

## Carbon Markets and Social Displacement: A Human Rights Critique of Technocratic Climate Governance in Nigeria's Carbon Economy

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**ABSTRACT:** This paper examines complex relationship between carbon market mechanisms and legal frameworks in Nigeria. Its main focus is on how climate finance instruments intersect with human rights and environmental justice. It examines how emissions trading, carbon offsets, and the REDD+ programme are being implemented as both climate tools as well as regulatory interventions with social and legal consequences. These mechanisms have practically contributed to community displacement, weakened participatory rights, and undermined environmental safeguards. Their operation reveals a deep crisis in climate governance where efficiency is often pursued at the expense of justice. This research make use of doctrinal and interdisciplinary approach to analyze how international human rights norms, investment treaties, corporate accountability regimes, and Nigerian constitutional and administrative law shape the current landscape. It critically highlights the ways and manners in which investor protections, through bilateral investment agreements and the African Continental Free Trade Area, create structural impediment to accountability and therefore, protect powerful actors within carbon markets. The failure of corporate social responsibility in the extractive sector serves as a caution because similar patterns now appear in climate finance. In response to the problem, this research paper proposes a rights-based framework for reforms that are grounded in inclusive participation, equitable outcomes, binding corporate obligations, and regulatory sovereignty. It argues that Nigeria's legal system must undergo structural transformation to meet the demands of climate justice. True leadership in climate finance will require more than alignment with global models. It will definitely depend on a deliberate and principled effort to advance constitutional reform, institutional accountability, and legal clarity that centres both people and the environment.

**Keywords:** Carbon Markets, Social Displacement, Human Rights, Technocratic Climate Governance, Nigeria's Carbon Economy

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### INTRODUCTION

Carbon markets have become a central feature of global climate governance, presented as mechanisms capable of balancing environmental imperatives with economic growth. Instruments such as the Clean Development Mechanism, the Reducing Emissions from Deforestation and Forest Degradation programme, and voluntary carbon market initiatives are designed to facilitate emissions reductions while attracting investment.

They operate on the premise that market-based instruments can deliver climate mitigation efficiently, encourage sustainable development, and integrate developing countries into the global climate response. Nigeria has actively aligned itself with these initiatives. It has committed forest areas for conservation under REDD+, explored participation in voluntary carbon markets, and engaged with international donors and

private actors to advance carbon finance projects. Yet, behind the official commitments lies a more complex reality. Experiences on the ground reveal instances of community displacement, restricted access to customary lands, and limited participation in decision-making. Benefit-sharing frameworks often fail to reach those most affected, and environmental safeguards are inconsistently applied.

These outcomes point to a structural imbalance in Nigeria's climate governance. While carbon markets are often presented as neutral and technical tools, their implementation in contexts of weak environmental institutions, ambiguous land tenure systems, and uneven governance can produce exclusionary results. In such settings, the focus on carbon accounting and investor security can overshadow socio-environmental justice, community agency, and ecological resilience.

Despite increasing attention to the economic and environmental aspects of carbon markets, little work has examined how Nigeria's legal framework covering constitutional provisions, administrative law, land governance, and international commitments shapes the implementation and outcomes of these projects. The interaction between these legal regimes determines whether carbon finance serves as a tool for inclusive climate action or as a vehicle for further marginalisation.

This article addresses that gap by providing an integrated legal analysis of carbon market governance in Nigeria. It examines how these mechanisms intersect with human rights protection, environmental justice, and regulatory sovereignty. The analysis adopts a doctrinal and interdisciplinary methodology. The doctrinal component examines constitutional provisions, statutory laws, administrative regulations, bilateral and multilateral investment agreements, and Nigeria's international treaty obligations. Statutory interpretation and case law analysis are used to assess how these instruments define rights, allocate powers, and regulate environmental and climate-related interventions. The interdisciplinary dimension draws on policy documents, project implementation reports, and independent assessments of REDD+ and voluntary carbon market initiatives to evaluate the practical outcomes of legal and policy frameworks. By integrating legal interpretation with governance analysis, the study identifies structural patterns, normative gaps, and potential areas for reform.

