CLIMATE CHANGE AND ENERGY TRANSITION: IS NIGERIA ON COURSE WITH ITS NEW CLIMATE CHANGE ACT 2021?

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INTRODUCTION

The year 2021 will remain historic as the year in which Nigeria made unprecedented and spirited efforts towards the reform of its energy sector through various legislative and policy initiatives. Firstly, after over a decade, the President of the Federal Republic of Nigeria (the "**President**") finally signed the long-awaited Petroleum Industry Bill into law in July 2021 and heralded a new wave of transformations in the sector. As if to sustain the tempo and hearken to calls to position Nigeria on the path for energy transition, the President in November 2021 proceeded to also sign the Climate Change Act 2021 (the "**CC Act**") as presented to him by the National Assembly.

Indeed, across the world, domestic and international climate change policies and deliberate steps towards energy transition have grown in leaps since the establishment of the United Nations Framework Convention on Climate Change ("**UNFCCC**") in 1992. The first implementation measure of the UNFCCC was the Kyoto Protocol, signed in 1997, which was replaced by the Paris Agreement in 2015. Nigeria was a signatory to both the Kyoto Protocol and the Paris Agreement. Following the Kyoto Protocol, Nigeria developed an overarching policy document for climate activities in the country[1]. Then, after its ratification of the Paris Agreement in 2017, Nigeria revised the policy document, to define a new framework to guide the country's response to the developmental challenges of climate change.

Recently world leaders gathered in Scotland for the 26th Conference of Parties to the UNFCCC ("**COP26**"). Ahead of COP26, Nigeria submitted its updated nationally determined contributions ("**NDC**") to the UNFCCC with stronger NDC commitments than in its previous submission. At COP26, Nigerian leaders reiterated these commitments and agreed to set the course for the attainment of a net global carbon emission of zero by the year 2060. Perhaps in further demonstration of Nigeria's commitment to global climate change and general energy transition agenda, the President upon return from COP26 signed into CC Act into law on 18 November 2021. The CC Act seeks to formally legislate Nigeria's efforts towards climate change adaptation and mitigation, and to enable the country to drive its economic development in a sustainable manner.

[1] This policy was titled the National Climate Change Policy Response and Strategy 2012.

In this piece, we provide an insight into certain key provisions of the CC Act, with commentaries on what some consider an ambitious agenda by Nigeria on energy transition.

SOME HIGHLIGHTS OF THE CLIMATE CHANGE ACT 2021

Focus and breadth

The CC Act provides the legal framework for achieving low greenhouse gases ("**GHG**") emissions as well as promoting sustainable economic growth[2]. These include mainstreaming climate change actions in line with national development priorities and facilitating the mobilisation of finance, and other resources necessary to ensure effective action on climate change. The CC Act sets a target for year 2050-2070, for the attainment of a net-zero GHG emission in Nigeria.

The new law applies to Ministries, Departments and Agencies of the Federal Government of Nigeria ("**MDAs**"), and to private and public entities in Nigeria. It further makes provisions for ensuring that private and public entities comply with stated climate change strategies, targets and the National Action Plan.

A Council and Secretariat on Climate Change

The CC Act establishes the National Council on Climate Change (the "**Council**"), which is empowered to make policies on all matters relating to climate change in Nigeria[3]. The Council which is to be chaired by the President will be responsible for, amongst others, (i) coordinating the implementation of sectoral targets and guidelines for the regulation of the GHG emissions and other anthropogenic causes of climate change; (iii) implementing Nigeria's Climate Change Action Plan; (iii) mobilising financial resources to support climate change actions and administering a climate change fund; and (iv) developing a mechanism for carbon tax in Nigeria, including developing and implementing a mechanism for carbon emission trading.

Membership of the Council is broad and perhaps indicates the central role that it is expected to play in climate change and energy transition. Besides the President and other members of the public who may be appointed into the Council, the Council has several ex-officio members, including the Vice-President of Nigeria, 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.

The CC Act also establishes a Secretariat, which will be the administrative, scientific, and technical arm of the Council, with its role being to advise and assist the Council in the performance of the Council's functions and duties.[4]

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[2] Section 1(a)-(i) of the CC Act.
[3] Section 3(1) of the CC Act.
[4] Section 8(a)-(k) of the CC Act.

The Climate Change Fund

The CC Act establishes a Climate Change Fund to be administered and maintained by the Council[5]. The Climate Change Fund will be a depository of amongst other, sums appropriated by the National Assembly for the running of the Council; fines and charges from private and public entities for flouting their climate change mitigations and adaptation obligations; carbon tax and emissions trading and such other funds the Council may prescribe from time to time. Monies in the fund are to be applied towards climate change advocacy and information dissemination; funding innovative climate change mitigation and adaptation projects; conducting assessments on climate change impact on vulnerable communities; incentivising efforts towards transiting to clean energy and sustaining a reduction in GHG emissions, etc.

