal, Economic and Planning Instruments on Climate Change* (Springer 2014) 56.

⁴⁰ The failure of the UNFCCC 1992 has been a subject to various commentaries. See Doaa Abdel Motaal, 'Durban: A Success and a Failure' (2012) 42(2) *Environmental Policy* 85.

⁴¹ Ngozi Chinwa Ole, 'The Paris Agreement as Primer for Developing the Nigerian Off-grid Solar Electricity' (2018) 26(3) *African Journal of International and Comparative Law* 426, 430.

⁴² Susana B. Adamo, 'About Mitigation, Adaptation and the UNFCCC's 21st Conference of the Parties' (2015) 32 (3) *R. bras. Est. Pop.* (Rio de Janeiro) 609.

⁴³ *Ibid.*

⁴⁴ Daniel Bodansky, 'The Legal Character of the Paris Agreement' (n 12) 143.

not.⁴⁵ Regardless, recourse can be validly made to its provisions for a detailing of the Paris Agreement.⁴⁶

The Paris Agreement mandates member states to prepare, communicate and maintain successive nationally determined contributions which will contain mitigation measures in the context of the objective of the Treaty.⁴⁷ It is expected that all member parties should have communicated their NDCs by 2020.⁴⁸ Subsequent NDCs which must represent a progression of previous efforts to mitigate climate change should be communicated at least every five years.⁴⁹ Consequent upon this, the Nigerian government communicated its NDCs in 2015.⁵⁰ The NDCs stipulate several actions for the mitigation of climate change in the relevant sector, particularly in land use (agriculture) and electricity.⁵¹ First, it provides for the replacement of orthodox gas electricity technologies with modern gas electricity

⁴⁵ The Vienna Convention on Law of Treaty 1969 (adopted 23 May 1969, entered into force 27 January 1980), Article 2(1). See also Antto Vihma, 'Climate of Consensus: Managing Decision Making in the UN Climate Change Negotiations' (2015) 24 (1) *RECIEL* 57, 60.

⁴⁶ *Ibid*, Art 31. The mentioned Article, provides that a treaty can be interpreted in the context of any instrument made by two or more of the parties in connection to the treaty. See also Yves le Bouthillier, 'Vienna Convention of 1969' in Olivier Corten and others (eds), *The Vienna Convention on Law of Treaties: A Commentary 1* (Oxford University Press 2011) 846.

⁴⁷ The Paris Agreement (n 12) Art 4(1) and (2).

⁴⁸ The Paris Decision (n 30).

⁴⁹ The Paris Agreement (n 12) Art 4(3) and (9).

⁵⁰ The NDC was previously communicated as Intended-NDC in 2015 but it became NDC in 2017 following the ratification of the Paris Agreement by the Nigerian Government. See Olumide Idowu, 'Nigeria Develops Third Paris Agreement National Communication' (2018) <www.climatescorecard.org/2018/09/nigeria-develops-third-paris-agreement-national-communication/> accessed 19th February 2020.

⁵¹ J Akinbunmi and C Akinbunmi, 'Climate Change Mitigation and Adaptation Studies in Nigerian Universities: Achievements, Challenges and Prospects' in Walter Lee Filho (eds) *Climate Change Research at Universities: Addressing the Mitigation and Adaptation Gaps* (Springer 2017) 139.

technologies.⁵² Secondly, it proposes that cost-efficient renewable energy solutions will drive rural electrification.⁵³ In furtherance to the latter, the government aims to develop Off-grid solar photovoltaic electricity options to drive rural electrification.⁵⁴ Thirdly, energy efficiency measures should be adopted widely, including in the electricity sector, to mitigate 179 million tonnes of GHGs.

Additionally, the government proposes to end the flaring of GHGs through the generation of electricity from gas sources.⁵⁵ It is proposed that the government will promote smart and sustainable agricultural practises to the extent that will mitigate the emission of 74 million tonnes of GHGs.⁵⁶ The actions are summarised in the table below:

⁵² Ibid, 3. This is to the extent that will reduce greenhouse gas emission by 102 million tonnes.

⁵³ Ibid, 2. The proposed solar photovoltaic will be to the extent that will reduce the emission of GHGs in the electricity sector by 31 million tonnes.

⁵⁴ Ibid. For more commentaries on Nigeria's NDC, see Emem C Onyejelam, 'Building an Effective Implementation Process to Nigeria's Climate Change Policies and Intended Nationally Determined Contributions (INDC)' (2016) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2843279> assessed 11th February 2020.

⁵⁵ Ibid. See Philip Antwi-Agyei, 'Alignment between National Determined Contributions and the Sustainable Development Goals for West Africa' (2018) 18 *Climate Policy* 1296.

⁵⁶ Ibid.

Table 1: Mitigation Measures in Nigerian NDC⁵⁷

Mitigation Measures	Potential GHGs Emission Reduction (Million Tonnes Per Year up till 2030)
1. Develop Efficient Gas Electricity Strategies	102
2. Energy Efficiency Strategies	179
3. End Gas Flaring	64
4. Climate Smart Agriculture	74
5. Reduce Transmission Losses	26
6. Develop Renewable Energy	31

As earlier stated, the provisions of the Paris Agreement yield some political and social tools which commentators are optimistic would facilitate the enforcement of the NDCs, including Nigeria's.⁵⁸ These tools are; global stocktake, compliance mechanism and transparency framework.⁵⁹ While the global stocktake and

⁵⁷ The Nigerian NDC (n 19) 3.