### Theoretical and Legal Frameworks

Carbon markets in Nigeria are shaped by the interaction of international legal frameworks, national constitutional provisions, and evolving principles in human rights and investment law. These systems often intersect in ways that produce unintended and sometimes exclusionary effects. A multidisciplinary perspective is required to properly understand these dynamics. In this section, the international, regional, and domestic legal regimes that

govern carbon finance and climate policy in Nigeria will be examined. Particular attention will be placed on issues of land tenure, community participation, investor responsibility, and rights-based obligations. Scholarly research highlights that although these legal instruments present themselves as neutral, their implementation frequently results in procedural exclusion, land-related conflicts, and limited accountability for harm, within forest-dependent communities.<sup>1</sup>

### International Climate Instruments: Technocratic Design, Political Consequences

The legal basis for global carbon markets was established under the Kyoto Protocol's Clean Development Mechanism (CDM) and expanded through the Paris Agreement, particularly Article 6, which provides for market and non-market cooperative approaches to achieving mitigation targets. However, while Article 6 acknowledges the importance of sustainable development and environmental integrity, it does not enshrine binding procedural protections such as Free, Prior, and Informed Consent (FPIC) or rights-based monitoring.<sup>2</sup> This omission has been widely critiqued for enabling the implementation of carbon finance projects that displace local populations or marginalize community land claims under the guise of emissions reduction.

Nigeria's REDD+ engagements, particularly in Cross River State, illustrate these legal tensions. Asiyambi documents how carbon rights in Nigeria were structured without legislative clarity, resulting in militarized protectionism and what he terms "carbonised exclusion" of forest dwellers from land they have traditionally occupied.<sup>3</sup> In many REDD+ zones, there is no statutory recognition of communal tenure or participatory co-benefit sharing, allowing subnational authorities and foreign investors to treat forests as emissions assets rather than inhabited ecologies.<sup>4</sup>

### Human Rights Law and Social Displacement in Climate Governance

The technocratic orientation of carbon markets is challenged by international and regional human rights law. Instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), the African Charter on Human and Peoples' Rights, and the UN Declaration on the Rights of Indigenous Peoples

<sup>1</sup> Asiyambi A, 'A Political Ecology of REDD+: Property Rights, Militarised Protectionism and Carbonised Exclusion in Cross River' (2016)

<sup>2</sup> Ezeumeh P, 'Paris Agreement Article 6 and Environmental Justice' (2023)

<sup>3</sup> Asiyambi (n 1)

<sup>4</sup> Izoukumor B and Razzaque J, 'The Ecological Impacts of REDD+ on Customary Communities in Nigeria' (2025)

(UNDRIP) establish minimum standards for the protection of livelihoods, housing, food, health, and land-based cultural practices, all of which are often disrupted by carbon offsetting regimes. A defensible reading of these instruments would require pre-project consultation, grievance mechanisms, and community monitoring of REDD+ and offset interventions.<sup>5</sup>

Notably, the African Charter recognizes not only individual rights but also collective entitlements to natural resources and cultural self-determination. Nigeria's own Constitution, although lacking explicit environmental rights in its justiciable provisions, has been interpreted in *Gbemre v Shell* to impose implicit environmental obligations under the rights to life and dignity.<sup>6</sup> Nonetheless, Nigeria's human rights enforcement mechanisms remain weak, and environmental litigation suffers from poor enforcement and chronic delays.

Recent scholarship also highlights how REDD+ programs displace not just individuals, but legal authority itself, eroding traditional governance systems and transferring decision-making power to centralize and often opaque environmental institutions.<sup>7</sup> This raises not only rights concerns but fundamental questions about climate sovereignty and epistemic injustice.

### Investment Law and the Limits of Accountability

Carbon markets in Nigeria do not exist in a vacuum; they are mediated by a complex investment law regime that includes bilateral investment treaties (BITs), trade agreements such as African Continental Free Trade Area (AfCFTA), and investor protections embedded in domestic law. Most BITs signed by Nigeria include provisions on fair and equitable treatment, protection from indirect expropriation, and access to investor-state dispute settlement (ISDS). These instruments rarely contain environmental or human rights carve-outs, and there is little jurisprudence to suggest that tribunals would defer to socio-environmental regulations without a clear legal basis.<sup>8</sup>

The REDD+ case in Nigeria remains emblematic. As Jegede and Ashukem observe, there is no clear policy on carbon payments to communities, and no statute requires the integration of affected populations into benefit-sharing

frameworks.<sup>9</sup> Foreign actors often operate through joint ventures, trusts, or special-purpose entities that obscure financial flows and shield them from direct legal accountability. Furthermore, no existing carbon project in Nigeria has been subjected to a formal human rights impact assessment, despite clear risks of land alienation and exclusion.

The corporate responsibility frameworks currently available, including the United Nations Guiding Principles on Business and Human Rights (UNGPs), are entirely voluntary. While Nigeria's Companies and Allied Matters Act (CAMA) 2020 introduces modest sustainability provisions, these are not tailored to climate investment and remain weakly enforced. The Security and Exchange Commission (SEC) does not currently require specific carbon finance disclosures, and carbon offset ventures fall into a legal grey zone between environmental regulation, land law, and financial oversight.

