



NIGERIAN INSTITUTE OF  
ADVANCED LEGAL STUDIES



**NIALS  
DIGEST**



**Jan, 2022**



in

**HONOUR**

of

**PROF. IGNATIUS AYUA, SAN, OFR, FNIALS**  
Former Director General NIALS  
Born 5-5-1948 - Died 23-1-2022



**Editor-In-Chief**  
Prof. M.T. Ladan, PhD

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## MOTTO

Knowledge that makes the Difference.

## MISSION

To be the nucleus and hub of legal research and advanced studies in law in Nigeria.

## OUR VISION

To be a world class institution that is the primary source of information, training and advice at the highest level of policy formulation on legal matters, effectively impacting on local and international institutions in the development of law.


## NIALS ENABLING ACT

Commencement Establishment of the Nigerian Institute of Advanced Legal Studies

- (1) There is hereby established an institute to be known as the Nigerian Institute of Advanced Legal Studies (in this Act referred to as “the Institute”) which shall have the functions assigned to it by this Act.
- (2) The Institute shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name.

## MEMBERSHIP OF THE COUNCIL, etc.

- (1) There shall be established for the management of the affairs of the Institute a body to be known as the Nigerian Institute of Advanced Legal Studies Council (in this Act referred to as “the Council”)
- (2) The Council shall consist of the following members, that is
  - (a) a Chairman to be appointed by the President;
  - (b) a representative of the Federal Ministry of Justice,
  - (c) a representative of the Federal Ministry charged with responsibility for higher education;
  - (d) six Deans or Heads of Faculties, or other formations



of Nigerian Universities offering degree courses in law at not less than post-graduate level, to be appointed by the President; the Director-General of the Nigerian Law School; one member of the Judiciary nominated by the Chief Justice of Nigeria; the President of the Nigerian Bar Association; five persons of whom one shall be a woman to be appointed by the President; and the Director-General of the Institute.

(3) The provisions of the Schedule to this Act shall have effect with respect to the proceedings of the Council and the other matters therein mentioned.

### **FUNCTIONS OF THE COUNCIL**

(i) Council shall be responsible for the determination of the overall policy of the Institute and in particular for the financial and operational programmes of the Institute and for ensuring implementation of such policies and programmes.

(ii) Without prejudice to the generality of subsection of this section, it shall be the duty of the Council to approve the research and training programmes of the Institute, determine the fees to be paid for research, consulting, training and any other services that may be offered by the Institute and promote or undertake any other activity that in the opinion of the Council is calculated to help achieve the purposes of the Institute.

### **NIALS ANTHEM**

Ever questioning,  
Ever Probing,  
Nigerian Institute of Advanced Legal Studies!  
Vision foretold by founding fathers,  
Ideas nurtured by patriotic fervor,  
Urging us to make the difference,  
And be the nucleus of legal studies,  
With passion and hope our mandate deliver,  
And be the best that we can be,  
A truly world class institution,  
Nigeria's law abode!

# GOODNIGHT TO

**PROF. IGNATIUS AYUA, SAN, OFR, FNIALS**

Former Director General NIALS

**T**he Director-General, Nigerian Institute of Advanced Legal Studies, NIALS, Professor Muhammed Ladan has expressed shock over the demise of a former Director-General of the Institute, Prof Ignatius Akaayar Ayua, SAN.

According to a press statement personally signed by Prof. Ladan and made available to the public, he commiserated with the immediate family of the deceased, describing the death of Prof. Ayua as a loss not only to his family, but to the Nigerian Institute of Advanced Legal Studies as well as the Body of Senior Advocates of Nigeria and to the entire legal profession in Nigeria.

Prof. Ladan paid glowing tribute to the late Professor Ayua, adjudging him a pathfinder who distinguished himself in the legal profession and successfully carved a niche for himself as a lawyer of repute.