⁵⁸ Ngozi Chinwa Ole, 'The Paris Agreement 2015 as a Primer for Developing Nigerian Off-grid Solar Electricity' (n 41) 432. See also Daniel Gross, 'The Paris Agreement Is the Shove the World Needs' (14 December 2015), <www.slate.com/articles/business/moneybox/2015/12/the_paris_agreement_won_t_punish_countries_that_fall_short_but_it_s_still.html> accessed 12 February 2020.

⁵⁹ Lavanya Rajamani, 'The 2015 Paris Agreement: Interplay Between Hard, Soft and Non- Obligations' (n 17) 331

compliance mechanism is not within the purview of this article, it will be summarily discussed in the light of its role in securing the enforcement of the Nigerian NDCs.

The Paris Agreement provides for the global stocktake by vesting on the conference of member states (COP), the mandate to periodically review the collective progress made in the implementation of their individual NDCs.⁶⁰ The first stocktake is scheduled to be held by 2023 and subsequently every five years.⁶¹ There is a 'good faith expectation that Nigeria should be influenced by the outcome of such stocktake to voluntarily scale up efforts to develop the targeted off-grid solar electricity' and other mitigation measures.⁶² The latter is especially in the context where the stocktake shows that collective efforts of member states are inadequate in the expectation of mitigating the temperature to well below 2 ° C.⁶³ However, the effect of the global stocktake in facilitating the enforcement of Nigeria's NDCs is whittled down by some other factors which have been discussed by the author in another publication.⁶⁴ One of such is that it is 'authorised to consider "collective" progress, thus insulating individual nations from any assessments of adequacy in relation to their actions'.⁶⁵

⁶⁰ The Paris Agreement (n 12) Art. 14 (2).

⁶¹ *Ibid.*

⁶² Ngozi Chinwa Ole, 'The Paris Agreement as Primer for Developing the Nigerian Off-grid Solar Electricity' (n 41) 441.

⁶³ *Ibid.*

⁶⁴ *Ibid.*

⁶⁵ Rajamani Lavanya, 'Ambition and Differentiation in the 2015 Paris Agreement: Interpretative Possibilities and Underlying Politics' (2016) 65 ICLQ 493, 504.

A compliance mechanism comprising of 12 members is also established by the Agreement.⁶⁶ It provides that the mechanism shall be 'expert-based and facilitative in nature and function in a manner that is transparent, non-adversarial and non-punitive.'⁶⁷ Where a member state like Nigeria is not implementing all or some part of its NDCs as proposed, the mechanism may indicate it in its overall report to the COP.⁶⁸ It is argued that in the event of such report, the other member states in the COP might exert peer pressure on the defaulting state to the extent that will nudge them to do the needful to implement their NDCs.⁶⁹ However, the strength of the compliance mechanism is whittled down by the general absence of an express provision in the Paris Agreement mandating member states to implement their NDCs.⁷⁰ Consequently, there is no legal footing for such peer pressure from other member states to generate a strong force that will compel a recalcitrant Nigerian government, for example, to implement its NDCs.⁷¹

The final tool of implementation created by the provisions of the Paris Agreement is transparency. The Paris Agreement establishes the transparency framework to

⁶⁶ The Paris Agreement (n 12) Art 15(1).

⁶⁷ The Paris Decision (n 30) Article 15(2). See Christina Voigt, 'The Compliance and Implementation Mechanism of the Paris Agreement' (2016) 25 (2) *RECIEL* 161.

⁶⁸ Achala Abeyasinghe and Subhi Barakati, *The Paris Agreement: Options for an Effective Compliance and Implementation Mechanism* (IIED Press 2016) 92.

⁶⁹ Sebastian Oberthur, 'Options for a Compliance Mechanism in a 2015 Climate Agreement' (2014) 1–2 *Climate Law* 34 and 42.

⁷⁰ Lavanya Rajamani, 'The 2015 Paris Agreement: Interplay Between Hard, Soft and Non- Obligations' (n 17) 337, 354.

⁷¹ Alexander Zahar, 'Why the Paris Agreement Does Not Need a Compliance Mechanism' (September 2016) <<https://poseidon01.ssrn.com/delivery.php?ID=876127020083071028117022119087028098.pdf>> accessed 20 Feb. 2020.

enhance the effective implementation of its provisions.⁷² The detailed guidelines for transparency will be adopted in 2020.⁷³ Under the transparency framework, Nigeria is expected to provide all the necessary information to enable the tracking of progress for the implementation of the NDCs on a biennial basis.⁷⁴ Such information include the GHGs emission by sources and removals, all such progress recorded in implementing the measures outlined in the NDCs, and the flow of support from external sources.⁷⁵ Nigeria submitted its first biennial update on the implementation of the NDCs in 2018.⁷⁶ The biennial updates, including the one submitted by Nigeria is displayed in the UNFCCC public registry.⁷⁷ The updates will also inform the collective assessment of progress made in the implementation of the global stocktake.⁷⁸ More importantly, the information on progress will galvanise the activities of non-party stakeholders' particularly civil societies for the implementation of its provisions.⁷⁹ The global stocktake has already been discussed in this section. Given the focus of this paper, some of the provisions on transparency will be discussed in detail alongside the role of civil societies in the implementation of the Paris Agreement.

