

EXAMINING DIRECTORS' LEGAL DUTIES IN RELATION TO CLIMATE RISK: A NIGERIAN CORPORATE LAW PERSPECTIVE*

Abstract

The increasing impacts of climate change are creating substantial financial and systemic risks for businesses globally, necessitating a close look at corporate governance structures. In Nigeria, where the economy is heavily dependent on fossil fuels and vulnerable to climate change, the responsibility of corporate directors in managing these risks is under increased scrutiny. This paper analyzes the legal duties of company directors under Nigerian corporate law within the context of climate risk in Nigeria. It examines the extent to which Nigerian corporate law, primarily the Companies and Allied Matters Act (CAMA) 2020 mandates or permits directors to consider climate risks in their decision-making processes. The paper argues that while CAMA 2020 introduces provisions that gesture towards responsible and sustainable business conduct, it remains largely silent on the specific obligations of directors in relation to climate risks. This regulatory gap may expose companies to significant financial, operational, and reputational risks, particularly as investors, regulators, and stakeholders increasingly demand climate-conscious governance. The paper recommends that the current legal frameworks in Nigeria must be reformed to explicitly incorporate climate risk into directors' legal duties. Doing so will not only align corporate governance with Nigeria's climate commitments but also enhance corporate resilience, transparency, and long-term value creation in the face of escalating climate uncertainty.

Keywords: climate risk, climate change, corporate law, director, legal duty, Nigeria

1.0. Introduction

Climate change has emerged as one of the most pressing global risks of the 21st century, posing significant threats not only to the environment but also to economic stability and corporate sustainability. The Intergovernmental Panel on Climate Change has firmly established the reality of anthropogenic climate change, warning of increasingly severe consequences such as rising global temperatures, more frequent and intense extreme weather events, and accelerating sea-level rise.¹² These escalating climate impacts are expected to have profound implications across economic sectors, particularly in developing countries like Nigeria, which are disproportionately vulnerable to climate shocks such as flooding, drought, and coastal erosion.³

Similarly, the Nigerian Meteorological Agency, in its 2021 climate assessment, reported that Nigeria is experiencing rising temperatures, increasingly unpredictable rainfall patterns, and a higher frequency of extreme weather events.⁴ These climatic shifts have far-reaching consequences, impacting agricultural output, damaging infrastructure, and posing significant challenges for businesses. The Niger Delta, a major oil-producing region, is highly vulnerable to climate-related impacts, particularly sea-level rise and flooding, which disrupt operations and cause significant environmental degradation.⁵ Rising sea levels and increased flooding

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² V Masson-Delmotte and others (eds), *Climate Change 2021: The Physical Science Basis* (Cambridge: Cambridge University Press 2021) 1.

³*Ibid.*

⁴ Nigerian Meteorological Agency, 'State of the Climate in Nigeria 2021' <<https://nimet.gov.ng/>> accessed 14 April 2025.

⁵ A Benson, 'Social and Environmental Drivers of Climate Change Vulnerability in the Niger Delta region, Nigeria' (2020)1(5) *European Journal of Environment and Earth Sciences*,

have already led to erosion, displacement of communities, and damage to oil infrastructure, exacerbating environmental concerns in the region.⁶

In this context, the role of corporate governance, and specifically the duties of company directors, becomes paramount. Corporate governance is evolving to integrate environmental, social, and governance concerns. Internationally, there is a growing recognition that directors owe a duty to consider climate-related risks and opportunities as part of their fiduciary obligations.⁷ In Nigeria, directors are entrusted with the responsibility of managing the company's affairs, play a crucial role in ensuring its long-term sustainability and resilience.⁸ Their duties, typically defined by corporate law, require them to act in the best interests of the company and exercise due care and diligence.⁹

In Nigeria, the principal legal framework governing the duties of company directors is the Companies and Allied Matters Act 2020. While CAMA 2020 does not explicitly mention climate risk, it codifies several core duties such as the duty to act in good faith, in the best interest of the company, and with reasonable care, skill, and diligence that could, arguably, be interpreted to encompass environmental considerations.¹⁰

However, the extent to which these traditional duties encompass the consideration of climate-related risks remains a critical question, particularly within the Nigerian legal framework. The absence of explicit legal directives contributes to the uncertainty surrounding directors' obligations in addressing such risks.

This paper examines the legal duties of directors under Nigerian corporate law, with particular emphasis on their responsibilities in relation to climate risk. It evaluates whether the existing legal framework provides an adequate basis for incorporating climate-related considerations into corporate decision-making and recommends legal reform to strengthen directors' accountability in this regard.