Though pained by his demise, Prof. Ladan took solace in the fact that late Prof Ignatius Ayua's worthy services to Nigeria especially as Nigeria's Solicitor-General (2003 to 2008), his sojourn and impact in the teaching and evolution of Law practice in Nigeria through his inexhaustive list of publications and his contributions to Constitutional development in Nigeria through his appointment as a Member of Constitutional Review Committee (CRC) in 1984.

While appreciating Prof. Ayua's leadership stint and achievements as Director-General of NIALS between 1995 and 2003, Prof Ladan identified courage, transparency, rich understanding of Law Practice and a reputation of excellence as virtues which Prof Ayua would be missed for.

According to Prof. Ladan, the late Prof Ignatius Ayua, SAN paid his dues, made his mark and successfully wrote his name in gold in the Nigerian Legal space through his enviable profile, he implored members of the Nigerian Bar and bench to take a cue from the deceased's track record of service.

Prof Ignatius Ayua, SAN died on Sunday, January 23, 2022 at the age of 72.


## FAREWELL TO OUR HERO: PROF IGNATIUS AYUA, SAN, RENOWNED LAW SCHOLAR

On Wednesday, May 5, 1948, the cry of a baby was heard in the commercial town of Gboko, Benue State. No one knew that on that fateful day, an enigma was birthed.

Young Ignatius Akaayar Ayua had his primary school education at St. Michael's Secondary School, Aliade between 1963 and 1967; Government College, Keffi between 1968 and 1969.

He studied at The Ahmadu Bello University, Zaria from 1970 to 1973; and 1975-1976 University of Birmingham, United Kingdom, 1977-1979; and the Nigeria Law School in Lagos, 1982-1983.

Prof Ignatius Ayua, SAN is a renowned Professor of Law, an astute legal consultant and distinguished academician of the Ahmadu Bello University, Zaria also known as ABUSITE.



He kickstarted his lecturing career with his alma-mater; the Ahmadu Bello University, Zaria, where he rose through the ranks from being an Assistant Lecturer in 1974 to becoming the Head of Department, Commercial Law in 1981. He was appointed Sub-Dean of the Faculty of Law in 1985; became Dean of Law in 1986 and was Deputy Vice Chancellor, Ahmadu Bello University, Zaria in 1991 from which position he withdrew into politics.

Professor Ignatius Akaayar Ayua brought his administrative and academic prowess to bear through his service to many academic bodies which include the Council of Legal Education; NUC Accreditation Panels to various Universities; National Judicial Institute; and Body of Appeal Tax Commissioners.

Away from core academics, Professor Ignatius Ayua served Nigeria in many capacities within the government circle, he was nominated by the Federal Government to serve as a Member of Constitutional Review Committee (CRC) in 1984, a Member of the Constituent Assembly in 1988 and Nigeria's solicitor general of the federation (2003 to 2008).

Professor Ayua published several books on Nigerian Company Law and Nigerian Tax respectively; he has many Articles in Learned Journals on topical Issues; he edited several titles on different areas of law and he attended and presented papers at several local and international fora.

Professor Ignatius Akaayar Ayua belongs to several professional bodies such as Nigerian Bar Association; Chartered Institute of Taxation of Nigeria and Institute of Management Consultants.

He was a recipient of several honours and awards amongst which are: Winner, Faculty of Law and Nigerian Regional Philips C. Jessup International Law Moot Court Competition; Award for Pro-Active Contribution in respect of the Nigerian Common Boundary Dispute by International Court of Justice (ICJ), Hague.

Professor Ignatius Akaayar Ayua was the Director, Nigerian Institute of Advanced Legal Studies between 1995 - 2003 within which time he made indelible mark in the Institute.

In acknowledgment of his dedicated and immense contribution to University Scholarship and the Legal Profession of the nation, Professor Ignatius Ayua was conferred with the award of Officer of the Order of the Federal Republic (OFR).

[Prof. Ignatius Ayua](#) was part of the Nigerian legal team to the World Court case between Nigeria and Cameroon. He served alongside Chief Anyim Pius Anyim, who was then, Nigeria's Senate President between 2000 - 2003.