⁷² The Paris Agreement (n 12) Art 13 (1).

⁷³ The Paris Agreement (n 12) Art 13 (13). See UNFCCC, 'Transparency of Support under the Paris Agreement' (2020) < <https://unfccc.int/topics/climate-finance/workstreams/transparency-of-support-ex-post/transparency-of-support-under-the-paris-agreement>> accessed 3rd March 2020.

⁷⁴ *Ibid*, Art 13 (5).

⁷⁵ *Ibid*, Art 13 (7).

⁷⁶ UNFCCC, 'Nigeria: First Biennial Update Report' (n 20).

⁷⁷ *Ibid*, Art 4 (9), and Art 4 (12).

⁷⁸ *Ibid*, Art 13 (6).

⁷⁹ Arunabha Ghosh and Sumit S Prasad, 'Shining the Light on Climate Action: The Role of Non-party Institutions' (2017) Fixing Climate Governance Series Paper No. 6 <www.cigionline.org/publications/shining-light-climate-action-role-non-party-institutions> accessed 22nd February 2020.

3. The Role of Civil Societies in the Implementation of the Paris Agreement

The point that non-party stakeholders have a role to play in the implementation of the Paris Agreement in Nigeria has previously been made. The term 'non-party stakeholders' was defined in the Paris Decision to include civil societies.⁸⁰ The role of civil societies in the implementation of the Paris Agreement is tripartite. In the first instance, civil societies can use various political and legal tools to nudge a member state like Nigeria to vigorously deploy measures for the implementation of their NDCs⁸¹. Additionally, civil societies can also push for the adoption of more ambitious measures for the mitigation of climate change in a member state like Nigeria in subsequent NDCs.⁸² Importantly, they are encouraged to adopt measures, independently, for the mitigation of climate change.⁸³ These will be discussed accordingly.

The bedrock of transparency is that member states including Nigeria, will make available sufficient information on progress made concerning the implementation of their NDCs in the UNFCCC public register.⁸⁴ On the strength of such publication, commentators posit that civil societies and other non-party actors can propel member states like Nigeria to adopt more ambitious actions for the implementation

⁸⁰ The Paris Decision (n 30) preamble, para 15.

⁸¹ Harro van Asselt, 'The Role of Non-State Actors in Reviewing Ambition, Implementation, and Compliance under the Paris Agreement' (2016) 6 *Climate Law* 91, 107.

⁸² Thomas Hale, *The Role of Sub-State and Non-State Actors in International Climate Processes* (Chatham House 2018) 3-5.

⁸³ The Paris Decision (n 30) para 117.

⁸⁴ The Paris Agreement (n 12) Art 13 (7).

of their NDCs.⁸⁵ While the latter position was not expressly provided for in the Paris Agreement, it can be gleaned from its provisions which is that the transparency framework shall be built on the past experiences from the implementation of the UNFCCC.⁸⁶ A core attribute of the transparency framework under the UNFCCC regime was the active role of civil societies in stimulating member states to do more in the area of the implementation of their NDCs.⁸⁷ The tool at the disposal of civil societies includes litigation, lobbying, and engagement with relevant stakeholders *etc.*⁸⁸

Another role of civil societies is to nudge member states to scale up mitigation measures in subsequent NDCs. The Paris Agreement provides that member states shall submit subsequent NDCs which will be a progression of the first NDC and shall represent their highest possible ambition.⁸⁹ It is argued that civil societies can use tools such as lobbying and litigation to harness the highest possible measures for climate change mitigation from member states in subsequent NDCs.⁹⁰ The latter is already the case in some advanced climes. In the case of *Urgenda Foundation and 886*

⁸⁵ Thomas Bernauer and others, 'Could more Civil Society involvement increase Public Support for Climate Policy-Making? Evidence from a Survey Experiment in China' (2016) 40 *Global Environmental Change* 10.

⁸⁶ The Paris Agreement (n 12) Art 13 (3) and (4).

⁸⁷ Steinar Andresen and Lars H. Gulbrandsen, 'The Role of Green NGOs in Promoting Climate Compliance' in *Implementing the Climate Regime: International Compliance* (Earthscan, 2005) 178– 181; Eric Dannenmaier, 'The Role of Non-state Actors in Climate Compliance', in Olav Schram Stokke et al., *Promoting Compliance in an Evolving Climate Regime* (Cambridge University Press, 2012).

⁸⁸ Ngozi Chinwa Ole, 'The Paris Agreement 2015 as a Primer for Developing Nigerian Off-grid Solar Electricity' (n 41) 445-447.

⁸⁹ The Paris Agreement (n 12) Art 4(2) and (3).

⁹⁰ Harro van Asselt, 'The Role of Non-State Actors in Reviewing Ambition, Implementation, and Compliance under the Paris Agreement' (n 81) 107.