### Legal Fragmentation and Regulatory Disempowerment in Nigeria

Nigeria's climate and environmental legal frameworks are defined by fragmentation and ambiguity. The Land Use Act of 1978 vests all land in the state, but does not recognize communal or customary land titles in ways that are legally actionable. As a result, forest-dependent communities often lack the formal standing needed to challenge expropriation or exclusion under REDD+.<sup>10</sup> The Environmental Impact Assessment (EIA) Act exists in law but is rarely enforced. Reports indicate that many REDD+ and carbon forestry projects were implemented without full EIAs, with state authorities citing lack of capacity or jurisdictional confusion.<sup>11</sup>

This institutional incoherence creates governance vacuums in which environmental decisions are made without accountability. As Onyekuru et al. observe, REDD+ in Nigeria is often deployed within a neo-patrimonial framework that privileges elite actors, excludes community leadership, and fosters rent-seeking behavior.<sup>12</sup> Legal pluralism intensifies this problem. In the absence of harmonized recognition between statutory and customary law, carbon markets can be used to

<sup>5</sup> Jegede A, 'Safeguarding Socio-Economic Rights in REDD+ Policy Implementation in Nigeria' in Ashukem J, Jegede A and others (eds), *Human Rights and Environmental Sustainability in Africa* (Springer 2023)

<sup>6</sup> *Gbemre v Shell Petroleum Development Co* (2005) AHRLR 151 (NgHC 2005)

<sup>7</sup> Adogame A, 'REDD+ and Traditional Governance Systems in Nigeria' (2020)

<sup>8</sup> Sornarajah M, *The International Law on Foreign Investment* (Cambridge University Press 2017)

<sup>9</sup> Jegede A and Ashukem J, 'REDD+, Human Rights and the Challenge of Participation in Africa' in Ashukem J and others (eds), *Human Rights and Environmental Sustainability in Africa* (Springer 2023)

<sup>10</sup> Olawuyi D, 'Legal Strategies for REDD+ Implementation in Africa' (2015) 6(1) *Washburn Law Journal*

<sup>11</sup> Adogame A, 'REDD+ and Traditional Governance Systems in Nigeria' (2020)

<sup>12</sup> Onyekuru A and others, 'Decentralisation and Environmental Rent Seeking in Nigeria's REDD+ Programs' (2021)

deepen existing social inequalities while presenting themselves as neutral, market-based interventions.

### **Case Study Analysis – Technocratic Governance and Carbon Displacement in Practice**

Building upon the theoretical and legal frameworks discussed above, this section applies those insights to the lived realities of carbon market implementation in Nigeria. While the preceding analysis outlined how legal infrastructures enable or constrain climate governance, it is in specific projects, particularly REDD+ interventions and voluntary carbon market (VCM) offsets, that these dynamics take shape. Drawing on grounded examples, this section demonstrates how technocratic governance regimes, in pursuit of carbon efficiency, have displaced local rights, weakened participation, and externalized harm to vulnerable populations. In doing so, it brings to life the broader critique: that Nigeria's carbon governance structures are both globally embedded and locally disempowering.

#### **The Cross River State REDD+ Programme: From Climate Finance to Community Exclusion**

The REDD+ pilot in Cross River State has become emblematic of the contradictions inherent in technocratic climate governance. Promoted by the United Nations and various international donors, the project aimed to generate emissions reductions through forest conservation, with anticipated co-benefits for biodiversity, community livelihoods, and environmental stewardship.<sup>13</sup> In practice, however, the REDD+ initiative entrenched exclusionary practices. Field research indicates that forest communities were barred from traditional farming and hunting activities without prior consultation or adequate compensation.<sup>14</sup> The militarization of forest spaces, ostensibly for conservation enforcement, exacerbated tensions between communities and state authorities. Participation mechanisms were introduced late in the process, often in tokenistic form, and failed to meet the standards of Free, Prior, and Informed Consent.<sup>15</sup>

The lack of legislative clarity regarding carbon rights further complicated benefit sharing. Without a legal framework that defines who owns sequestered carbon or how revenues are distributed, REDD+ benefits were

<sup>13</sup> Asiyanbi A, 'A Political Ecology of REDD+: Property Rights, Militarised Protectionism and Carbonised Exclusion in Cross River' (2016)

<sup>14</sup> Izoukumor B and Razzaque J, 'The Ecological Impacts of REDD+ on Customary Communities in Nigeria' (2025)

<sup>15</sup> Jegede A, 'Safeguarding Socio-Economic Rights in REDD+ Policy Implementation in Nigeria' in Ashukem J, Jegede A and others (eds), *Human Rights and Environmental Sustainability in Africa* (Springer 2023)

captured by bureaucratic elites and consultants.<sup>16</sup> While REDD+ literature increasingly acknowledges this critique, donor narratives continue to assert participatory benefits; a disjuncture that merits further empirical interrogation. This experience illustrates how global mitigation goals, translated into subnational policy, can perpetuate local disempowerment when embedded in opaque institutions.

