Legal and Institutional Framework for Achieving Sustainable Development in Nigeria through the Clean Development Mechanisms

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ABSTRACT

The Clean Development Mechanism (CDM) of the Kyoto Protocol was received in Nigeria as an innovative mechanism through which she could achieve sustainable development goals. Since 1994 when Nigeria ratified the Protocol, she has not achieved much sustainability from it. This has been attributed to Nigeria's unpreparedness to host CDM projects and its perception by investors as one of the most unattractive CDM investment spots. The article argues that for Nigeria to be considered by prospective CDM investors as attractive, appropriate legal and institutional legal framework, which removes the identifiable barriers to CDM implementation in Nigeria, should be put in place.

1. INTRODUCTION

The Kyoto Protocol[1] is aimed at enforcing Article 3 of the United Nations Framework Convention on Climate Change (UNFCCC)[2] especially emission reduction through Clean Development Mechanism (CDM),[3] Joint Implementation (JI)[4] and Emission Trading (ET).[5] CDM is a cost-effective

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1 The UN's Kyoto Protocol established binding greenhouse gas emissions reduction targets for 37 industrialised countries and the European community. To help achieve these targets, the Protocol introduced three "flexible mechanisms" – international emissions trading (IET), joint implementation (JI), and the Clean Development Mechanism (CDM).

2 Article 3 of the UNFCCC is to stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.

3 The objective of the Convention in Article 3 is "to achieve stabilisations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system."

4 The mechanism known as "joint implementation," defined in Article 6 of the Kyoto Protocol, allows a country with an emission reduction or limitation commitment under the Kyoto Protocol (Annex B Party) to earn emission reduction units (ERUs) from an emission-reduction or emission removal project in another Annex B Party, each equivalent to one tonne of CO2, which can be counted towards meeting its Kyoto target. Joint implementation offers Parties a flexible and cost-efficient means of fulfilling a part of their Kyoto commitments, while the host Party benefits from foreign investment and technology transfer.

5 Emissions trading, as set out in Article 17 of the Kyoto Protocol, allows countries that have emission units to spare - emissions permitted them but not "used" - to sell this excess capacity to countries that are over their targets.

mechanism to assist industrialized countries to comply with their greenhouse gas emission reduction commitments outside their territories and to promote sustainable development in developing countries. In order to achieve the objectives of CDM, the developing countries will host project activities resulting in real, measurable, verifiable and certified emission reductions (CERs).[6] The CERs can be traded and sold, and used in industrialized countries to meet part of their emission reduction targets under the Kyoto Protocol. In order to participate in CDM, Nigeria ratified the UNFCCC in 1994 and, also, established the National Designated Authority (NDA).

Sustainable Development (SD) encompasses complex and multidimensional issues, which combine efficiency, equity, and intergenerational equity based on economic, social and environmental aspects.[7] The concept of SD developed and gained popularity in the 1980s.[8] Awareness about SD can be traced to the Brudtland Commission.[9] The Commission believes that SD is not a fixed state of harmony, but rather a process of change in which the exploitation of resources, the direction of investments, the orientation of technological development, and institutional change are made consistent with future as well as present needs.[10] The Earth Summit was the first to embrace the concept of SD at the level of global diplomacy and international law as evidenced in the Rio Declaration on Environment and Development.[11]

6 Article 12 of the Kyoto Protocol to the UNFCCC offers the Clean Development Mechanism as a tool to assist developing countries, which are Parties to the Protocol, to achieve sustainable development while helping to checkmate un-controlled global emission of Greenhouse Gases (GHG). CDM also offers the developed countries opportunity to achieve compliance with their quantified emission limitation and reduction commitments under Article 3 of the protocol. The CDM, *per se*, is, therefore, a technology capability transfer likely to be a major source of Direct Foreign Investment (DFI) to a developing country like Nigeria. The package may consist of physical transfer of equipment, technical knowledge, skills and expertise that underline the country's capacity to undertake contemporary clean and end–of-pipe activities.

7 Ciegis, R., Ramanauskiene, J., and Martinkus, B. (2009), *The Concept of Sustainable Development and its use for Sustainable Scenarios: The Economic Conditions Enterprise Functioning*. Pp 28-37 at 28; available at http://www.ktu.edu/lt/mokslas/zurnalai/inzeko/62/1392-2758-2009-2-62-28 pdf.