Carbon Budget

The Federal Ministry of Environment in consultation with the Federal Ministry of Budget and National Planning (the "**Ministries**") is expected to set the carbon budget for Nigeria, 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. The carbon budget is the approved quantity of GHG emission that is acceptable over a specified time[6].

The Ministries are required to periodically revise the carbon budget in line with Nigeria's NDCs, and every carbon budget, together with any revisions thereto, will be submitted for approval by the Executive Council of the Federation ("**FEC**") before such budget becomes effective.

National Climate Change Action Plan ("Action Plan")

The Secretariat, in consultation with the Ministries shall formulate the Action Plan in every five-year cycle. The Action Plan will serve as a basis for, amongst others, identifying the activities aimed at ensuring that the national emissions profile is consistent with the carbon budget, reviewing levels and trends of GHG emissions; identifying strategic areas of national infrastructure requiring climate proofing; and prescribing measures and mechanisms for achieving Nigeria's climate goals.

The first Action Plan shall be produced not later than 12 months from the commencement of the CC Act[7]. Similar to the carbon budget, the Action Plan shall be submitted through the Council to the FEC for approval. However, before submission to the FEC, the Action Plan must be published to the public for consultation for a period not less than 8 weeks before such submission to the FEC[8].

Obligations relating to Climate Change

MDAs, private and public entities all have assigned responsibilities under the CC Act geared towards enabling Nigeria to attain its energy transition objectives. For instance:

MDAs

The CC Act mandates the MDAs to adhere to the annual carbon emission reduction targets, in line with the Action Plan and carbon budget. Any MDA that fails to meet its carbon emission reduction

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[5] Section 15 of the CC Act.
[6] Section 35 of the CC Act.
[7] Section 20(1)&(2) of the CC Act.
[8] Section 20(3) of the CC Act.

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[9].

Private Entities

The CC Act extends climate change obligations to a person or body with functions of a private nature, bodies registered under the Companies and Allied Matters Act and private and public limited and unlimited companies, business names, partnerships, companies limited by guarantee, and incorporated trustees.

The CC Act sets a qualification threshold for such private entities, with respect to the mandated climate change obligations. Thus, by section 24 of the CC Act, all private entities with employees numbering 50 and above are required to put in place measures to achieve the annual carbon emission reduction targets in line with the Action Plan. They are also required to designate a climate change officer or an environmental sustainability officer, who shall submit to the Secretariat, through the State Director, annual reports on the entity's efforts at meeting its carbon emission reduction and climate adaptation plan. This requirement certainly increases the overall compliance obligations of mid-to-large private sector firms in Nigeria and care should be taken not to violate it.

A private entity that fails to meet its reduction targets shall be liable to a fine to be determined by the Council. The Council in determining such fine, may rely on a system of Environmental Economic Accounting with attention on the health impacts, impact on climate variation, and total damage to ecosystem services[10]. The Council may also require a private entity that fails to comply with its climate change obligations, to prepare a report within a specified time, on its past and current actions, and future actions to be taken to secure performance with its climate change obligations.

Public Entities

The CC Act defines a public entity as an organisation or body providing services to the public on behalf of the Nigerian government[11]. Under the CC Act, the Council may by regulations impose obligations relating to climate change on any public entity, from time to time; and vary or revoke any such obligations, where necessary.[12]

From the above, it appears that there is no immediate climate change obligations mandate on public entities in Nigeria, unlike private entities that fall within the designated threshold, whose climate change obligations seem immediate upon production of the Action Plan and climate budget by the Secretariat and the Ministries.

This notwithstanding, a person, or private or public entity that acts in a manner that negatively affects efforts towards mitigation and adaptation measures made pursuant to the CC Act commits an offence and is liable to a penalty to be determined by the Council[13]. To incentivise private and public entities in fostering clean energy activities, the Action Plan, as previously stated, will provide incentives for private and public entities that achieve their GHG emission reduction targets.[14]

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[9] Section 22(5) of the CC Act.
[10] Section 24(2) of the CC Act.
[11] Section 35 of the CC Act.
[12] Section 23 of the CC Act.
[13] Section 34 of the CC Act.
[14] Section 20(5)(f) of the CC Act. The incentives will be sourced from the Climate Change Fund, as provided in section 15(2)(j) of the CC Act.

CONCLUSION

The CC Act presents the main statutory framework for Nigeria's energy transition trajectory as it prescribes sectoral and cross-sectoral strategic actions for the management of climate change activities within the country and seeks to provide a plan for achieving low GHG emissions, inclusive green growth, and sustainable economic development. It is hoped that when the Council is constituted, and the Action Plan developed, there will be more clarity on the details for implementing the energy transition mandate. Although the full implementation of the CC Act may limit income resources from the country's oil & gas sector, it is the expectation that to find suitable buffers against this limitation, the country (through the Council) will leverage on climate finance opportunities available to countries who have enacted laws and put in place realistic plans and policies aimed at reducing GHG emissions.