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AN APPRAISAL OF THE POLLUTER PAYS PRINCIPLE UNDER THE CLIMATE CHANGE ACT, 2021

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Abstract

The Polluter Pays Principle stipulates that those responsible for pollution should bear the financial costs of preventing, controlling and remediating the pollution. It is a principle of sustainable development and a guiding principle in Nigeria's National Policy on the Environment. The utilisation of the Polluter Pays Principle in climate change law could aid Nigeria in meeting treaty obligations yet there are challenges in its application including difficulties in identifying the polluter, apportionment of liability, and socio-economic implications. The Climate Change Act 2021 is Nigeria's primary legislation on climate change yet there is a paucity of research on the application of the principle in climate change legislation. This paper had the following research questions: How does the Climate Change Act 2021 incorporate the Polluter Pays Principle? What are the likely prospects and challenges in applying the principle under the Act? The aim was to analyse the incorporation of the Polluter Pays Principle in the Climate Change Act 2021. The paper highlighted the opportunities and challenges in applying the Polluter Pays Principle to tackle climate change. The paper adopted the doctrinal method of legal research, placing reliance on primary sources of law namely legislations and judicial precedents as well as secondary sources. This paper found that the Act incorporates the Polluter Pays Principle through the use of financial instruments; imposition of self-monitoring and self-reporting obligations on public and private entities and imposition of civil and criminal liability for breach of climate change obligations. However, the National Council on Climate Change is yet to exercise its powers to make subsidiary legislations, leading to gaps in the law. The paper recommends amendment of the Act to provide clarity in apportionment of criminal liability; strengthening the National Council on Climate Change to carry out its functions; collaboration with the legal profession in building manpower for enforcement of the Act; and implementation that takes into account the socio-economic needs of Nigeria.

Key words*: Climate Change, Climate Change Act 2021, Environment, Polluter Pays Principle, Pollution.*

1.0 Introduction

The polluter-pays principle (PPP) is a key principle of international environmental law that is increasingly linked with climate change action. The PPP provides that the financial costs of preventing,

controlling and remediating pollution and other damage to the environment should be borne by those responsible for the pollution. The emission of carbon and other greenhouse gases (GHGs) pollutes the environment and contributes to global warming and climate change. These have implications for the fulfillment of the constitutional environmental objective which requires the state to "protect and improve the environment and safeguard the water, air and land, forest and wild life of Nigeria".[343] Pollution and climate change also constitute significant impediments to attainment of the Sustainable Development Goals (SDGs).

Climate Change is a significant global challenge and one of the greatest threats to the environment and human well-being in the 21st Century. It is a problem affecting every continent, country, state and city[344] and has been described as "the biggest issue facing our generation"[345]. In *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*,[346] Kumai Bayang Akaahs JSC, *obiter* alluded to the harmful impacts of climate change on the environment and the global trend of countries adopting stronger measures for environmental protection.[347] Goal 13 of the United Nations Sustainable Development Goals (SDG) contains a commitment by the countries of the world to "take urgent action to combat climate change and its impacts" while in Target 13.2, they aim to "integrate climate change measures into national policies, strategies and planning"[348].

Nigeria is the largest country on the African continent with major developmental challenges that threaten her ability to meet the SDGs. She is heavily indebted and has a large and growing population.[349] The Nigerian government is also a carbon dependent economy, aggressively pursuing investments in the oil and gas and solid minerals sectors in order to meet her financial goals. Both sectors have major adverse impacts on the environment and are significant GHG contributors.

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[343] Section 20 of the Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999).
[344] Theodore Houghton, *Global Warming: The Complete Briefing* (Cambridge University Press 2015)
[345] Henry Shue, *The Pivotal Generation: Why We Have a Moral Responsibility to Slow Climate Change Right Now* (Princeton University Press 2022)
[346] (2019) 5 NWLR (Pt. 1666) 518
[347] Ibid 580, paras G-H.
[348] 'Sustainable Development Goals – The United Nations' https://sdgs.un.org/goals Accessed 24 June 2025; United Nations (UN) (2023) Sustainable Development Goals, https://www.un.org/sustainabledevelopment/energy/966... Accessed 24 June 2025
[349] In 2022 the National Bureau of Statistics (NBS) put Nigeria's population at 216,783,381. National Bureau of Statistics (NBS), *Demographic Statistical Bulletin 2022* (NBS 2022). https://www.nigerianstat.gov.ng/elibrary/read/1241422 Accessed 24 June 2025.

The adverse impacts of climate change on the environment and on the lives and livelihoods of Nigerians have been widely documented.[350] Climate change is linked to extreme weather, flooding and is a driver of displacement, violent conflicts, terrorism and food insecurity in Nigeria.[351] Nigeria is deficient in climate change mitigation and adaptation mechanisms and its population is among the most vulnerable to climate change impacts.[352] The percentage of Nigeria's population who are rural dwellers is about 47.25 per cent.[353] These often rely on the environment for their subsistence needs and so they suffer disproportionately from environmental degradation and climate change. Although their contribution to GHG emissions is minimal they bear the brunt of climate change due to their lack of adequate adaptation mechanisms.

The threat posed by climate change has spurred significant action at the global level. At the 1992 United Nations Conference on the Environment and Development (UNCED) held at Rio de Janeiro in Brazil, sustainable development and climate change were among the major themes on the agenda.[354] Among the fruits of the Conference were the United Nations Framework Convention on Climate Change (UNFCCC)[355] and Principle 16 of the Rio Declaration which provides for the polluter-pays principle. These were followed by the the Kyoto Protocol of 1997[356] and the Paris Agreement of 2015.[357]

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[350] Federal Ministry of Environment, National Climate Change Policy For Nigeria 2021 – 2030, 6; P Akpodiogaga and O Odjugo, 'General Overview of Climate Change Impacts in Nigeria' *Journal of Human Ecology* [2010] 29(1) 47-55; H Haider, 'Climate Change in Nigeria: Impacts and Responses' The Institute of Development Studies and Partner Organisations <opendocs.ids.ac.uk> Accessed 24 June 2025; NE Ebele and NV Emodi, 'Climate Change and its Impact in Nigerian Economy' *Journal of Scientific Research and Reports* [2016] 10(6) 1-13.

[351] TO Adewuyi and CK Ezeamaka, 'Ecological Disasters, Climate Change and Rural Violence in Nigeria' In: UA Tar and B Bala (eds.) *Rural Violence in Contemporary Nigeria: The State, Criminality and National Security* (Taylor & Francis 2023) 87 - 108; Federal Ministry of Environment, *National Climate Change Policy For Nigeria 2021 – 2030*; NE Ebele and NV Emodi, 'Climate Change and its Impact in Nigerian Economy' *Journal of Scientific Research and Reports* [2016] 10(6) 1-13.