#### **Voluntary Carbon Markets and Forest Commodification in the Niger Delta**

In Nigeria's oil-producing regions, carbon offsetting has recently emerged as a strategy to rebrand degraded lands and polluted ecosystems. Through voluntary carbon market (VCM) initiatives, oil companies and foreign partners invest in reforestation and afforestation to generate carbon credits. These projects are often marketed as sustainable development solutions. Yet the legal, social, and ecological impacts remain poorly understood.

One such VCM project in the Niger Delta has involved corporate-backed land rehabilitation aimed at offsetting emissions generated elsewhere. Local communities, many of whom have unresolved grievances relating to oil spills and gas flaring, were neither consulted nor given access to project documentation.<sup>17</sup> In some cases, customary lands were converted into carbon sinks without formal title transfer or land valuation under the Land Use Act.<sup>18</sup>

The voluntary nature of these initiatives limits both oversight and recourse. There is no requirement for Environmental Impact Assessments under Nigerian law for most VCMs, and they fall outside the scope of binding corporate disclosure requirements. The gap is further reinforced by the absence of explicit climate-related disclosures in the Nigerian Securities and Exchange Commission's (SEC) listing rules or under Companies and Allied Matters Act, 2020 (CAMA). This regulatory gap has allowed companies to greenwash their reputations while communities experience the continued erosion of their environmental and land rights.<sup>19</sup>

Legal scholars have noted that many of these companies operate under stabilisation clauses or investor-protective Bilateral Investment Treaties, raising

<sup>16</sup> Adogame A, 'REDD+ and Traditional Governance Systems in Nigeria' (2020)

<sup>17</sup> Jegede A and Ashukem J, 'REDD+, Human Rights and the Challenge of Participation in Africa' in Ashukem J and others (eds), *Human Rights and Environmental Sustainability in Africa* (Springer 2023)

<sup>18</sup> Olawuyi D, 'Legal Strategies for REDD+ Implementation in Africa' (2015) 6(1) *Washburn Law Journal*

<sup>19</sup> Onyekuru A and others, 'Decentralisation and Environmental Rent Seeking in Nigeria's REDD+ Programs' (2021)

the question of whether regulatory attempts to enforce social safeguards could be subject to investor-state dispute settlement (ISDS) litigation.<sup>20</sup>

### Comparative and Constitutional Implications

The failures of REDD+ and VCM projects in Nigeria raise broader questions about the legal tools used to mediate environmental governance. These failures are not simply the result of poor implementation, but of a structural misalignment between global carbon governance instruments and the legal-political realities of states like Nigeria. While technocratic regimes valorize data, contracts, and emissions metrics, they often ignore plural legal systems, informal landholding, and fragile environmental institutions.

Unlike countries with independent environmental courts or robust land rights jurisprudence, Nigeria's constitutional and statutory frameworks are fragmented. Section 20 of the Constitution, which proclaims that the state shall protect and improve the environment and safeguard water, air, and land for the benefit of future generations, remains non-justiciable under Chapter II. The judiciary has been hesitant to interpret socioeconomic rights expansively in environmental contexts, despite innovative arguments advanced in cases such as *Gbemre v Shell*,<sup>21</sup> where environmental degradation was linked to the right to life and dignity.

As a result, communities displaced by climate interventions must rely on administrative appeals or civil society support rather than constitutional litigation. Judicial remedies are further constrained by procedural technicalities and a general reluctance to extend constitutional protections to environmental harms. This analysis contends that any meaningful climate governance strategy must account for not just carbon outcomes, but the embeddedness of legal pluralism, social marginalization, and state weakness. If carbon interventions continue to operate without these considerations, they risk producing a form of governance that is not only technocratic, but extractive in both economic and epistemic terms.

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### Genealogy and Epistemic Critique of Technocratic Climate Governance

Technocratic climate governance in Nigeria reflects a broader global trend that privileges carbon quantification over social and ecological complexity. This trajectory can be traced from the Kyoto Protocol's Clean Development Mechanism (CDM) to REDD+, and more recently to the Paris Agreement's Nationally Determined Contributions (NDCs) and the expansion of Voluntary Carbon Markets (VCMs). While each of these tools has aimed to make climate mitigation more efficient and investable, they have also embedded certain epistemological assumptions, namely, that what can be measured can be managed.

This focus on measurable emissions reductions ignores the intangible, often unquantifiable consequences of climate interventions: displacement, spiritual loss, social fragmentation, and the erosion of customary institutions. The political economy of measurement itself must be scrutinized. Emissions are calculable, but land alienation and procedural exclusion are not. This creates a governance asymmetry that structurally privileges metrics aligned with Global North priorities over the lived realities of Southern communities.