*Citizens v. The State of The Netherlands*⁹¹ (Urgenda Foundation), a civil society succeeded in getting a court declaration to the effect that the Dutch government was liable to keep their emissions to below 25% by 2020, a level that will reflect what is expected of developed countries in international climate science.⁹² In Nigeria, some civil societies are already involved in engaging with relevant government stakeholders to push for more ambitious mitigation measures. For example the Civil Society Legislative Advocacy Centre (CISLAC) is currently engaging relevant stakeholders to facilitate the adoption of laws on climate change mitigation.⁹³

Finally, the Paris Decision encourages civil societies to adopt measures for the mitigation of climate change. It provides that the member party ‘welcomes the efforts of non-party stakeholders to scale up their climate actions...’⁹⁴ and encourages member states to ‘work closely with non-party stakeholders to catalyse efforts to strengthen mitigation...actions’.⁹⁵ The last arm of this provision is to ensure that the activities of non-party stakeholders including civil societies are coordinated

⁹¹ [2015] C/09/456689/ha za 13-1396. See the judgment available at <http://uitspraken.rechtspraak.nl/inzien_document?_id=ecli:nl:rbdha:2015:7196a> accessed 4th March 2020. The possibility of this strategy has been considered in light of the Paris Agreement; see Sara Stefanini, ‘Next Stop for Paris Climate Deal: The Courts’ (2016) *Politico*, 11 <<http://www.politico.eu/article/parisclimate-urgenda-courts-lawsuits-cop21/>> (accessed 4 February 2020).

⁹² *Ibid.* See also K. J. Graaf and J. H. Jans, ‘The Urgenda Decision: Netherlands Liable for Role in Causing Dangerous Global Climate Change’ (2015) 25 *Journal of African Law* 517.

⁹³ Like the Civil Society Legislative Advocacy Centre (CISLAC) is currently involved in engaging relevant stakeholders to facilitate laws on environmental protection and conservation which includes climate change. See CISLAC, ‘About Us’ (2020) <<https://cislacnigeria.net/page/2/>> accessed 4th March 2020.

⁹⁴ The Paris Decision (n 30) para 117.

⁹⁵ *Ibid.*, para 118.

and counts in the overall implementation of the NDCs.⁹⁶ Thus, civil societies can initiate and implement measures for the mitigation of climate change. Interestingly, the Paris Decision established some form of transparency mechanism called 'Non-State Actor Zone for Climate Action (NSAZCA)'⁹⁷. In the latter platform, civil societies are expected to register major climate change mitigation projects initiated and implemented at the national level.⁹⁸ Thus, the activities of civil societies and other non-party stakeholders can be aggregated and monitored in the light of the overall mitigation target of holding the global temperature to well below 2 °C.⁹⁹ The NSAZCA indicates that three civil societies are already implementing climate change mitigation measures in Nigeria.¹⁰⁰ The three civil societies are Center for Initiative and Development (CID), Nma Eunice Owenson Foundation and, Sanitation and Hygiene Education.¹⁰¹

In the light of the analysed roles of non-party stakeholders, the next section contains an analysis of challenges and opportunities that the discussed roles present for NULAI.

⁹⁶ Harro Van Asselt and Thomas Hale, 'Maximizing the Potential of the Paris Agreement: Effective Review in a Hybrid Regime' (2016) <<https://www.jstor.org/stable/resrep02776>> accessed 4th March 2020.

⁹⁷ The Paris Decision (n 30) para 117. See UNFCCC, 'Global Climate Action' (2020) <<https://climateaction.unfccc.int/#NG>> accessed 4th March 2020.

⁹⁸ Ibid. See Sander Chan and Wanja Amling, 'Does Orchestration in the Global Climate Action Agenda Effectively Prioritize and Mobilize Transnational Climate Adaptation Action?' (2019) 19 Int Environ Agreements 429, 435.

⁹⁹ Ibid. See the Paris Agreement (n 12) Art 2.

¹⁰⁰ UNFCCC, 'Global Climate Action' <<https://climateaction.unfccc.int/#NG>> accessed 4th of March 2020.

¹⁰¹ Ibid.

4. NULAI: Opportunities and Challenges

The Network of University Legal Aid Institution (NULAI) is a civil society and, a conglomerate of law clinics of Nigerian Universities committed to the promotion of clinical legal education, legal aid and access to justice.¹⁰² The term clinical legal education has been by Ojukwu as ‘an experiential method of learning that enables law students to learn practice skills while in the same learning process providing legal assistance in circumstances where justice so demands’.¹⁰³ On the other hand, law clinics refer to the service hub or physical facilities that affords law students the opportunities to demonstrate and imbibe core law attributes while aiding access to justice.¹⁰⁴

There are currently about 43 law clinics domiciled in forty-three universities¹⁰⁵ and registered with NULAI.¹⁰⁶ The law clinics usually are managed internally by a set of student clinicians under the supervision of law teachers within the university where it is domiciled.¹⁰⁷ The recurrent focal points of most law clinics are prisoners/pre-trial detainee rights; child rights; human rights; freedom of information community

¹⁰² NULAI, ‘About us’ (n 42).

¹⁰³ Ernest Ojukwu and others, *Clinical Legal Education: Curriculum, Lessons and Materials* (NULAI 2013) 7-8.

¹⁰⁴ Sam Erugo, ‘Legal Assistance by Clinical Law Students: A Nigerian Experience in Increasing Access to Justice for the Unrepresented’ (2016) 3(2) *Asian Journal of Legal Education* 165.

