



A Review of Nigeria's Climate Change Act, 2021



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Introduction

On 18 November 2021, President Muhammadu Buhari signed into law the Climate Change Bill 2021 following the passing of the bill by the Senate just a month earlier on 13 October 2021. The Climate Change Act 2021 (the “Act”) has been described as one of Nigeria’s life-changing laws. Given the increasing need for environmental sustainability, low-carbon climate-resilient development and ecosystem conservation, Nigeria has joined frontline nations of the world and taken deliberate steps towards environmental sustainability and the preservation of earth.

The Act reinforces Nigeria’s commitment to the Paris Agreement on climate change and her updated Nationally Determined Contributions (“NDCs”) at the 26th Conference of Parties to the United Nations Framework Convention on Climate Change in Glasgow, which include cutting Nigeria’s carbon emissions to reach net-zero by 2060. The Act seeks to legislate Nigeria’s efforts towards climate change adaptation and mitigation measures including nature-based solutions.¹ If well implemented, the Act will create employment for the teeming youth and help Nigeria on her journey towards green recovery, and ultimately ensure that Nigeria creates a more environmentally friendly world for this generation and generations to come.

Private entities have obligations under the Act, and these are backed by sanctions for non-compliance. These are highlighted in more details below.

¹ Mitigation measures in the context of climate change means the efforts that seek to prevent or slow down the increase of atmospheric greenhouse gas concentrations by limiting current or future emissions and improving potential sinks for greenhouse gases.

Key Provisions of the Climate Change Act 2021

Objectives and Application

The Act provides a legal framework for reducing Greenhouse Gas Emissions (“GHGs”),² as well as promoting green growth and sustainable economic development within Nigeria. The Act aims to guide Nigeria in her decarbonation efforts as it sets a target for years 2050-2070, for the attainment of a net-zero GHG emission in Nigeria.³ The Act highlights the need to implement measures that promote a low carbon economy and sustainable livelihood as part of the decarbonation efforts and to develop action plans and mainstream climate change actions to achieve long-term climate objectives.

The Act applies to Ministries, Departments and Agencies (“MDAs”) of the Federal Government of Nigeria, and to private and public entities in Nigeria.⁴

The National Council on Climate Change

The Act establishes the National Council on Climate Change (the “Council”),⁵ which is empowered to make policies on all matters concerning climate change in Nigeria. The Council will be responsible for, amongst others:⁶

- Overseeing the implementation of the Action Plan;
- Administering the climate change fund established under the Act;
- Ensuring mainstreaming of climate change into national development plans;
- mobilising financial resources to support climate change actions;
- Developing a mechanism for carbon tax in Nigeria, as well as developing and implementing a mechanism for carbon emission trading;⁷ and
- Coordinating the implementation of sectoral targets and guidelines for the regulation of the GHG emissions and other anthropogenic causes of climate change.

The membership of the Council will be as follows: the President of the Federal Republic of Nigeria as Chairman, the Vice President as the Vice Chairman, ex-officio members including the Ministers responsible for Environment, Petroleum Resources, Budget and National Planning, Justice, Mines and Steel Development, Finance, Agriculture and Rural Development, Power, Women Affairs, Transportation, Water Resources, the Director-General of the Secretariat, Governor of the Central Bank of Nigeria, the National Security Adviser, Chairman of the Nigerian Governors’ Forum, and the President of the Association of Local Governments of Nigeria. Members of the public who may be appointed into the Council include representatives of women, youths, persons with disabilities, environment related Civil Society Organisations (CSOs) and the private sector on climate change.⁸

² Greenhouse gases or GHGs means the constituents of the atmosphere that contribute to the greenhouse effect and includes carbon dioxide; methane; nitrous oxide; hydro fluorocarbons; per fluorocarbons, sulphur hexafluoride; and indirect greenhouse gases.

³ Section 1 of the Act.

⁴ Section 2 of the Act.

⁵ Section 3 of the Act.

⁶ Section 4 of the Act.

⁷ For this, the Council will collaborate with federal bodies such as the Federal Inland Revenue Service (FIRS), the Federal Ministry of Environment and the Federal Ministry of Trade

⁸ Section 5 of the Act.



