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## The impact of climate change on economic and social rights realisation in Nigeria: International cooperation and assistance to the rescue?

*Philip E Oamen\**

Lecturer-in-Law, University of Northampton; Doctoral Researcher, Birmingham Law School, University of Birmingham, United Kingdom

<https://orcid.org/0000-0002-6684-1270>

*Eunice O Erhagbe\*\**

Senior Lecturer, Department of Public Law, Faculty of Law, University of Benin, Nigeria

<https://orcid.org/0000-0003-4122-6703>

**Summary:** *The role of international cooperation and assistance in the realisation of economic and social rights has not been given sufficient attention in existing literature. It is also quite concerning that, although the impact of climate change has dominated scholarly debates in recent times, most of the discussions focus on environmental and economic perspectives, with scanty reference to its specific impact on the realisation of economic and social rights. However, the fact is that climate change not only alters the environment, but also adversely affects the realisation of economic and social rights of people, especially the most vulnerable groups of society. This article appraises these adverse*

\* BL (Abuja, Nigeria) LLB LLM (Ambrose Alli, Nigeria); philip.oamen@northampton.ac.uk; philipoamen1@gmail.com

\*\* BL (Nigeria) LLB LLM PhD (Benin, Nigeria) MEd (NU, Boston); euniceerhagbe12@gmail.com

*effects of climate change in Nigeria and argues for an international cooperation approach towards mitigation and adaptation mechanisms. Drawing on several United Nations human rights and climate change instruments, the article theorises 'contributory and legally obligatory grounds' to affix an international obligation to developed countries in favour of developing countries such as Nigeria, in the latter's efforts to address the socio-economic impact of climate change. However, it notes that international cooperation is complementary, not substitutive of the Nigerian government's obligation to realise economic and social rights with locally-available resources.*

**Key words:** *climate change; economic and social rights; impact; international cooperation; Intergovernmental Panel on Climate Change*

## 1 Introduction

Without a choice, the world has come to accept climate change with its ferocious effect on virtually every aspect of human life. It has become 'an undeniable environmental threat of the 21st century which the world is currently experiencing and seeking measures to adapt and mitigate its impact'.<sup>1</sup> According to the International Federation of Red Cross (IFRC) '[c]limate change is here to stay and will accelerate'.<sup>2</sup> Thus, from environmental discourse to socio-economic development studies, it is commonly agreed that the change in climate has its attenuating effect on the day-to-day living conditions of people. These negative effects are more pronounced in the Global South, where people live in acute poverty and where climate change has radically affected their means of livelihood.<sup>3</sup> It has also been established that climate change particularly affects those who are socially, economically, culturally, politically or institutionally marginalised or vulnerable.<sup>4</sup> The African continent, where Nigeria is geographically located, has been described as 'one of the most vulnerable continents due to its high exposure and low adaptive capacity'.<sup>5</sup> In spite of states' commitments under several

1 NE Ebele & NV Emodi 'Climate change and its impact in Nigerian economy' (2016) 10 *Journal of Scientific Research and Reports* 2, <http://www.journaljsrr.com/index.php/JSRR/article/view/21917/40737> (accessed 8 July 2020).

2 IFRC 'Aggravating factors: Climate change', <https://www.ifrc.org/en/what-we-do/disaster-management/about-disasters/aggravating-factors/climate-change/> (accessed 8 July 2020).

3 Intergovernmental Panel on Climate Change (IPCC) 'R5 climate change 2014: Impacts, adaptation, and vulnerability' IPCC's Working Group II's 5th Assessment Report (AR5) 1205.

4 Ebele & Emodi (n 1) 6.

5 IPCC (n 3) 1205.

treaties to, for example, ‘achieve ... stabilisation of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system’<sup>6</sup> or to minimise temperatures ‘well below 2°C’ so as to ‘pursue efforts to limit the temperature increase to 1,5°C’,<sup>7</sup> the present reality across the globe does not seem to evince a positive outcome of these commitments. Thus, it has been noted with great concern that ‘states’ current commitments ... are insufficient to limit global warming to 1,5°C and that many states are not on track to meet their commitments’.<sup>8</sup>

Although there are several independent and related effects of climate change in terms of environmental and economic challenges, there is a need to specifically situate its impact in the economic and social rights context. According to the United Nations (UN) Intergovernmental Panel on Climate Change (IPCC) Report, on the African continent ‘extensive pressure is exerted on different ecosystems by human activities (deforestation, forest degradation, biomass utilisation for energy) as well as processes inducing changes such as fires or desertification’,<sup>9</sup> and all of these have a negative impact on the realisation of economic and social rights. The more challenging aspect of this issue is the fact that ‘without mitigation and adaptation, these impacts will intensify as time progresses’.<sup>10</sup> Recently, the United Nations Committee on Economic, Social and Cultural Rights (ESCR Committee) observed that ‘climate change constitutes a massive threat to the enjoyment of economic, social and cultural rights’.<sup>11</sup>

This article seeks to articulate the concerns around climate change and the realisation of economic and social rights in Nigeria. To this end, the article appraises the adverse effect of climate change in Nigeria *vis-à-vis* the realisation of some select economic and social

6 Art 2 United Nations Framework Convention on Climate Change (UNFCCC).

7 Art 2 2015 Paris Agreement.

8 ‘Joint Statement on “Human rights and climate change”’ by Committee on the Elimination of Discrimination Against Women, Committee on Economic, Social and Cultural Rights, Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, Committee on the Rights of the Child, and Committee on the Rights of Persons with Disabilities (19 September 2019), [https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E#\\_edn1](https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E#_edn1) (accessed 8 July 2020).

9 IPCC ‘AR4 climate change 2007: Impacts, adaptation, and vulnerability’ IPCC’s Working Group II’s 4th Assessment Report (AR5) 442.

10 J Fanzo et al ‘The effect of climate change across food systems: Implications for nutrition outcomes’ (2018) 12 *Global Food Security* 12.

11 See ESCR Committee Statement on Climate Change and the International Covenant on Economic, Social and Cultural Rights 8 October 2018, <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23691&LangID=E> (accessed 9 July 2020).

rights, and canvasses for an international cooperation approach towards mitigation and adaptation mechanisms. Drawing on several UN human rights and climate change instruments, the article theorises 'contributory and legal obligation grounds' to affix an international obligation to developed countries in favour of developing countries such as Nigeria, in the latter's efforts to address the socio-economic impact of climate change. Against the backdrop of the developed nations' historical contribution to the anthropogenic causes of climate change and the low effect the change has on them,<sup>12</sup> coupled with the legal obligations under international human rights law instruments, the article situates aid from the developed nations in a human rights-based context. It thus argues that such aid, if given to combat climate change in developing countries, should be seen as a commendable compliance with international human right obligations, not as an act of charity. Of course, this position does not excuse the developing countries' governments, including the Nigerian government, of its economic and social rights obligations to their citizens. Rather, what is argued here is that developed countries should, through international cooperation and assistance, complement their efforts as a matter of obligation. Thus, developing countries should leverage on the window of international cooperation and assistance to bolster their efforts towards providing a social protection safety net to protect the most vulnerable groups from the socio-economic impact of climate change.

The article proceeds in seven parts. While this part introduces the article, part 2 conceptualises climate change and economic and social rights. Part 3 examines the legal framework for economic and social rights in Nigeria, and part 4 assesses the adverse effect of climate change on the realisation of economic and social rights. In part 5 the article explores the role of international cooperation and assistance in the realisation of climate change-impacted economic and social rights, while part 6 examines the role of national and regional bodies in realising economic and social rights in Nigeria. Part 7 concludes the article and summarises the recommendations offered.

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12 See DS Ward & NM Mahowald 'Contributions of developed and developing countries to global climate forcing and surface temperature change' (2014) *Environmental Research Letters* 6; MGJ den Elzen et al 'Countries' contributions to climate change: Effect of accounting for all greenhouse gases, recent trends, basic needs and technological progress' (2013) 121 *Climate Change* 397.

## 2 Conceptual clarification

In this part of the article the authors unpack the key terms 'climate change' and 'economic and social rights' and contextualise the meaning given to these terms in the article.

### 2.1 Climate change in definitional and causative contexts

According to the UN Framework Convention on Climate Change (UNFCCC) climate change means '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 over comparable time periods'.<sup>13</sup> Further, the IPCC defines climate change as 'change in the state of the climate that can be identified (eg using statistical test), by change in the mean and/or the variability of its properties, and that persists for an extended period, typically decades or longer'.<sup>14</sup> It refers to a long-term shift, an alteration in the type of climate prevailing over a specific location, a region or the entire planet.<sup>15</sup> Although a major feature of climate change is variability, an argument has been put forward that '[t]he most crucial things about the concept of climate change is not only the time periods involved but also the degree of variability that the change is subjected to as well as the duration and impact of such variability on man and the ecosystem'.<sup>16</sup> This implies that the concept cannot be discussed fully without having regard to its impact on human life. Palaeoclimatologically speaking, the world has not really been static but has always gone through changes. These changes have only become of concern lately because of their impact on man and the ecosystem, and this impact differs from country to country.<sup>17</sup> Two major factors have been identified as triggering climate change. These are biogeochemical (natural events and processes) and anthropogenic influences (human activities).<sup>18</sup> Although a detailed discussion of these factors is outside the scope of the article, it is generally agreed among scholars that the

13 Art 1(2) UNFCCC.

14 IPCC 2007.

15 JO Ayoade *Climate change* (2004) 45-66.

16 E Ikpe, BA Sawa & LU Ejeh 'Evidence of climate change and adaptation strategies among grain farmers in Sokoto State, Nigeria' (2017) 11 *IOSR Journal of Environmental Science, Toxicology and Food Technology* 1.