¹⁰⁵ The institutions of Higher Learning include thirty seven universities and, six campuses of the Nigerian Law School. See NULAI, ‘Reform of Legal Education in Nigeria’ (2020) <<http://nulai.org>> accessed 6th March 2020.

¹⁰⁶ *Ibid.*

¹⁰⁷ Olanike S. Adhlakun-Odewale, ‘Role of Clinical Legal Education in Social Justice in Nigeria’ (2017) 5(1) *Asian Journal of Legal Education* 88-98.

education and support.¹⁰⁸ The law clinic is compartmentalised into several units according to the focal points of the law clinic in question.¹⁰⁹ Each of the units is headed by a student clinician.¹¹⁰ The heads of departments are responsive to the central executives, namely an appointed president, a vice president and a secretary.¹¹¹ In turn, the activities of the central executives and, the law clinic are overseen by qualified legal practitioners who are law teachers.¹¹²

As earlier mentioned, NULAI is a civil society that focuses on different spectrum of access to justice, including environmental and climatic justice. The role of NULAI in promoting access to justice is one with statutory flavour as provided for in the Legal Aid Act.¹¹³ Access to justice is said to cover a series of activities for the promotion, enforcement and, protection of the right to a healthy environment including from anthropogenic activities that exacerbate global warming.¹¹⁴ It is therefore not surprising that NULAI also covers the promotion of climatic justice as part of access

¹⁰⁸ Ernest Ojukwu, *Compendium of Campus Based Law Clinics* (NULAI 2014).

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

¹¹¹ Peters Ifeoma, 'Role of Law Clinics in Bridging the Gap between the Less Privileged and Access to Justice in Nigeria – Uwais Abdulrahman' (2017) <<https://dnllegalandstyle.com/2017/role-law-clinics-bridging-gap-less-privileged-access-justice-nigeria-uwais-abdulrahman/>> accessed 3rd July 2020.

¹¹² *Ibid.*

¹¹³ Section 17 of the Legal Aid Act 2011 provides that the Legal Aid Council shall maintain a register of law clinics and may partner with them in the performance of any of their functions under the Act. See the Legal Aid Act 2011.

¹¹⁴ Niguel Crawhall and Allison Crawhall, 'Access to Justice and the Right to Sustain' (2016) IUCN Working Paper <https://www.iucn.org/sites/dev/files/content/documents/atj_.pdf> accessed 6th March 2020.

to justice.¹¹⁵ Given its focus and mandate, NULAI can play crucial roles in the implementation of the Paris Agreement, including the Nigerian NDCs.

In the first instance, NULAI can get the Nigerian government to adopt more measures than they ordinarily would for the implementation of the NDCs. As indicated, the Nigerian government has submitted and published their biennial updates on progress made in the implementation of the UNFCCC in 2018.¹¹⁶ The update shows that while the GHGs emission level is still increasing, little has been done in the area of the implementation of the mitigation proposed in the Nigerian NDCs.¹¹⁷ An instrument used by individual law clinics to achieve access to justice in some contexts is engaging with relevant stakeholders.¹¹⁸ For instance, law clinics undertaking prison projects pay advocacy visits to the Chief Judge and Director of Public Prosecution of the state where they are domiciled to secure the release of prison detainees.¹¹⁹ Thus, NULAI can visit and engage with relevant stakeholders like members of the State and National Assembly¹²⁰ both at the national and state level to extrapolate more measures for the implementation of Nigerian NDCs.

¹¹⁵ NULAI, 'NULAI Law Clinic Global Day of Action for Climate Justice' (2020) <https://www.change.org/p/students-climate-justice-is-social-justice-join-the-nulai-fresh-aircampaign?use_rea_ct=false> accessed 6th March 2020.

¹¹⁶ UNFCCC, 'Nigeria: First Biennial Update Report' (n 20).

¹¹⁷ *Ibid*, 146- 148.

¹¹⁸ NULAI, 'Law Clinics and Pretrial Detainees' <<http://www.nulai.org/index.php/blog/82-improving-access-to-justice-for-pre-trial-detainees-in-nigeria-project>> accessed 9th March 2020.

¹¹⁹ Taiye Joshua Omidoyin and Omolade Oniyinde, 'Law Clinics and Access to Justice for Pretrial Detainees in Nigeria' (2019) 10 (9) NAUJILJ 103.

¹²⁰ The relevant stakeholders include members of the State and National Assembly, Staff of the Ministry of Environment and the National Environmental Standards and Regulations Enforcement Agency (NESREA). See Mandyen Brenda Anzaki, 'Climate Change: the Legal Framework' <www.thelawyerschronicle.com/climate-change-the-legal-framework/> accessed 9th March 2020.

However, the limit to which they can engage with relevant stakeholders is constrained by the low level of awareness of climate change issues among university students. The point that NULAI is a conglomerate of university law clinics in Nigeria which embeds facilitating of access to justice with the training of law students has already been made.¹²¹ Law students operate a law clinic under the guidance of qualified law teachers and, in partnership with licensed law firms.¹²² A study conducted in 2019 confirms that there is low awareness of climate change issues among university students in Nigeria.¹²³ As such, it is not surprising that there is little awareness of climate change policies and law among law faculties.¹²⁴ Thus, some law clinics will not be sufficiently informed about climatic justice and policies in Nigeria to the extent that will birth a meaningful interaction with stakeholders in the light of securing more proactive measures for the implementation of the NDCs.