2.0. Conceptual Framework

Climate risk has become a critical concern in corporate governance, particularly in jurisdictions like Nigeria, where environmental challenges pose significant financial and operational risks to businesses. Climate risk refers to the potential financial, social, and environmental damage resulting from climate change.¹¹ These adverse consequences range from acute hazards like extreme weather events to gradual changes such as rising sea levels at transition risk. The Intergovernmental Panel on Climate Change, defines climate risk as the potential for adverse consequences from a climate-related hazard, resulting from the interaction between the hazard itself¹² and the vulnerability and exposure of the affected system.¹³ It encompasses various factors, including physical risks associated with climate

<<https://doi.org/10.24018/ejgeo.2020.1.5.69>> accessed 14 April 2025

⁶United Nations Environment Programme, 'Environmental Assessment of Ogoni land' <<https://www.unep.org/resources/report/environmental-assessment-ogoniland-report>> accessed 14 April 2025.

⁷S Barker and T Baxter, *Directors' Liability and Climate Risk: Comparative Paper* (Commonwealth Climate and Law Initiative 2021) <<https://commonwealthclimatelaw.org>> accessed 14 April 2025.

⁸CAMA 2020, s 269.

⁹*Ibid*, ss305 -308.

¹⁰*Ibid*, ss 305-308.

¹¹E Di Febo and E Angelini, 'Transition Risk in Climate Change: A Literature Review' <<https://www.mdpi.com/2227-9091/13/4/66>> accessed 15 April 2025.

¹²e.g., an extreme weather event or a slow-onset change.

¹³ Intergovernmental Panel on Climate Change (IPCC), *Climate Change 2022: Impacts, Adaptation and*

change, transition risks arising from the shift to a low-carbon economy, and liability risks linked to environmental harm.¹⁴ These risks have significant implications for corporate governance, particularly as businesses face mounting pressure to adapt their strategies and operations in response to the accelerating climate crisis.

Perhaps, climate risk is often categorized into three primary types: physical risks, transition risks, and liability risks.¹⁵ Physical risks refer to the direct impacts of climate change, such as extreme weather events¹⁶ and long-term shifts in climate patterns.¹⁷ These risks can severely disrupt business operations, damage infrastructure, and negatively affect supply chains. A recent example is the devastating floods in Nigeria in 2024, which affected over 1.2 million people across 33 states and led to the destruction of vast tracts of farmland, homes, and essential infrastructure.¹⁸

On the other hand, transition risks arise from the global shift towards a low-carbon economy. They are risks associated with the pace and extent at which an organization manages and adapts to the internal and external pace of change to reduce greenhouse gas emissions and transition to renewable energy.¹⁹ As industries, businesses and communities make the transition away from fossil fuels, those that rely heavily on these resources may face significant financial losses and socio-economic disruption. This includes policy and regulatory changes, technological advancements and shifts in consumer preferences that might lead to reduced demand for certain products or services.²⁰ Alternatively, if an organization is a low-carbon emitter and in the renewable energy or climate transition market, they could experience market, technological, and reputational opportunities.²¹

However, this transition may result in challenges for businesses, particularly those in carbon-intensive industries like oil and gas, mining, and heavy manufacturing. Transition risks include regulatory risks, market risks, and technological risks. A prominent example of transition risk is seen in the oil and gas sector, where the growing push for renewable energy sources threatens the long-term viability of fossil fuel-based businesses.²² This risk is further compounded by regulatory changes, such as the introduction of carbon taxes and stricter emissions standards in both domestic and international markets.²³

Moreover, liability risks refer to the legal consequences of climate-related damages. They arise from legal actions seeking to hold governments, corporations, and other entities

Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (Cambridge University Press 2022) <<https://www.ipcc.ch/report/ar6/wg2/>> accessed 15 April 2025.

¹⁴A McGrath and A Jonker, 'What is climate risk?'<<https://www.ibm.com/think/topics/climate-risk>>accessed 12 April 2025

¹⁵McGrath and Jonker (n 13).

¹⁶ Examples, hurricanes, floods, heatwaves and droughts.

¹⁷Examples, rising sea levels, temperature increases etc.

¹⁸OCHA, 'Nigeria: Floods - Situation Report No. 4 (As of 23 October 2024), <<https://www.unocha.org/publications/report/nigeria/nigeria-floods-situation-report-no-4-23-october-2024>>, accessed 12 April 2025

¹⁹McGrath and Jonker (n 13).

²⁰*Ibid.*

²¹EPA, 'Climate Risks and Opportunities Defined'<<https://www.epa.gov/climateleadership/climate-risks-and-opportunities-defined>>, accessed 12 April 2025

²² R Sullivan and M Everett, *Managing Climate Risk in the Fossil Fuel Industry* (Environmental Finance Publications 2019).