[352] Nigeria is prone to desertification in the north and also a coastal state, bounded by the Atlantic Ocean to the south. Countries with coastal, arid and semi-arid areas or areas liable to floods, drought and desertification are among those listed in the UNFCCC as particularly vulnerable to the adverse effects of climate change. See the UNFCCC Preamble.

[353] 'Nigeria – Rural Population' https://tradingeconomics.com Accessed 24 June 2025.

[354] Rio de Janeiro Declaration on Environment and Development, June 16, 1992, UN Doc.A/CONF.151/5. The Rio Declaration is a statement of twenty-seven principles, some of them restatements of the Stockholm principles setting out the basis on which states and individuals are to cooperate and further develop international law in the field of sustainable development.

[355] https://unfccc.int/files/resource/docs Accessed 24 June 2025.

[356] https://unfccc.int/files/resource/docs/comvkp/kpeng.pdf Accessed 24 June 2025.

[357] The Paris Agreement aims to limit global warming to well below 2° C, preferably to 1.5° C, compared to pre-industrial levels. It was adopted by 196 Parties in 2015 at the Conference of Parties (COP) 21 in Paris and entered into force in 2016. For the text of the Paris Agreement 2015, https://unfccc.int/sites/default/files/english_paris_agreement.pdf Accessed 24 June 2025.

Nigeria has ratified the key climate change treaties and committed itself to climate reduction targets under the 2015 Paris Agreement where it established its nationally determined contributions (NDCs). Nigeria's Nationally Determined Contributions (NDC) are designed to deliver 20 per cent unconditional and 47 per cent conditional emissions reductions by 2030.[358] Subsequently and pursuant to section 12 of the CFRN 1999, which requires domestication of treaties, the government enacted the Climate Change Act, 2021 ("the Act") as the legal framework for mainstreaming climate change mitigating and adaptive actions at a national level.

Nigeria formally adopted the polluter-pays principle (PPP) in the 1999 National Policy on the Environment (revised in 2016)[359] as one of the principles that would drive Nigeria's policy on environmental protection and remediation.[360] Despite the recognition of the polluter pays principle internationally and nationally, and its application by the judiciary in environmental litigation, its application in climate change legislation in Nigeria remains overlooked. Nigeria is a country suffering from the impacts of climate change, yet the legal framework for climate change is still evolving. Furthermore, research on the application of the polluter pays principle in Nigeria is centred mostly on oil spills. As an emerging economy with substantial developmental needs and major environmental challenges, the polluter pays principle has the potential of holding polluters accountable, discouraging the use of polluting technologies and promoting environmentally friendly technologies thereby promoting sustainable development.

This paper therefore poses the following research questions: How does the Climate Change Act 2021 incorporate the polluter-pays principle? What are the likely prospects and challenges in applying the principle under the Act? The aim is to undertake an analysis of the incorporation of the polluter-pays principle in the Climate Change Act 2021. The paper adopts the doctrinal research methodology. Primary sources relied on include legislations and judicial precedents. Secondary sources consulted include undomesticated treaties and other international instruments, journal articles, textbooks, conference papers, online articles and press reports.

[358] *Nigeria's First Nationally Determined Contributions 2021 Update* https://climatechange.gov.ng/wp-content/uploads/2021/08/NDC_File-Amended_11222.pdf Accessed 20 June 2025.
[359] (1999 National Policy on Environment (revised in 2016)
[360] Ibid. s 1.5(3).

The paper is divided into six parts. Part I is the introduction; Part II comprises the conceptual clarification and literature review; Part III provides a broad overview of the Climate Change Act 2021 and Part IV analyses specific provisions of the Act that incorporate the polluter pays principle. Part V contains a discussion on the prospects and challenges of the application of the polluter pays principle under the Act. Part VI is the conclusion in which we set forth the findings and recommendations.

2.0 Conceptual Clarification and Literature Review

2.1 Definition of Pollution

Section 37 of the National Environmental Standards and Regulations Enforcement Agency (Establishment) Act (NESREA Act)[361] defines pollution as "man-made or man aided alteration of chemical, physical or biological quality of the environment to the extent that is detrimental to the environment or beyond acceptable limits". This suggests that it is not every alteration of the quality of the environment that would qualify as pollution; rather it is a question of degree. It is to the extent that the alteration is detrimental to the environment or beyond the limit set by the environmental authority that such alteration would amount to pollution. There are many acts of pollution which, when viewed separately, may not result in an alteration of the quality of the environment to an extent that is detrimental to the environment or beyond acceptable limits; yet such acts, when viewed collectively, would fall within the definition of pollution. (E.g. emissions from motor vehicles). There is also long term pollution where the effects are not immediate or apparent but nevertheless result in harm to the environment and humans

Pollution is also defined as: the direct or indirect introduction as a result of human activity, of substances, vibrations, heat or noise into the air, water or land which may be harmful to human health or the quality of the environment, result in damage to material property, or impair or interfere with amenities and other legitimate uses of the environment.[362] From the definitions provided, pollution has adverse effects on the health and welfare of humans as well as on the environment. Effects on humans could include diseases caused by inhaling, ingesting and being exposed to chemicals and radioactive particles present in the air, water, land and food. Effects could be short-term or long-term.

[361] Cap N164 LFN 2010.

[362] European Union 1996 Council Directive on Integrated Pollution Prevention and Control (IPPC) 'Council Directive 96/61/EC of 24 September 1996 Concerning Integrated Pollution Prevention and Control' Official Journal L257, 10/10/1996 p. 26.

Climate change is largely caused by polluting activities of humans. In the last few centuries the continuous release of massive amounts of GHGs like carbon dioxide and methane into the atmosphere led to global warming. Climate change may therefore be regarded as a long-term consequence/effect of polluting activities. Because of their potential to negatively affect the climate, GHGs are regarded as pollutants.

2.2 The Polluter Pays Principle

According to the polluter-pays principle, polluters are obligated to pay for the effects of their actions/activities on the environment and society. The principle was devised by the Organization for Economic Cooperation and Development (OECD)[363] in the early 1970s as an economic principle directed at the more efficient and equitable allocation of costs resulting from environmental pollution.[364] It is aimed at correcting the improper allocation of costs to the environment and to society from production activities by holding the polluters responsible for remedying pollution. Previously, the costs of remedying environmental pollution were not considered an integral part of the production costs of the persons or companies that caused the pollution.[365] Air, land and water resources were exploited as "sinks" for pollution. Pollution was externalized or transferred from the polluter to the larger society, at disproportionate societal and individual costs[366]. Thus, damage to property and human health was covered by society, not the polluter. The implication of this was that the society, particularly the masses, would pay the price of pollution, often suffering ill health, lower quality of life and in severe cases, death.