Other notable personalities Prof. Ayua served with are former Federal Attorneys -General and Ministers for Justice, Chief Richard Akinjide, SAN and Alhaji Abdullahi Ibrahim, SAN, Mrs. Nella Ewa, from Cross River State, former Senior Special Assistant to the President on Legal and Constitutional Matters, Mr. Maxwell Gidado PhD SAN, and Late Prof. Olisa Chukurah, SAN.

#### **List of HONOURS & PREFERMENTS:**

- Federal Scholar, Ahmadu Bello University (1971).
- Director-General, Nigerian Institute of Advanced Legal Studies (1995 - 2003)

- Member, Constitution Assembly (1988).
- Member, Constitution Review Committee ([1984 - 1988](#)).
- Member, Nigerian Universities Commission Committee on Standard of Legal Education in Nigeria.
- Fellow, Nigerian Institute of Advanced Legal Studies.
- Dean, Faculty of Law, Ahmadu Bello University ([1986-1990](#)).
- Solicitor General of the Federation and Permanent Secretary, Federal Ministry of Justice ([2003-2008](#)).

### **LIST OF LEGAL PUBLICATIONS:**

- Nigerian Company Law, Graham Burn Publishers; 1984.
- Nigerian Tax Law, Spectrum Books.
- Nigerian Commercial Laws: Problems and Perspectives(editor), ABU Zaria; 1984.
- Privatisation of Government-owned Banks and Issue of Ownership and Control (Legal and Economic Perspectives), (editor). NIIA;1996.
- Rights of the Child in Nigeria (editor) Nil A; 1995.
- The New Law of the Sea (editor), NIIA;1999.
- Issues in the 1999 Constitution (editor) Nil A; 2000

Until his demise on Sunday, January 23, 2022, Prof. Ignatius Akaayar Ayua was the Principal Partner, Ayua, Horn & Co. / Director General-Abuja Law & Development Institute

He is survived by his lovely wife and four children.

ADALIKWU GODWIN ATSU  
DIS (INFORMATION/PROTOCOL)



**Late Prof. Ignatius Ayua (SAN)**



**Mrs. Victoria Awomolo (SAN), Late Prof. Ignatius Ayua, Prof. Epiphany Azinge, (SAN), Prof. Yinka Omorogbe (SAN)**



**L.R: Prof. Ignatius Ayua & Hon. Justice Mahmud Mohammed**



**L.R: Prof. Charles Ilegbunem, Hon. Justice Mary Odili, Late Prof. Ignatius Ayua**



**L.R: Hon. Justice Mary Odili, Late Prof. Ignatius Ayua (SAN) & Hon. Justice Uwais (Rtd)**



**Late Prof. Ignatius Ayua (SAN) and Prof. Epiphany Azinge (SAN)**



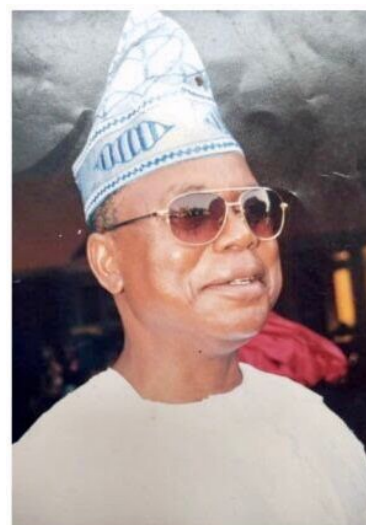
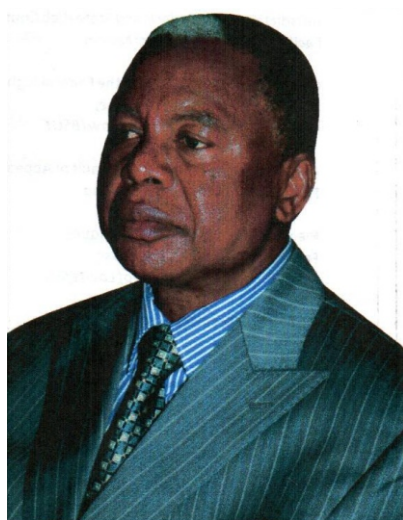
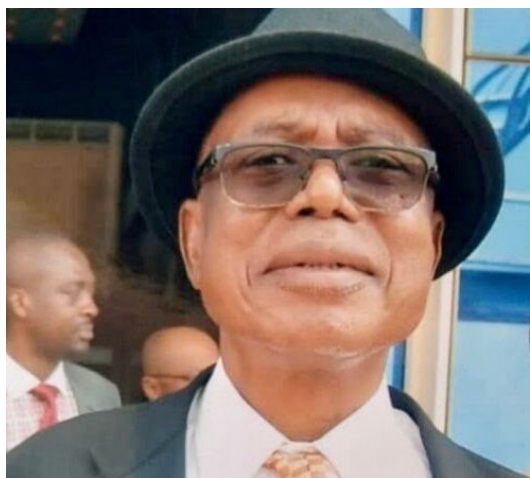