Moreover, the very categories through which success is defined, such as tons of carbon sequestered or hectares conserved, are shaped by technocratic and financial logics that sideline indigenous epistemologies and community-driven ecological knowledge. As recent scholarship has argued, this constitutes a form of epistemic injustice. Technocratic climate governance does not merely fail to incorporate local voices; it systematically renders them unintelligible within the dominant frameworks of legitimacy and expertise.

This critique resonates with broader postcolonial environmental thought, including the work of scholars

<sup>20</sup> Sornarajah M, *The International Law on Foreign Investment* (Cambridge University Press 2017)

<sup>21</sup> *Gbemre v Shell Petroleum Development Company Nigeria Ltd and Others* (Federal High Court, Benin Judicial Division, 14 November 2005) **Suit No FHC/B/CS/53/05**; [2005] AHRLR 151 (NgHC 2005)

such as Arturo Escobar<sup>22</sup> and Achille Mbembe,<sup>23</sup> who challenge the universalization of Western scientific rationalities in defining environmental value and epistemic legitimacy. A more just and context-sensitive regime would begin not with emissions data, but with participatory frameworks rooted in social rights, legal pluralism, and ecological autonomy.

### **Social Displacement and Rights Implications**

Despite the professed dual mandate of climate finance mechanisms to mitigate emissions while fostering sustainable development, the on-ground realities in Nigeria's REDD+ and voluntary carbon market (VCM) projects reveal a persistent erosion of community rights and ecological agency. This section deepens the interrogation of how technocratic interventions, when decoupled from grounded legal protections and participatory frameworks, structurally displace vulnerable populations. Through a rights-based lens, it examines the procedural blockages, comparative jurisprudence, and empirical evidence of exclusion underpinning Nigeria's evolving carbon economy.

### **The Limits of FPIC in Nigeria's Legal Terrain**

Free, Prior, and Informed Consent (FPIC) is internationally recognized as a procedural safeguard for communities facing development-induced displacement. Yet, its implementation in Nigeria remains more aspirational than actual. The Land Use Act 1978 vests all land in state governors, a colonial vestige that denies communities ownership and procedural leverage. Sections 1 and 28 empower executive authorities to revoke occupancy rights for overriding public interest without compensation for unregistered tenure.<sup>24</sup>

This legal architecture entrenches exclusion, especially in forested regions where customary tenure systems prevail but lack statutory recognition. REDD+ project documents in Cross River State confirm that carbon sequestration zones were designated without prior community mapping or land audits.<sup>25</sup> The absence of cadastral clarity allows project sponsors to sidestep FPIC by engaging with state governments instead of communities, thereby formalizing dispossession through administrative consent.

<sup>22</sup> Escobar A, *Encountering Development: The Making and Unmaking of the Third World* (Princeton University Press 2011)

<sup>23</sup> Mbembe A, *Critique of Black Reason* (Duke University Press 2017)

<sup>24</sup> Nigeria, Land Use Act 1978, ss 1 and 28

<sup>25</sup> Amnesty International, 'Nigeria: "Our Forests are Our Lives": How the Forest Carbon Partnership Facility Undermines the Rights of Forest Communities in Cross River State' (2022)

The bureaucratic environment compounds this exclusion. Multiple agencies, the National Council on Climate Change, Federal Ministry of Environment, and State Forestry Commissions, often overlap in mandate but diverge in enforcement. Communities attempting to assert procedural rights encounter unclear grievance pathways, poor legal literacy, and elite mediation. Where FPIC does appear, it is tokenistic, post-hoc, or constrained by power asymmetries.<sup>26</sup>

### **Comparative Reflection: The Ogiek Case and Regional Jurisprudence**

A comparative analysis underscores the limitations of Nigeria's current posture. In *African Commission on Human and Peoples' Rights v Kenya*, the African Court on Human and Peoples' Rights found that the eviction of the Ogiek from the Mau Forest violated their collective rights to culture, property, natural resources, and development under the African Charter.<sup>27</sup> The Court emphasized that conservation imperatives must not trump indigenous rights and that FPIC is a binding obligation under Article 21.

While Nigeria has ratified and domesticated the African Charter on Human and Peoples' Rights through the African Charter (Ratification and Enforcement) Act 2004, it has yet to fully litigate many of its progressive environmental and socio-economic provisions. The Nigerian judiciary has generally underutilised the Charter's transformative potential in areas such as environmental justice and indigenous rights.<sup>28</sup> The Ogiek ruling affirms that socio-ecological harms are legally cognizable, even when cloaked in climate policy. It offers Nigerian litigants a model for constructing transnational accountability claims, especially where domestic avenues are institutionally constrained or politically compromised.