²³Sullivan and Everett (n 21)

accountable for their contributions to climate change and its resulting impacts. As the effects of climate change become more pronounced, businesses and governments may face lawsuits for failing to mitigate or adapt to climate risks. A notable case in this regard is *Milieudefensie v Royal Dutch Shell*,²⁴ where a Dutch court ruled that Shell must reduce its carbon emissions by 45% by 2030, setting a precedent for corporate climate accountability. Although this ruling was overturned on appeal in 2024, it highlights the growing legal scrutiny surrounding corporate environmental responsibility.

Indeed, climate risk which encompasses physical, transition and liability risks poses financial, operational and reputational challenges for corporations, necessitating governance frameworks that integrate environmental considerations into strategic decision-making. Within this paradigm, climate risk has emerged as a core governance issue that boards must integrate into strategic oversight, enterprise risk management, and stakeholder engagement.

3.0. Legal Duties of Directors under Nigerian Corporate Law

The primary legislation regulating directors' duties in Nigeria is the Companies and Allied Matters Act CAMA, 2020. Under CAMA 2020, directors of Nigerian companies owe several critical duties aimed at ensuring good corporate governance. One of the foremost duties imposed on directors is the fiduciary duty, which requires them to act in utmost good faith and in the best interest of the company. According to section 305 of CAMA 2020, a director must observe utmost good faith towards the company in any transaction with it or on its behalf. In *Yalaju-Amaye v ARECLtd*,²⁵ the Supreme Court emphasized the importance of fiduciary duty and the duty to act in the best interest of the company. A person standing in a fiduciary relationship relative to another means that such a person is in a position of mutual trust and confidence with respect to whom they relate. Such a relationship is one of dependability and unique trust requiring a director to exercise utmost integrity and honesty to ensure they do not take decisions that hurt the company as an entity.²⁶

Moreover, section 305 (3) states that the director shall always act in what he believes to be in the best interest of the company as a whole so as to preserve its assets, further its business, and promote the purposes for which it was formed, and in such a manner as a faithful, diligent, careful and ordinarily skillful director would act in the circumstances. Section 305(3) of CAMA further mandates the directors while acting in the best interests of the company to have regard to the impact of the company's operations on the environment in the community where it carries on business. This provision explicitly obligates directors to take account of the impact of the company's operations on the environment.

In addition to fiduciary duties, directors also owe a duty of care, skill, and diligence under section 308 (1) of CAMA 2020. A director is obligated to exercise reasonable care, skill, and diligence in performing his duties. This provision introduces an objective standard, requiring directors to perform their functions with the same level of care and skill that a reasonably diligent person with their general knowledge and experience would exercise.²⁷ The standard is that of a reasonably prudent director would exercise in comparable circumstances.

²⁴*District Court of The Hague*, Case No. C/09/571932 / HA ZA 19-379, Judgment of 26 May 2021.

²⁵(1990) 4 NWLR (Pt. 145) 422.

²⁶M Muriungi, 'Directors' Duties and Climate Change in Africa: Evidence from Kenya, Nigeria and South Africa' <<https://ex-ante.ch/index.php/exante/article/view/219/125>>, accessed 13 April 2024

²⁷AAlex-Adedipe, 'Corporate Governance: The Duties and Responsibilities of Directors under Nigerian Law' <<https://businessday.ng/bd-weekender/article/corporate-governance-the-duties-and-responsibilities-of-directors-under-nigerian-law/>> accessed 13 April 2025

Section 306(1) of CAMA 2020 also requires directors to avoid conflicts of interest, ensuring that their personal interests do not conflict with those of the company. This duty includes the obligation not to make secret profits and to disclose any personal interest in company transactions. In line with this, section 303(1) of CAMA 2020 specifically mandates directors to disclose any direct or indirect interest in transactions or arrangements involving the company, reinforcing transparency and accountability in corporate governance. In the case of *Adewunmi v Ogunbiyi*,²⁸ the Court of Appeal held that directors have a fiduciary duty to prioritize the company's interests over their own personal interests. Similarly, the court in *Okpata v Ibru*,²⁹ emphasized that directors must not place themselves in a position where their personal interests conflict with the company's interests. In essence, director must consistently avoid situations in which personal interests conflict with their duties to the company. This obligation is most clearly illustrated when a director appropriates corporate opportunities intended for the company for personal gain.³⁰

Directors also have a duty to act within the powers conferred on them by the company's constitution and relevant statutory provisions, ensuring that their decisions align with corporate governance principles and legal obligations. Section 305(5) of CAMA 2020 specifically requires directors to exercise their powers only for the purposes for which they were conferred and not for any collateral purpose. The directors are expected to act bona fide in what the directors consider not what the courts consider to be in the best interest of the company.³¹ Moreover, section 377 of CAMA 2020 mandates company directors to prepare annual financial statements, which must include a directors' report, among other components. Furthermore, Section 4 of the Fourth Schedule to the Act outlines specific contents of the directors' report, notably the requirement to disclose any likely developments in the business of the company and its subsidiaries.