Prof. Ignatius Ayua 2nd from the left during the Roundtable on 2011 Elections: Imperatives and Challenges for Credible Elections



(L-R): Professor I. A. Ayua, SAN (former D.G. NIALS), Professor Epiphany Azinge, SAN (D.G. NIALS) and Mr. Demola Seriki, Hon. Minister of State for Interior, at the Opening Ceremony of Institute's Roundtable held on the 19th January, 2010, at the Institute's Auditorium, University of Lagos Campus, Akoka - Lagos





Prof. Adedeji Adekunle (SAN) & Late Prof. Ignatius Ayua (SAN)



# Nigerian Institute of Advanced Legal Studies

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## DIRECTOR - GENERAL

Professor Muhammed Tawfiq Ladan, PhD  
Hubert Humphrey Fellow, U.S.A

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Date: 24<sup>th</sup> January, 2022

Hon. Justice P.M. Ayua  
No. 1 Rudoff Close,  
Off Limpopo Street,  
Maitama, Abuja

Dear Hon. Justice P.M. Ayua,

## CONDOLENCE MESSAGE

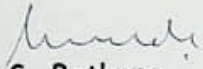
It is with deep sense of grief that we received the shocking news of the demise of Professor Ignatius Akaayar Ayua SAN, OFR, FNIALS.

2. The Director-General, Professor Muhammed Tawfiq Ladan, on behalf of Governing Council, Management and entire staff of the Institute conveys our heartfelt condolences to you and the entire family over the great and monumental loss. We pray God to grant you inner strength and sustained comfort to bear the irreplaceable loss.

3. We recall the great role he played in uplifting NIALS when he meritoriously served as its Director-General. He elevated it to enviable heights as a world class legal research Institute and this remains a reference point in the Institute. We shall continue to remember him as an icon, role model, indefatigable legal Professor of international repute and a distinguished administrator par excellence.

4. He played his noble role while in active service and has left his name in the footprints of sand. May Almighty God grant his gentle reposed soul peaceful rest and sustained comfort and courage to the family left behind.

5. We sincerely empathise with you My Lord over the loss. May his soul rest peacefully with the Lord.

  
**James G. Bathnna**  
Director, Administration and Legal Services  
For: Director-General

Cc: Director-General

**CONDOLENCE VISIT TO LATE PROF. AYUA'S FAMILY BY NIALS TOP LEVEL MANAGEMENT STAFF LED BY PRINCIPAL OFFICER, JOHN YAWE (INSTITUTE BURSAR), DANJUMA TANGNI (DIRECTOR COUNCIL AFFAIRS), DAVID EZE (DIRECTOR EXPENDITURE), CHARITY ADDINGI (DIRECTOR PRESS) AND UKPI ITIZA (PAS LEAVE MATTERS)**





# **NIGERIA'S CLIMATE CHANGE ACT AND POLICY 2021 AND THE FUTURE OF CLIMATE LITIGATION**

**BY**

**PROF. MUHAMMED TAWFIQ LADAN, PhD  
(HUBERT HUMPHREY FELLOW, USA)**

**ECOWAS AND NIGERIA NATIONAL RAPPOREUR OF  
THE GLOBAL CLIMATE LITIGATION NETWORK, USA**

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## **Background**

The importance of law in regulating climate change response is evident in the upswing of climate change laws over the last two decades. (the Sabin Center for Climate Change Law, Columbia University, USA).