[363] The Organisation for Economic Cooperation and Development (OECD) is an intergovernmental organisation comprising 38 mostly developed and wealthy member countries, including the United States, Canada, Mexico, twenty seven European countries, and eight countries drawn from Asia, South America and the Pacific. Its forerunner was the Organisation for European Economic Cooperation (OEEC) set up in 1948 after World War II for the economic reconstruction of Europe. The OEEC transformed into the OECD on 30 September 1961. <oecd.org/en/about>

[364] Jude O. Ezeanokwasa, Polluter-Pays Principle and the Regulation of Environmental Pollution in Nigeria: Major Challenges. *Journal of Law, Policy and Globalization* (2018) Vol.70 www.iiste.org...ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Accessed 24 June 2025; Mohammed Munir, 'History and Evolution of the Polluter Pays Principle: How an Economic Idea Became a Legal Principle' [2013] <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2322485> accessed 13th June 2024

[365] JO Ezeanokwasa (n 22).

[366] Vojtech Vomaka, 'Principles of EU Environmental Law' (*Academy of European Law*) <https://www.era-comm.eu/Introduction_EU_Environmental_Law/EN/module_2/module_2_11.html> accessed 11 December 2023

The PPP was internationally recognised as a principle of sustainable development in 1992, at the United Nations Convention on Environment and Development (the Earth Summit). Principle 16 of the Rio Declaration[367] restates the Principle as follows:

> National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

The PPP is one of the guiding principles in Nigeria's National Policy on the Environment[368] and is also implied in several Nigerian environmental legislations.[369] The application of the PPP entails that polluters are held accountable for all expenses related to their pollution, including societal costs and the price of the actions necessary to avoid, control, and mitigate it, as well as encouraged to prevent harm to the environment. Additionally, the polluter bears the remediation costs rather than the taxpayer. The rationale of the principle is that if every polluter is responsible for both the benefits (like the money made from producing and selling a product) and the harm (like impaired air quality caused by pollutant discharges into the atmosphere), then every polluter will modify the amount and quality of the activity to reach an economically efficient level of production and pollution.[370] This strategy encourages complete cost allocation and places the proper parties in charge of externalities[371]. It also provides a basis for pursuing legal action against a polluter.

2.3 Climate Change

The United Nations Framework Convention on Climate Change (UNFCC) defines climate change 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 climate variability observed

[367] Rio de Janeiro Declaration on Environment and Development, June 16, 1992, UN Doc.A/CONF.151/5. The Rio Declaration is a statement of twenty-seven principles, some of them restatements of the Stockholm principles setting out the basis on which states and individuals are to cooperate and further develop international law in the field of sustainable development.

[368] Federal Ministry of Environment, National Policy on the Environment (Revised 2016), see 3.3 (iv), p. 12.

[369] The NESREA (Establishment) Act (s. 28), the Petroleum Industry Act (ss. 103-105), National Oil Spill Detection and Response Agency (NOSDRA) (Establishment) Act (s. 6(2)(3)), Harmful Wastes (special Criminal Provisions) Act, 1988 (s. 12 (1)).

[370] G Elvis-Imo. 'An Analysis of the Polluter Pays Principle in Nigeria' *Ajayi Crowther University Law Journal* [2016] 1(1) aculj.acu.edu.ng Accessed 23 June 2025

[371] G Elvis-Imo. 'An Analysis of the Polluter Pays Principle in Nigeria' *Ajayi Crowther University Law Journal* [2016] 1(1) aculj.acu.edu.ng Accessed 23 June 2025; 'Treatise on Estuarine and Coastal Science' (Academic Press, 2012)

over comparable time periods over comparable time periods."[372] The Climate Change Act 2021 defines climate as "the average weather condition, as the statistical description in terms of the mean and variability of relevant quantities over a period of time".[373] It defines climate change as "a change of climate, which is attributed directly or indirectly to human activity or natural climate variability that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods".[374] The Act differs significantly from the UNFCCC in its inclusion of /recognition of causative factors other than human activity. It states that climate change may also be attributed to natural climate variability.

It has been established that humans are the primary cause of global warming and climate change[375]. Human activities release significant amounts of greenhouse gases into the atmosphere and lower the amount of carbon absorbed from the atmosphere and weakens the ozone layer. Greenhouse gases (GHGs)[376] such as carbon dioxide and methane are released into the atmosphere by the burning of fossil fuels, gas flaring, urbanization, agriculture. Deforestation, reduces the absorptive capacity of the environment, raising the concentration of these gases in the environment. Greenhouse gases (GHGs) are linked to climate change because these chemical pollutants trap heat in the Earth's atmosphere. GHGs operate as a blanket over the atmosphere, effectively absorbing heat radiation from the earth's surface and keeping it warmer than it otherwise would be. This leads to global warming, altered weather patterns, rising sea levels, and increased frequency of extreme weather events, impacting human activities worldwide.[377]

Climate change, apart from the threat it poses to the realization of the SDGs, violates the rights to life, dignity and property in the 1999 Constitution[378] and the rights to health and a general satisfactory

[372] Article 1(2) UNFCCC.
[373] Section 35 Climate Change Act 2021
[374] ibid.
[375] Intergovernmental Panel on Climate Change (IPCC). Climate change impact, adaptation and vulnerability: Contribution of working group II to the Forth Assessment Reports of the IPCC. Cambridge University Press, Cambridge; 2007b.
[376] The Climate Change Act 2021 defines GHGs as "constituents of the atmosphere that contribute to the Greenhouse effect". It lists the following as GHGs: carbon dioxide, methane, nitrous oxide, hydro fluorocarbons, per fluorocarbons, sulphur hexafluoride, and indirect greenhouse gases. (CCA, s. 35)
[377] Muhammed Tawfiq Ladan, A Review of Nigeria's 2021 Climate Change Act: Potential for Increased Climate Litigation (*International Union for Conservation of Nature*, 2022) https://www.iucn.org/news/commission-environmental-economic-and-social-policy/202203/a-review-nigerias-2021-climate-change-act-potential-increased-climate-litigation accessed 12 May 2025
[378] CFRN 1999, ss 33, 34 and 43.

environment in the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.[379] The decision in *Jonah Gbemre v Shell Petroleum Development Company and others*[380] (centred on human rights implications of gas flaring) demonstrated the link between environmental harm and human rights. Gas flaring contributes to pollution and climate change. It is a leading cause of GHG emissions in Nigeria. When gases are flared in the course of oil production, the cost of gas production is externalized and borne primarily by the oil producing communities.