8 T. T. Onifade, *Legal and Institutional Framework for Promoting Environmental Sustainability in Nigeria through Renewable Energy: Possible Lesson from Brazil, China and India*; LL.M. Thesis submitted to the Faculty of Law, University of Ibadan, Nigeria, (2014), p. ?

9 *Ibid*.

10 WCED, 1987

11 UNGA 1992. Rio Declaration on Environment and Development Adopted at the UN 1992 Conference on Environment and Development (UNCED) at Rio de Janeiro U.N. Doc. AICONF, 151126 (Vol. 1), 31 I.L.M 874 (1992); available at http://www.unep.org/documents.multilingual/default.asp? Document=78 and articled=1163.

The Rio Declaration[12] essentially captures the concept of SD as defined by the Brudtland Commission as development that "... meets the needs of the present without compromising the ability of future generations to meet their own needs".[13] The Rio Declaration also opened two international law instruments for signature at the 1992 Summit, the United Nations Framework Convention on Climate Change (UNFCC) and the United Nations Framework Convention on Biological Diversity (UNCBD), the provisions of which seek to maintain the balance between sovereign right to development and the need to protect natural resources and reduce environmental pollution.[14] The Rio Declaration was followed by the World Summit on Sustainable Development 2002, Rio+10, which was a platform for the global community to reinforce its commitment to achieving SD. This was followed with the United Nations Conference on Sustainable Development, Rio+ 20, in 2012, which brought about the concept of green economy.[15]

The CDM was received by Nigeria as an innovative mechanism through which the country can achieve its sustainable development goals, such as, the positive transfer of clean technologies, financial returns and profits to local entities, poverty alleviation, and an improved quality of life. Years after its adoption however, the country has benefited little or nothing from the much talked about sustainable development gains of the mechanism. This situation has been attributed to the perception of Nigeria by the international community as an unattractive location for CMD investments. The article argues that for Nigeria to be considered as an attractive destination for CMD investment, the starting point is for the country to put in place appropriate legal and institutional framework, which will identify barriers to CMD implementation.

12 UNGA, 1992. Rio Declaration. Principles 3 & 4.
13 Ibid. Principle 11.
14 The Earth Conference is, therefore, one that cannot be side-lined in discussions about SD, in general, and environmental sustainability, in particular.
15 See Note 8, *supra*

2. LEGAL FRAMEWORK GOVERNING CDM IN NIGERIA

2.1 INTERNATIONAL LAW

The Clean Development Mechanism (CDM) is one of the three flexibility mechanisms of the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC). The goal of the UNFCCC and Kyoto Protocol is to reduce the emission of GHG emissions into the atmosphere, in order to mitigate human-induced climate change. The CDM was created to promote the hosting of GHG reduction projects by developing country parties to the Kyoto Protocol, using finance provided by developed country parties in order to make these projects possible.

By enabling the implementation of GHG reduction projects in developing countries, the CDM contributes to the sustainable development of those countries, while also allowing them to contribute to the GHG reduction objectives of the UNFCCC and Kyoto Protocol. At the same time, CDM projects assist developed country parties that finance such projects to meet their legally binding GHG reduction obligations, by generating Certified Emission Reductions (CERs) that can be used to meet their emission reduction obligations under the Kyoto Protocol or the European Union Emission Trading Scheme.

The CDM was established under Article 12 of the Kyoto Protocol, which was agreed upon in 1992. The detailed rules and modalities for the CDM were subsequently agreed upon by Kyoto Protocol parties in 2001, as part of the so-called Marrakesh Accords. In that same year, the CDM Executive Board was formed and began building the structure and process of the international CDM system. The first CDM projects were officially registered with the Executive Board in 2004, and since then the number of projects in the pipeline has continued to grow steadily.

2.1.1 THE UNFCCC

The CDM forms a part of the international legal framework regulating anthropogenic GHG emissions and their mitigation, as well as global adaptation to climate change. Negotiated by the countries participating in the 1992 Earth

Summit in Rio de Janeiro, the UNFCCC provides the foundation for this international legal framework. The UNFCCC is specifically directed to the stabilization of GHG concentrations in the Earth's atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. The UNFCCC does not, however, impose any quantified emission reduction targets or equivalent obligations on its Parties. Rather, as its name suggests, the UNFCCC only provides a framework for activities addressing climate change, including the preparation of national GHG inventories, the consideration of climate change in the development of domestic policy, the transfer of technologies with which to tackle climate change, and the raising of awareness of climate change and its impacts.