This is partially attributable to the dynamism in international negotiations on climate change but also a growing appreciation of the crucial role that national laws and policy measures play. ([The Paris Agreement on Climate Change, 2015](#))

National laws on environment, energy and climate change typically follow the enactment of international agreements in order to support implementation. Legislative instruments therefore can and do play a critical role in empowering governments to take urgent and strategic actions, especially climate actions, by creating legal certainty and powerful incentives and disincentives; providing for institutional mechanisms to facilitate a more coordinated, effective and mandatory response. ([Nigerias Climate Change Act, 2021](#)). Since the conclusion of the Paris Agreement on climate change, a few African Countries like Kenya and Nigeria have promulgated specific / dedicated climate change laws, while many have sectoral legislations, others have pursued or are pursuing amendments to existing laws that take into account climate change considerations. ([Kenyan Climate Change Act, May 2016 and Nigerias Climate Change Act, 17 November 2021](#))

Most of the initiatives in Nigeria's Climate Change Act, 2021, build on existing climate change policies and the National Determined Contribution (NDC) devised in accordance with the Paris Agreement. ([Nigerias Revised National Climate Change Policy, June 2021 and the national climate change programmes for Nigeria, 2021; Nigerias 2050](#))



[Long-Term Low Emission Vision, 2021; Nigerias First Nationally Determined Contribution, July 2021](#)).

In 2020, greenhouse gases (GHG) or CO<sub>2</sub>e emission for Nigeria was 126.9 million tonnes ([www.Knoema.com](http://www.Knoema.com)). The energy sector was the largest source of GHG emissions with 209mt CO<sub>2</sub>e emitted in 2018 (60% of total emissions). Agriculture, Forestry and other Land use is the second largest contributor to total GHG emissions, contributing approximately 25% of national GHG emissions in 2018, followed by waste (9%) and Industrial Processes and Other Product Use (5%) (['Nigerias First NDC, July 2021](#)). In 2017, Nigeria's GHG emissions per capita (including land use) was 3.37 tonnes of CO<sub>2</sub>e, far below the global average of 7 tonnes. ([Climate-Transparency Report, Nigeria 2020](#))


GHG emissions for Nigeria in 2030 are estimated to be 435 million tonnes of CO<sub>2</sub>e emissions, representing a 31% increase in total GHG emissions between 2018 and 2030, which is consistent with historic trends. Nigeria recommits to its unconditional contribution of 20% below business as usual by 2030 and increase its conditional contribution from 45% to 47% below business as usual, by 2030, provided that sufficient international support is assured. The NDC 2021 updated covers an enhanced contribution by the waste and water resources sectors, and articulates nature-based solutions not included in the 2015 NDC. (['Nigerias NDC 2021 update](#))

### **Overview of the Climate Change Act 2021**

It is against this contextual background that this article seeks to provide an overview of the rationale, structure and contents of the Nigeria's 2021 Climate Change Act ([Presidential Assent dated 17th November 2021](#)). In terms of Rationale, the Act provides for a framework for mainstreaming climate change actions, a system of carbon budgeting and the establishment of the National Council on Climate Change.

The Act is structured into eight parts of thirty-six sections and a schedule. The Act sets out its objectives and scope of application; establishment of the National Council on Climate Change; Administration and control of the National Council on Climate change; financial provisions; carbon budget and National Climate Change Action Plan; Obligations relating to climate change; nature-based solutions; and miscellaneous matters.