2.4 Literature Review

The polluter-pays principle is accepted globally and in many domestic settings as a principle of sustainable development. Munir[381] traces its origins as an economic principle that rapidly evolved into a legal principle. Application of the principle to environmental law and policy in the past few decades has resulted in considerable scholarly output, however most studies on the PPP are based in the global north. Additionally, most scholarly works discuss the application of the principle to air pollution, water pollution, waste management, and clean-up of toxic waste and mostly in the context of remedial action.[382]

In the last three decades, arising from the climate change agreements and various Conference of the Parties (COP), the PPP has assumed increasing importance in climate change negotiations. According to Lange and others,[383] it is one of the most widely accepted equity principles in international climate negotiations. They describe it as the rule of equal ratio between abatement costs and emissions[384] implying that a country whose greenhouse gas emissions amount to a certain proportion of the global emissions should bear that same proportion of the global abatement costs for reductions of greenhouse gas emissions.

[379] Cap A9 LFN 2004, ss 16 and 24.
[380] (2005) AHRLR 151 (NgHC 2005)
[381] Mohammed Munir, 'History and Evolution of the Polluter Pays Principle: How an Economic Idea Became a Legal Principle' [2013] <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2322485> accessed 13th June 2024
[382] MA Nugroho and others, 'Implications of 'Polluter Pays Principle' in Criminal Liability of Business Actors for Environmental Pollution through Wastewater'. *Reformasi Hukum* (2024) [28]1, 4-23. DOI:10.46257/jrh.v28i1.932; L Bredenhann and L Garlipp, 'The polluter pays principle in water and environmental law' CIVIL ENGINEERING-YEOVILLE [1999] (7),17-18.
[383] Andreas Lange, Carsten Vogt, and Andreas Ziegler, On the Importance of Equity in International Climate Policy: An Empirical Analysis. Discussion Paper No. 06-042 (Centre for European Economic Research 2006) ftp://ftp.zew.de/pub/zew-docs/dp/dp06042.pdf Accessed 7 December 2025
[384] Ibid.

Zahar[385] similarly argues that the principle is increasingly recognized in international climate law as creating a positive obligation for states to act. That this evolution of the law leads to the acceptance by polluting-states that the emission of greenhouse gases in its territory must come at a cost to the state, as a matter of law. Hence the practice of reducing greenhouse gas emissions by pricing them. This he regards as a significant development in an emerging area of law.

While the PPP emerged at the regional level in Europe and was subsequently contained in soft law (Principle 16 of the Rio Declaration), it has been transposed to domestic jurisdictions and is now incorporated in environmental laws and tax laws and applied by national courts to affix liability on polluters.[386] This is essential in translating international commitments into concrete actions at the national level.[387]

Few studies exist on the application of the polluter-pays principle in Nigeria's environmental law. Abimbola and others[388] explore the application of the principle as a tool for restoration of oil-impacted environment. The study is narrowly focused on compensation for environmental pollution arising from oil exploration and production.

Oranye and Adenikinju[389] further analyse the application of the principle in the context of compensation claims against Shell Petroleum Development Company. They narrowly define the polluter-pays principle as "that which ensures the environment is remedied close to or its original state following an action or inaction that results in the pollution of the environment. It provides for compensation of those affected by the impact of the pollution. The principle includes prevention of

[385] A Zahar, 'The Polluter-Pays Principle in International Climate Change Law: Are States Under an Obligation to Price Carbon Emissions?' *Biology & Sustainability eJournal* (2018) SSRN 3281677 accessed 9 December 2025; A Zahar, The Polluter Pays Principle and its Ascendancy in Climate Change Law. *Environmental Economics eJournal* [2019]. DOI:10.2139/ssrn.3479845 accessed 9 December 2025.

[386] M Tiwari, 'The Role of National Legal Frameworks in Implementing International Climate Agreements: A Comparative Study of Environmental Policies between India and Germany,' *Indian Journal of Legal Review* [2025] (5)5, 451-463 https://ijlr.iledu.in/wp-content/uploads/2025/04/V5I548.pdf accessed 12 December 2025; S. Tiwari, 'Polluter Pays Principle as a Principle of Sustainable Development: A Study in Indian Scenario'. *South Asian Law Review Journal* [2022]; AS Akram and others, 'Green Taxes and Justice: Rethinking 'Polluter Pays' for a Sustainable Future.' *E3S Web of Conferences* [2025].

[387] M Tiwari (n 44)

[388] OA Abimbola, TE Ayo and IO Ayo, 'X-raying the Bounds of Polluter Pays Principle as an Environmental Protection Tool in the Nigerian Oil and Gas Industry.' *IIARD International Journal of Geography and Environmental Management* [2023]

[389] N Oranye, and AF Adenikinju, '£55M Shell Petroleum Development Company's Compensation to the Bodo Fishermen and Community: The Effectiveness of Polluter Pays Principle in the Liability Settlement.'. In SPE Nigeria Annual International Conference and Exhibition (SPE 2020] p. D013S006R032.

pollution, measures for control, the cost for clean-up and the liability." (sic) This narrow perception, with the primary focus on remediation, is emblematic of most Nigerian studies on the principle.

Gina Elvis[390] addresses challenges of conceptualizing the polluter-pays principle. She argues that for effective application, the principle must answer questions such as: "What constitutes pollution? Who are the polluters? How much must the polluters pay? To whom should such payment be made?" This paper posits that the provisions of relevant laws that incorporate the polluter-pays principle could serve as a guide in answering these questions. So also would judicial decisions applying the principles. Thus the need to critically analyze the legislations and test them by way of judicial interpretation.

Ezeanokwasa[391] provides a critique of the incorporation of the polluter pays principle in the Minerals and Mining Act 2007, Nigeria's primary mining legislation. He highlights the rise in solid minerals exploitation in Nigeria, its adverse impacts on the environment and the potential role of the polluter-pays principle in balancing economic development with environmental protection and promoting responsible mining. He finds that, though the Minerals and Mining Act 2007 incorporates the principle, its actualization is bedeviled by factors such as weak institutions and corruption. A valuable contribution of the research is the high-lighting of non-legal factors that could render laws ineffectual. This paper focuses on the incorporation of the PPP in climate change law.

Olaniyan's[392] research, is situated in the Nigerian oil and gas industry. The research adopts deterrence theory in analysing the effect of the polluter-pays principle in preventing and controlling oil spills. It similarly points out the negative impact of weak and compromised institutions and poorly enforced laws on actualization of the PPP.