2.1.2 THE KYOTO PROTOCOL

Legally binding, quantified emission reduction obligations only became part of international law with the entry into force of the Kyoto Protocol to the UNFCCC, agreed by the Parties to the UNFCCC in 1997. The Kyoto Protocol strengthens the UNFCCC by imposing the following: undertaking national climate change and GHG emission data collection and reporting; instituting national and regional climate change mitigation and adaptation programs; and cooperating in climate change technology transfer and capacity building programs.

The Kyoto Protocol came into force on 16 February 2005, and has been ratified, approved, accepted or acceded to by 183 countries and 1 regional economic integration organization (the European Economic Community). Article 12 of the Kyoto Protocol establishes the CDM, and defines its purpose as being: to assist Parties not included in Annex I [to the UNFCCC] in achieving sustainable development and in contributing to the ultimate objective of the Convention, and to assist Parties included in Annex I in achieving compliance with their quantified emission limitation and reduction commitments under Article 3 [of the Kyoto Protocol].

The objectives of the CDM are, thus, threefold: first, to assist Non-Annex I Parties in achieving sustainable development; second, to assist Non-Annex I Parties in contributing to the avoidance of "dangerous anthropogenic interference with the climate system"; and third, to assist Annex I Parties in

meeting their emission reduction obligations under the Kyoto Protocol.

Under the Protocol, which was designed to give effect to the general prescriptions of the United Nations Framework Convention on Climate Change ("Convention"), countries listed in Annex I to the Protocol (mostly developed countries) committed to reducing their CO2 and Green House Gas ("GHG") emission levels to at least five per cent (5%) below the 1990 levels between 2008 to 2012. To fulfil these commitments, Article 6 of the Protocol permitted the trade (i.e. the acquisition and or transfer) of emission reduction units resulting from projects, which is aimed at reducing emissions. The Protocol specifically establishes the Clean Development Mechanism ("CDM") whereby parties not included in Annex I[16] can benefit from project activities resulting in Certified Emission Reductions ("CERs"); and parties included in Annex I can use the CERs accruing from such project activities to contribute to compliance with part of their quantified emission limitation and reduction commitments under Article 3 of the Protocol. The CDM engenders asymbiotic relationship whereby Annex I Countries looking to meet pre-determined emission reduction targets are able to finance emission reduction projects in developing countries and retain the emission reductions in respect of such projects, notwithstanding their location in the developing country. Such developing countries benefit from the finance received for such projects whilst the Annex I countries are able to meet their emission reduction targets.

2.2 NATIONAL LAWS

There is currently no existing Nigerian legislation which specifically deals with the subject of CDM. However, in December 2004, Nigeria acceded to the Protocol thereby setting the stage for the trading of CERs in Nigeria and making qualifying Nigerian emission reduction projects eligible for the issuance of CERs.[17] Also, in 2005, in line with the CDM requirements, the Nigerian government inaugurated the Presidential Implementation Committee on the Clean Development Mechanism ("PIC-CDM"). The PIC-CDM is currently

16 Mostly developing countries.

17 The Protocol falls within the category of international agreements which impose financial, political and social obligations on Nigeria. Therefore, by the provisions of Section 3(1)(b) of the Treaties (Making Procedures, etc.) Act, ratification of same by the Federal Government suffices to make it enforceable in Nigeria. The Protocol was ratified in March 2005.

responsible for issuing letters of approval for eligible CDM projects in Nigeria and is assisted by the Ministry of Environment, which is mainly involved at the broader policy and national level. The PIC-CDM confirms the eligibility of the project to the CDM Executive Board, which, thereafter, upon concluding its assessment of the project, issues a CER in respect thereof. Upon issuance, the CERs may be traded between Annex I countries and Nigeria.

3. INSTITUTIONAL FRAMEWORK

The most important government bodies dealing with the issue of climate change in Nigeria are: National Committee on Climate Change (ICCC), Special Climate Change Unit (SCCU), Inter-ministerial Committee on Climate Change (ICCC), Designated National Authority (DNA) and National Technical Committee on CDM.