A most commendable feature of the Act is its ambitious framework for achieving low greenhouse gas emission(GHG), inclusive green growth and sustainable development by, inter alia, mainstreaming climate change actions in line with National development priorities, setting a target for year 2050-2070 for the attainment of a net-zero GHG emission, in line with Nigeria's international climate change obligations, strengthening existing adaptive capacities to the impacts of climate change, implementing mitigation measures that promote low carbon economy and sustainable livelihood, and ensuring



that private and public entities comply with stated climate change strategies, targets and National Climate Change Action Plan.

To achieve the Act's laudable objectives, its scope of application is necessarily to both private and public entities within Nigeria's territorial jurisdiction for the development and implementation of mechanisms geared towards fostering low carbon emission, environmentally sustainable and climate resilient society.

Another notable and commendable feature of the Act is the establishment of the National Council on Climate change , chaired by the President of Nigeria, with members drawn from both the public and private sectors, inclusive of the civil society, women, youth and persons with disabilities; and empowers the Council with enormous powers to coordinate national climate actions, administer the newly established Climate Change Fund, mobilise resources to support climate actions, and collaborate with Nigerian Sovereign Green Bond in meeting Nigeria's Nationally Determined Contributions consistent with the Paris Agreement obligations on climate change. The establishment of the Council's secretariat, with a chief executive, to serve as the administrative, scientific, and technical arm of the Council is imperative.

The Act provides for setting the carbon budget for Nigeria and its periodic review of carbon budget cycle in line with Nigeria's NDCs and treaty obligations. It empowers the secretariat to formulate a five-year cycle National Climate Change Action Plan, which among other things, prescribes measures for setting out actions for mainstreaming climate change responses into sector functions; identifying actions for adaptation and mitigation against climate change; and enhancing energy conservation, efficiency and use of renewable energy in industrial, commercial, transport, domestic and other uses.

The obligation imposed on the Secretariat to partner with civil society organisations, promote climate educations, to report annually to the National Legislative Assembly on the State of the nation's climate change and evaluation of report on performance of climate change duties by private and public entities in Nigeria, is an enabler for a legislative oversight. The Act also imposes obligations relating to climate change on Ministries, Departments and Agencies to establish Desk officers for ensuring compliance with National Climate Change Action Plan; empowers Council to impose obligations relating to climate action on any public entity by regulations and on any private entity by notice published in a gazette.

Lastly, the Act provides for the climate change fund to be administered by the council, as a financing mechanism for prioritized climate actions and interventions; and empowered the council to promote and adopt nature-based solutions to reducing GHG emissions and mitigating climate change issues in Nigeria.

Rationale, Adaptation and Mitigation Measures of the National Climate Change Policy for



## Nigeria, 2021-2030


Prior to the approval for adoption of the revised Nigeria's National Climate Change Policy by the Federal Executive Council at a meeting presided over by President Buhari on 2<sup>nd</sup> June 2021, Nigeria had adopted a number of mitigation, adaptation and sectoral policies, strategies and action plans that are related to the pursuit of climate resilient and climate-compatible initiatives for sustainable development. The list includes: - The Economic Recovery and Growth Plan, 2017-2020; National Adaptation Strategy and Plan of Action on Climate Change for Nigeria, 2011; National Gas Policy, 2017; National Climate Change Policy and Response Strategy, 2012; National Renewable Energy and Energy Efficiency Policy, 2015; National Policy on Environment, 2016/17; National Biodiversity Strategy and Action Plan, 2016; REDD + Strategy, 2019; National Health and Transport Policies, 2016 and Agricultural Promotion Policy 2016-2020, among others.

Other global and continental developments that influenced the current policy direction include: - the Paris Agreement on Climate Change, 2015 and Nigeria's Nationally Determine Contribution (NDC); and the African Union Agenda 2063 on the Africa We Want and the UN Agenda 2030 and its 17 Sustainable Development Goals (SDGs). While the NDC formulated targets and concrete strategies for mitigating GHG emissions by 2030 and for adapting to climate change, it serves also as a catalyst for a comprehensive national climate action that offers Nigeria a number of opportunities to advance the course of sustainable development.