Mpofu's[393] review of 99 scholarly works situates the polluter-pays principle in the context of green taxes in Africa and implications for environmental protection and attainment of the SDGs. Findings of the review are that green taxes can provide an opportunity for green transformation, policy reforms

[390] G Elvis-Imo (n 28).
[391] JO Ezeanokwasa, 'An Appraisal of the Conformity of the 2007 Nigerian Minerals and Mining Act to the Polluter Pays Principle.' *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* [2017] 8, 64-73.
[392] A Olaniyan, 'Imposing Liability for Oil Spill Clean-Ups in Nigeria: An Examination of the Role of the Polluter-Pays Principle.' *Journal of Law, Policy and Globalization* [2015] 40, 73-85. DOI:10.1007/s11158-022-09569- accessed 8 December 2025.
[393] FY Mpofu, 'Green Taxes in Africa: Opportunities and Challenges for Environmental Protection, Sustainability, and the Attainment of Sustainable Development Goals' *Sustainability* [2022] (14) 10239. https://doi.org/10.3390/su141610239 Accessed on 8 December 2025 at

and boost revenue mobilization. On the other hand, the taxes can increase inequality, heighten the cost of energy, and increase energy poverty for those dependent on fossil fuel for energy, thereby resulting in social costs and compromising the attainment of some other SDGs. The study holds significance for Nigeria and developing countries whose citizens are energy poor, reliant on fossil fuels and thus likely to be socio-economically disadvantaged by wholesale implementation of green taxes. Mpofu's research, while relevant to this paper, adopts a critical literature review influenced by Accountancy. This paper, on the other hand, provides doctrinal legal analysis of the provisions of the Climate Change Act that incorporate the PPP, thus adopting a different methodology. Additionally, the broad scope of Mpofu's review fails to take into account Nigeria's law on climate change.

Most of the literature from Nigeria focuses on the oil and gas industry particularly remedial actions on damage caused by oil spills. There is a paucity of literature on the application of the principle in climate change law. Studies on the preventive dimensions of the principle are lacking and there is next to nothing on judicial interpretation of the principle in relation to climate change. Nigeria's climate change legislation is still in its infancy and has not been judicially tested. This paper addressed some of these gaps by analyzing the incorporation of the PPP in Nigeria's primary climate change legislation and highlighting preventive aspects of the principle in the Climate Change Act 2021.

3.0 Overview of the Climate Change Act 2021

The enactment of the Climate Change Act 2021 is perhaps the most important step in Nigeria's efforts to tackle climate change. Hitherto, the National Climate Change Policy played the key role in shaping the domestic approach to climate change. The Act is the first stand-alone climate change legislation in West Africa.[394] It provides for the mainstreaming of climate change actions and establishes the National Council on Climate Change (NCCC or "the Council"), headed by the President of Nigeria, as the major body with powers to make policies and decisions on all matters regarding climate change in Nigeria.[395] Mainstreaming is the integration of climate change actions into the policies and decisions of government.[396] The Act is a framework legislation that leaves vast areas to be covered by the NCCC and relevant agencies in the form of subsidiary legislation. The NCCC has a Secretariat to handle the administrative, scientific, and technical functions of the Council and a Director-General of the

[394] Muhammed Tawfiq Ladan (n 35).
[395] Climate Change Act 2021, ss. 3, 4 and 5.
[396] Climate Change Act 2021, s. 35.

Secretariat who oversees the administration of the NCCC.[397] The Act provides a framework for achieving low greenhouse gas emissions, inclusive green growth and sustainable economic development and sets 2050– 2070 as the timeline for realizing the country's net- zero GHG emissions target.[398]

The Act is divided into 8 parts and has 36 sections and a Schedule. Part I contains the objectives and application of the Act. Part II provides for the establishment of the NCCC including its functions and powers, membership and cessation of membership. Part III deals with the administration and control of the NCCC while Part IV contains financial provisions, including the establishment of the Climate Change Fund. Part V provides for Carbon budget, the National Climate Change Action Plan and periodic reporting to the National Assembly. Part VI contains obligations relating to climate change and applicable to Ministries, Departments and Agencies, public entities and private entities; and provides for partnership with Civil Society and climate change education. Part VII contains provisions on the promotion and adoption of nature-based solutions to climate change; the establishment of the REDD+ Registry; the development of Nigeria's Natural Capital Accounts and National Development Plans. Part VIII contains miscellaneous provisions on public engagement strategy, conflicts of interest, power to make regulations, limitation of suits and offences. It also contains the interpretation section and the citation.[399]

4.0 The Polluter Pays Principle under the Climate Change Act 2021

This part highlights several sections in the Climate Change Act 2021 from which the PPP may be implied. These will be treated under subsequent subheadings.

4.1 Carbon Tax and Carbon Emission Trading

Section 4 of the Act, in providing for the functions and powers of the Council, mandates it to, *inter alia*, develop a mechanism for carbon tax in Nigeria in collaboration with the Federal Inland Revenue Service (FIRS).[400] Carbon tax is a tax levied on firms that produce carbon dioxide emissions through

[397] Climate Change Act 2021, ss 7, 8.
[398] Climate Change Act 2021, s1(f)
[399] See EO Popoola, 'The Role of Law in the Energy Transition: Interrogating Some Provisions of the Climate Change Act 2021', Conference Paper presented at 2023 Hybrid Annual International Conference on Democracy, Security and Development, University of Nigeria Nsukka 5 - 6 July 2023.
[400] Section 4(i) Climate Change Act 2021. Under the new Nigeria Revenue Service Act 2025, the FIRS is to be replaced with a new federal tax body known as the Nigeria Revenue Service. See Nigeria Revenue Service Act 2025, ss 3, 40 and 41.

their operations and is used as an incentive to reduce the use of high-carbon fuels in order to protect the environment.[401] The government sets a price that emitters of carbon dioxide and other GHGs must pay for each ton of GHG emissions they emit. The objective is to make businesses and consumers switch fuels, transit to cleaner energy or adopt new technologies, among others, to reduce their emissions to avoid paying the tax.[402]

The Act further mandates the Council to develop and implement, in collaboration with the Federal Ministries of Environment and of Trade, a mechanism for carbon emission trading.[403] Carbon emission trading is a market mechanism to promote global GHG emissions mitigation and reduce global GHG emissions.[404] One party to the contract pays the other party to obtain carbon credits and the buyer uses the purchased emission credits in lieu of mitigating GHG emissions, thereby achieving its emission reduction targets.[405] Carbon credits, also known as carbon offsets, are permits that allow the owner to emit a certain amount of GHGs, typically one ton of carbon dioxide equivalent. They are generated by projects that reduce or remove GHG emissions, like renewable energy or reforestation initiatives.[406] These credits can be traded, enabling companies to offset their emissions by purchasing credits from entities that have reduced emissions elsewhere. Carbon credits are regarded as a way to quantify and trade the reduction, avoidance, or removal of GHG emissions.[407] This practice embodies the PPP since the polluter is paying some other entity or country in order to be allowed to emit GHGs above the allowable limit.