Indeed, the duties of directors under CAMA 2020 require them to act in the best interests of the company, avoid conflicts of interest, exercise due care and diligence, and act within the company's powers. The Directors are therefore liable against the company for any breach of their duties, with companies retaining the right to enforce against them.³² In addition, no provision either in the articles of association of the company or in the resolutions, may relieve any director of their duty or relieve them of any liability arising from a breach of their duties.³³ Be that as it may, every director of a company is required to exercise their powers and perform their duties with honesty, integrity, and in the best interests of the company.³⁴ They must apply a degree of care, skill, and diligence that would reasonably be expected from a prudent and responsible director in comparable circumstances.³⁵ Furthermore, the law provides that a failure to uphold these standards may lead to legal consequences, including liability for negligence and breach of duty.^{36,37}

²⁸(2022) LPELR-57965(CA).

²⁹(2020) LPELR-51240(CA).

³⁰O. Omotoye, 'Inroads into Directors' Fiduciary Duties'(2023) 7 (2) *African Journal of Law and Human Rights* 71

³¹*Re Smith & Fawcett Ltd* (1942) Ch 304

³²CAMA 2020, s 305(9)

³³*Ibid*, s 305(8).

³⁴*Ibid*, s 308.

³⁵CAMA, s 308.

³⁶*Ibid*.

³⁷Financial Reporting Council of Nigeria Act 2011, as amended, s 73.

Moreover, the Nigerian Code of Corporate Governance 2018 establishes an essential framework that underscores the responsibilities of directors in embedding environmental, social, and governance considerations into corporate strategy and oversight. Although, the NCCG 2018 does not have the force of law, it is issued pursuant to the Financial Reporting Council of Nigeria Act 2011,³⁶ and applies on a ‘apply and explain’ basis to all public companies and other specified entities, thereby creating persuasive obligations for corporate boards. Central to the NCCG 2018 is Principle 26, which emphasizes that the board should pay adequate attention to sustainability issues including environment, social, occupational, community health and safety. This principle imposes a de facto duty on directors to integrate climate considerations into decision-making processes, particularly where the company’s activities have direct or indirect environmental impacts. Principle 26 further requires that companies should develop a framework for sustainability, including policies and practices, which address environmental, social and governance issues. Directors, therefore, bear the strategic responsibility to ensure that climate-related risks such as carbon exposure, regulatory transitions, reputational harm, and supply chain disruptions are identified, disclosed, and addressed in line with stakeholder expectations and long-term corporate sustainability.³⁸

Furthermore, Principle 1 of the NCCG 2018 charges the board with the ultimate responsibility for the company’s governance and overall strategy, requiring directors to act in the best interest of the shareholders and other stakeholders while sustaining the prosperity of the company. In essence, directors must ensure that environmental, social, and governance factors, including climate risk, are incorporated into decision-making.

Also relevant is Principle 17 of the NCCG 2018, which emphasizes risk management and internal controls, requiring the board to ensure the establishment of a risk management framework that defines the company’s risk policy, risk appetite and risk limits³⁹ and identifies, assesses, monitors and manages key business risks to safeguard shareholders’ investments and the company’s assets.^{40,41} It also requires the board to ensure that the company’s risk management framework is disclosed in the annual report. ⁴⁰Accordingly, directors are expected to integrate climate-related risks into their enterprise risk management frameworks. This involves conducting scenario analyses, developing transition plans, and ensuring board-level oversight of sustainability and climate-related strategies. Failure to act or engaging in only superficial compliance may expose companies to regulatory investigations, shareholder activism, or even litigation, particularly where environmental risks have materialized and caused harm to investors or the wider public.⁴²

In light of these provisions, the NCCG requires boards not only to comply with governance principles in form but also to demonstrate meaningful integration of climate risk into their operational, strategic, and disclosure functions. For example, companies listed on the Nigerian Exchange are now required under NGX’s Sustainability Disclosure Guidelines, 2021 to report on environmental and climate-related performance placing directors in a

³⁸NCCG 2018, Principle 26.

³⁹NCCG 2018, Principle 17.1.1.

⁴⁰*Ibid*, Principle 17.1.2.

⁴¹*Ibid*, 17.7.