### **Documented Harms and the Politics of Exclusion**

The human rights implications of REDD+ in Nigeria are no longer speculative. A 2022 Amnesty International report documented that forest-dependent communities in Cross River faced access restrictions to ancestral lands, increased food insecurity, and coercive enforcement by

<sup>26</sup> SERAP, 'Carbon Markets and Human Rights in Nigeria: Submission to the African Commission' (2023).

<sup>27</sup> African Commission on Human and Peoples' Rights v Kenya (Ogiek case) (2017) App No 006/2012 (African Court on Human and Peoples' Rights) <https://en.african-court.org/cpmt/details-case/0062012>

<sup>28</sup> IO Ifeakandu and OE Charles, 'Indigenous Peoples Rights under International Law and the Legal Impediments to their Full Realisation in Nigeria' (2022) *Delta State University Law Review*

forest patrol units.<sup>29</sup> Women disproportionately bore the burdens, losing access to medicinal plants and firewood essential for domestic livelihoods.

The United Nations Development Programme found that benefit-sharing mechanisms across REDD+ projects were opaque, inconsistent, and lacked enforceability.<sup>30</sup> Revenues were routed through state structures without transparent allocation, further disenfranchising local actors. Despite community mobilisation efforts, the structures of REDD+ continue to privilege financial efficiency over equity, largely due to the absence of statutory social safeguard obligations.

The 2023 SERAP submission to the African Commission outlines how VCM and REDD+ projects reproduce patterns of elite capture. It identifies a lack of environmental impact assessments, procedural exclusion of customary authorities, and a total absence of gender-based risk audits.<sup>31</sup> Analysis of project implementation reports reveals a consistent discursive framing that treats communities as beneficiaries but not stakeholders; a subtle but potent mechanism of epistemic exclusion.

The cumulative effect is structural marginalisation. Communities are displaced not just from their lands but from the legal and epistemic arenas where decisions about those lands are made. This form of governance disempowers while masquerading as development, reifying a regime where the promise of climate action conceals the persistence of ecological injustice.

### ***Investment Arbitration, Corporate Power, and Legal Asymmetries in Nigeria's Carbon Market***

#### **The Protective Architecture of Foreign Investment Law**

Nigeria's engagement with bilateral investment treaties (BITs), the Energy Charter Treaty, and African Continental Free Trade Area (AfCFTA)<sup>32</sup> investment protocols has built a legal environment where foreign investors in REDD+ and VCM sectors are granted expansive rights with limited accountability. Stabilization clauses and investor-state dispute settlement (ISDS) mechanisms embedded in these treaties allow corporations to challenge public interest regulations such

<sup>29</sup> Amnesty International, 'Nigeria: "Our Forests are Our Lives": How the Forest Carbon Partnership Facility Undermines the Rights of Forest Communities in Cross River State' (2022)

<sup>30</sup> UNDP, *Nigeria Environmental Finance and Benefit Sharing Mechanisms Review* (2021) <https://www.undp.org/publications/environmental-finance-nigeria>

<sup>31</sup> SERAP, 'Carbon Markets and Human Rights in Nigeria: Submission to the African Commission' (2023)

<sup>32</sup> African Continental Free Trade Area (AfCFTA), Protocol on Investment (2023)

as land reform or environmental disclosure on grounds of indirect expropriation or breach of fair and equitable treatment.<sup>33</sup> Notably, Article 23 of the AfCFTA Protocol on Investment lacks strong language protecting climate-related regulatory space, despite aspirational references to sustainable development.

This legal architecture produces a regulatory chill, where Nigerian policymakers are discouraged from pursuing land tenure reform, FPIC enforcement, or emissions disclosure for fear of triggering arbitration or financial penalties. Affected communities, those displaced or disenfranchised by carbon offset projects, have no standing in ISDS, no access to international arbitration, and no recourse to treaty-based mechanisms. This analysis contends that Nigeria's BITs, which still follow pre-2010 models without meaningful sustainability clauses, create a structural imbalance that weakens the state's ability to regulate carbon finance in line with human rights obligations.

A comparative example is instructive. South Africa's 2015 BIT termination and replacement policy introduced domestic frameworks for dispute resolution and made clear that the state retained the sovereign right to regulate in the public interest, including for environmental justice. Nigeria has not adopted this model, though it has begun negotiating new generation BITs under the AfCFTA framework.

### **Corporate Social Responsibility and the Oil Sector's Cautionary Lessons**

Nigeria's history with corporate social responsibility (CSR) in the oil and gas industry provides a cautionary precedent. In the Niger Delta, oil companies such as Shell and Chevron pledged community development funds and environmental remediation programs, yet these were largely non-binding and unenforceable. Despite multiple Memorandum of Understandings and CSR pledges, oil spills, gas flaring, and human rights violations persisted.<sup>34</sup>

A review of carbon offsetting initiatives suggests that similar voluntary frameworks are now being repurposed for REDD+ and VCM projects. Companies involved in forest carbon schemes often claim co-benefits and community participation but are under no legal obligation to verify these claims. This analysis maintains that without statutory ESG obligations or enforceable social safeguards, Nigeria's carbon markets risk replicating the extractive dynamics of its oil sector.