4.2 Climate Change Fund

[401] 'Carbon Tax'. *Encyclopaedia Britannica* (2023) https://www.britannica.com/money/carbon-tax Accessed 12 May 2023.
[402] Center for Climate and Energy Solutions, 'Carbon Tax' (2023) https://www.c2es.org/content/carbon-tax-basics/#:~:text=Under% Accessed 12 May 2023.
[403] Section 4(j) Climate Change Act 2021.
[404] Under Article 17 of the Kyoto Protocol, emissions trading allows countries that have GHG emissions permitted them but not used up to sell the excess capacity to countries that have exceeded their targets. Since carbon is the principal GHG, the common term used to describe this is carbon trading. See https://unfccc.int/process/the-kyoto-protocol/mechanisms/emissions-trading Accessed 22 June 2025.
[405] Liwei Liu and others, 'China's Carbon-emissions Trading: Overview, Challenges and Future', *Renewable and Sustainable Energy Reviews* Vol 49 [2015} 254-266. https://doi.org/10.1016/j.rser.2015.04.076 Accessed 23 June 2025.
[406] I. Kaminski, 'Rise in Legal Challenges over Carbon Credit Schemes' *The Guardian* 25 June 2025 https://www.theguardian.com/environment/2025/courts-corporate-carbon-offsetting-claims-lse-report Accessed 25 June 2025; F Harvey, 'What is Carbon Offsetting and How Does it Work? The Guardian 4 May 2021
[407] Ibid.

The Act establishes the Climate Change Fund (the Fund) to be maintained by the Council. Funding is statutorily derived from a variety of sources including: sums appropriated by the National Assembly for the functioning of the Council, "fines and charges from private entities for flouting their climate change mitigation and adaptation obligations"[408]; carbon tax and emissions trading.[409] The use of the word shall in section 15 suggests that these monies realized are to be mandatorily paid into the Fund. The Fund shall be used to fund, *inter alia*, innovative climate change mitigation and adaptation projects approved by the Council, conduct assessment of climate change impacts on vulnerable communities and population, and incentivize private and public entities for their efforts toward transitioning to clean energy and sustaining a reduction in GHG emissions.[410]

The implication of the above provisions is that monies paid by polluters in the form of fines, taxes, charges etc. constitute a major source of funding for climate change mitigation and adaptation programs. Communities suffering from the effects of climate change are expected to benefit from the conduct of impact assessments. The PPP is thus linked with climate change finance, a prerequisite for fulfilling climate change obligations.

4.3 Carbon Emission Reduction

The Act imposes several obligations relating to climate change on both public entities and medium-to-large private entities[411]. It requires them to put measures in place to achieve carbon emission reduction targets.[412] Ministries, departments and agencies that fail to meet their carbon emission reduction target shall be subjected to a review and principal officers found liable sanctioned and, where appropriate, fined.[413] In furtherance of the emission reduction targets, medium to large private entities shall designate a Climate Change Officer or an Environmental Sustainability Officer, who shall submit annual reports on the entity's efforts at meeting its carbon emission reduction and climate adaptation plan to the Secretariat, through the State Director.[414]

[408] Section 15 (1)(d) Climate Change Act 2021.
[409] Section 15 (1)(e) Climate Change Act 2021.
[410] Section 15 (2)(f)(i)(j) Climate Change Act 2021.
[411] The obligation applies to any private entity with employees numbering 50 and above. Section 24 (1) CCA. This paper describes them as "medium to large private entities".
[412] Sections 22 and 24 Climate Change Act 2021.
[413] Sections 22 (4)(5) and 24(1) Climate Change Act 2021.
[414] Section 24 (1)(b) Climate Change Act 2021.

The measures stipulated above are preventive and control measures that could entail considerable financial costs to the entity. Setting emission reduction targets indicates recognition of the impact that the entity's activities could have on the environment, specifically release of GHGs, and government's intention to make the entity take/bear responsibility for the costs of reducing its GHG emissions. In order to meet its emission reduction targets, the company or entity would invariably have to invest in technology, raw materials, processes and energy sources etc. with lower GHG emissions. (E.g. investing in solar or wind energy). An oil and gas entity may have to invest significantly in a gas-gathering system to minimise flaring of associated gas. Employment of a climate change officer or environmental sustainability would entail additional costs, particularly for the smaller entities. The polluter bears the costs of these preventive and control measures directed at climate change.

This accords with the PPP which stipulates that the polluter should bear the expenses of the pollution prevention and control measures decided by the public authorities to ensure that the environment is in an acceptable state.[415] The major responsibilities of firms specifically related to climate change are to reduce greenhouse gas emissions from their own activities and their subsidiaries; reduce greenhouse gas emissions from their products and services; minimize greenhouse gas emissions from their suppliers; publicly disclose their emissions, climate vulnerability and the risk of stranded assets; and ensure that people affected by business-related human rights violations have access to effective remedies.[416]

A private entity that fails to meet its emission reduction target shall be "liable to a fine to be determined by the Council, relying on a system of Environmental Economic Accounting with attention on the health impacts, impact on climate variation, and total damage to ecosystem services"[417]. The phraseology of section 24 captures the essence of the PPP. Pollution results in damage to environmental resources and ecosystems, and adversely impacts the health and livelihoods of humans with corresponding implications for their human rights. Section 24 recognises that the real costs of production are often externalized and borne by the environment, the host community and the larger society. The PPP seeks to correct this by the use of environmental economics in determining the real

[415] OECD, 'Recommendation of the Council on Guiding Principles concerning International Economic Aspects of Environmental Policies'
[416] Philip Alston, 'Climate Change and Poverty UN doc A/HRC/41/39' (25 June 2019) <digitallibrary.un.org> accessed 27 April 2021
[417] Section 24(2) Climate Change Act 2021.

costs of production. This buttresses (the OECD designation of the PPP as an economic principle that incorporates environmental considerations into production costs.

An additional implication of section 24 is that polluters are compelled to monitor themselves. Designation of an environmental officer tasked with preparation and submission of regular/annual reports to the Secretariat on the entity's efforts at meeting its carbon emission reduction and climate adaptation plan implies that the CCA imposes on the entity the responsibility for self-monitoring. This would reduce the cost of monitoring by state agencies. In this way polluters bear the costs of pollution prevention and control measures.