17 AO Jegede 'Climate change as a "constitutional essential": Trend and significance for Africa' in M Addaney & AO Jegede (eds) *Human rights and the environment under the African Union law* (2020) 233; PAO Odjugo 'The impact of climate change on water resources: Global and Nigerian analysis' (2009) 4 *FUTY Journal of the Environment* 59.

18 Odjugo (n 17) 61.

anthropogenic factors are the major cause of global warming and other climate change situations.<sup>19</sup>

## 2.2 Unpacking economic and social rights

Economic and social rights are a set of rights recognised under international human rights law instruments<sup>20</sup> and some national constitutions,<sup>21</sup> which seek to address the problem of material deprivation in society. In fact, not less than 90 per cent of the 195 constitutions in the world recognise one or the other economic and social right, either in a justiciable or aspirational status.<sup>22</sup> Part III of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the flagship treaty on economic and social rights, recognises these rights as including the right to work;<sup>23</sup> the right to just and favourable conditions of work, and fair remuneration;<sup>24</sup> the right to form and join trade unions;<sup>25</sup> the right to social security;<sup>26</sup> the right to the protection of family;<sup>27</sup> the right to an adequate standard of living, including adequate food, housing and clothing, and the continuous improvement of living conditions;<sup>28</sup> the right to enjoy the highest attainable standard of physical and mental health;<sup>29</sup> the right to education;<sup>30</sup> and the right to take part in cultural life, to enjoy the benefits of scientific progress, and to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which a person is the author.<sup>31</sup>

19 HD Matthews et al 'National contributions to observed global warming' (2014) 9 *Environmental Research Letters* 1. Also see J Wang & B Chameides *Global warming's increasingly visible impacts: Environmental defense* (2005); NP Gillett et al 'Improved constraints on 21st-century warming derived using 160 years of temperature observations' (2012) *Geophysical Research Letters* 39.

20 Particularly the International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR).

21 Although the Mexican Constitution of 1916 was the flagship constitution to have recognised ESR, the Constitution of the Republic of South Africa debatably stands out as the most promising national constitutional recognition of ESR because of the outright justiciability status it confers on ESR. These rights are also contained, albeit as directive principles, in ch II of the Nigerian Constitution.

22 C Jung, R Hirschl & E Rosevear 'Economic and social rights in national constitutions' (2014) 62 *American Journal of Comparative Law* 1053.

23 Art 6 ICESCR.

24 Art 7 ICESCR.

25 Art 8 ICESCR.

26 Art 9 ICESCR.

27 Art 10 ICESCR.

28 Art 11 ICESCR.

29 Art 12 ICESCR.

30 Arts 13 & 14 ICESCR.

31 Art 15 ICESCR.

### 3 Legal framework on economic and social rights in Nigeria

Economic and social rights are contained in the Constitution of the Federal Republic of Nigeria, 1999 (Nigerian Constitution) as directive principles. Thus, the provisions of sections 13 to 24 of the Constitution can safely be said to accommodate economic and social rights.<sup>32</sup> The section contains economic and social objectives (similar to the economic and social rights provisions in ICESCR) geared towards the promotion of these rights in Nigeria. These provisions reflect the high ideals of a liberal democratic polity and serves as guidelines to action or major policy goals.<sup>33</sup> The economic and social rights, having been described in the Nigerian Constitution as directive principles, were meant to have lesser force than the civil and political rights which the Constitution refers to as fundamental rights.<sup>34</sup> Although generally they are not judicially enforceable solely on the basis of their constitutional recognition,<sup>35</sup> the Directive Principles provide a yardstick for the critical assessment of government(al) actions,<sup>36</sup> and they can be specifically made justiciable by legislative interventions made pursuant to the Constitution.

Section 6(6)(c) of the Nigerian Constitution, which provides that the courts cannot enquire into issues relating to the Directive Principles, equally provides that judicial intervention is permissible where the Constitution provides otherwise. In other words, the judicial powers shall not extend to economic and social rights issues 'except as otherwise provided by this Constitution'.<sup>37</sup> The use of the phrase 'except as otherwise provided by this Constitution' indicates that the non-justiciability clause in section 6(6)(c) is not an absolute bar. Section 4 of the Constitution gives the Nigerian legislature the

32 By virtue of sec 6(6)(c) of the Nigerian Constitution, judicial powers do not extend to questions as to whether the Directive Principles have been complied with by government and its agencies, except if it is otherwise provided for by the Constitution.

33 O Agbakoba & U Emelonye 'Test of progressive realisation of economic, social and cultural rights in Nigeria' (1990-1999 Budget Analysis) (2001) *HURILAWS* 1-2, cited in S Ibe 'Beyond justiciability: Realising the promise of socio-economic rights in Nigeria' (2007) 7 *African Human Rights Law Journal* 239.

34 See PE Oamen 'The justiciability of economic, social and cultural rights in Nigeria: A call to follow global trends' (2017) 3 *International Journal of Law and Interdisciplinary Legal Studies* 51; R Ako, N Stewart & EO Ekhaton 'Overcoming the (non)-justiciable conundrum: The doctrine of harmonious construction and the interpretation of the right to a healthy environment in Nigeria' in A Diver & J Miller (eds) *Justiciability of human rights law in domestic jurisdictions* (2016) 123.

35 See *Femi Falana v Attorney-General of the Federation* Suit FHC/IKJ/CS/M59/2010 (unreported) delivered on 10 January 2011.

36 BO Nwabueze *Constitutional law of the Nigerian republic* (1964) 408.

37 Sec 6(6)(c) Nigerian Constitution.

powers to make laws for the peace, order and good government of Nigeria or any part thereof.

Thus, despite the general non-justiciability of economic and social rights under the Constitution, in *Attorney-General of Ondo State v Attorney-General of the Federation and Others*<sup>38</sup> the Supreme Court of Nigeria held that the Directive Principles (which contain economic and social rights) can become justiciable if the constitutionally-recognised legislature (for instance, the federal legislature – the National Assembly) makes a specific legislation which recognises these rights as justiciable. Put differently, where a particular statute specifically provides that economic and social rights are justiciable, it would not be a good argument to state that the economic and social rights are constitutionally non-justiciable, provided that the statute was passed in accordance with the constitutional legislative authority, power and procedure.<sup>39</sup> There are a number of statutes that can pass this test.

One major statute in this regard is Nigeria's African Charter on Human and Peoples Rights (Ratification and Enforcement) Act<sup>40</sup> which domesticates the provisions of the African Charter on Human and Peoples' Rights (African Charter). The Charter provides for clearly justiciable economic and social rights,<sup>41</sup> and article 24 provides for a climate change-related right by guaranteeing everyone's right to a 'general satisfactory environment favourable to their development'. Thus, the Nigerian Supreme Court held in *Abacha v Fawehinmi*<sup>42</sup> that the African Charter (and *a priori* the African Charter Ratification and Enforcement Act) not only is binding on Nigeria but that it also enjoys superiority over all domestic laws, except the Constitution. The apex court impliedly gave a stamp of justiciability to economic and social rights in Nigeria by virtue of the provisions of the domesticated African Charter. Also, in *Gbemre*<sup>43</sup> the High Court held that the applicant's right to health, and a healthy and satisfactory environment under articles 16 and 24 of the African Charter, were

38 (2002) 9 NWLR (Pt 772) 2; *Federal Republic of Nigeria v Anache & Others* (2004) 3 MJS 1; *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* (2019) 5 NWLR (Pt 1666) 518.

39 Sec 4 of the Constitution gives the legislature the power to make laws for the peace, order and good governance of Nigeria.

40 Cap A9, Laws of the Federation of Nigeria, 2004.

41 See arts 14-17 of the African Charter.

42 (2000) 6 NWLR (Pt 660) 228; *Ogugu v State* (1994) 9 NWLR (Pt 366) 1.