⁴²Task Force on Climate-related Financial Disclosures (TCFD), *Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures* (2017) <<https://www.fsb-tcfd.org/publications/final-recommendations-report/>> accessed 15 April 2025.

frontline role of ensuring the accuracy and completeness of such disclosures.⁴³

Indeed, while the Nigerian Code of Corporate Governance is not legislation, it imposes significant normative and best-practice standards that directors are expected to adhere to in order to fulfill their obligations as responsible corporate stewards. As such, Principles 1, 17, and 26 of the NCCG 2018 jointly establish a governance imperative for boards to recognize, manage, and disclose climate risks in a manner consistent with fiduciary and strategic duties. Failure to do so not only exposes companies to environmental, reputational, and financial risks but also opens directors up to potential legal consequences under evolving interpretations of governance failure and breach of duty in Nigeria's climate-conscious regulatory landscape.

4.0 Climate Risk in the Context of Directors' Duties under Nigerian Corporate Law

Climate risks have increasingly become central to corporate governance discussions due to their far-reaching implications for business operations, financial stability, and stakeholder interests. Directors of companies, particularly in jurisdictions such as Nigeria, are under growing legal and regulatory expectations to consider climate-related risks as part of their fiduciary responsibilities. Although Nigerian company law does not expressly refer to climate risk, the Companies and Allied Matters Act 2020 provides a flexible framework within which directors' duties may be interpreted to encompass emerging threats such as climate risk. Thus, in the absence of a clearly defined statutory obligation, the responsibility to address climate-related risks remains implicit, grounded in the broader fiduciary and duty of care obligations, which may evolve in line with changing regulatory expectations and stakeholder demands.

Section 308(1) of CAMA requires directors to exercise their powers and discharge their duties with a degree of care, skill, and diligence which a reasonable prudent director would exercise in comparable circumstances. This implies that directors are expected to possess and utilize a level of skill and diligence that encompasses understanding and addressing foreseeable and material climate risks and opportunities relevant to the company's business. Climate risk increasingly represents a material risk factor that directors must address as part of their duty of care. This duty extends to ensuring that the company conducts a thorough analysis of climate risks, whether physical risks from extreme weather events or transition risks arising from regulatory changes, such as carbon taxes or emissions restrictions. Directors must make informed decisions about how the company will manage these risks and avoid practices that could leave the company vulnerable to the adverse financial and reputational implications of these risks. The failure to take these risks into account could be deemed a breach of their duty of care.

Perhaps, given the growing awareness and documentation of climate-related financial and operational risks, directors can no longer claim ignorance of such risks in fulfilling their oversight obligations. The Task Force on Climate-related Financial Disclosures has defined climate risks as both physical such as floods, storms, and droughts and transition-related such as legal, reputational, or market changes due to climate policies or evolving stakeholder expectations.⁴⁴ These risks can directly affect a company's assets, liabilities, revenues, and reputation and failure by directors to adequately assess or mitigate these risks could be construed as a breach of duty.

⁴³ NGX Sustainability Disclosure Guidelines 2021, principle 9 (6).

⁴⁴ Task Force on Climate-related Financial Disclosures (n 41).

Nevertheless, it is argued that directors may be exposed to liability where they fail to consider foreseeable climate risks that a reasonably diligent board member ought to have addressed.⁴⁵ This view finds support in evolving global norms, such as the Task Force on Climate-related Financial Disclosures, which provides a governance-oriented framework for identifying and managing climate-related financial risks.⁴⁶ Although the TCFD framework is not yet mandatory in Nigeria, its increasing adoption by international financial institutions, investors, and corporations sets a standard of diligence that may inform judicial interpretations of directors' duties.

Section 305(3) of CAMA further mandates that directors must act in good faith and in a manner that they believe, in their honest judgment, is most likely to promote the success of the company for the benefit of its members.⁴⁷ In the current global context, long-term corporate success is increasingly determined by a company's ability to manage environmental sustainability, adapt to regulatory shifts, and align with investor expectations regarding climate resilience. A director who fails to account for the financial and operational risks posed by climate change, or who does not incorporate climate considerations into long term strategic planning, may be failing to promote the company's success in the holistic manner required by law.

Moreover, International jurisprudence and thought leadership have reinforced the foreseeability and materiality of climate risks. The *Client Earth v Shell Plc*⁴⁸ case brought these issues to the fore when Client Earth, a minority shareholder, argued that Shell's directors had failed to implement an adequate climate risk management strategy, thereby breaching their duties to promote the company's success.⁴⁹ Although, the court declined to allow the derivative claim to proceed, it did not reject the underlying argument that climate strategy may be relevant to fiduciary duties.