To reduce GHG emissions and consequently mitigate climate change disasters in Nigeria, the Federal Ministry of Environment (“FME”) is required set up a registry with sub-national nodes for capturing REDD+⁹ activities in the country. In the same vein, the Council shall adopt nature-based solutions, as well as provide fiscal support for all REDD+ activities¹⁰.

The Act also empowers the Council to collaborate with the National Bureau of Statistics to establish Nigeria’s Natural Capital Account and the data accumulated from the account will be used in the development of an action plan and policy formulation in line with the carbon budget¹¹.

The Secretariat

The Act also establishes a Secretariat,¹² headed by the Director-General, and which will be responsible for, amongst others, advising and assisting the Council in the performance of its duties; monitoring, verifying and reporting progress of the Action Plan; periodically reviewing the Action Plan; providing analytical, scientific and analytical advice to the Council;¹³ appointing staff for the Council;¹⁴ and for keeping accounts, auditing and submitting reports to the Council on the Council’s income and expenditure.¹⁵

The Act empowers the Secretariat with the approval of the Council to work in partnership with governmental agencies, civil society organisations, as well as members of the society in order to execute projects that are related to climate advocacy¹⁶. With the approval of the Council, the Secretariat will also partner with MDAs responsible for regulating educational curriculum in Nigeria to ensure that climate change is integrated into various subjects and disciplines across all educational levels as well as support scientific research and other similar projects.¹⁷

⁹ Section 28 (2) of the Act defines REDD+ to mean Reducing Emissions from Deforestation and Forest Degradation and the role of conservation, sustainable management of forests and the enhancement of forest carbon stocks.

¹⁰ Section 27 & 28 of the Act.

¹¹ Section 29 (1) & (3) of the Act.

¹² Section 7 of the Act.

¹³ Section 8 of the Act.

¹⁴ Section 13(1) of the Act.

¹⁵ Section 16(1) & (2) of the Act.

¹⁶ Section 25 (1) of the Act.

¹⁷ Section 26 (1) & (2) of the Act.

Climate Change Fund

The Act establishes a Climate Change Fund (the “Fund”) to be maintained by the Council. The Fund will be a collection of sums appropriated by the National Assembly for the running of the Council; funding from international organisations and funds due to Nigeria for meeting her NDCs;¹⁸ carbon tax and emissions trading and such other funds the Council may prescribe from time to time. The Fund was essentially created to, amongst others, fund innovative climate change mitigation and adaptation projects with the Council’s approval; cater to the administration and operations of the Council; support climate change advocacy and information dissemination; and incentivize private and public entities for their efforts towards transiting to clean energy and sustaining a reduction in GHG emissions. Emoluments, salaries, benefits and other remunerations or allowances are also paid from this Fund.¹⁹

Carbon Budget

The Act empowers the FME, together with the Federal Ministry for National Planning, to set a carbon budget for Nigeria in order to keep average increases in global temperature within 2°C and pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels.²⁰ The Act defines “carbon budget” to mean the approved quantity of GHG emission that is acceptable over a specified time. The Ministries are also empowered to periodically revise the carbon budget in line with Nigeria’s NDCs.²¹ The carbon budget, along with any revisions, must be submitted to the Federal Executive Council for approval before it can be effective.

National Climate Change Action Plan

The Act provides for the formulation of an Action Plan every five-year cycle by the Secretariat together with the FME and the Federal Ministry for Budget and National Planning.²² The first Action Plan must be produced within 12 months from the commencement date of the Act, and it must be published to the public for consultation for a period not less than 8 weeks before it is eventually submitted to the Council and Federal Executive Council for approval.²³

The Action Plan will serve as a basis for identifying the activities aimed at ensuring that the national emissions profile is consistent with the carbon budget goals and establishing national goals, objectives and priorities on climate adaptation.²⁴ The Action Plan also prescribes, among other things, mechanisms and measures for setting out a structure for public awareness and engagement in climate change actions and achieving Nigeria’s climate change goals.²⁵

The Action Plan comprises an articulated carbon budget for the five-year cycle consistent with the carbon budget, an articulated annual budget for each of the years making up the five-year cycle; past, current and projected GHG emission profile of GHG emission sectors of the economy; details of past, current and proposed climate mitigation and adaptation actions across sectors of the economy; details on the compliance level with international climate commitments; and proposed incentives for private and public entities, which achieve GHG emission reduction.²⁶

¹⁸ The Act defines NDCs as national climate plans highlighting climate actions, including climate related targets, and policies and measures that government aims to implement in response to climate change, and as a contribution to global climate action.