A recent analysis of corporate filings under Nigeria's SEC ESG pilot guidance shows minimal reference to

<sup>33</sup> Sornarajah M, *The International Law on Foreign Investment* (Cambridge University Press 2017)

<sup>34</sup> Watts M, 'Petro-Violence: Some Thoughts on Community, Extraction, and Political Ecology' (2008) 20(3) Development Studies Journal

carbon finance risks, indicating the failure of soft law tools to incentivize disclosure or community engagement. By contrast, Brazil's CFIA investment agreements include participatory mechanisms and project-specific social monitoring committees, which could inform Nigeria's emerging carbon investment frameworks.

### **Legal Asymmetry and Procedural Injustice**

The asymmetry of legal remedies in Nigeria's investment climate undermines climate justice. Foreign investors benefit from International Centre for Settlement of Investment Disputes (ICSID) access, treaty rights, and state-backed dispute resolution mechanisms. Communities impacted by carbon projects lack procedural standing, face opaque administrative structures, and are often excluded from pre-project consultations or remedies. The absence of a legal framework for climate grievance redress reinforces this structural exclusion.

To correct this imbalance, Nigeria should introduce a statutory "community standing clause" into the Nigerian Investment Promotion Commission Act, allowing affected communities to challenge carbon project approvals or seek remedy for FPIC violations. In addition, a "climate and land ombudsman" should be established, independent of ministerial control, to oversee REDD+ and VCM project compliance with social safeguards and land use rights.

These proposals are grounded in broader trends toward procedural environmental justice. In jurisdictions like the Philippines and Colombia, constitutional courts have upheld community standing and environmental defenders' rights in climate-related cases. Nigeria can adapt similar institutional innovations to its plural legal system.

### **Toward Binding Corporate Accountability in Nigeria's Climate Economy**

Nigeria's Companies and Allied Matters Act (CAMA 2020) introduces ESG disclosure obligations, but these remain largely procedural and lack sectoral tailoring for carbon-linked investments. The SEC's green finance framework similarly omits mandatory climate-related risk audits or social impact assessments specific to REDD+ and VCM actors.

To ensure corporate accountability in Nigeria's climate economy, legal reform should embed mandatory human rights and environmental due diligence for all carbon-linked investments. These should include ex ante impact assessments, enforceable benefit-sharing obligations, and grievance redress structures monitored by independent oversight boards. Inspiration can be drawn from the EU's proposed Corporate Sustainability Due Diligence Directive<sup>35</sup> which mandates binding ESG practices for transnational corporations.

These reforms would shift Nigeria from a discretionary, investor-focused regime toward a rule-based accountability system aligned with its obligations under the African Charter, ICESCR, and the Paris Agreement. Only through binding obligations, not CSR rhetoric, can Nigeria avoid the ecological and procedural injustices of its fossil fuel past while engaging with future climate finance.

### **Towards a Rights-Based Climate Governance Framework for Nigeria**

As Nigeria contemplates the future of its climate governance landscape, the limitations of technocratic approaches and market-driven carbon tools must be met with a renewed normative foundation rooted in justice, constitutional accountability, and institutional resilience. This final section outlines a transformative framework, structured around four core pillars: procedural justice, substantive equity, corporate accountability, and sovereign regulatory space. These recommendations draw from preceding empirical analyses, review of Nigerian legal and institutional texts, and comparative governance models.

#### **Procedural Justice: Embedding Participation and Redress**

A foundational element of any rights-based framework is the guarantee of procedural justice. Nigeria must move beyond tokenistic consultation toward a legally mandated Free, Prior, and Informed Consent (FPIC) regime. Review of REDD+ implementation reports confirms that FPIC has been inconsistently applied or procedurally vague in most projects.<sup>35</sup>

To remedy this, the Land Use Act must be amended to formally recognize community and customary land rights. Legal empowerment mechanisms should include environmental tribunals tasked with adjudicating REDD+ and VCM-related grievances, following best practices drawn from jurisdictions with standing-based access to environmental justice.<sup>36</sup>

A national Climate and Land Ombudsman should be created by statute, equipped with powers to receive complaints, issue findings, and compel compliance from private and state actors. This would ensure independent oversight and institutional redress beyond elite or ministerial discretion.