4.4 Creation of Offences and Judicial application of the Principle by the Courts

The Climate Change Act 2021 creates offences but leaves the penalties to be determined by the Council. Under section 34 it is an offence for a person, or private or public entity to act in a manner that negatively affects efforts towards mitigation and adaptation measures made under the Act and the offender is liable to a penalty to be determined by the Council.[418] This provision is couched in broad and vague language and could be problematic in terms of interpretation, proof and assignment of criminal liability. For example, what kind of act or omission would constitute acting "in a manner that negatively affects efforts towards mitigation and adaptation measures"? It is a principle of law that penal legislation should be couched in clear and explicit language so that those required to obey it can understand what conduct is prohibited.[419] This is based in part on the need for advance knowledge of what constitutes criminal conduct. The vague or imprecise language used in apportioning criminal liability under section 34 of the Act could result in legal challenges and ultimately lead to the provision being voided by the courts down for its vagueness.

This paper posits that in line with the constitutional requirement on codification of criminal law,[420] the offences relating to the Act need to be clearly defined in a statute or subsidiary legislation with

[418] Section 34 (1)

[419] *Nwobike v Federal Republic of Nigeria* (2021) LPELR-56670 (SC); See also 'Vagueness Doctrine' https://www.law.cornell.edu/wex/vagueness_doctrine Accessed 9 December 2025.

[420] Section 36 (12) CFRN 1999 states -

> Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.

penalties explicitly spelt out in same. Since the penalties may include fines, the PPP could be utilized in determining the appropriate amounts to levy on offenders. Furthermore, the sums realized could be applied to climate change mitigation and adaptation as well as rehabilitation of vulnerable communities adversely affected by climate change, thereby making the polluter to pay for the costs of their action.

The Act further provides that a court, before which a suit regarding climate change or environmental matters is instituted, may make an order to prevent, stop or discontinue the performance of any act that is harmful to the environment.[421] The court may further compel any public official to act in order to prevent or stop the performance of any act that is harmful to the environment;[422] or order compensation to the victim directly affected by the acts that are harmful to the environment.[423] This provision provides a basis for the courts to apply the polluter-pays principle in relation to climate change litigation. The order for payment of compensation to victims of climate change and environmental harm could result in the polluter bearing the real cost of their activities in relation to the environment.

5.0 Discussion: Prospects and Challenges

Climate change, apart from the threat it poses to the realization of the Sustainable Development Goals, has adverse effects on human rights.[424] This is particularly so in a developing country like Nigeria that is lagging behind in mitigation and adaptation mechanisms. The incorporation of the polluter-pays principle in the Climate Change Act 2021 is an instance of its transition from soft law to hard law and demonstrates its growing importance in climate change legislation. In addition to its being a guiding principle in environmental policy, the principle is indirectly expressed in legally binding provisions.

While the Climate Change Act 2021 does not explicitly mention the polluter-pays principle, the principle can be implied from a number of its provisions. One example is the responsibility of emission reduction. The Act applies to both public and private entities, particularly larger companies. These companies are required to develop climate action plans with emission reduction targets. This incentivizes them to find ways to reduce their own pollution footprint, reflecting the idea of polluters

[421] Section 34(2) (a) Climate Change Act 2021
[422] Section 34(2) (b) Climate Change Act 2021
[423] Section 34(2) (c) Climate Change Act 2021
[424] CFRN 1999, ss 33, 34 and 43.

bearing the cost of reducing their emissions. The imposition of fines on companies or firms that flout their climate change obligation as well as the use of financial instruments like carbon taxes, carbon credits, and green bonds are all based on the polluter-pays principle.

Additionally, the Act empowers the Council to, make regulations on several areas related to the Act.[425] These include regulations to supervise market-based mechanisms and instruments relating to climate change; creating offences and their penalties; to provide fiscal incentives for the promotion of GHG emission reduction; and encouragement of private sector participation in climate actions. These offer immense potential for the operation of the polluter pays principle in Nigerian climate change law.

The Climate Change Act 2021 creates increased potential for climate change litigation. This could arise in several forms - challenges to carbon taxes, public interest litigation by NGOs and individuals challenging governmental action or inaction on climate change, lawsuits against corporate polluters; and medium – large private entities challenging governmental actions. This could have implications for government investment goals in the oil and gas sector.[426]

Climate change litigation would come with its peculiar evidentiary challenges. Proving causation, a direct link between specific action of a polluter and climate change impacts could be challenging, requiring complex scientific evidence. Nevertheless, advances in climate science have eased the burden of proving causation and of assigning responsibility for GHG emissions.[427] Challenges could also arise in proving the specific harm, economic, health, social which the plaintiff(s) have suffered from climate change and how they have suffered above and beyond other members of the public. The broad and vague language in section 34(1) of the Climate Change Act could be problematic in terms of interpretation, proof and assignment of criminal liability.

The socio-economic and political context within which the Climate Change Act 2021 is situated could constrain effective implementation of the PPP. Nigeria is a top oil producer in Africa, deriving about

[425] Sections 23 and 32 Climate Change Act 2021.

[426] Climate change litigation includes cases that focus on stopping the drivers of climate change, such as oil, gas, and coal extraction. See T Morganthau and N Reisch, 'Litigating the Frontlines: Why African Community Rights Cases Are Climate Change Cases' (2020) 25(1) *UCLA Journal of International Law & Foreign Affairs* 85, 86; Pedi Obani, 'Climate Litigation in South Africa and Nigeria: Legal Opportunities and Gender Perspectives' In: Kim Bouwer, Uzuazo Etemire and others (eds) *Climate Litigation and Justice in Africa* (Bristol University Press 2024) 291-312 accessed 5 July 2025 https://doi.org/10.51952/9781529228977.ch012

[427] See Aaron O Salau, 'An Appraisal of the Climate Change Act and Climate Public Interest Litigation in Nigeria' *NIALS Journal of Environmental Law*; Simone Bastianoni, Federico M Pulselli and Enzo Tiezzi, 'The Problem of Assigning Responsibility for Greenhouse Gas Emissions' *Ecological Econ* [2004] (49) 253

6 to 10 per cent of its Gross Domestic Product from the oil and gas sector[428] and about 90 per cent of its foreign exchange earnings from the sector[429]. Generally climate change obligations require a diversification from fossil fuel and adoption of renewable energies like solar and wind energy. Nigeria on the other hand is a heavily indebted country with a large and growing population aggressively pursuing investment in the oil and gas and the solid minerals sectors in order to meet its financial goals. Nigerian governments, from past experience, prioritise oil and gas production over environmental protection, thus it remains to be seen if the the Act will bring about significant change.[430]

The socio-economic status of Nigerians poses additional challenges to the operation of the PPP. Over 60 per cent of Nigeria's population are classified as experiencing multidimensional poverty[431] and about 90 million people in Nigeria are without access to grid electricity.[432] Carbon taxes have the potential of raising energy costs and this would disproportionately affect the poor and most vulnerable. Use of fuel wood and charcoal is common and remains the main source of energy for cooking by rural dwellers and many urban dwellers.[433] An unintended consequence of the removal of oil subsidies (a key recommendation of the PPP) was deforestation as more urban dwellers resorted to the use of charcoal.[434] The public outcry against the introduction of a fuel tax[435] in the recently enacted tax legislations further illustrates socio-economic challenges likely to arise in implementation of the PPP.