3.1 NATIONAL COMMITTEE ON CLIMATE CHANGE (ICCC)

The International Committee on Climate Change (ICCC) is the CDM monitoring body on CDM in developing countries.[18] In actualising the objective of ICCC, Nigeria Government established the National Committee on Climate Change (NCCC), which functions as the supervising body for the preparation of the technical documents including Nigeria's first national communication for the implementation of the Climate Change Convention. Memberships of the NCCC are drawn from the Ministries of Finance, Foreign Affairs, Petroleum Resources, Nigeria Metrological Agency, Energy Commission of Nigeria and National Planning Committee.

NCCC acts as a technical and advisory network to the government. It is supposed to support the government as a multi-sectoral expert panel to make the right decisions by mutual agreement. ICCC's tasks are concentrated on the elaboration and discussion of climate change technical documents with the aim to implement them in practice, including the National Communication to UNFCCC. [19]

18 NCCC is set up in response to supplement the functions of ICCC under CDM.

19 Koblowsky, P., Chinwe, I.S. Institutional Challenges to developing a Nigerian Climate Change Policy; paper submitted to the Berlin Conference on Human Dimensions of Global Environmental Change: Social Dimensions of Environmental Change and Governance. 8-9th October, 2010.

NCCC has the right to set directives for the application of CDM projects in Nigeria, as well as to approve or reject respective project applications. NCCC is Nigeria's single negotiating agency to UNFCCC for all CDM related matters.[20]

3.2 SPECIAL CLIMATE CHANGE UNIT (SCCU)

In recognition of the impacts of climate change on its socio-economic development, the Government put in place strategic plans, policies, regulations and other meetings as initiatives to address the challenges of climate change. One strategy was the establishment of Special Climate Change Unit (SCCU). The Ministry of Environment, through SCCU, implements these policies by working in collaboration with other relevant government organizations, academia and private sector.

SCCU was established in 2006 as a coordinating department of the Federal Ministry of Environment for all climate related matter. SCCU is the designated government authority for cooperation with UNFCCC. The unit's broad mandate is the development of a short to long term national plan on climate change. SCCU coordinates and manages the financing of the preparation of Nigeria's National Communication to UNFCCC. It also coordinates Nigeria's national, regional and international climate change projects and initiatives. SCCU has a coordinating role in Nigeria's Inter-Ministerial Committee on Climate Change.

However, SCCU is faced with problems, such as, low public awareness about climate change, low public funding for climate change related projects and research.

3.3 INTER-MINISTERIAL COMMITTEE ON CLIMATE CHANGE (ICCC)

The Federal Ministry of Environment established the Inter-ministerial Committee on Climate Change (ICCC). The major activity of the Unit is the coordination of activities toward national implementation of Climate Change

20 *Ibid*.

Convention and the Kyoto Protocol. The Ministry carries out these activities by working in collaboration with other relevant government organisations, non-governmental organisations, academia and private sectors under ICCC.

3.4 DESIGNATED NATIONAL AUTHORITY (DNA)

The Designated National Authority (DNA) is the CDM monitoring body required by the CDM rules to be formed by the developing countries for the purpose of approving a prospective CDM investment. The DNA has the duty of deciding whether a project will result in real, measureable and long-term benefits to mitigate the climate change.[21]

3.5 NATIONAL TECHNICAL COMMITTEE ON CDM

The National Technical Committee gives technical advice to the government on CMD matters. Membership of National Technical Committee on CDM include Ministries of Environment, Petroleum, Power and Energy, Foreign Affairs, Industry, Transportation, Agriculture, National Planning Commission and others, such as, Private Sector, Academic and NGOs.

4. CDM PROJECTS IN NIGERIA

The major CDM projects in Nigeria include the Kwale Oil-Gas Processing Plant (Kwale Recovery of Associated Gas Project). This project was established to recapture and utilise associated gas in Kwale oil field, Delta State, and was registered under UNFCCC as a CDM project on 9 November 2006. It was registered for accrediting period of 10 years. This project is a joint venture between Nigeria Agip Oil Company (NAOC) and Nigerian National Petroleum Corporation (NNPC). The amount of CO2e to be reduced annually is 14.9 million tonnes of GHGs.

21 Other functions of the DNA include: serving as a focal point between investors and the government; providing potential projects for investors; processing framework agreements with investors; ensuring that an environmental impact assessment is carried out before approving projects and considering the assessment reports carefully; providing legal advice for project investors; coordinating with other relevant official entities and authorities; drawing up standardized baseline; monitoring ongoing CDM projects; granting export of emission right (CERs); conducting public relations and providing information on CDM implementation through advertisements in the media and through the website; and designing and establishing an evaluation procedure that adopts international eligibility criteria to assess the contribution of the prospective CDM projects to sustainable development.