However, the latter problem of a low level of awareness may be addressed by the creation of climate-focused law clinics. The general focus of most law clinics in Nigeria is on issues that have a direct bearing on the realisation of human rights.¹²⁵

Thus, it might be difficult to get existing law clinics to familiarise themselves with

¹²¹ Rafatu Ohiare, 'The Role of Law Clinics in Advancing Pretrial Justice Reform in Nigeria' (2019) 4 *African Journal of Clinical Legal Education and Access to Justice* 33.

¹²² *Ibid.*

¹²³ Mark M Akrofi and others, 'Students in Climate Action: A Study of Some Influential Factors and Implications of Knowledge Gaps in Africa' (2019) 6 *Environments* 12.

¹²⁴ *Ibid.* See Emeka Daniel Otuonye, 'An Assessment of the Level of Awareness of the Effects of Climate Change among Students of Tertiary Institutions in Jalingo Metropolis, Taraba State Nigeria' (2011) 4 (9) *J. Geogr. Reg. Plann.* 514.

¹²⁵ One of such popular area of focus is the realisation of the right to personnel liberty and dignity through prison decongestion projects. See Odinakaonye Lagi and others, *Campus-Based Law Clinics in Criminal Justice Administration in Nigeria* (NULAI 2019).

climate change policies to the degree that will inform a meaningful interaction with law clinics. As such, a panacea to the low level of awareness is the creation of climate justice focused law clinics, stimulated by NULAI. For instance, in 2013, NULAI initiated a project where they mainstreamed Freedom of Information Community Education as a focal point for law clinics across Nigeria.¹²⁶ In practise, NULAI can stimulate law clinics registering with them to adopt climate justice as a sole or one of their focal points. Such a unique creation will enable the galvanisation of needed knowledge that will foster meaningful interaction with stakeholders.

What is more, the low level of awareness can also be addressed by the adoption of a top-down approach. Some members of the Board of Trustees of NULAI have already carved a niche for themselves as climate change law experts.¹²⁷ There are also some members of NULAI, who are well-grounded in the area of climate change law.¹²⁸ Thus, NULAI can leverage the expertise of its members to design a uniform guidance for meaningful engagement with the relevant stakeholders. The uniform program will be distributed across specific law clinics in Nigeria to facilitate such engagement with stakeholders.

¹²⁶ Sam Erugo and Charles O Adekoya, *Lawyering with Integrity: Essays in Honour of Ernest Ojukwu SAN* (Lulu Press 2017) 19-20. See also Ernest Ojukwu and others, *Street Law: Freedom of Information Manual* (NULAI 2016).

¹²⁷ Two of the Seven Board Members of NULAI are experts in climate change law. See NULAI, *NULAI Nigeria Profile* (NULAI 2018) 4.

¹²⁸ The first author of this article was among the pioneer clinicians and, a product of the first phase of law clinics in Nigeria. Dr. Ngozi Chinwa Ole is a member of NULAI and, an expert in climate change law. See <<https://www.linkedin.com/in/dr-ngozi-chinwa-ole-9885858b/?originalSubdomain=uk>> accessed 27th March 2020.

On another note, NULAI could also use the instrument of litigation to extract more ambitious actions from the Nigerian government for the implementation of the NDCs. The point that very little has been done in the implementation of the Nigerian NDCs in view of 2030 has been made.¹²⁹ It has been established that one of the tools used by civil societies for extracting proactive actions for the mitigation of climate change is litigation.¹³⁰ Some campus-based law clinics in advanced climes like Canada have employed such tools. In *Nadege Dorzema et al. v. the Dominican Republic (Guayabin Massacre Case)*¹³¹, a campus-based law clinic at the University of Quebec in Montreal, Canada successfully used the instrument of litigation to enforce the right to life and human dignity of 30 Haitian migrants against the Dominican government as contained in the American Convention on Human Rights.¹³² Thus, NULAI can institute and pursue public interest litigation to extrapolate more actions for the mitigation of climate change in Nigeria.

Such litigation by NULAI just like the *Urgenda foundation's case* can arguably come under the law of tortuous liability, particularly negligence. Given that NULAI is rudimentarily powered by student law clinicians, they can partner with other NGOs

¹²⁹ Priscilla Offiong, 'Nigeria's Biannual Update Report and Greenhouse Gas Inventory Report Provide Useful Information on the Country's Emission Levels' (2019) <<https://www.climatescorecard.org/2019/06/nigerias-biannual-update-report-and-greenhouse-gas-inventory-report-provide-useful-information-on-the-countrys-emission-levels/>> accessed 11th March 2020

¹³⁰ The case of *Urgenda Foundation and 886 Citizens v. The State of The Netherlands* (n 91) is an example in this context.

¹³¹ (2012) Ser.C No 251 (Dom).