The provisions of the Climate Change Act 2021 that reflect the PPP create additional obligations for medium to large firms/companies. These obligations could increase the operating costs of companies,

[428] NBS, Nigerian Gross Domestic Product Q1 2022 (NBS 2022); NBS, Nigerian Gross Domestic Product Q3 (NBS 2023).
[429] K. Imandojemu and AN Toyosi, 'Monetary Conditions, Oil Revenue and Economic Growth in Nigeria' [2018] *CBN Bullion* 42(4) 46-59 https://dc.cbn,gov.ng Accessed 26 July 2025.
[430] E.g. the continuation of gas flaring in Nigeria in spite of legislation and subsidiary instruments such as the Flare Gas Regulations.
[431] NBS, *2022 Multidimensional Poverty Index* (NBS 2022) https://www.nigerianstat.gov.ng/pdfuploads/NIGERIA%20MULTIDIMENSIONAL%20POVERTY%20INDEX%20SURVEY%20%RESULTS20%202022.pdf Accessed 25 June 2025.
[432] *Nigeria Energy Transition Plan* (August 2022) https://energytransition.gov.ng/ Accessed May 2025
[433] S. Ajala, 'Enhancing Nigeria's Clean Cooking Access to Reduce Greenhouse Emissions' *Energy Transition* 1 June 2022 https://energytransition.org/2022/06/enhancing-nigerias-clean-cooking-access-to-reduce-greenhouse-emissions/... Accessed 25 June 2025
[434] According to the National Bureau of Statistics, about 67 per cent of Nigerians use firewood for cooking. Many users of kerosene and cooking gas can no longer afford the product and now use charcoal or fuel wood since it is more affordable. E Adegbesan, 'Nigerians in Urban Areas now Embrace Firewood, Charcoal for Cooking' *Vanguard* 2 December 2024; T Kolade, 'Nigerians Return to Charcoal Stoves, Firewood for Cooking', *Daily Nigerian*, March 7 2024 <dailynigerian.com> Accessed 25 June 2024.
[435] 'Federal Government Given 14- Day Ultimatum to Withdraw 5% Fuel Tax.' *Daily Trust* 8 September 2025.

who would reflect the same in their product prices, thereby passing the costs on to the consumer. This could have the unintended consequence of increasing the prices of goods and services, further fuelling inflation.

The judicial application of the PPP in the Climate Change Act 2021 has implications for the legal profession in Nigeria. A major need arising from the application of the PPP in Nigeria relates to the manpower needs. Climate change litigation necessitates lawyers and judges knowledgeable in Environmental Law and in disciplines other than law. Globally, climate change litigation is on the increase with the Global South is experiencing a growth in climate change litigation.[436]

The PPP in its origin has its roots in the discipline of Economics.[437] A proper application of the Principle would necessitate some knowledge of Economics and Accountancy. For example, the Council, in determining the fine to be levied on a violator of section 24 of the Act, is mandated to rely on a system of Environmental Economic Accounting with attention on the health impacts, impact on climate variation, and total damage to ecosystem services".[438] In determining the rate to be charged as carbon tax and the entities chargeable, the public bodies charged with the responsibility such as the NCCC and tax authority would be guided not only by law but by Economics, Accounting and Environmental Sciences. Additionally, judicial officers in assessment of damages, are to be guided by economic principles. These all illustrate the interdisciplinary nature of environmental law. Lawyers and Judges thus have the added responsibility of developing themselves in interdisciplinary study and research.

6.0 Conclusion

6.1 Findings

The polluter-pays principle, as incorporated in the Climate Change Act 2021, has both preventive and remedial dimensions. The responsibility of emission reduction incentivizes public and private entities to find ways to reduce their own pollution footprint, reflecting the idea of polluters bearing the cost of reducing their emissions. The imposition of fines on companies or firms that flout their climate change

[436] Global trends in climate change litigation: 2025 snapshot, London School of Economics 25 June 2025 https://www.lse.ac.uk/granthaminstitute/publication/global-trends-in-climate-change-litigation-2025-snapshot/
[437] Mohammed Munir, 'History and Evolution of the Polluter Pays Principle: How an Economic Idea Became a Legal Principle' [2013] <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2322485> accessed 13th June 2024
[438] Section 24(2) Climate Change Act 2021.

obligation as well as the use of financial instruments like carbon taxes, carbon credits, and green bonds are additional ways in which the Act incorporates the polluter-pays principle. An innovation is the self-monitoring and self-reporting requirements for business entities. The Act additionally creates a basis for climate change litigation. Imposition of civil and criminal liability under the Act aids in holding polluters accountable for conduct harmful to the environment. A drawback is the vague language used in creating offences and penalties.

This paper finds that although the Act confers broad powers on the NCCC, including the power to make regulations, the NCCC has been slow to exercise this power thus there is a paucity of regulations and corresponding gaps in the law. This suggests a combination of low technical and administrative capacity and lack of pro-activeness on the part of the Secretariat of the NCCC.

This paper further finds that the concretization of the polluter-pays principle into hard law in the form of legislation provides a solid basis for judicial interpretation and application of the principle. Additionally, the use of fiscal incentives and financial instruments encourages private sector participation in climate actions. Overreliance of the Nigerian economy on oil and gas, lack of political will, socio-economic status of many Nigerians, and training of legal professionals in this interdisciplinary field pose potential challenges in the application of the principle.

6.2 Recommendations

It is recommended that the Climate Change Act 2021 be amended, specifically that more precise language be adopted in defining what acts or omissions in particular would attract criminal liability under the Act. It is further recommended that the NCCC be strengthened to carry out its functions under the Act and take prompt action in making the relevant regulations. The NCCC should engage in collaboration with the legal profession in building manpower for effective application of the Act and just apportionment of liability.

Implementation and enforcement of the Act requires significant political will and enormous economic resources as well as skilled human resources. Diversification of Nigeria's economy from extractive industries and massive investments in renewable energy are required as it is imperative that Nigeria wean itself from over-dependence on oil and gas. It is recommended that the NCCC and relevant bodies take Nigeria's socio-economic realities into account in enforcing the Act and subsidiary

legislations made thereunder. This can be done by government massively investing in public infrastructure and social safety nets for the poor and vulnerable in a transparent manner.