43 *Gbemre v Shell Petroleum Development Company Nigeria Limited* (2005) AHRLR 151 (NgHC 2005). Also see *Socio-Economic Rights and Accountability Project (SERAP) v Federal Republic of Nigeria and Universal Basic Education Commission* ECW/CCJ/APP/0808.

justiciable. The *Gbemre* case is notable as it is one of the earliest climate change-implicated cases in the world.<sup>44</sup>

However, Enabulele and Ewere have criticised the judicial reasoning in the *Fawehinmi* case, which criticism can affect the commendable judicial decision in *Gbemre* case. According to these scholars,

The ACHPR (Ratification and Enforcement) Act cannot allow what the CFRN [Constitution of the Federal Republic of Nigeria] has prohibited in Nigeria; the Constitution having made the aforementioned ESC rights non-justiciable, the ACHPR (Ratification and Enforcement) Act cannot make them justiciable ... the ACHPR (Ratification and Enforcement) Act ranking secondary to the Constitution under Nigeria law, it could be concluded that ESC rights, having been made non-justiciable by the Constitution, cannot be litigated before a Nigerian Court through the ACHPR (Ratification and Enforcement) Act.<sup>45</sup>

To summarise, the above scholars' argument is that, by virtue of the supremacy of the Constitution,<sup>46</sup> which was recognised by the Court itself in the *Fawehinmi* case, the economic and social rights provisions in the African Charter remain non-justiciable since the Charter is inferior to the Constitution. While we agree with the authors as to the superiority of the Constitution, we depart from their reasoning on the justiciability of economic and social rights in Nigeria, pursuant to the African Charter. To be clear and, as noted above, the constitutional bar on the justiciability of economic and social rights in Nigeria is not absolute. Section 6(6)(c) which makes them non-justiciable provides that they remain non-justiciable 'except as otherwise provided by this Constitution'. Further, as stated above, section 4(2) of the Constitution gives the federal legislature the power to make laws for the peace, order and good government, in which economic and social rights matters are included. Arguably, it was pursuant to this power that the Nigerian National Assembly passed the African Charter (Ratification and Enforcement) Act.<sup>47</sup>

44 D Esrin & H Kennedy 'Achieving justice and human rights in an era of climate disruption' International Bar Association Climate Change Justice and Human Rights Task Force, International Bar Association (2014) 83; OO Olashore 'Implementation of the international legal framework regarding climate change in developing countries: A review of Nigeria, Kenya, and Botswana's environmental provisions governing climate change' (2019) 21 *Environmental Law Review* 199.

45 AO Enabulele & AO Ewere 'Can the Economic Community of West African States Community Court of Justice enforce the African Charter replicas of the non-justiciable chapter II human rights provisions of the Nigerian Constitution against Nigeria' (2012) 1 *International Human Rights Law Review* 322-324.

46 Sec 1(1) of the Constitution states that the Constitution is supreme and binding on all persons and authorities.

47 As at the time the Act was passed, the 1979 Constitution was in operation, but its sec 4(2) and the extant sec 4(2) are identically framed.

Therefore, it is argued that, by conferring law-making power on economic and social rights matters and all other matters on the legislature, section 4(2) serves as an exception envisaged by section 6(6)(c). We argue that any product or outcome of the section 4-inherited law-making power and process enjoys the same exception and thus are unaffected by the non-justiciability provisions in the Constitution. We are not unmindful of the provision of section 1(3) of the Constitution which states that any law that conflicts with the Constitution shall be null and void. However, we argue that our present analysis is not caught by section 1(3) as the constitutional non-justiciability of economic and social rights is not absolute.

The phrase 'except as otherwise provided by this Constitution' could not have been inserted in section 6(6)(c) for cosmetic reasons or for no reason. Since the Constitution nowhere expressly provides for the justiciability of economic and social rights, it is arguable that what the law makers had in mind when inserting the phrase in section 6(6)(c) was section 4 and item 60(a) of Part I of the Second Schedule to the Constitution which give the legislature the power to make these rights justiciable. Thus, we argue that the African Charter Ratification Act is unaffected by section 6(6)(c). It rather is an exception to the rule in that section. This reasoning perhaps influenced the decision of the Supreme Court in the above-mentioned *Ondo State* case.<sup>48</sup> Therefore, it is safe to conclude that economic and social rights are justiciable in Nigeria.

The above arguments notwithstanding, climate change litigation has not been sufficiently explored to push for the realisation of economic and social rights in Nigeria. As Etemire notes, 'climate change litigation is in its infancy in Nigeria',<sup>49</sup> and the obstacles to climate change litigation have been identified as including 'the lack of an adequate climate legislative regime, an unduly restrictive standing rule and a discouraging judicial posture'.<sup>50</sup>

Having said that, the recent Supreme Court decision in *Centre for Oil Pollution Watch (COPW) v Nigerian National Petroleum Corporation (NNPC)*<sup>51</sup> has clearly heralded a robust climate change litigation opportunity in Nigeria. In that case the apex court not only upheld the contention that oil companies (both public and private) in Nigeria have a duty to prevent environmental degradation or oil

48 *Ondo State* (n 38).

49 U Etemire 'The future of climate change litigation in Nigeria: *COPW v NNPC* in the spotlight' (2021) 2 *CCLR* 158 165.

50 As above.

51 (2019) 5 *NWLR* (Pt 1666) 518.

spillage, but also widened the scope of those who can challenge such degradation in court. The Court observed that the instant suit was a public interest litigation and, as such, the appellant non-governmental organisation (NGO) had the *locus standi* to institute the case. This is a novel and welcome development, because before this case 'NGOs could not successfully access the Nigerian courts to protect the environment'.<sup>52</sup>

With this apex court's decision in the *COPW* case, the future of climate change litigation looks bright, since 'every person, including NGOs, who *bona fide* seek the due performance of statutory functions or enforcement of ... public laws designed to protect human lives, public health and environment, should be regarded as proper persons clothed with standing in law to request adjudication on such issues of public nuisance'.<sup>53</sup> Also in this case, the apex court interestingly gave an indivisibly-aligned interpretation to the right to life and the right to a clean environment.<sup>54</sup> This case has indeed 'set the tone of environmental and climate change enlightenment in the judiciary',<sup>55</sup> and it is hoped that the political branches would follow suit by making and implementing the appropriate pro-climate laws and policies in Nigeria.

There is no gainsaying the fact that the courts have a key role to play in effectuating the realisation of economic and social rights in the face of climate change. Climate change litigation has been 'transformed from a creative lawyering strategy to a major force in transnational regulatory governance of greenhouse gas emissions'.<sup>56</sup> As courts in several countries, including the United States of America, the United Kingdom, Canada, Germany, India and Pakistan, have deployed climate change litigation to change the narrative, Nigerian courts should also key into the potential of using this channel to promote human rights.<sup>57</sup> As unregulated climate change leads to

52 MC Anozie & EO Wingate 'NGO standing in petroleum pollution litigation in Nigeria – *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*' (2020) 13 *Journal of World Energy Law and Business* 491.

53 *COPW* (n 51) 595.

54 Etemire (n 49) 169.

55 Etemire (n 49) 167.

56 WCG Burns & HM Osofsky 'Overview: The exigencies that drive potential causes of action for climate change' in WCG Burns & HM Osofsky (eds) *Adjudicating climate change: State, national, and international approaches* (2009) 1.

57 For a detailed discussion on climate change litigation, see LJ Kotze & A du Plessis 'Putting Africa on the stand: A bird's eye view of climate change litigation on the continent' (2020) 50 *Environmental Law* 615; E Okumagba 'Examining global court practices in reducing climate change impacts through litigation: Lessons for Nigeria' in EO Ekhatior, S Miller & E Igbinosa (eds) *Implementing the Sustainable Development Goals in Nigeria: Barriers, prospects and strategies* (2021); KP Oniemola 'A proposal for transnational litigation against climate change violations in Africa' (2021) 38 *Winconsin International Law Journal* 301.

the 'death of the citizens that have been affected by GHG emissions, failing to address climate change is failing to keep to terms with the right to a healthy environment'.<sup>58</sup> The courts would be complicit if they do not activate their judicial powers to address and redress the impact of climate change on economic and social rights.

#### 4 Impact of climate change on economic and social rights realisation

Having examined the legal architecture for economic and social rights in Nigeria, it is pertinent to explore the effect of climate change on these rights. As noted in the introduction, climate change has the potential to attenuate, if not eliminate, people's enjoyment of economic and social rights. According to the Malé Declaration on the Human Dimension of Global Climate Change, 'climate change has clear and immediate implications for the full enjoyment of human rights including inter alia the right to life,<sup>59</sup> the right to take part in cultural life, the right to use and enjoy property, the right to an adequate standard of living, the right to food, and the right to the highest attainable standard of physical and mental health'.<sup>60</sup>

It has also been argued that '[c]limate change has myriad implications for the health of humans, our ecosystems, and the ecological processes that sustain them'.<sup>61</sup> As far back as 2008, the UN also acknowledged that 'climate change poses an immediate and far-reaching threat to people and communities around the world and has implications for the full enjoyment of human rights'.<sup>62</sup> Even the IPCC in its fifth Assessment Report on Climate Change has warned that climate change would lead to greater risk of injury, disease and death due to increased heat and fire, a higher risk of undernutrition owing to decreased food availability and accessibility, lowered work capacity and productivity, and greater risk of food, water, and vector-borne diseases.<sup>63</sup>

58 Oniemola (n 57) 313.

59 See, eg, WHO *Quantitative risk assessment of the effects of climate change on selected causes of death, 2030s and 2050s* (2014) where it was projected that between 2030 and 2050, climate change could lead to approximately 250 000 deaths per year because of malnutrition, malaria, diarrhoea and heat stress alone.

60 'Malé Declaration on the Human Dimension of Global Climate Change', [www.ciel.org/Publications/Male\\_Declaration\\_Nov07.pdf](http://www.ciel.org/Publications/Male_Declaration_Nov07.pdf) (accessed 7 July 2020).

61 C Machalaba et al 'Climate change and health: Transcending silos to find solutions' (2015) 81 *Annals of Global Health* 445.