The 2021 policy is structured into seven parts. Part one provides a general background on climate change in Nigeria, the rationale for the policy review, approach adopted as well as the link between the current policy and other related national policies, strategies and plans. Part two puts climate change in the national context with emphasis on Nigerian's Vulnerability and impact, as well as policy, legal and institutional responses to the challenge. The relevance to the Paris Agreement on Climate Change in influencing the national response to climate change is highlighted in this part. The vision, objectives and guiding principles for the policy is given in part three. Policy Statements that would accelerate the needed process and implementation of climate change mitigation initiatives are made in part four, while part five elaborates on the key policy directions for adaptation on climate change in the country. Part six addresses a number of enabling conditions that are necessary for actualizing the vision of ensuring a climate resilient economy. Part seven elaborates on the imperative for functional means of implementation that can propel the country in the path of ensuring climate resilient compatible with sustainable development. ([National climate change policy, 2021](#))

There are four key commendable features of the Policy. First, is the strategy to achieve the overall goal of the Policy in promoting a low-carbon, climate-resilient and gender-responsive sustainable socio-economic development. It seeks to ensure, among other





things, implementing adaptation and mitigation measures that promote low-carbon development; strengthening capacities and synergies at local, state and national levels and at individual and institutional levels to implement climate change response; mainstreaming gender, children, youth and other vulnerable groups into all climate change interventions. ([National Action Plan on Gender and Climate Change for Nigeria, 2020](#)).

Second, is the comprehensive multisectoral mitigation measures to reduce GHG emissions (direct and fugitive), mainly from the energy (including power generation), oil and gas, and biomass (agriculture, forest and land use), health, manufacturing industry, transport, water and waste sectors.

Third, is the elaborate and inclusive adaptation strategic measures that promote efficient and sustainable use of its resources, finding alternatives to promote and implement long-term strategies that will make Nigeria a climate-resilience and compatible nation, while ensuring the active participation of women, youth and other vulnerable groups in planning and adaptation interventions.

Fourth, is the strategic placement of legal framework as one of the core enablers for an integrated or harmonized climate resilient development. A functional legal framework to, among others: - guide national response to climate change, provide legal backing for compliance with such policy strategies, clarify roles and responsibilities of different actors in climate governance, facilitate the establishment of an authority instrument on the National Legislative Assembly to appropriate sufficient resources for climate actions. ([Climate change Act, 2021](#)).

### **The Future of Climate Change Litigation in Nigeria**

The cumulative effect of sections 1 and 22-25 of the 2021 Climate Change Act is providing a solid framework for climate action needed to achieve Nigeria's short, medium and long-term goals on climate mitigation and adaptation, and the obligations imposed on both the public and private entities to promote low carbon economy and sustainable livelihood, as well as the responsibility of the Council and its Secretariat to partner with relevant Stakeholders, especially CSOs, constitutes sufficient tool for strategic advocacy on climate education and a sound legal foundation for potential climate litigation.

The Climate Change Act, 2021 and the Revised 2021 National Climate Change Policy are clear demonstrations of commitment to the implementation of Nigeria's treaty obligations under the Paris Agreement on Climate Change and the constitutional obligations placed on the Nigerian State by section 20: - "The State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria".




Having read together the provisions of sections 20 and 33 of the Constitution of Nigeria ([1999 Constitution, as amended](#)) and Articles 16 and 24 of the African Charter on Human and Peoples' Rights ([Cap. A9 Laws of the Federation of Nigeria, 2004](#)), the Supreme Court of Nigeria in the recent case of Centre for Oil Pollution Watch v. NNPC (2019) 5 NWLR pt. 1666, p. 518, expanded the frontiers of locus standing to environmental litigation and held that the right to a clean and healthy environment to sustain life is a fundamental human right of citizens and the State, owes the community (represented by the plaintiff) a duty to protect them against noxious and toxic pollutants from the exploration and production activities of oil companies. In a much earlier case of Jonah Gbemre v. Shell, NNPC and AGF (2005) FHC/B/CS/53/05, the Federal High Court of Nigeria ruled that oil companies must stop gas flaring in the Niger Delta due to its environmental pollution impact on the communities' collective survival and its contribution to adverse and potentially life-threatening climate changes, including acid rain. The court held that the practice of massive and unceasingly intense gas flaring in the community violates the citizens' fundamental rights to life and human dignity guaranteed in the Nigerian Constitution and the African Charter.