¹³² The case of *William Andrews v United States* (1997) IACHR, Case 11.139, Report N^o 57/96 is also another example where the law clinic of American University Washington College of Law instituted a public interest litigation for inmates on death row for the enforcement of their right to dignity.

or affiliated law firms to institute such an action.¹³³ There are three elements that must establish concurrently for one to succeed in an action for Negligence in Nigeria.¹³⁴ The elements are: that there was a duty of care owed, that there was a breach of duty of care and, that the plaintiff suffered damages as a result.¹³⁵ The duty of care must be founded in common law or statute.¹³⁶ It is such duty of care that will give a litigant the legal right to be heard in a court of law.¹³⁷ Thus, NULAI must at least cross the first hurdle of getting the right of audience in a court of law by showing that there is a duty of care on the state to protect the environment.

Regrettably, the non-justiciability of the state's duty to guarantee a safe environment will puncture the chances of NULAI getting a right of audience in a court of law under the tort of negligence. The 1999 Constitution of Nigeria provides for the duty of a state to protect and improve the environment.¹³⁸ Thus, this section would ordinarily give rise to a duty of care on the state for the purpose of giving a litigant, the right of audience in a court of law in Nigeria.¹³⁹ Regrettably, the duty of care imposed on the state to protect and improve the environment is non-justiciable.¹⁴⁰

¹³³ Law clinics generally have the antecedent of partnering with law firms and NGOs particularly to enable them use the instrument of litigation in attaining access to justice. See Bernard Duhaime & Ismene Nicole Zarifis, 'Using Public Interest Litigation and Advocacy as a Tool for Social Change: Clinical Experiences in the Americas and Africa' (2013) *African Journal of Clinical Legal Education and Access to Justice* 118, 128-129.

¹³⁴ Ese Malemi, *Law of Tort* (Princeton 2017) 287.

¹³⁵ MTN (Nig Coms Ltd) v Sadiku (2014) 17 NWLR 386.

¹³⁶ A O N Ezeani and R U Ezeani, *Law of Torts (With Cases and Materials)* (Odade Publishers 2014) 295.

¹³⁷ This is encapsulated in the legal maxim, *Ubi jus ibi remedium* which means *where there is a legal right, there is a remedy*. See *Thomas v. Olufosoye* (1986) 1 NWLR (Pt 18) 669, at 686.

¹³⁸ The 1999 Constitution of Nigeria (NG) s. 20 (1).

¹³⁹ *Ibid.* See MTN (Nig Coms Ltd) v Sadiku (2014) 17 NWLR 386.

¹⁴⁰ *Ibid.*, s. 20. See Epiphany Azinge and Bolaji Owasanoye (eds), *Justiciability and Constitutionality: An Epiphany of the Law* (Nigerian Institute of Advanced Legal Studies Press, 2010) 151.

The latter provision automatically takes away the right of a litigant to be heard in a court of law in this context.¹⁴¹ Thus, NULAI will not have the legal right to sue under the tort of negligence to extract more ambitious actions from the Nigerian government for the implementation of its NDCs.

However, a panacea to the lack of a legal right to sue under the law of negligence might be the use of a rights-based approach. The 1999 Constitution provides for the fundamental right to life in Nigeria, which shall be enforceable against any party including the state.¹⁴² The Fundamental Human Rights Enforcement Procedure Order 2009 provides that:

The court shall encourage and welcome public interest litigations in the human rights field and no human rights case may be dismissed or struck out for want of *locus standi*. In particular, human rights activists, advocates, or groups as well as any non-governmental organisations, may institute human rights application on behalf of any potential applicant.¹⁴³

The implication of the latter provision is that civil societies like NULAI have a right of audience in court for the enforcement of any of the fundamental human rights

¹⁴¹ *Archbishop Anthony Okogie v. AG Lagos State* [1981] 2 NCLR 337, 350.

¹⁴² The 1999 Constitution (NG) s. 33.

¹⁴³ The Fundamental Human Rights Enforcement Procedure Order 2009 (NG), Preamble, s. 3 (e).

provided for in the constitution.¹⁴⁴ In *Gbemre v Shell Petroleum Development Companies and Another*¹⁴⁵, the court held that the right to life includes the right to a healthy environment including one devoid of the adverse effects of climate change. Thus, one can anticipate a higher possibility of success of a suit by NULAI for the implementation of the NDCs if it is pursued from a right-based approach. A right-based approach will accommodate the position that the refusal to fully implement the measures proposed in the NDCs is likely to undermine an individual's right to life.¹⁴⁶ The latter is permissible in the light of the provisions of the Fundamental Human Rights Enforcement Procedure Order 2009 to the effect that a person can sue to enforce his fundamental human rights where an action or omission may likely infringe it.¹⁴⁷

Another role that NULAI can play in this context is the adoption of measures for the mitigation of climate change. As noted, the Paris Decision encourages civil societies to adopt measures for the mitigation of climate change.¹⁴⁸ Thus, NULAI can adopt measures either individually or collectively for the mitigation of climate change. Some law clinics have already started initiating climate change mitigation projects

¹⁴⁴ Abiola Sanni, 'Fundamental Rights Enforcement Procedure Rules, 2009 as a Tool for the Enforcement of the African Charter on Human and Peoples' Rights in Nigeria: The Need for Far-reaching Reform' (2011) 11 African Human Rights Law Journal 512.