62 See the Resolution of the 7th session of the Human Rights Council, passed on 26 March 2008 A/HRC/7/L.21/Rev.1.

63 IPCC 'AR5 Climate Change 2014' (n 3).

Although the impact of climate change could be felt by both developed and developing nations, it would be graver in the latter as they lack the needed coping institutional mechanisms to withstand the situation.<sup>64</sup> Ebele and Emodi argue that although climate change has a global effect, it is felt the most among the poorest people who, ironically, make the least contribution to the change.<sup>65</sup> Conversely, the developed nations, with a majority of well-to-do population, suffer a less severe impact of the crisis. The fact that the developed nations suffer a less severe impact does not suggest any form of immunity for them, because 'even though some richer countries may have enjoyed small benefits on average from temperature increases, the evidence suggests that all countries will eventually be negatively affected by climate change'.<sup>66</sup> The reason for this differential in impact lies in the fact that the developed nations possess the needed coping adaptation strategy, research and technological wherewithal to deal with the effect of climate change.<sup>67</sup> Unfortunately, Nigeria happens to be among the developing nations with the poorest people. This means that the country stands a high risk of being negatively affected, not only because of the above indices, but also because approximately two-thirds of its land mass lies in the semi-arid region, and at the moment the country is under threat and stress of desertification and frequent drought.<sup>68</sup> The problem of climate change is already having somewhat of a ravaging effect in some parts of Nigeria. Some of the implicated economic and social rights include rights to health, food, housing and work. We now turn to these rights.

#### 4.1 Climate change and the right to health

The right to health is recognised in article 12 of ICESCR,<sup>69</sup> which is strengthened by the provisions of ESCR Committee General Comment 14. According to the said article, '[t]he States Parties ... recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health' and that '[t]he steps to be taken by the States Parties ... to achieve the full realisation

64 AD Mshelia 'Adaptation strategies to climate change' (2005) 18 *Journal of Energy and Environment* 74-81.

65 Ebele & Emodi (n 1) 2.

66 UNDP 'Beyond income, beyond averages, beyond today: Inequalities in human development in the 21st century' (Human Development Report 2019) 181.

67 C Mcguian, R Reynolds & D Wiedmer 'Poverty and climate change: Assessing impacts in developing countries and the initiatives of the international community' London School of Economics Consultancy Project for The Overseas Development Institute, 2002.

68 PAO Odjugo & Al Ikhuoria 'The impact of climate change and anthropogenic factors on desertification in the semi-arid region of Nigeria' (2003) 2 *Global Journal of Environmental Science* 118-126; CPN Nyelong 'Lake Chad: From megalake to minilake' (2004) 6 *Arid Wetland Bulletin* 24-27.

69 Also see arts 16(1) & (2) of the African Charter.

of this right shall include those necessary for ...the improvement of all aspects of environmental and industrial hygiene'.<sup>70</sup> Thus, the right to health in this respect goes beyond being healthy or having access to healthcare facilities; it is a multi-factored right. As Beaglehole argues, environmental, social, cultural, economic, political and associated conditions are as important as access to medical care in health discourse.<sup>71</sup> Accordingly, the ESCR Committee interprets the right to health as an inclusive right which embraces social determinants such as access to safe and potable water, adequate and nutritious food, housing, health-related information, and healthy occupational and environmental conditions.<sup>72</sup> The right is also recognised in the constitutions of more than 100 nations across the globe,<sup>73</sup> either as a fundamental right or as a directive principle.<sup>74</sup> It has also been judicially affirmed by some national courts.<sup>75</sup>

Additionally, the right to health enjoys a special recognition under the UNFCCC. As a UN report noted, '[t]he protection of all human rights from the impact of climate change is fundamental for the protection of the right to health. Internationally, however, there is growing recognition of the specific interlinkages between climate change and the human right to health.'<sup>76</sup> Thus, article 1 of the UNFCCC discusses climate change and its adverse effect on human health and welfare, while article 3 requires state parties to the UNFCCC to take measures that would reduce those effects. Further, article 4 requires state parties to reduce the impact of climate change mitigation and adaptation responses on public health.

Unfortunately, climate change undermines the potential for healthy occupational and environmental conditions for the populations. It has long been reported that climate change has the potential to have a system-wide negative impact on human health

<sup>70</sup> Arts 12(1) & (2)(b) ICESCR.

<sup>71</sup> R Beaglehole 'Overview and framework' in R Detels (ed) *Oxford textbook of public health* (2002).

<sup>72</sup> ESCR Committee General Comment 14: The right to the highest attainable standard of health (art 12) para 11.

<sup>73</sup> E Kinney & B Clark 'Provisions for health and health care in the constitutions of the countries of the world' (2004) 37 *Cornell International Law Journal* 285.

<sup>74</sup> It is recognised as a directive principle under sec 17 of the Nigerian Constitution.

<sup>75</sup> See *Minister of Health v Treatment Action Campaign (TAC)* 2002 (5) SA 721 (CC) (where the South African Constitutional Court affirmed the right of infected nursing mothers to have access to HIV drugs) and *Mendoza & Others v Ministry of Public Health and the Director of the HIV-AIDS National Programme* Resolution 0749-2003-RA, 28 January 2004 (where an Ecuadorian court held that withdrawal by a public hospital of antiretroviral therapy from HIV/AIDS patients was a violation of their right to health).

<sup>76</sup> UN Human Rights Council 'Analytical study on the relationship between climate change and the human right of everyone to the enjoyment of the highest attainable standard of physical and mental health' Report of the Office of the United Nations High Commissioner for Human Rights 6 May 2016 13.

that could result in death.<sup>77</sup> Even in the developed world, there is no immunity against the scourge. According to a recent report, '[i]n some developed countries there is also evidence that prenatal heat exposure increases the risk of maternal hospitalisation and of hospital readmission in the first year of life for newborns'.<sup>78</sup>

Climate change can affect the health of Nigerians either directly or indirectly. While the direct effect emanates from acute weather conditions such as heat waves or extreme cold, flooding, hurricanes, landslides, wildfires, storms and droughts, which could lead to sicknesses, injuries, incapacitation and even death, the indirect impact can be in the form of malnutrition due to food shortages; the spread of infectious disease and food and water-borne illness such as typhoid and cholera.<sup>79</sup> Thus, it has been observed that climate change and disasters accelerate the prevalence, distribution and gravity of new diseases.<sup>80</sup> One reason that could be attached to this is the rise in temperature. For example, it has been reported that since the 1980s temperatures have been rising unprecedentedly in Nigeria,<sup>81</sup> and that it would continue to rise in all zones in decades to come.<sup>82</sup> While Amadi and Udo argue that high temperature is one cause of tropical diseases such as heat strokes and meningitis,<sup>83</sup> Nkechi et al colleagues also observe that drought in the Savanna and Sahelian region can reduce the quantity of fresh water, thereby leading to risk of illness such as diarrhoea and cholera due to poor hygiene occasioned by a lack of adequate and safe water.<sup>84</sup> There is also evidence from research that meningitis cases may increase

77 Second Assessment Report of the Intergovernmental Panel on Climate Change 'Synthesis of scientific-technical information relevant to interpreting article 2 of UNFCCC' (1995) 35.

78 UNDP (n 66) 182.

79 H Haider 'Climate change in Nigeria: Impacts and responses' (2019) K4D Helpdesk Report 675 (Institute of Development Studies, Brighton) 3, [https://assets.publishing.service.gov.uk/media/5dcd7a1aed915d0719bf4542/675\\_Climate\\_Change\\_in\\_Nigeria.pdf](https://assets.publishing.service.gov.uk/media/5dcd7a1aed915d0719bf4542/675_Climate_Change_in_Nigeria.pdf) (accessed 2 July 2020); A McMichael 'Global environmental changes, climate change and human health' in K Lee & J Collin (eds) *Global change and health* (2005) 140.

80 CEDAW General Recommendation 37.

81 IC Enete 'Impacts of climate change on agricultural production in Enugu State, Nigeria' (2017) 5 *Journal of Earth Science and Climatic Change* 234, <https://www.omicsonline.org/openaccess/impacts-of-climate-change-on-agricultural-production-in-enugu-state-nigeria-2157-7617.1000234.php?aid=32633> (accessed 8 July 2020).

82 A Akande et al 'Geospatial analysis of extreme weather events in Nigeria (1985–2015) using self-organizing maps' (2017) *Advances in Meteorology*, <https://doi.org/10.1155/2017/8576150> (accessed 8 July 2020).

83 SO Amadi & SO Udo 'Climate change in contemporary Nigeria: An empirical analysis of trends, impacts, challenges and coping strategies' (2015) 7 *IOSR Journal of Applied Physics* 1–9.

84 O Nkechi et al 'Mitigating climate change in Nigeria: African traditional religious values in focus' (2016) 7 *Mediterranean Journal of Social Sciences* 299.

in Northwest Nigeria because of acute temperatures.<sup>85</sup> Also, elevated carbon dioxide levels decrease the protein, mineral and vitamin content of many staple food crops.<sup>86</sup> Further, the higher the temperature, the more likely more bacterial contaminants of food and water will survive and replicate themselves, thereby undermining the health and hygiene of people.<sup>87</sup>

Moreover, as Caney argues, climate change affects the right to health, whether viewed from a deontological perspective or from a teleological standpoint. Deontologically, engaging in activities that expose other human beings to dangerous health effects of climate change disrespects their freedom, moral standing and dignity which are all inherent in the right to health.<sup>88</sup> Teleologically, exposing people to climate change health hazards undermines their capacity to lead a decent life.

