

**DECONSTRUCTING THE CLIMATE CHANGE ACT, 2021: - THE ROLE OF THE LEGISLATURE, THE EXECUTIVE (MDAS),  
THE PRIVATE SECTOR AND THE CIVIL SOCIETY ORGANIZATIONS IN NIGERIA.**

**BY**

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# 1. INTRODUCTION

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Countries around the world have increasingly adopted climate change laws over the last two decades. This is partially attributable to the dynamism in international climate negotiations but also a growing appreciation of the crucial role that national laws and policy measures play. Legislative instruments play a critical role in empowering governments to take urgent and strategic actions to mitigate and adapt to climate change and can significantly impact the growth of climate litigation in a particular jurisdiction. In 2021, Nigeria promulgated the 2021 Climate Change Act, which provides a framework for climate actions at the national level. Most of the initiatives envisioned in Nigeria's new Climate Change Act build on prior climate change policies, most of which were adopted in 2021 (i.e., the Revised National Climate Change Policy; national climate change programmes; the 2050 Long-Term Low Emission Vision; the First Nationally Determined Contribution; see here). The law is the first stand-alone comprehensive climate change legislation in West Africa.

It is against this background that this presentation seeks to: -

- ❖ Highlight the rationale and scope of application of the CCA, 2021;
- ❖ Examine the roles of critical actors in climate action; and
- ❖ Conclude on the way forward.

## 2. Overview of the Climate Change Act 2021

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Nigeria's 2021 Climate Change Act provides for an ambitious framework for mainstreaming climate actions in line with national development priorities and sets a net-zero target for 2050-2070. The Act codifies national climate actions by mandating the Ministry of Environment to set, among others, a carbon budget, keeping average increase in global temperature within 2 C and pursuing efforts to limit the temperature increase to 1.5 C above pre-industrial levels. It further approves of formulation of a National Climate Change Action Plan in every five-year cycle to ensure that the national emission profile is consistent with the carbon budget goals and prescribes measures for identifying actions for climate adaptation and mitigation.

The Act applies to both public and private entities within Nigeria's territorial jurisdiction and directs both to implement mechanisms geared towards fostering a low-carbon emission, environmentally sustainable, and climate resilient society. The Act obligates any private entity with employees numbering 50 and above to put in place measures to achieve the annual carbon emission reduction targets in line with the Action Plan; and designate a climate change officer responsible for submitting annual reports to the National Climate Change Secretariats, at meeting its carbon emission reduction and climate adaptation plan.

The Act also establishes the National Council on Climate Change, chaired by the President of Nigeria, with members from both the public and private sectors, including members of the civil society, women, youth, and persons with disabilities. It empowers the Council with significant powers to coordinate national climate actions, administer the newly established Climate Change Fund, mobilize resources to support climate actions, and collaborate with the Nigerian Sovereign Green Bond in meeting Nigeria's NDC. The Climate Change Fund is envisioned as a financing mechanism for prioritized climate actions and interventions. The promotion and adoption of nature-based solutions to reducing GHG emissions and mitigate climate change is encouraged.

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Legislative oversight is enabled through the Secretariat's obligation to partner with civil society organizations, promote climate education, report annually to the National Legislative Assembly on the state of the nation's climate change activities, and evaluate reports on the performance of climate change duties by private and public entities in Nigeria. The Act also imposes obligations on ministries, departments, and agencies to establish desk officers for ensuring compliance with National Climate Change Action Plan. The Council can further impose obligations relating to climate action on public and private entities.

The Climate Change Act provides a solid framework for climate action to achieve Nigeria's short, medium, and long-term goals on climate mitigation and adaptation. Particularly relevant are the obligations imposed on 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 civil society organizations. These measures provide a sound legal foundation for potential climate litigation. The Act makes it actionable to bring a claim for the potential failure of the Council to regulate offenses and penalties from non-compliance with the climate obligations imposed by the new law on any person, private or public entity that acts in a manner that negatively affects efforts towards mitigation and adaptation measures made under the Act.

The Act empowers a Federal or State High Court, before which a suit regarding climate change or environmental matters is instituted, to make an order to: (a) prevent, stop or discontinue the performance of any act that is harmful to the environment; (b) compel any public official to act to prevent or stop the performance of any act that is harmful to the environment; (c) compensate victims directly affected by the acts that are harmful to the environment. These specifically include climate change harms.

# 3. Role of the Legislature

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- Power to appropriate funds payable to the climate change fund as required by section 15 (1)(a) of the Climate Change Act, 2021, for the running of the National Council on Climate change.
- This requirement is consistent with the power of the NASS to appropriate and control public funds under sections 59, 80 – 83 of the 1999 Constitution of Nigeria, as amended.
- The NASS equally has the legislative oversight power on the utilisation of money appropriated to the Council / Fund and on the reporting obligations of the Director-General to the NASS Committees on climate change as required by section 21 of the Climate Change Act, 2021.

## 4. Role of The Executive (Ministries Departments and Agencies) and public entities.

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The CCA, 2021 primarily obligates the Federal Ministries of Environment and of Budget and National Planning to formulate a Climate Change Action Plan with timelines and requirements for consultation with stakeholders before presentation to the Federal Executive Council. The Act further obligates MDAs to establish Desk officers with specified tasks and responsibilities and a liability regime for failure to meet up with their responsibilities. Under sections 28 and 29 of the Climate Change Act, the Federal Ministries of Environment and Budget and National Planning shall establish a REDD + Registry and ensure that data are captured in the National Capital Accounts and National Development Plans.

# 5. Role of the Private Sector

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The CCA, 2021 obligates the private sector to take specified climate actions on annual carbon emission reduction targets, reporting obligations on the status of its performance and a liability regime for failure to comply with the obligations imposed under the Act.

# 6. Role of the CSOs

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Unlike MDAs, public and private entities, CSOs have not been defined in the Act. However, the CSOs are known to include broadly, Non-Governmental Organisations (NGOs), Community-Based Organisations (CBOs), Faith-based Organisations (FBOs), Professional Bodies / Associations (like Women and Youth organisations and the Nigerian Bar Association), the Academia (including research institutes) and the mass media (electronic, print and social media outfits) whose responsibility is to engage in climate advocacy and climate litigation, climate change education and by virtue of sections 22 of the Constitution, the media are free to uphold the fundamental objectives of the Constitution contained in chapter two, especially, state obligations to protect the natural environment against harm (including climate protection) and to uphold the responsibility of the government to the people.

# Conclusion

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While there are several necessary measures needed to operationalize the Act, it demonstrates the seriousness with which Nigeria is approaching climate action. Being the first stand-alone comprehensive climate change legislation in West Africa and among few both globally and regionally, it has the potential to become a strategic tool for climate change advocacy and a legal foundation for potential climate litigation in Nigeria.

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