<sup>35</sup> Amnesty International, 'Nigeria: "Our Forests Are Our Lives"' (2022)

<sup>36</sup> Boyd D, 'The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment' (UBC Press 2013)

## Substantive Equity: Realizing Socio-Economic and Environmental Rights

Substantive justice entails embedding distributive equity in Nigeria's climate frameworks. Section 20 of the 1999 Constitution mandates environmental protection, but it is generally classified as non-justiciable under Chapter II. However, recent jurisprudence and commentary suggest that this section may be judicially revitalized when interpreted in conjunction with ratified treaties such as the African Charter on Human and Peoples' Rights and the ICESCR.<sup>37</sup>

A rights-based transition should legally require benefit-sharing schemes in all REDD+ and carbon offset projects, with transparent inclusion of women, youth, and customary authorities. Community-level livelihood assessments and impact distribution models must become statutory prerequisites in investment approval. The use of these tools aligns with the Paris Agreement's emphasis on nationally determined contributions that are socially inclusive and context-specific.<sup>38</sup>

## Corporate Accountability: From Soft Law to Legal Obligation

Nigeria's Companies and Allied Matters Act (CAMA 2020) and Securities and Exchange Commission guidelines include nascent ESG disclosure provisions, but these lack the legal force to regulate carbon finance projects. To move beyond voluntary CSR, corporate actors in REDD+ and VCMs should be subjected to binding human rights and environmental due diligence mandates, as outlined in the UN Guiding Principles on Business and Human Rights<sup>39</sup> and OECD Guidelines<sup>40</sup>. Based on analysis of SEC submissions and investor reports in Nigeria's extractive sectors, current ESG compliance tends to prioritize financial performance over socio-ecological transparency.<sup>41</sup> To reverse this trend, companies should be required to submit third-party verified environmental and social impact audits, publish local engagement records, and include grievance mechanisms accessible to host communities.

## Sovereign Space: Reclaiming Regulatory Autonomy in Investment Law

<sup>37</sup> Oladipo J, 'Reviving Section 20 CFRN through Treaty Interpretation' (2020) 6(2) Nigerian Journal of Environmental Law 45

<sup>38</sup> UNFCCC, 'Paris Agreement' (2015)

<sup>39</sup> UNHRC, 'Guiding Principles on Business and Human Rights' (2011) UN Doc A/HRC/17/31

<sup>40</sup> OECD, 'OECD Guidelines for Multinational Enterprises' (2011)

<sup>41</sup> SERAP, 'Carbon Markets and Human Rights in Nigeria: Submission to the African Commission' (2023)

Deep legal asymmetries persist in Nigeria's investment regime. BITs signed in the 1990s and 2000s provide extensive protections to investors without accommodating evolving climate needs or environmental sovereignty.<sup>42</sup> Renegotiation should embed public interest exceptions and explicit carve-outs for climate measures consistent with the Paris Agreement and AfCFTA Protocol on Investment.

Legal reforms should be codified domestically to assert regulatory authority over land tenure, biodiversity protection, and indigenous consent. South Africa's 2015 investment reform and Brazil's local-benefit-driven CFIA model offer instructive pathways. These models prioritize participatory safeguards, reduce reliance on ISDS, and enable national institutions to vet foreign investment against environmental justice criteria.

This framework advances a legally robust and ethically grounded climate governance model. It affirms that environmental rights are inseparable from procedural access, corporate accountability, and the sovereign authority to regulate climate investments in the national interest.

## Conclusion

This paper has examined the complex entanglement of carbon markets, technocratic climate governance, and human rights in Nigeria. At the heart of the inquiry lies a structural concern: that market-driven mitigation tools, when applied in legally fragile and socially unequal contexts, may amplify rather than resolve environmental and social harms. By focusing on Nigeria's legal landscape, institutional capacity, and socio-political realities, the paper has shown how international carbon instruments risk displacing vulnerable communities, weakening participatory rights, and entrenching foreign investor power without adequate safeguards.

The analysis affirms that technical efficiency alone cannot deliver climate justice. Governance frameworks must be restructured to account for land tenure insecurity, procedural exclusion, regulatory asymmetries, and the failure of soft accountability mechanisms. A rights-based model that centers local agency, constitutional equity, and corporate responsibility offers a viable path forward. Such a model does not reject climate finance or foreign investment. Rather, it insists on anchoring these instruments within a legal and ethical infrastructure that prioritizes dignity, fairness, and democratic oversight. Only by integrating human rights protections, corporate regulation, and environmental sovereignty can Nigeria move toward a coherent and accountable climate governance framework.

Nigeria is uniquely positioned to shape the normative boundaries of global climate finance through domestic

<sup>42</sup> Sornarajah M, *The International Law on Foreign Investment* (Cambridge University Press 2017)

legal reform and strategic treaty engagement. It must not remain a passive recipient of technocratic tools but emerge as an agent of regulatory innovation. The credibility of Nigeria's climate future will rest not only on emissions accounting but on the constitutional integrity of its laws and the lived realities of its most vulnerable citizens.

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