Going by the frightening impact of climate change, the World Health Organisation (WHO) has warned that 'the overall health effects of a changing climate are likely to be overwhelmingly negative'.<sup>89</sup> Consequently, Hunt and Khosla argue that '[g]iven the massive public health challenge posed by climate change, especially in the developing world [including Nigeria], there is an urgent need for a global [and national] partnership aimed at establishing an effective, integrated environmental regime capable of ensuring healthy environmental conditions for all'.<sup>90</sup>

## 4.2 Climate change and the right to food

The right to food is recognised by article 11(1) of ICESCR which provides that everyone has a right to 'an adequate standard of living for himself and his family, including adequate food'<sup>91</sup> and

85 AF Abdussalam et al 'The impact of climate change on meningitis in Northwest Nigeria: An assessment using CMIP5 climate model simulations' *AMS100* 379, <https://journals.ametsoc.org/doi/full/10.1175/WCAS-D-13-00068.1> (accessed 10 July 2020).

86 L Ziska et al 'The impacts of climate change on human health in the United States: A scientific assessment' *US Global Change Research Program* (Washington DC 2016) 189.

87 United Nations Department of Economic and Social Affairs World Economic and Social Survey 2009: Promoting Development, Saving the Planet, UN Doc E/2009/50/Rev 1, ST/ESA/319 (2009) (WESS 2009) 79.

88 S Caney 'Climate change, human rights and moral thresholds' in M Langford & AFS Russell (eds) *The human rights to water: Theory, practice and prospects* (2017) 79.

89 WHO 'Climate change and health' Fact Sheet 266, [www.who.int/mediacentre/factsheets/fs266/en/](http://www.who.int/mediacentre/factsheets/fs266/en/) (accessed 12 July 2020).

90 P Hunt & R Khosla 'Climate change and the right to the highest attainable standard of health' in S Humphreys (ed) *Human rights and climate change* (2009) 238.

91 Also see art 25(1) of the Universal Declaration of Human Rights.

that everyone has a fundamental right 'to be free from hunger'.<sup>92</sup> Also, articles 4, 16 and 22 of the African Charter protect the right to food.<sup>93</sup> The right to adequate food is the right to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of the people to which the consumer belongs, and which ensures a physical and mental, individual and collective, fulfilling and dignified life free of fear.<sup>94</sup>

This right can also be affected by climate change. For example, unpredictability in rainfall, acute temperature and drought have the potential to affect food production and the food supply chain in Nigeria.<sup>95</sup> This is so, because crops cannot survive without water; climate change can affect water which in turn can affect the survival of crops.<sup>96</sup> The fact that a greater percentage of crop farming takes place in the worst-hit north of Nigeria signals a huge risk to food security in the country.<sup>97</sup> Similarly, the survival of animals – which supply nutrients to humans – is dependent on climate change. Acute heat from global warming can lead to the death or infertility of animals.<sup>98</sup> Studies have indicated that 'flooding will also lead to crop failure ... freak weather events will also destroy agriculture'.<sup>99</sup> According to the World Bank, a 2°C increase in average global temperature would put approximately 100 to 400 million people at risk of hunger, especially in sub-Saharan Africa and South Asia.<sup>100</sup> A country such

92 Art 11(2) ICESCR.

93 Art 4 (right to life); art 16 (right to health); and art 22 (right to economic and social development) have been interpreted by the African Commission on Human and Peoples' Rights Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights as also implying the right to food. Also see art 15 of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa.

94 Food and Agricultural Organisation (FAO) 'Right to adequate food in constitutions', <http://www.fao.org/3/ca3518en/CA3518EN.pdf> (accessed 13 July 2020).

95 ZA Elum et al 'Climate change mitigation: The potential of agriculture as a renewable energy source in Nigeria' (2017) 24 *Environmental Science and Pollution Research* 3260, <https://www.ncbi.nlm.nih.gov/pubmed/27933500> (accessed 13 July 2020).

96 As above.

97 IA Madu 'Spatial vulnerability of rural households to climate change in Nigeria: Implications for internal security' (2012) Robert S Strauss Center for International Security and Law 37, <https://www.strausscenter.org/researchreports?download=105:spatial-vulnerability-of-rural-household-to-climate-change-in-nigeria> (accessed 20 July 2020).

98 A Nardone et al 'Effects of climate changes on animal production and sustainability of livestock systems' (2010) 130 *Livestock Science* 57.

99 Caney (n 88) 81.

100 World Bank 'World development report' (2010) 4-5. Also see B Hare 'Relationship between increases in global mean temperature and impacts on ecosystems, food production, water and socio-economic systems' in HJ Schellnhuber et al (eds) *Avoiding dangerous climate change* (2006) 179.

as Nigeria, which does not have an effective social protection safety net, would certainly not be able to save its vulnerable groups from the impending disaster, if national and global action plans are not put in place upfront.

Another area of concern is the security of lives and property. As it is commonly noted, a hungry man is an angry man and an angry man can cause crises. Thus, Madu argues that a lack of water and food scarcity can lead to conflict among people which may threaten the public peace.<sup>101</sup>

### 4.3 Climate change and the right to housing

The right to housing has also been impacted by climate change. Due to flooding, many people in the coastal areas have lost their houses.<sup>102</sup> Further, tropical storms can affect housing by removing roofs from peoples' homes and destroying their means of communication and other household items.<sup>103</sup> With particular reference to the Niger Delta region of Nigeria, studies have shown that the rise in the sea level has caused flooding and erosion that have displaced many of the local people.<sup>104</sup> The precarious position of this right in the face of climate change can better be appreciated with the benefit of hindsight wherein over 3 million people were displaced from their homes in the 2012 flooding in the Niger Delta region.<sup>105</sup> It has been observed that climate change is one of the major causes of displacement in the north-eastern part of Nigeria in recent times.<sup>106</sup> As Aloba and Obaji note, Nigerian internally-displaced persons debatably 'suffer the worst violations of their fundamental human rights',<sup>107</sup> but we add that climate change would exacerbate the situation if something urgent is not done to meet the economic and social rights needs of those affected. Future projections are frightening as they predict a rising trend of displacement of people due to climate change challenges.<sup>108</sup>

101 Madu (n 97) 37.

102 Odjugo (n 17).

103 E Mills 'Insurance in a climate of change' (2005) 80 *Science* 1040-1044.

104 E Uyigwe & M Agho 'Coping with climate change and environmental degradation in the Niger Delta of Southern Nigeria' (2007) Community Research and Development Centre, Abuja, Nigeria 4.

105 O Ohwo 'Climate change impacts, adaptation and vulnerability in the Niger Delta region of Nigeria' (2018) 8 *Environmental Earth Sciences* 171-179.

106 M Addaney, E Boshoff & B Olutola 'The climate change and the human rights nexus in Africa' (2017) 9 *Amsterdam Law Forum* 20.

107 E Aloba & S Obaji 'Internal displacement in Nigeria and the case for human rights protection of displaced persons' (2016) 51 *Journal of Law, Policy and Globalisation* 30.

108 See E Uyigwe & AE Ogbeibu 'Climate change and poverty: Sustainable approach in the Niger Delta region of Nigeria' Proceedings of the Conference

Also, population relocation and redistribution occasioned by climate change would worsen communal clashes and conflicts.<sup>109</sup> As the European Commission to the European Council notes, climate change is 'a threat multiplier which exacerbates existing trends, tensions and instability'.<sup>110</sup> With the infiltration of herdsmen into the southern part of Nigeria, it also is not surprising that desertification in one place leads to overpopulation and potential ethnic clashes in another place.<sup>111</sup>

#### 4.4 Right to work/means of livelihood

According to article 6(1) of ICESCR, everyone has a 'right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts'. Article 7 of ICESCR also provides for everyone's right to just and favourable conditions of work which are needed to earn a decent living. Similarly, the African Charter states that '[e]very individual shall have the right to work under equitable and satisfactory conditions and shall receive equal pay for equal work'.<sup>112</sup>

Although there are white collar jobs in Nigeria, at least 70 per cent of the country's population still engages in agricultural activities as a major means of livelihood.<sup>113</sup> However, coastal erosion caused by climate change serves as a threat to the economic activities of the people in this agrarian sector, as it prevents them from engaging in farming and fisheries.<sup>114</sup> Also, it has been reported that gas flaring, oil spill, and the rise in sea level, which can increase salinity of surface and underground water, will lead to the death of susceptible aquatic plants and animals.<sup>115</sup> This no doubt will adversely affect those whose

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on the Human Dimensions of Global Environmental Change, Amsterdam, The Netherlands, 24-26 May 2007.

- 109 See B Chellaney 'Climate change and security in Southern Asia: Understanding the national security implications' (2007) 152 *Royal United Services Institute Journal* 63; S Atapattu *Human rights approaches to climate change: Challenges and opportunities* (2016) 242.
- 110 The High Representative and the European Commission to the European Council, 'Climate change and international security' 2 14 March 2008, [www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/reports/99387.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/reports/99387.pdf) (accessed 12 July 2020).
- 111 O Nkechi et al 'Mitigating climate change in Nigeria: African traditional religious values in focus' (2016) 7 *Mediterranean Journal of Social Sciences* 299.
- 112 See art 15 of the African Charter.
- 113 CJ Onwutuebe 'Patriarchy and women vulnerability to adverse climate change in Nigeria' (2019), <https://doi.org/10.1177/2158244019825914>SAGE (accessed 12 July 2020).
- 114 LF Awosika 'Impacts of global climate change and sea level rise on coastal resources and energy development in Nigeria' in JC Umolu (ed) *Global climate change: Impact on energy development* (1995) 83.
- 115 Uyigue & Ogbeibu (n 108) 4.

source of livelihood is dependent on such plants and animals, not to mention its effect on food security.