¹⁹ Section 15 of the Act.

²⁰ Section 19 of the Act.

²¹ Section 35 of the Act.

²² Section 20(1) of the Act.

²³ Section 20(2) and (3) of the Act.

²⁴ Adaptation measures are actions taken or interventions made to help communities and ecosystems cope with changing climate conditions.

²⁵ Section 20(4) of the Act.

²⁶ Section 20(5) of the Act.

The Director-General of the Secretariat is expected to submit a detailed report on the state of the nation with regards to climate change to the Council and National Assembly Committees on Climate Change within a year of formulating the Action Plan for the first five-year cycle and for subsequent cycles as well.²⁷

Obligations Relating to Climate Change

The Act imposes certain obligations on certain bodies regarding climate change actions in Nigeria. The obligations stipulated by Act are detailed below:

MDAs

MDAs are obligated to establish a climate change desk responsible for ensuring the integration of climate change activities into their core mandate. They are also expected to adhere to the annual carbon emission reduction targets in line with the Action Plan and carbon budget. The Ministry for Finance, Budget and National Planning must ensure that all budget proposals submitted by the MDAs have been properly vetted and costed for climate change considerations and that adequate allocation is provided for the MDAs in the annual budget. Any MDA that fails to meet its carbon emission reduction target will be subjected to a review, and its principal officers upon being found liable, shall be sanctioned, and where appropriate fined as determined by the Council.²⁸

Public Entities

The Act defines a public entity as an organisation or body providing services to the public on behalf of the Nigerian government. Public entities under the Act do not have defined obligations imposed on them however, the Council may by regulations impose obligations on them. These obligations may be varied or revoked where necessary.²⁹

Private Entities

The Act defines a private entity as a person or body with functions of a private nature. It includes bodies registered under the Companies and Allied Matters Act 2020. Private entities with more than 50 employees are obligated to put measures in place to achieve annual carbon emission reduction targets in line with the Action Plan, and also designate a climate change officer or Environmental Sustainability Officer responsible for submitting annual reports on the entity's efforts to meet its carbon emission reduction and climate adaptation plan to Secretariat, through the State Director.³⁰ A private entity which fails to meet its annual carbon emission reduction targets is liable to a fine determined by the Council. In fining the private entity, the Council is expected to rely on a system of Environmental Economic Accounting with attention on health impacts, impact on climate variation and total damage to ecosystem services.³¹

In addition to the foregoing, the Council may by notice in the Federal Government Gazette impose on the private entity the obligation to prepare reports on the status of its performance in relation to climate change obligations and prescribe the period for reporting. A private entity that fails to comply with its climate change obligations may also be required by the Council through such notice to prepare a report within a specified time, on its past,

²⁷ Section 21 of the Act.

²⁸ Section 22 of the Act.

²⁹ Section 23 of the Act.

³⁰ Section 24(1) of the Act.

³¹ Section 24(2) of the Act.

current and future actions to be taken to secure future performance with their climate change obligations.³²

Conclusion

The timely signing into law of the Climate Change Bill and the establishment of a National Council on Climate Change are commendable. However, based on Nigeria's experience with the gas flaring laws, legislation alone without full and effective implementation is futile. As such, the Act will only achieve its set objectives if stakeholders are properly educated and the law itself is well implemented. It is recommended therefore that the committee drawing up the Action Plan should set out clear strategies and steps for the implementation. It should be noted finally that the full implementation of the Act may ultimately impact on oil and especially gas revenues and this is not particularly good news for a country with one of the world's largest gas reserves. Like other oil and gas rich countries, Nigeria must therefore intensify its efforts to prepare for a post crude era in order to properly position itself in the future "green era".



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