



# The Climate Change Act (2021): One year After



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Today, more than one year after the Nigerian Climate Change Act has become law, its promise remains unrealized. The institutions that it established have been slow to become operational and have not yet begun to work as closely with other regulators as they need to. These tendencies to work slowly and alone need to be reversed sooner than later.

## Introduction

The effects of hydrocarbon emissions on the environment are well-documented and cannot be overstated. The combustion of hydrocarbon fuels leads to the release of carbon dioxide (CO<sub>2</sub>) as well as other greenhouse gases (“GHG”) into the atmosphere. The consequences of climate change as a result of the emission of large quantities of hydrocarbons as well as carbon dioxide into the environment over the years are many. They include rising sea levels (evidenced by an alarming increase in incidents of flooding globally<sup>1</sup>), unprecedentedly harsh weather conditions<sup>2</sup>, the melting of the polar ice caps<sup>3</sup>, and other grave adverse environmental conditions.

Carbon dioxide is an element present in GHG. It is released when hydrocarbon fuels burn the earth.<sup>4</sup> Hydrocarbons are compounds of hydrogen and carbon elements. They are present in petroleum, natural gas, coal, and bitumen.<sup>5</sup>



Understandably, the global campaign to reduce heavy releases of carbon dioxide, hydrocarbons and GHG into the environment has become more and more concerted. These global efforts have been championed in global palaces of power by way of municipal laws and treaties. For instance, the Paris Climate Accords of 2015 (“**Paris Convention**”) aims to strengthen the global response to the threat of climate change in the context of sustainable development by (a) limiting the global average temperature rise to below 2°C above pre-industrial levels initially and eventually limit it to 1.5°C, and (b) increasing countries’ ability to adapt to the adverse impact of climate change,

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<sup>1</sup> As of the time of going to press, the body count of Florida’s Hurricane Ian has exceeded the 100 mark. At home, troubling pictures of the residents of Lokoja, Kogi State rowing their way through flooded streets are littered in the blogosphere. <https://dailypost.ng/2022/10/04/kogi-flood-two-dead-as-boat-capsizes-in-lokoja/> accessed on October 6, 2022.

<sup>2</sup> For instance, the United Kingdom’s much-decried heat wave of Q32022.

<sup>3</sup> [Experts have warned, for instance, that the continued melting of the Arctic ice portends catastrophe for the planet.](https://www.bbc.com/news/health-61888888)

<sup>4</sup> <https://climatekids.nasa.gov>

<sup>5</sup> <https://www.britannica.com>

foster climate resilience and low GHG development, in a manner that does not threaten food production.<sup>6</sup>

The global efforts have also been championed in corporate offices. For example, the increasing reluctance of leading global banks to finance hydrocarbon projects affirms this.<sup>7</sup> Desiring not to be left behind in the global fight against climate change and in line with Nigeria's treaty obligations under the Paris Convention and other Conventions such as the United Nations Framework Convention on Climate Change and the Kyoto Protocol, the Nigerian National Assembly has passed the Climate Change Act 2021 (the "**CC Act**") into law. The Act was assented to by President Muhammadu Buhari on November 18, 2021. However, the Federal Government has been too slow to implement the CC Act and needs to do so far more inclusively than it has been doing.

### ***The CC Act: Institutions and Appointments***

The CC Act established the National Council on Climate Change (the "**Council**"). The Council's central objective is to ensure the formulation and implementation of the elements of the first five-year cycle and subsequent cycles of the National Climate Change Action Plan (the "**Action Plan**").<sup>8</sup> The Director-General of the Council is to submit to the Council and the National Assembly Committee on Climate Change a detailed report on the state of the nation with respect to climate change (the "**Report**"). The Report is to cover issues and topics ranging from the identification of different impact elements of climate change on the population to the fines to be levied against, and payable by, private and public entities for non-compliance with the CC Act.<sup>9</sup>

A Director-General of the Council has been appointed in 2022. The Council itself was inaugurated in late September 2022. Understandably since two key officers have been empanelled only recently, there has been no progress of note on developing a national policy document to spearhead the nation's effort at addressing climate change challenges.

### ***The CC Act: Budgets, Plans and Contributions***

The CC Act notably introduced into Nigerian law the concept of a "carbon budget".<sup>10</sup> It also saddles the Federal Ministries of Environment and National Planning with the responsibility of setting up a "carbon budget" for Nigeria.<sup>11</sup> The objective of the carbon budget is to keep average increases in global temperature below 2°C and pursue efforts to limit temperature increases to 1.5°C above pre-industrial levels.

This is in line with Nigeria's Nationally Determined Contributions (**NDCs**) and with a view to complying with Nigeria's international treaty obligations.<sup>12</sup> ("Nationally Determined Contributions" or NDCs means national climate plans highlighting climate actions, including climate related targets and policies and measures that the Nigerian government aims to

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<sup>6</sup> Paris Convention, art. 2.

<sup>7</sup> [The European Investment Bank announced in Q4, 2021 that it would end all loans to oil and gas firms.](#)

<sup>8</sup> Section 20 Climate Change Act 2021.

<sup>9</sup> Section 21 (1) Climate Change Act 2021.

<sup>10</sup> "Carbon Budget" means the approved quantity of GHG emissions that is acceptable over a specified time. Section 35 of the Climate Change Act.

<sup>11</sup>Section. 19(1) of the Climate Change Act.