As Addaney et al argue, '[o]ne way in which climate change could impact on the right to dignity of people who are affected by it is if, for example, a subsistence farmer loses his livelihood through a harsh drought which wipes out all their crops and livestock, and with no insurance or support from the government, he is reduced to begging to provide for his family'.<sup>116</sup> Further, climate change will impact on the country's economy since agriculture remains a major source of employment for the Nigerian people.<sup>117</sup> The UN recently announced that '[i]n 2017, 153 billion labour hours were lost because of heat, an increase of more than 62 billion hours since 2000'.<sup>118</sup> Moreover, a recent study reveals that 'unmitigated warming is expected to reshape the global economy by reducing average global incomes roughly 23 per cent by 2100 and widening global income inequality, relative to scenarios without climate change'.<sup>119</sup> There is no evidence to suggest that Nigeria is immune to or has taken steps to avert this projection.

Anyone who loses his food, means of earning, house or even loved ones to climate change is most likely to have mental health challenges which may lead to suicide. A study suggests that incidents of suicide among farmers increase during prolonged drought.<sup>120</sup> A related point is the economic losses and concomitant deaths that result from climate change. According to a 2019 UN report, 'during the period 1998-2017, direct economic losses from disasters were estimated at almost \$3 trillion. Climate-related and geophysical disasters claimed an estimated 1,3 million lives'.<sup>121</sup>

Thus, a government's failure to meet the economic and social rights needs of its population in the face of climate change-induced hardship could trigger frustration, lead to tensions between different ethnic and religious groupings in countries and to political or

116 Addaney et al (n 106) 15.

117 Ebele & Emodi (n 1).

118 UNDP 'Beyond income, beyond averages, beyond today: Inequalities in human development in the 21st century' (Human Development Report 2019) 181.

119 M Burke, SM Hsiang & E Miguel 'Global non-linear effect of temperature on economic production' (2015) 527 *Nature* 235-239.

120 SK Padhy et al 'Mental health effects of climate change' (2014) 19 *Indian Journal of Occupational and Environmental Medicine* 3.

121 United Nations Economic and Social Council. Special edition: Progress towards the Sustainable Development Goals Report of the Secretary-General 2019 19, <https://unstats.un.org/sdgs/files/report/2019/secretary-general-sdg-report-2019--EN.pdf> (accessed 4 July 2020).

religious radicalisation, which could destabilise countries and even entire regions.<sup>122</sup>

To end this part of the article, it is apposite to reflect on the words of the European Commission, that '[c]limate change impacts will fuel the politics of resentment between those most responsible for climate change and those most affected by it. Impacts of climate mitigation policies (or policy failures) will thus drive political tension nationally and internationally.'<sup>123</sup> This climate change challenge, therefore, calls for international cooperation.

## 5 Role of international cooperation and assistance

The role of international cooperation and assistance cannot be overemphasised in the realisation of economic and social rights, especially against the backdrop of a climate change-induced threat to these rights. Just as the way in which developed countries are eagerly interested in the realisation of civil and political rights by their monitoring and funding mechanisms of the civil and electoral processes in the developing countries, it is argued that they should also devote the same or even a higher measure of interest, participation and financial commitment towards the realisation of economic and social rights.

Economic and social rights deserve better attention than civil and political rights. To borrow from the words of Hoveyda, '[w]hat, for instance, is the meaning of freedom of speech in a society where everything is sadly lacking, with no hope in sight for betterment, or freedom of speech where everybody is illiterate ... without carrying out the basic needs of human beings, all other rights are mere illusion'.<sup>124</sup> This view is buttressed by the fact that 'the full realisation of civil and political rights without the enjoyment of economic, social and cultural rights is impossible'.<sup>125</sup> This view really should spring no surprise, because political rights without social rights, justice without social justice, political democracy without economic democracy for a people are meaningless.<sup>126</sup> Thus, the developed world should

122 The High Representative and the European Commission to the European Council 'Climate change and international security' 14 March 2008 2, [www.consilium.europa.eu/ueDocs/cms\\_Data/docs/pressData/en/reports/99387.pdf](http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressData/en/reports/99387.pdf) (accessed 12 July 2020).

123 High Representative and European Commission (n 122) 5.

124 F Hoveyda 'Not all clocks for human rights are the same' *New York Times* 18 May 1977.

125 Art 13 of the United Nations Conference on Human Rights, Proclamation of Teheran, 13 May 1968, A/CONF. 32/41.

126 See SMR Pahlavi 'Text of address by His Imperial Majesty the Shahinsha Aryamehr' International Conference on Human Rights, 22 April 1966 3 S-0883-

pay more attention to the economic and social rights needs of the people of the developing world through international cooperation and assistance.

In the same way as individuals are entitled to economic and social rights from their respective states, so are developing countries entitled to economic and social rights by way of international cooperation and assistance from the developed countries, though for and on behalf of their citizens. To put it in Burke's words, '[s]tates were [are] themselves the bearers of some kind of social rights, which the international community was [is] urged to protect'.<sup>127</sup> This, of course, does not mean that states should abandon or suppress the protection of civil and political rights in the guise of protecting economic and social rights, but there should be a striking of balance.<sup>128</sup> It also does not mean that states should abdicate their economic and social rights obligations. It is argued that international cooperation and assistance should be complementary to, not substitutive of, national responsibility for the realisation of economic and social rights.

The concept of international cooperation and assistance found its way into ICESCR through the vigorous arguments by Mahmud Azmi, the Egyptian delegate at the Working Group of the Commission on Human Rights which drafted ICESCR. According to his argument, it was unlikely that 'the available resources of small countries, even if utilised to the maximum, would be sufficient'<sup>129</sup> and that 'those countries would have to fall back on international cooperation'<sup>130</sup> if the resource-drawing economic and social rights were to be achieved in their jurisdictions.

Regarding the realisation of economic and social rights in times of climate change challenges, it is argued that the need for international cooperation and assistance from developed countries to developing countries can be justified on two grounds. These are the contributory ground and the legal obligation ground.

## 5.1 Contributory ground

As discussed above, there is no gainsaying the fact that human activities adversely affect climate change on global and regional

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018-008, UN Archives.

127 R Burke 'Some rights are more equal than others: The Third World and the transformation of economic and social rights' (2014) 3 *Humanity Journal* 439.

128 As above.

129 Commission on Human Rights, Summary Record of the 236th, 10 May 1951, E/CN.4/SR.236 18.

130 As above.

scales, in terms of sea level pressure, precipitation, and ocean heat content. It has also been established that 'greenhouse gas emissions, mostly CO<sub>2</sub>, are the most important anthropogenic forcing on climate'.<sup>131</sup> However, it has been scientifically proved that developed countries' historical contributions to climate change or global warming outweigh that of developing countries. Without any intention to engage in technical analysis, this article presents what some scholars have found, to the effect that

[r]esults show that the contribution to the increased CO<sub>2</sub> concentration from 1850 to 2005 estimated ... is 61% from the developed countries and 39% from the developing countries (for BNU-ESM the split is 63%-37%). A simple carbon-cycle model simulated the contributions as 70% and 30% for developed and developing countries, respectively ... Robust evidence ... shows significant changes in the atmosphere, ocean, and cryosphere in response to climate change that may be attributed to radiative forcing. Radiative forcing is proportional to the logarithm of CO<sub>2</sub> concentration and is divided 53-47% by CESM (BNU-ESM 62-38%) for the developed and the developing countries from 1850 to 2005 using the normalised proportional approach.<sup>132</sup>

Also, Matthew et al argue that 'the sources of ... emissions have and continue to vary dramatically between regions and individual countries, with countries in the developed world responsible for the vast majority of historical emissions'.<sup>133</sup> Further, Den Elzen et al assert that '[a]t the end of last century, the developed countries were the main contributors to the anthropogenic rise in atmospheric GHG concentrations'.<sup>134</sup>

It is rather bewildering that empirical results indicate that the emissions-reduction commitments by developed countries does not 'reflect their historical ethical responsibility, which still accounts for greater than half of the total climate change impacts ... despite the rapid growth in emissions from the developing world'.<sup>135</sup> On this score, it is argued that the only reasonable response from the developed countries should be to 'repair' the developing countries as a matter of an obligation, to account for their historical contributions to the global problem of climate change.

131 T Wei et al 'Developed and developing world responsibilities for historical climate change and CO<sub>2</sub> mitigation' (2012) 109 *Proceedings of the National Academy of Sciences* 12911 (footnotes omitted).

132 Wei et al (n 131) 12912 (footnote omitted).

133 Matthews et al (n 19).

134 GJ Michel et al 'Countries' contributions to climate change: Effect of accounting for all greenhouse gases, recent trends, basic needs and technological progress' (2013) 121 *Climatic Change* 398.