¹⁴⁵ Suit No. FHC/B/CS/53/05; (2005) AHRLR 151 (NgHC 2005).

¹⁴⁶ Franziska Knur, 'The United Nations Human Rights Approach to Climate Change- Introducing a Human Dimension to International Climate Law' in Sabine von Schorlemer and Sylvia Maus (eds), *Climate Change as a Threat to Peace: Impacts on Cultural Heritage and Cultural Diversity* (Peter Lang AG 2014) 37-60.

¹⁴⁷ The Fundamental Human Rights Enforcement Procedure Order 2009 (NG) Order II (1).

¹⁴⁸ The Paris Decision (n 30) para 117.

like tree planting in Nigeria.¹⁴⁹ However, there is still room for more ambitious measures by NULAI.

Notably, such mitigation measures should be made known to relevant stakeholders at the national and international level. Mitigation measures adopted by NULAI should be communicated to the Department of Climate Change, Federal Ministry of Environment.¹⁵⁰ The latter would enable them to factor it in the preparation of Nigeria's Biennial Updates. In the same vein, such mitigation action needs to be registered in NSAZCA so that it can be counted at the global stocktake as part of collective measures for climate change mitigation.¹⁵¹ Registering with the NSAZCA means that NULAI can also have a stronger footing to partner with other civil societies globally for the adoption of climate change mitigation initiatives.

5. Conclusion

This paper contains an analysis of the opportunities and challenges that the Paris Agreement 2015 provide for NULAI in the context of mitigating climate change in Nigeria. It was argued that the definition of non-party stakeholders to include civil societies provides a platform for NULAI to play dual role in the implementation of

¹⁴⁹ For instance the Ebonyi State University Law Clinic, Nigeria has an annual ritual of tree planting to mitigate climate change in Nigeria. Amari Omaka Chukwu, 'Going Green and Clean: The Ebsu Law Clinic Role in Combating Climate Change for Health' (2019) A Paper presented at the ENCLE-IJCLE Conference 2019 Comenius University, Bratislava, Slovakia 3-5th July 2019.

¹⁵⁰ Department of Climate Change, 'What we do' (2020) <<https://climatechange.gov.ng/what-we-do/>> accessed 26th March 2020.

¹⁵¹ UNFCCC, 'Global Climate Action NSAZCA: About' < <https://climateaction.unfccc.int/views/about.html> > accessed 26th March 2020.

the Agreement. In the first instance, NULAI can help in facilitating the implementation of Nigerian NDCs. The latter would be through interaction with stakeholders and, the instrument of litigation. Additionally, they can adopt and implement mitigation measures in Nigeria.

It was argued that the provisions of the Paris Agreement and, the Decision allows for NULAI to interact with relevant stakeholders to galvanise more ambitious actions to achieve the implementation of the NNDCs by 2030. However, the low level of awareness of climate change policies among law faculties, including law clinicians reduces the chances of a meaningful engagement with stakeholders in this context. The establishment of climate change-focused law clinics and, the adoption of a top-down strategy were recommended as ways to surmount the problem of low awareness.

The Paris Agreement provides the foundation for NULAI to use litigation as a tool to secure the enforcement of the NDCs by 2030, possibly under the tort of negligence. Regrettably, the possibility of such litigation is eroded by the absence of an enforceable right to a healthy environment in Nigeria. Thus, NULAI will not have a right of audience in a court of law for this purpose. On the other hand, it was argued that the use of a right-based approach might provide an appropriate avenue for NULAI to secure the implementation of Nigeria's NDCs.

Finally, it was identified that the provisions of the Paris Agreement as detailed in the Decision allows for the adoption of mitigation measures by civil societies such as

NULAI. Some law clinics are already involved in projects that are mitigating climate change in Nigeria. However, the latter efforts are few in comparison to what is needed and more measures are needed. It was recommended that NULAI should communicate such measures to the Department of Climate Change, Ministry of Environment, Nigeria and NASZCA to enable it count in the overall national and global efforts for the mitigation of climate change.

Climate change is a recurrent topic in various discourses at governmental and non-governmental fora because of its direct and indirect ramifications, all of which stall the realisation of the sustainable development goals in Nigeria.¹⁵² Given the unprecedented scale of its negative ramifications, the Government of Nigeria has indicated that it is welcoming the actions of civil societies towards the mitigation and adaptation of climate change in Nigeria.¹⁵³ This paper has outlined the various ways NULAI can help in the implementation of the Paris Agreement in Nigeria. The paper was presented in the 2nd African Colloquium on Clinical Education 2020 organised by NULAI¹⁵⁴ and, it is anticipated that the analysis and recommendations in this paper will be fully implemented.

¹⁵² Mohamed Yahya, 'Nigeria must lead on Climate Change' (2019) <www.undp.org/content/undp/en/home/blog/2019/nigeria-must-lead-on-climate-change.html> accessed 30th March 2020.

¹⁵³ María Yetano Roche and others, 'Achieving Sustainable Development Goals in Nigeria's Power Sector: Assessment of Transition Pathways' (2019) Climate Policy 15.

¹⁵⁴ NULAI, 'NULAI 2nd African Clinical Legal Education Colloquium' (2019) <<https://nulai.org/nulai-africa-clinical-legal-education-colloquium/>> accessed 30th March 2020.