The Asuoku-Umutu Marginal Field Gas Recovery Facility (Asuoko/ Umutu Gas Recovery and Marketing Facility) is another of such projects. This project is to capture associated gas at Asuoko/Umutu marginal field and it was registered for 10 years starting from 2011 to 2021. It is a partnership of joint venture of Platform Petroleum Limited & Newcross Petroleum Limited, and Carbon Limits AS, Norway. The amount of CO2e to be reduced is 256,793 tonnes annually, i.e. 2.6 million tonnes of CO2e in 10 years.

Efficient Fuel Wood Stoves for Nigeria is an Afforestation and Reforestation (AR) CDM project, which targets to distribute about 11,000 efficient wood stoves (SAVE80) at subsidised prices to Nigerian States in the Guinea Savannah zone. It was registered under UNFCCC in 2008 for 10years. Partners of this project are the Nigerian Development Association for Renewable Energies (DARE), Lernen Helfen Leben (NGO in Germany) and Atmosfair (German carbon offset organisation). The amount of CO2e to be reduced is 300, 000 tonnes; that is, each SAVE80 has potential to reduce 3.19 tonnes of CO2e per annum.

The Municipal Solid Waste (MSW) (Municipal Solid Waste Composting) Facility in Ikorodu, Lagos State, project will utilise advance technology of waste composting and will process about 1,500 tonnes of solid waste per day, thereby preventing emission of methane (CH4). It is registered for 10 years crediting period starting from 2010 to 2019 under UNFCCC. The amount of CO2e to be reduced is 145,000 tonnes annually amounting to 1.45 million tonnes of CO2e in 10 years crediting period.

The Afam Combined Cycle Gas Turbine Power Project project will utilise associated gas from Afam oil field located in Rivers State co-operated by NNPC (55% share), Shell Nigeria (30%), Elf Petroleum Nigeria Limited (10%) and Agip Nigeria (5%), to generate electricity which will be dispatched to Nigerian electricity national grid. This project is registered for 10 years crediting period starting from 2011 to 2020. The proponents of this project are the Shell Petroleum Development Company of Nigeria (SPDC) and the Power Holding Company of Nigeria (PHCN). The amount of CO2e to be reduced is 8.1 million tonnes within the10 years crediting period when fully implemented. The Kainji Hydropower Rehabilitation project is aimed at rehabilitating

the hydroelectric power plant with 8 turbines located at Kainji, Niger state, Nigeria and the plant will start using natural gas instead of coal. This project is registered as CDM project under UNFCCC for 10 years crediting period starting from 2010 to 2019 to repair the damage units of this plant. Participants of this project are Power Holding Company of Nigeria (PHCN), International Bank for Reconstruction and Development (Trustee of Spanish carbon fund, USA) and International Bank for Reconstruction and Development (Trustee for carbon fund for Europe, Portugal). The amount of CO2e to be reduced is 1.2 million tonnes of CO2e per annum amounting to about 12 million tonnes in 10 years crediting period.

The Natural Gas Based Power Project of TPUL, which is located in Ogun State, will utilise natural gas from Shell Gas Company of Nigeria to generate electricity while replacing the old fuel source- diesel. The electricity produced will not be dispatched to the national grid; rather, it will be sold to the nearby industries. This project is registered for 10 years crediting period, starting from 2010 to 2019, as a CDM project under UNFCCC. This project is owned by Tower Power Utility Limited (an alliance between Tower Aluminium Nigeria PLC and Clean Energy Development Corporation), and Shell Gas Company as participating actor. The amount of CO2e to be reduced is 28,893 tonnes annually, i.e., 288,893 tonnes of CO2e within the 10years crediting period.

The Ovade-Ogharefe Gas Capture and Processing Project is aimed at reducing associated gas produce at Ovade Ogharefe oil field operated by joint venture of NNPC and Pan Ocean Oil Corporation. It was registered under UNFCCC on 1 February, 2009, with a crediting period of 10 years. This project is operated by a joint venture of Pan Ocean Oil Corporation and NNPC in conjunction with Carbon Limits AS of Norway. The amount of CO2e to be reduced is 2.6 million tonnes of GHGs annually, i.e. 26.27 million tonnes of CO2e within the 10 years.