135 As above.

Another point on contributory ground relates to developed countries' colonisation of most of the developing countries. While it is agreeable that the developing world cannot continue to brood over what transpired centuries ago, one cannot underestimate the adverse effect that colonial rule has had on the colonised territories, which is evident in the lack of infrastructure that is needed for the enjoyment of economic and social rights. As Burke notes, '[w]hen in power, colonial administrators delivered few civil and political rights, and decidedly limited social rights ... they could, begrudgingly, deliver statehood and independence to their colonies ... But they could not deliver the majority of the more substantial social rights: health, shelter, and education.'<sup>136</sup>

Thus, from a Third World Approaches to International Law (TWAIL) perspective, it can be argued that colonialism directly or indirectly attenuated the ability of the governments in developing countries to meet their economic and social rights needs.<sup>137</sup> Colonialism disrupted the social and economic structures and conditions in the Third World, so much so that it determined their place or status in the world economy.<sup>138</sup> Thus, there cannot be an honest and conclusive assessment of economic and social rights realisation in the developing countries if and when issues of colonialism are divorced from the discourse. It is worth reiterating that '[t]his is not about crying over milk that was spilt many decades back but about being intuitive in understanding the systemic and structural constraints on the Third World that are heritages of a colonial legacy'.<sup>139</sup>

Finally on this ground, the current neo-colonial tendencies or activities across the Third World countries also attenuate economic and social rights realisation. It has been reported that forces from developed countries have resorted to land grabbing, acquiring large expanses of land in Third World countries, such as Ethiopia, Madagascar, Mali, Sierra Leone, South Sudan, Tanzania and Zambia for 'outsourced farming and biofuel' purposes. According to a 2011 report on those countries by the Oakland Institute, 'largely unregulated land purchases are resulting in virtually none of the promised benefits for native populations, but instead are forcing millions of small farmers off ancestral lands'.<sup>140</sup> In a subsequent

136 Burke (n 127) 441.

137 See A Anghie & BS Chimni 'Third World approaches to international law and individual responsibility in internal conflicts' (2003) 2 *Chinese Journal of International Law* 83-84.

138 See R Austen *African economic history* (1987) 138.

139 OA Badaru 'The right to food and the political economy of Third World states' (2014) 1 *Transnational Human Rights Review* 116.

140 The Oakland Institute: Special/Investigation: Understanding land investment deals in Africa (July 2011).

report, the Institute stated that '[t]ens of millions of hectares of land on the African continent have been grabbed by foreign investors in recent years. This has led to loss of life, land, and livelihoods for millions, and threatened the very survival of entire communities and indigenous groups.'<sup>141</sup> These reports are disturbing and the developed world should take concrete steps to remedy the deplorable situation regarding economic and social rights that such acquisitions have triggered.

## 5.2 Legal obligation ground

Legally, those developed countries that are parties to ICESCR and the climate change instruments have an obligation to internationally cooperate and assist the developing countries or, indeed, Nigeria, towards the realisation of economic and social rights in the latter's jurisdictions, whether generally or in the face of climate change. Below, the article examines the general obligation and the climate change-induced obligation of international cooperation and assistance.

### 5.2.1 General obligation

According to article 2(1) of ICESCR states are required to, 'individually and through international assistance and co-operation, especially economic and technical', take steps towards a progressive full realisation of economic and social rights. Specifically, on the right to food, article 11(1) of ICESCR provides that states shall take steps while 'recognising ... *the essential importance of international cooperation*', towards the realisation of the right to food. As discussed above, the incorporation of these provisions was informed by the argument that was put forward by the Egyptian delegate during the drafting of ICESCR, to the effect that developing countries cannot internally muster the resources needed for economic and social rights realisation.

The role of international cooperation and assistance is also well articulated in the ESCR Committee jurisprudence and other international instruments.<sup>142</sup> For example, in April 2020 the ESCR Committee released its latest General Comment which emphasises

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141 Oak Institute 'World Bank fuels land grabs in Africa through shadowy financial sector investments' 1 May 2017, <https://www.oaklandinstitute.org/world-bank-fuels-land-grabs-africa-through-shadowy-financial-sector-investments> (accessed 22 July 2020).

142 See, eg, art 23 of the Covenant of the League of Nations; arts 55 & 56 of the Charter of the United Nations.

the importance of international cooperation in combating climate change. According to the General Comment 25, 'international cooperation is essential because the most acute risks to the world related to science and technology, such as climate change, the rapid loss of biodiversity ... are transnational and cannot be adequately addressed without robust international cooperation'.<sup>143</sup> It further provides that '[s]tates should promote multilateral agreements to prevent these risks from materialising or to mitigate their effects'.<sup>144</sup> Further, states have the extraterritorial obligation to ensure that multinational corporations that are headquartered in their jurisdictions take no action that would exacerbate the climate change crises in another state, for instance, through the activities of their subsidiary companies in that other state.<sup>145</sup>

Further, General Comment 3 of the ESCR Committee states that '[t]he Committee notes that the phrase "to the maximum of its available resources" was intended by the drafters of the Covenant to refer to both the resources existing within a state and those available from the international community through international cooperation and assistance'.<sup>146</sup> These provisions evince the fact that developing countries are expected to draw from the resources of the developed countries and the international community in a bid to realise economic and social rights. The developed nations should intervene when approached, because 'international cooperation for development and thus for the realisation of economic, social and cultural rights is an obligation of all states. It is particularly incumbent upon those states which are in a position to assist others in this regard'.<sup>147</sup> Thus, as regards the right to food, the ESCR Committee requires states to carry out their tripartite obligations of respecting, protecting and fulfilling economic and social rights both territorially and extraterritorially.

A similar obligation holds out for the right to health where '[s]tates ... should recognise the essential role of international cooperation and comply with their commitment to take joint and separate

<sup>143</sup> ESCR Committee General Comment 25 (2020): Science and economic, social and cultural rights (arts 15(1)(b), (2), (3) & (4) of the International Covenant on Economic, Social and Cultural Rights) para 81.

<sup>144</sup> As above.

<sup>145</sup> See ESCR Committee General Comment 24 (2017) on state obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities para 37. Also see EO Ekhatior 'Regulating the activities of multinational corporations in Nigeria: A case for the African Union?' (2018) 20 *International Community Law Review* 30.

<sup>146</sup> ESCR Committee General Comment 3: The nature of states parties' obligations (art 2 para 1 of the Covenant) para 13.

<sup>147</sup> General Comment 3 (n 146) para 14. Also see ESCR Committee General Comment 12: The right to adequate food (art 11) para 36.

action to achieve the full realisation of the right to health'.<sup>148</sup> They are also expected to recognise the fact that 'the existing gross inequality in the health status of the people, particularly between developed and developing countries, as well as within countries, is politically, socially and economically unacceptable and is, therefore, of common concern to all countries'.<sup>149</sup> Thus, as Curtis and Darcy argue, 'international cooperation can be characterised as a means of addressing the power differential between wealthy influential states and those states unable to realise the rights of their people'.<sup>150</sup>

Again, the foregoing should not be taken as a suggestion that developing countries are exempt from meeting the economic and social rights needs of their people. Although a detailed discussion of the obligations of domestic governments to realise economic and social rights is beyond the scope of this article, it is agreed that the 'primary obligation to implement the right to food [and all economic and social rights] rests with the home government, so another government cannot be obliged to guarantee complete implementation of the right ... in other countries, but only to assist'.<sup>151</sup> This is a justified position, because 'international obligations are not a substitute for national responsibility. International action, however, is indispensable for addressing obstacles that are beyond the capacity of national governments to tackle on their own'.<sup>152</sup> A needy state is expected to formally seek such assistance or cooperation<sup>153</sup> which should be considered in good faith by the developed country or countries.<sup>154</sup>

148 ESCR Committee General Comment 14: The right to the highest attainable standard of health (art 12) para 38.

149 As above. See similar provisions in General Comment 15: The right to water (arts 11 and 12 of the Covenant) paras 30-35; ESCR Committee General Comment 18: The right to work (art 6 of the Covenant) paras 29-30; ESCR Committee General Comment 23 (2016) on the right to just and favourable conditions of work (art 7 of the Covenant) para 66.

150 J Curtis & S Darcy 'The right to a social and international order for the realisation of human rights: Article 28 of the Universal Declaration and international cooperation' in D Keane & Y McDermott (eds) *The challenge of human rights: Past, present and future* (2012), <https://aran.library.nuigalway.ie/bitstream/handle/10379/2185/CURTIS%20AND%20DARCYS%20Article%2028%20and%20International%20Coop.pdf?sequence=1&isAllowed=y> (accessed 21 July 2020).

151 UN Commission on Human Rights 'The right to food: Report by the Special Rapporteur on the Right to Food', Jean Ziegler, UN Doc E/CN.4/2005/47.

152 S Fukuda-Parr 'International obligations for economic and social rights: The case of the Millennium Development Goal eight' in S Hertel & L Minkler (eds) *Economic rights: Conceptual, measurement and policy issues* (2007) 293.

153 Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (2013) para 34. Also see HO Yusuf & PE Oamen 'Realising economic and social rights beyond COVID-19: The imperative of international cooperation' (2021) *Indiana International and Comparative Law Review* (forthcoming).

154 Maastricht Principles (n 153) para 35.

### 5.2.2 *Specific climate change obligation*

Apart from ICESCR, ESCR Committee jurisprudence and other international human rights instruments mentioned above, the UNFCCC and the Paris Agreement also mandate developed countries to engage in international cooperation and assistance in favour of developing countries. For instance, articles 4(4) and (5) of the UNFCCC state that '[t]he developed country Parties ... shall also assist the developing country Parties that are particularly vulnerable to the adverse effects of climate change in meeting costs of adaptation to those adverse effects' and that they 'shall take all practicable steps to promote, facilitate and finance, as appropriate, the transfer of, or access to, environmentally sound technologies and know-how to ... developing country Parties, to enable them to implement the provisions of the Convention'.