In addition, the duty to avoid conflicts of interest enshrined in section 306 of CAMA may also be implicated in cases where directors' personal or professional interests conflict with the company's need to transition towards sustainable practices. For instance, directors with ties to fossil fuel enterprises may resist sustainability reforms to preserve private benefits, even when such reforms would better serve the company's longevity and shareholder interests.⁵⁰ If directors allow such conflicts to influence their judgment, they may be liable for breach of duty, especially if stakeholders or regulators can demonstrate that decisions were made in bad faith or without due consideration of long-term risks. This duty extends to ensuring that directors do not make decisions that benefit them personally while exposing the company to environmental risks. For instance, if a director has personal financial interests in industries that are major polluters or involved in environmentally harmful activities, this could create a conflict of interest if the director pushes the company to engage in practices that disregard climate considerations for personal gain.

⁴⁵Commonwealth Climate and Law Initiative (CCLI), *Directors' Duties and Climate Risk: Global Comparative Report* (Oxford Sustainable Law Programme 2021) <<https://commonwealthclimatelaw.org>> accessed 14 April 2025.

⁴⁶Task Force on Climate-related Financial Disclosures (TCFD), *Final Report* (2017) <<https://www.fsb-tcfd.org>> accessed 14 April 2025.

⁴⁷CAMA 2020, s 305 (3).

⁴⁸(2023) EWHC 1137 (Ch)

⁴⁹*Client Earth v Shell Plc* (2023) EWHC 1137 (Ch).

⁵⁰ S Barker and T Baxter, *Climate Change and the Fiduciary Duties of Directors* (Commonwealth Climate and Law Initiative, 2021).

Thus, directors must avoid conflicts of interest and exercise independent judgment in decision-making. This is particularly relevant in climate governance, where directors must balance financial performance with sustainability obligations.

Indeed, the legal duties of directors under Nigerian corporate law therefore encompass climate-related risks. The duty of care and diligence, the duty to promote company success, and the duty to act in good faith and avoid conflicts of interest all provide a legal foundation for requiring directors to understand, monitor, and mitigate the effects of climate change on their businesses. As the legal, financial, and reputational risks associated with climate change become increasingly apparent, directors who fail to act may not only jeopardize their companies' sustainability but also expose themselves to personal liability.

Thus, failure to adequately address climate risk or treating it superficially may expose directors to regulatory enforcement, litigation, or reputational damage. Consequently, directors under Nigerian law must navigate their duties within an expanded interpretation of fiduciary responsibility, one that demands diligence, transparency, and foresight in responding to climate-related challenges.

4.1. Climate Risk Disclosure and Liability

Corporate disclosure is another area where climate risks intersect with directors' duties. Although, Nigerian law currently lacks mandatory climate risk disclosure requirements, the Nigerian Code of Corporate Governance 2018, issued by the Financial Reporting Council of Nigeria, requires the board to ensure that the company's risk management framework is disclosed in the annual report.⁵¹ As financial risks tied to climate change become more apparent, directors are expected to ensure accurate and timely reporting of these risks in the company's financial statements and sustainability reports.

Directors are legally obligated to uphold sound corporate governance, and this responsibility now extends to identifying, disclosing, and mitigating climate risks as part of their fiduciary duties. Directors are required to promote the business of the company while considering the environmental and societal impact of their decisions.⁵² This duty aligns with the growing global emphasis on sustainability disclosures, where companies must assess, manage, and report financially material climate risks. A key responsibility of directors is the duty to exercise care and diligence, ensuring compliance with legal and regulatory requirements.⁵³ This duty extends to climate-related disclosures, where directors must provide accurate and comprehensive reports on climate risks affecting their company.⁵⁴ Failure to do so may expose directors to liability for greenwashing, securities lawsuits, or regulatory penalties. As a result, directors are expected to consider scenario analysis, climate-related financial disclosures, and risk assessments in their reporting obligations under the FRCN Act and NCCG 2018.⁵⁵ Failure to do so may amount to a breach of duty and open directors up to legal liability.

Moreover, inaction or superficial treatment of climate risk could expose directors to

⁵¹ NCCG 2018, principle 17.7

⁵² Alex-Adedipe (n 26).

⁵³ CAMA., s 308

⁵⁴ 'Directors,' Duties and Sustainability Disclosures', <<https://hub.climate-governance.org/Resource/directors-duties/directors-duties-and-sustainability-disclosure-obligations>> accessed 15 April 2025.

⁵⁵ FRCN 2011, as amended, s 11(c) and NCCG 2018, principle 17

enforcement or reputational consequences. For instance, in *McVeigh v Retail Employees Superannuation Trust*,⁵⁶ the Australian Federal Court indicated that institutional investors and trustees may have legal obligations to disclose how climate risk is incorporated into investment decision-making. While not binding in Nigeria, such jurisprudence signals an international shift towards recognizing climate governance as integral to fiduciary obligations.