The OML 123 Offshore Associated Gas Capture and Utilisation project will capture associated gas that would otherwise be flared at OML 123 offshore oil field in Cross River State, Nigeria. It is a joint venture between Addax Petroleum Development Nigeria Limited and NNPC. This project was

registered as CDM under UNFCCC for 10 years crediting period from 2011 to 2021. The proponents of this project are Addax Petroleum Development Limited and the Carbon Limits AS of Norway. The annual reduction potential of GHGs is 1.7million tonnes i.e. 17 million tonnes of CO2e within the 10 years crediting period.

Lastly, the Waste Heat Recovering from Industrial Power Generation for Steam Production in Apapa, Ikeja and Benin, Nigeria, is aimed at recovering waste heat from three bottling plants owned by Nigerian Bottling Company (NBC) via waste heat recovery boilers. The captured heat that would otherwise be vented into the atmosphere will be used to generate steam for production at NBC. Also, the facilities will use natural gas brought from outside to generate electricity instead of using diesel, and the primary gas that will be reduced is CO2. The project is registered under UNFCCC for 10 years crediting period starting from 2011 to 2020. The participants of this project are Nigerian Bottling Company (NBC) and Contour Global. Within the 10 years crediting period, about 100,110 tonnes of CO2e will be reduced i.e. 10,011 tonnes of CO2e per annum.[22]

5. ADVANTAGES OF CDM IN NIGERIA

The benefits the CDM as a socio-economic and political opportunity for Nigeria as a nation are numerous. The few CDM projects in place have been creating jobs for the people from the hosting communities and other Nigerians, at large. This job creation has reduced the rate of restiveness by the Nigerian youths who were offered jobs via CDM projects. The total amount of CERs generated when sold can generate huge amount of money for the Nigerian government to offset its debts and provide some infrastructural facilities to the citizens. Further, the CDM projects implementation has reduced the cost of maintaining and cleaning the Nigerian environment (post remediation clean-up of oil spill and vented gas) by the government. For example, the municipal solid waste facility in Lagos state can compost the generated solid wastes into fertiliser, thereby preventing the venting of methane gas. The CDM is reducing the amount of

22 Okafor. O., *Environmental Laws and Factors affecting them in Nigeria: A Case Study of Gas Flaring Laws in Niger Delta*; MSc Thesis (unpublished) submitted to the Environmental Policy Group Sciences, Wageningen University.

gas flared in Nigeria. Nigeria is the second largest producer of gas flaring in the world by capturing and reusing the natural gas that would, otherwise, be flared. Some of the projects like Afam Gas Turbine, Natural Gas Based Power Project of TPUL, use utility gas to generate electricity, which is either dispatched to the national electricity grid or consumed locally. This is a boost to solving electricity problem in Nigeria. The villagers who depend on woods as fuel source will limit the rate of cutting down trees for energy. Notably, CDM has presented a potential opportunity for foreign investors to invest in Nigeria, thereby improving the Nigerian economy as a result of capital flow into the nation's economy. This mechanism can make Nigeria to become a potential carbon-trading market. Another benefit of CDM in Nigeria is the opportunity for technology and knowledge transfer in the power, oil and gas sector. This technology transfer is a window of opportunity for Nigeria to improve her technological know-how and develop its gas and power sector.[23]

6. CHALLENGES OF CDM IN NIGERIA.

CDM has some challenges in Nigeria, just like in all other CDM countries. CDM is still growing in Nigeria and has been faced with some constraints that every other project will face in a developing country like Nigeria. Nigeria ratified the Kyoto Protocol in 2004. A legal framework for CMD project has not, however, been established yet in the country. All that existed are a number of draft laws, which have not yet been enacted or implemented. These include, for example, a bill for setting up the International Committee on Climate Change (ICCC) to function as a technical advisory committee and take unanimous decisions on project approval after prior consultation.

The major legal barrier to unconstrained implementation of CDM projects in Nigeria is the absence of specific legislative/regulatory framework to govern the mechanism, which investors as well as focal recipients can interpret to distil out benefits and costs. There are existing legislation, which relate to foreign investment and technology transfer issues but none specific for CDM.[24]

An equally important legal barrier to CDM implementation in Nigeria

23 *Ibid*.