For its part, the Paris Agreement requires developed nations to recognise 'the need to support developing country Parties for the effective implementation' of the Agreement in response to climate change issues.<sup>155</sup> This position is further strengthened by article 7(6) of the Agreement which provides that 'Parties recognise the importance of support for and international cooperation on adaptation efforts and the importance of taking into account the needs of developing country Parties, especially those that are particularly vulnerable to the adverse effects of climate change.' Further, article 8(3) of the Agreement mandates state parties to take actions on a 'cooperative and facilitative basis with respect to loss and damage associated with the adverse effects of climate change'. More fundamentally, article 9(1) clearly provides that '[d]eveloped country Parties shall provide financial resources to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations under the Convention'. Where they are already supporting, an obligation remains on developed countries to continue to take the lead in mobilising climate finance from a wide variety of sources, through a variety of actions, including supporting country-driven strategies, and taking into account the needs and priorities of the developing country.<sup>156</sup>

Thus, a combined reading of the UNFCCC, the Paris Agreement, and the ICESCR provisions and ESCR Committee practice supports the argument that developed countries have a legal, not a moral, duty to help in addressing economic and social rights realisation in the

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<sup>155</sup> See art 3 of the Paris Agreement.

<sup>156</sup> See art 9(3) of the Paris Agreement.

developing countries, in the face of climate change. The provisions of articles 13(9) and (10) of the Agreement also commend themselves in aid of the instant argument, by stating that the Transparency Framework under the Agreement shall require developed countries and developing countries to supply information on support rendered or received in accordance with the foregoing provisions on international cooperation.<sup>157</sup> This support may be rendered through information sharing, the strengthening of institutional arrangements, the strengthening of scientific knowledge, direct financial or economic support, technology transfer, and capacity building to address the socio-economic effect of climate change in developing countries.<sup>158</sup>

## 6 Role of the Nigerian government and the regional body (African Union)

Having argued that international cooperation and assistance should be explored and exploited to push for the realisation of economic and social rights in Nigeria, the point should be made that this call does not attenuate the role of the Nigerian government in realising those rights. After all, Nigeria on its own contributes to climate change through its oil exploration and manufacturing activities.<sup>159</sup> National and regional bodies should not abdicate their responsibility solely because they depend on international cooperation. As Coomans argues, economic and social rights obligations acquire a domestic character in nature.<sup>160</sup> Thus, '[a] person's home state is certainly the first place to look to in terms of the protection of economic rights – and all other human rights as well'.<sup>161</sup>

Therefore, both the Nigerian government and the African Union (AU) have a key role to play in the realisation of the economic and social rights of Nigerians. As noted above, Etemire has attributed the lack of climate-related legislation as one of the obstacles to climate change litigation. While it is commendable that the Supreme Court has taken a bold step in the *COPW* case to open up the space for

157 See art 12(3) of UNFCCC.

158 Art 4 UNFCCC and arts 7(7), 9(1) & 10 Paris Agreement.

159 SI Ladan 'An appraisal of climate change and agriculture in Nigeria' (2014) 7 *Journal of Geography and Regional Planning* 176; OO Emoyan 'The oil and gas industry and the Niger Delta: Implications for the environment' (2008) 13 *Journal of Applied Sciences and Environmental Management* 113.

160 F Coomans 'The extraterritorial scope of the International Covenant on Economic, Social and Cultural Rights in the work of the United Nations Committee on Economic, Social and Cultural Rights' (2011) 11 *Human Rights Law Review* 25.

161 SI Skogly & M Gibney 'Economic rights and extraterritorial obligations' in Hertel & Minkler (n 152) 267.

climate change litigation, the political branches should also come alive by enacting and implementing relevant laws that are protective of climate change-impacted economic and social rights of Nigerians. Thus, climate laws and policies should be enacted and implemented as a matter of urgency. The truth remains that, without the support of the executive and legislative arms of government, whatever value the recent and commendable Supreme Court's decision in the *COPW* case may have will not be worth the while. Without political collaboration, the judicial decision may sound only in the realm of symbolic victory, rather than having a direct or real-world impact on the lives of those affected. It would take a deliberate inter-institutional collaboration to effectuate a rewarding climate change litigation and economic and social rights realisation.

At the regional level, the AU should strive to ensure that the African human rights system delivers on the goals of meeting the economic and social rights needs of Africans, in the context of climate change. The AU should develop or redact its laws and policies with a view to protecting the right to a safe climate.<sup>162</sup> The AU institutions, including the African Commission on Human and Peoples' Rights (African Commission), the African Court on Human and Peoples' Rights (African Court) and the African Committee of Experts on the Rights and Welfare of the Child (African Children's Committee), should provide, or continue to provide, a more robust articulation and interpretation of the relevant laws and policies that are pro-economic and social rights. The AU should seek to harmonise and operationalise all its climate change treaties and policies, although such attempt would face a challenge from the principle of state sovereignty.<sup>163</sup>

Despite the problem of dualism in the Nigerian legal system, it is heart-warming that the African Charter and the entire AU jurisprudence have gradually started to have impact on Nigeria.<sup>164</sup> To bring about much more impact, the AU should adopt a truly Pan-African human rights and climate change philosophy. Thus, it has been suggested that climate change cases should be allowed for adjudication in African countries other than where those issues arose, so that 'a breach of climate change regulation for actions leading to

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162 AO Jegede 'Should a human right to a safe climate be recognised under the AU human rights system?' in Addaney & Jegede (n 17) 55; AO Jegede 'Climate change and socio-economic rights duties in Nigeria' (2017) 73/74 *Dignitas* 13.

163 E Ekhaton 'Sustainable development and the African Union legal order' in O Amao, M Olivier & K Magliveras (eds) *The emergent African Union law: Conceptualisation, delimitation, and application* (2021), <https://ssrn.com/abstract=3804404> (accessed 21 July 2020).

164 As above.

violation of human rights due to the release of GHGs in Nigeria may be addressed in any African country even if the act was committed in Nigeria'.<sup>165</sup> The regional and sub-regional courts in Africa should also be able to drive robust climate change litigation in order to ensure environmental sustainability.<sup>166</sup> All of this extraterritorial litigation, of course, will unsettle state sovereignty. However, it is argued here that what African states need among themselves really is not an absolute sovereignty but a shared sovereignty. Africans are known for their communal living and such communality should also reflect in the state-state relationship, under the leadership of the AU. A shared sovereignty may lead to a more fruitful and mutually-rewarding interdependence, rather a somewhat unrewarding independence among African states.

## 7 Final thoughts

While Nigeria has overtaken many African countries in terms of economic indices, the realisation of the economic and social rights of its citizens still significantly lags behind. The economic and social rights challenge is further exacerbated by the emerging problem of climate change. This article has examined the impact of climate change on the realisation of economic and social rights. The findings reveal that climate change has further weakened the realisation of these rights in Nigeria. The article has thus recommended an international cooperation and assistance model as a part of the solution, without undermining the role of domestic government and institutions. As a UN Human Development Report recently observes, 'nature's degradation is often linked with power imbalances ... the unequal distribution of power during colonial times was explicit, with colonies meant to provide natural resources for the colonial power. Power imbalances meant that most benefits were concentrated in the colonial power.'<sup>167</sup> Thus, poor countries, including Nigeria, should not be left to sink or swim with their meagre resources while the rich countries protect their own citizens against climate change.<sup>168</sup> It has thus been argued that assisting the developing countries in combating economic and social rights challenges is helping the

<sup>165</sup> Oniemola (n 57) 325.

<sup>166</sup> Oniemola (n 57) 325-327.

<sup>167</sup> UNDP 'Human development report 2020: The next frontier – Human development and the anthropocene', <http://hdr.undp.org/sites/default/files/hdr2020.pdf> (accessed 21 July 2020).

<sup>168</sup> See UNDP 'Human Development Report 2007/2008: Fighting climate change – Human solidarity in a divided world', [http://hdr.undp.org/sites/default/files/reports/268/hdr\\_20072008\\_en\\_complete.pdf](http://hdr.undp.org/sites/default/files/reports/268/hdr_20072008_en_complete.pdf) (accessed 21 July 2020); UN, 'Sink or swim: Can island states survive the climate crisis?' <https://news.un.org/en/story/2021/07/1096642> (accessed 21 July 2020).

developed countries to stay out of trouble. An economic and social rights-triggered conflict in the developing world surely would, albeit slowly, have a ripple or spiral effect on the developed world. The international cooperation model conceptualises international cooperation and assistance as a binding, not hortative, duty on developed countries. As Caney asserts, 'any account of the impacts of climate change which ignores its implications for people's enjoyment of human rights is fundamentally incomplete and inadequate'.<sup>169</sup>

As a final remark, the words of the UN Secretary-General are worth echoing, to the effect that '[o]n all fronts, multilateral action is essential. Only together can countries find solutions to poverty, inequality and climate change, the defining challenges of the times'.<sup>170</sup> United, we all shall triumph; divided, we all shall perish in a climatically changing world.

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<sup>169</sup> Caney (n 88) 80.

<sup>170</sup> United Nations Economic and Social Council (n 121)38.