<sup>12</sup> Section 19(1) Climate Change Act 2021. The Paris Agreement 2015 requires countries which are signatories to it, such as Nigeria, to limit the global average temperature rise to below 2°C above pre-industrial levels and to aim for 1.5°C in the long run. <https://www.reuters.com/business/cop/whats-difference-between-15c-2c-global-warming-2021-11-07/> accessed June 2, 2022.

implement in response to climate change and as a contribution to global climate action.) It is expected that Nigeria's first carbon budget would be announced in November 2022, and that it will set annual emission reduction targets over a five-year period.<sup>13</sup>

The Secretariat of the Council in consultation with the Federal Ministries responsible for Environment and Budget and National Planning respectively, is obligated to formulate an Action Plan in every five-year cycle. The Action Plan is to be produced not later than 12 months from the commencement of the CC Act. The Action Plan is to serve as a basis for (i) identifying the activities aimed at ensuring that the national emissions profile is consistent with the carbon budget goals and (ii) establishing national goals, objectives and priorities on climate adaptation.

The Action Plan is to prescribe measures and mechanisms (i) for identifying and assessing risks, vulnerabilities and extreme instances of the impact of climate change on vulnerable communities and population and eco-systems', (ii) for setting out actions for mainstreaming climate change responses into sector functions, (iii) for identifying actions for adaptation and mitigation against climate change, (iv) geared towards mainstreaming climate change disaster risk reduction actions in development programmes.

The Action Plan is also to prescribe measures and mechanisms (v) for setting out a structure for public awareness and engagement in climate change actions, (vi) for identifying strategic areas of national infrastructure requiring climate proofing, (vii) to enhance energy conservation, efficiency and the use of renewable energy in industrial, commercial, transport, domestic and other uses, (viii) for reviewing levels and trends of greenhouse gas emissions and (ix) for achieving Nigeria's climate change goals.<sup>14</sup>

### ***The CC Act: Co-operation with other regulators***

It is very important to have a much more coordinated approach to ensure that the objectives of the CC Act are met. Such an effort has to cut across the several sectors of the Nigerian economy. A clarion call should be sounded to the regulators of the various economic sectors to introduce and enforce regulations consistent with the wider agenda of the CC Act, but bespoke to the needs and peculiarities of each regulated economic sector.

The CC Act mandates the Federal Ministry of Environment to publish detailed national, regional and sectoral climate vulnerability and risk assessments which would serve as the basis for the adaptation of components of the Action Plan to be formulated and implemented by the Council.<sup>15</sup> For instance, the Council is to collaborate with the Federal Ministry of Environment to develop and implement a mechanism for carbon emission trading as contemplated under the CC Act.<sup>16</sup>

Many observers say that the oil and gas and power sectors have historically not done as well as they should have as far as industrial greenhouse gas emission in Nigeria is concerned. In saying so, one cannot deny the several governmental measures aimed at curbing gas-flaring. These have ranged from requiring producers to (i) submit detailed utilization plans for "associated gas" produced in the course of oil production, (ii) as the case may be, re-inject associated gas where a utilization scheme is not feasible and (iii) pay gas-flaring penalties. They also include the FGN

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<sup>13</sup> <https://www.climatechangenews.com/2021/11/22/nigeria-commits-annual-carbon-budgets-reach-net-zero-climate-law/> accessed August 5, 2022.

<sup>14</sup> Section 20 Climate Change Act 2021.

<sup>15</sup> Section 19(5) climate Change Act 2021.

<sup>16</sup> Section 4(j) Climate Change Act 2021.

relaunching the gas flare commercialization programme where flared gas is offered for sale to buyers through a competitive and transparent process.

Notwithstanding such measures, it is fair to say that significant CC Act-driven interventions by, for example the Federal Minister for Petroleum Resources and the Nigerian Electricity Regulatory Commission (the regulator of the electric sector in Nigeria) are still needed. However, with the enactment of the Petroleum Industry Act 2021 (the “PIA”) significant improvements are expected in the environmental practices of oil firms. For instance, the PIA requires the storage, application and transportation of radioactive materials and other equipment generating ionizing radiation in oil and gas operations to comply with the Nuclear Safety and Radiation Protection Act.<sup>17</sup> Regulators<sup>18</sup> have been established pursuant to the Act. It has shown itself to be resolute and ambitious, but these are still early days in its life.

Considering Nigeria’s developmental needs and its historical reliance on its extractive natural resources, a wholesale and radical transition that calls for the abandonment of fossil fuels is certainly not immediately practicable. A much more coordinated and incremental approach has to be taken if the several emission goals are to be attained. The CC Act rightly requires the Director-General of the Council to state in its submitted report privileges granted to public and private entities to incentivize them to transit to clean energy,<sup>19</sup>

Further efforts can also be directed at making investments in renewable energy sources attractive for actors by way of tax concessions and rebates. Meaningful change and the attainment of the lofty objectives set by the CC Act will require harmonized regulatory efforts from all of the sector regulators concerned.

## Next Steps: Conclusion

It is expected that any efforts to develop the “carbon budget” and the “climate action plan” agenda will countenance inputs from the stakeholders in all sectors of the economy. There should be town hall meetings and communitywide engagements with industry players in all economic sectors with a view to producing a comprehensive and robust action plan and carbon budget that are practicable in the Nigerian context. It is hoped that progress will be made on these and other fronts sooner rather than later.

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<sup>17</sup> Section 225 of the Petroleum Industry Act 2021.

<sup>18</sup> The Nigerian Midstream and Downstream Petroleum Regulatory Authority and the Nigerian Upstream Petroleum Regulatory Commission.

<sup>19</sup> Section 21(2)(i) Climate Change Act 2021.

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