24 Felix, B. D., Nigeria Clean Development Mechanism (CMD) Phase II Report; submitted to the United Nations Industrial Development Organisation (UNIDO).

is the absence of an enabling legal framework for proper linkages between government ministries and agencies e.g. Ministries of Environment, Industry, Science and Technology, Finance and Agencies such as Energy Commission of Nigeria, Energy Research Institutes for handling CDM issues. The Nigerian UNFCCC National Committee can be developed into such a linkage group, but this will be only after proper capacity building has taken place. In the absence of such a framework, the lack of the necessary linkages and the overlapping legal and policy implementation responsibilities will become a potential barrier to the success of CDM projects in the country.[25]

Another potential barrier may result from the Non-complimentarily of the Federal and State administrative and legal framework. Section 20 of the 1999 Constitution provides that environmental protection is one of the fundamental objectives and directive principles of the Nigerian state policy. To this extent, both the National Assembly and State Assemblies can make laws on the environment. CDM projects would, generally, require approvals from not only the Federal but also from State authorities. For example, permit to use the land required by an Independent Power Producer (IPP), may have to be obtained from the state government in whom the constitution vests land ownership. Acquisition of land for example, with its attendant pitfalls, e.g. the right-of-way (ROW) issues, may impede or slow down CDM project approvals.[26]

There is lack of fiscal incentives to support CDM initiatives. Some implementing agencies complain of "deterrent fiscal measures" in the form of high duties or other charges for environmental projects, as experienced by the German Organisation LHL. Generally, the steps involved to get a particular flare reduction project registered are many. The CDM project cycle involves series of steps and timeline to be validated and approved, and there are many interactions between the proponents of the projects and other stakeholders.[27]

There is low level of awareness about the benefits and opportunities CDM can present to individuals and investors. There are still poor awareness creation and advertisement as relate to CDM opportunity for local investors to as well invest in.

25 *Ibid*.
26 *Ibid*.
27 *Ibid*.

The security issues arise especially in the areas where gas utilisation CDM projects are to be established. In the Niger Delta, a lot of militant activities and other communities' restiveness are ongoing and this is affecting the oil production and generation of gas for the CDM projects to utilise. Also, the CDM investors, including few Nigerians who are now investing in the CDM projects, are scared of the insecure nature of the Niger Delta.

The distance between the CDM projects and the location where the products of the projects will be consumed is far apart. For example, the distance between oil facilities that generate the natural gas to be utilised by CDM projects and the location of the CDM projects facilities are, at times, far apart, thus making it difficult for effective harnessing of the mechanism benefits.

For the local investors, the huge initial capital needed to start up a CDM project is another challenge. Some bureaucratic bottlenecks are involved before local investors can gain access to financial help from banks to start off the investment. Banks would always like to know the procedures and steps involved before releasing financial support for such projects, and before a CDM project will be registered a lot of steps are involved and banks in Nigeria would insist on them.[28]

Lastly, most developing countries are yet to give effect to the CDM through national laws, and are yet to establish nationally recognised NDAs.

7. CONCLUSION

Nigeria lacks legislative backing on CDM. In the absence of a legal framework on CDM, for investment to be protected under CDM projects, there should be existing regulations as in the case of India, which will define the procedure for proposing CDM projects and for getting a national approval for such projects and define the nature of the projects that can be proposed as CDM project.

There is the need to develop a "master plan" for a national CDM strategy in Nigeria. The master plan is to contain a description of projects that can be proposed to the National Assembly as CDM projects. The master plan should aid in facilitating investment procedures, promoting CDM projects

28 *Ibid*.

and participation, and coordinating between industries who will be involved in the sustainable development criteria for CDM projects and provide an easy breakdown of investment activity.

A number of strategies would have to be adopted to eliminate or reduce the legal barriers for CDM implementation in Nigeria. A piece of legislation must be immediately enacted to give effect to the UNFCCC, which was ratified by Nigeria in 1994. A national framework document with all its enabling tools must be immediately put in place to streamline and govern CDM activities in Nigeria. Legal backing must, also, be put in place for a body that would have the national mandate to manage all issues arising from the design and implementation of CDM projects in Nigeria. The capacity of lawyers in the private sector to handle legal issues relating to the adoption of CDM technologies in Nigeria needs to be strengthened. Such capacity currently exists but can be said to be quantitatively inadequate. Institutional capacity at the Federal and State Ministry of Justice would, also, have to be built. Finally, at the manufacturing industry level, the capacity of the legal department to handle climate change issues, in general, and CDM technology transfer issues, specifically, need to be developed.