Consequently, directors under Nigerian law must navigate their duties within a broadened understanding of fiduciary responsibility, one that requires diligence, transparency, and foresight in climate-related matters. Thus, the combined effect of sections 11(c) of the FRCN Act, 377 of CAMA 2020, and Principle 17 of the NCCG 2018 creates a framework obligating directors to assess and disclose climate risks as part of their corporate governance mandate. Non-compliance may not only result in regulatory penalties but also litigation risk, reputational damage, and potential personal liability for directors, especially as Nigerian courts become increasingly receptive to ESG-related claims.

However, unlike the traditional approach to financial reporting and the climate-related disclosure obligations under CAMA 2020, Nigerian Code of Corporate Governance 2018 and the Financial Reporting Council of Nigeria Act 2011, the Corporate Sustainability Reporting Directive and the accompanying European Sustainability Reporting Standards adopt a more comprehensive framework grounded in the principle of double materiality.⁵⁷ This principle requires companies to assess and disclose not only how environmental and social factors influence their financial performance referred to as financial materiality but also how their operations impact the environment and broader society, known as impact materiality.⁵⁸

By embedding this dual perspective, the CSRD and ESRS acknowledge that materiality extends beyond the company's internal financial outcomes to include its external effects on the world. This forward-looking standard has set a new global benchmark for sustainability reporting. In this regard, CAMA 2020 and the NCCG should evolve to adopt the double materiality principle in climate-related disclosures, mandating directors to report both on how environmental risks affect the company's financial performance and on how the company's activities affect the environment and society at large.

5.0. Deficiencies in Nigerian Laws Addressing Directors' Duties Related to Climate Risk

While Nigerian corporate law outlines the general duties of directors, there are noticeable deficiencies in specifically addressing their responsibilities concerning climate risk. These legal deficits pose significant implications for corporate accountability, environmental stewardship, and Nigeria's alignment with international climate goals. Some of these deficits are:

5.1 Lack of Explicit Mandates on Climate Risk

CAMA 2020 remains the primary statute regulating corporate governance in Nigeria. While it sets out directors' duties to act in good faith, with reasonable care and in the best interest of the company,⁵⁹ there is lack of explicit statutory climate duties for company directors under CAMA 2020. Although, section 305(3) mandates consideration of environmental impact, it

⁵⁶(2020) FCA 1020 (Australia)

⁵⁷EFRAG, *European Sustainability Reporting Standards (ESRS)* (2023) <<https://www.efrag.org/lab6?AspxAutoDetectCookieSupport=1>> accessed 15 April 2025.

⁵⁸*Ibid.*

⁵⁹CAMA, s305 - 308.

does not explicitly mandate the integration of climate risk into the core fiduciary duty of acting in the best interests of the company. The absence of a specific duty to consider and manage climate-related risks leaves directors with ambiguity regarding their obligations in this critical area.

5.2. Weak Enforcement Mechanisms

The enforcement of directors' duties, including the newly introduced environmental consideration, often relies on shareholder activism and derivative actions.⁵⁹ However, these mechanisms can be challenging to initiate and pursue in Nigeria. There is absence of specific legal precedents and established mechanisms for holding directors personally accountable for failing to adequately consider and manage climate-related risks. This enforcement gap is further underscored by the lack of climate-specific litigation targeting directors. In the absence of clear legal consequences for neglecting such risks, existing statutory and fiduciary duties may lack the necessary force to compel meaningful shifts in corporate behavior toward sustainability. However, recent global cases are pushing the boundaries of corporate accountability for climate inaction. In *Client Earth v Shell Plc*⁶⁰, a UK-based environmental law charity brought a derivative action against Shell's board, arguing that its climate strategy failed to meet the requirements of the Paris Agreement and posed significant transition risks to the company. Although the claim was ultimately dismissed, it underscored a growing willingness to test legal theories connecting directors' duties and climate governance.

5.3 Absence of Mandatory Climate Risk Disclosure Requirements

Currently, there are no mandatory regulations in Nigeria requiring companies to disclose their climate risks, strategies, and performance in a standardized and comprehensive manner. While some progressive companies may voluntarily disclose such information, the lack of a legal mandate means that many do not. This lack of transparency hinders investors, stakeholders, and regulators from assessing companies' exposure to climate risks and their preparedness for the transition to a low-carbon economy. Without mandatory disclosure, it is difficult to hold directors accountable for their oversight of climate-related matters.

5.4 Lack of Capacity Building and Awareness

There is a significant lack of awareness and capacity building among Nigerian directors regarding climate change as a material financial and systemic risk. Many directors may lack the expertise and understanding necessary to effectively identify, assess, and manage climate-related risks and opportunities. The lack of formal training and ongoing professional development in climate-related matters hinders directors from effectively incorporating climate considerations into corporate strategy, risk management, and decision-making. According to the Task Force on Climate-related Financial Disclosures, strong governance of climate risks demands that boards either possess or have access to the necessary expertise and mechanisms for comprehending and addressing these challenges.⁶² In countries like Nigeria, where corporate governance frameworks are still adapting to climate-related demands, this competency gap among directors increases the likelihood of regulatory noncompliance and insufficient disclosure.