Although the above case law may not strictly be climate change litigation based, they are noteworthy for recognizing the right to a clean and healthy environment and for establishing a range of qualitative human rights standards that Nigeria must observe in order to protect her citizens. Such elaborate human rights standards can be extended to climate change issues/litigation. Because, according to the 2021 recent global trends in climate change litigations, climate protection is a legal obligation and a basic human right. ([climate case chart](#))

Cases based on human rights violations have been achieving success in Europe and have already prompted changes in government policy in the Netherlands and Germany. The first such case was brought by the Urgenda Foundation in the Netherlands and established that the Dutch government owed a rights-based duty of care to its citizens to take more aggressive steps in curbing emissions. In April 2021, the German Constitutional Court made a similar ruling there. And then in May 2021, a Dutch court ordered Shell to achieve a 45% reduction in its net CO<sub>2</sub> emissions (including those from consumption of its products) by 2030, to avoid breaching a new right-based duty of care to the country's citizens. This decision, the first of its kind in the world is under appeal. ([climate case chart](#)).

All of this has inspired a wave of new cases across Europe, Asia, Latin America and Africa, many brought against government by young people on behalf of the next generation. The most ambitious of these cases is the Agotisho case in the European Court of Human Rights, seeking an order that Portugal and 32 other countries make more rapid cuts in emissions. The court has fast-tracked the case and the hearing could take place this year/2022. ([climate case chart](#)).



Scientific analysis that divides the global effort of emissions reduction amongst countries, based on the relevant normative criteria and principles, would greatly aid courts in determining countries' obligations with regards to emissions reduction.

Recent North American and European case law has diverged on one of the most fundamental issues in climate change litigation, that is whether courts can adjudicate a state's compliance with constitutional and human rights law in the context of climate change-related harm. ([Juliana v. US in contrast with Urgenda v. Netherlands: - climate case chart](#)). But the Norwegian Court of Appeal found that the Paris Agreement on Climate Change could “contribute to clarification of what is the acceptable tolerance limit and relevant measures” under the Norwegian constitutional right to a healthy environment. Hence courts can interpret a state's responsibility to protect human rights in light of, among other things, international climate change law. The Paris Agreement's principles of differentiation provide a legal framework for Judges and other adjudicators to use in enforcing a minimum standard of emissions reductions under constitutional and human rights law.

In future cases, courts will also need to assess whether countries are doing their '**fair share**' based on available scientific information. In doing so, they should consider the above-mentioned normative principles and criteria.

### **Next Steps**

The key actions to operationalise the Act will include: - establishing the National Climate Change Council and the Secretariat; funding the secretariat to disseminate information on the Act and its implications to stakeholders; developing relevant guidelines to engage stakeholders; enacting subsidiary legislations to trigger the establishment of the national climate fund and to impose obligations on public and private entities in appropriate circumstances.

### **Conclusion**

It is evident from the above review that the Act demonstrates the seriousness with which Nigeria approaches climate actions matters, with its high-level National Council, chaired by the Country's President, and membership drawn from a broad range of relevant stakeholders in the private and public domains. Being the first stand-alone comprehensive climate change legislation in West Africa and among few both globally and regionally, it becomes a strategic tool for climate change advocacy and a legal foundation for potential climate litigation in Nigeria and before the ECOWAS Court of Justice, whose human rights mandate constitutes the mainstay of the regional Community Court's Judicial functions and workload. The most distinctive feature of the mandate is that there is no requirement for exhaustion of local remedies by victims of human rights violations before accessing the Abuja-based court. ([Economic Community of West African States Court of Justice, Abuja, Nigeria](#)).