⁴⁹*Ibid*, s 346.

⁶¹*Client Earth v Shell Plc* [2023] EWHC 1137 (Ch).

⁶²TCFD (Task Force on Climate-related Financial Disclosures). (2017). *Final Report: Recommendations of the Task Force on Climate-related Financial Disclosures*<<https://www.fsb-tcf.org/publications/accessed>> 16 April 2025.

5.5 Lag in Adopting Emerging Global Standards

Corporate governance is undergoing a global transformation, with increasing recognition of directors' responsibilities in addressing climate-related risks. The shift toward codifying these duties has emphasized the principle of double materiality, which requires companies to consider both financial materiality, meaning how climate change impacts business operations, and impact materiality, which refers to how corporate activities affect the environment and society. Various international frameworks, such as the Corporate Sustainability Reporting Directive⁶³⁶⁴ and the European Sustainability Reporting Standards⁶³ require companies to disclose based on double materiality considering both how climate change affects the company and how the company affects the environment and society.

Despite these advancements, Nigerian corporate governance still relies on a single materiality approach, where legal obligations only necessitate disclosure if environmental concerns directly affect financial performance. This limitation reduces transparency and constrains the role of corporate boards in promoting sustainability objectives. The Nigerian Code of Corporate Governance 2018 encourages sustainability principles⁶⁵ but does not incorporate double materiality nor mandate climate-related financial disclosures aligned with international best practices. The absence of such provisions risks excluding Nigerian companies from global value chains and limiting access to green investment opportunities, as international investors increasingly prioritize businesses with clear sustainability strategies. Additionally, the lack of alignment with international frameworks exposes Nigerian corporations to reputational risks, particularly in transnational investment contexts where climate governance standards are stricter. Inadequate legal requirements regarding climate risk disclosures may also lead to litigation challenges for Nigerian corporations operating in jurisdictions with more stringent corporate sustainability laws.

6. Conclusion and Recommendations

The analysis of climate risk within the framework of directors' legal duties under Nigerian corporate law underscores the increasing necessity for corporate directors to integrate climate considerations into their governance strategies. While the CAMA 2020 introduces environmental considerations in Section 305(3), this provision, alongside the broader legal landscape, exhibits significant gaps in explicitly mandating and detailing directors' responsibilities concerning climate-related risks, thereby underscoring the necessity for comprehensive legal reforms and enhanced regulatory guidance to ensure that Nigerian corporations effectively integrate climate considerations into their strategic decision-making and operational practices, ultimately fostering a more sustainable and resilient economic future for the nation. Besides, the ambiguity inherent in the geographically limited scope of the environmental duty outlined in CAMA 2020 fails to capture the systemic and long-term nature of climate risk, which transcends immediate operational environments and necessitates a broader perspective encompassing global impacts and interconnected vulnerabilities, thus potentially allowing directors to overlook significant climate-related exposures that could materially affect the company and the society at large.

Consequently, an amendment to CAMA 2020 is essential to explicitly include climate risk

⁶³Directive (EU) 2022/2464 of the European Parliament and of the Council' <<https://eur-lex.europa.eu/eli/dir/2022/2464/oj7eng>> accessed 16 April 2025.

⁶⁴EC, 'Corporate Sustainability Reporting' <https://finance.ec.europa.eu/capital-markets-union-and-financial-markets/company-reporting-and-auditing/company-reporting/corporate-sustainability-reporting_en> accessed 16 April 2025

⁶⁵ NCCG 2018, principle 26.

within the scope of directors' duties, moving beyond the current geographically limited environmental consideration to encompass the broader systemic and long-term implications of climate change for corporate entities, thereby providing a clear legal mandate for directors to actively identify, assess, and manage these risks. Moreover, to enhance corporate sustainability reporting and align with global best practices, Nigeria should adopt double materiality standards. Thus, Nigerian regulators should integrate financial and impact materiality into corporate reporting requirements. Initiatives for capacity building and awareness programs targeting Nigerian directors are also necessary to equip them with the knowledge and skills required to effectively understand and manage climate-risks, fostering a greater level of expertise within corporate boards. Moreover, periodic monitoring and evaluation of the effectiveness of these legal and regulatory reforms will be necessary to ensure their adequacy in addressing the evolving challenges of climate change and in promoting a resilient and sustainable corporate sector in Nigeria, thereby fostering a continuous improvement approach to climate risk governance.