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A CRITICAL ASSESSMENT OF NIGERIA'S CLIMATE CHANGE LAW

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Dedication.

This Dissertation is dedicated to the loving memory of my mother, Elizabeth.

Acknowledgment.

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Abbreviations/Acronyms.

AFOLU. Agriculture, Forestry and Other Land Use.
CCA. Climate Change Act.
COP. Conference of the Parties.
CSO. Civil Societies and Organisations.
EPSR. Electric Power Sector Reform.
ETWG. Energy Transition Implementation Working Group.
FAO. Food and Agriculture Organisation.
FGN. Federal Government of Nigeria.
GDP. Gross Domestic Product.
GHG. Green House Gas.
IPCC. Intergovernmental Panel on Climate Change.
LFN. Laws of the Federation of Nigeria.
LPG. Liquefied Petroleum Gas.
MDAs. Ministries, Departments and Agencies.
MTNDP. Medium-Term National Development Plan.
NAP. National Adaptation Plan.
NAPF. National Adaptation Plan Framework.
NASTREP. National Shea Tree Restoration Advocacy Programme.
NCCC. National Council on Climate Change.
NCCP. National Climate Change Policy.
NDC. Nationally Determined Contribution.
NEEAP. National Energy Efficiency Action Plans.
NESP. Nigeria's Economic Sustainability Plan.
NETP. Nigeria's Energy Transition Plan.
NIIMP. National Integrated Infrastructure Master Plan.
NNPC. Nigeria National Petroleum Corporation.
NPE. National Policy on the Environment.
NREEEP. National Renewable Energy and Energy Efficiency Policy.
PA. Petroleum Act.
PIA. Petroleum Industry Act.
REDD+. Reducing Emissions from Deforestation and Forest Degradation.
SLCPs. Short-Lived Climate Pollutants.
UNFCCC. United Nations Framework Convention on Climate Change.
USAID. United States Agency for International Development.

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Abstract

Climate change refers to the significant variation or variability in climate that has persisted and measured over a period of time. It has been identified as one of the greatest threats facing the planet today. These variations are caused majorly by anthropogenic factors such as the emission of greenhouse gases at a harmful level into the atmosphere. Although climate change effects are felt globally, it is projected that Africa will be severely hit by the impacts of climate change even though the continent contributes very little to the activities fuelling the change. This is largely due to the continent's weak capacity to adapt to these changes. In Nigeria, the effects of climate change are apparent in water scarcity in areas prone to drought, floods in the coastal areas and desertification in the northern part of the Country. The emergence of international instruments such as the United Nations Framework Convention on Climate Change (UNFCCC), the Kyoto Protocol and the Paris Agreement, under which countries have committed to limiting global warming to well below 2°C compared to pre-industrial level represent the main international framework in addressing climate change challenges. Following this international initiative, countries have begun enacting domestic climate change legislation to give effect to their obligations under the international regime. The need to enact climate change legislation has gained global momentum particularly in the last three decades because climate change is a global problem and managing it requires a global and multi-level initiative. In a bid to realise its commitments under these global agreements, Nigeria recently passed the Climate Change Act, 2021. The law is national framework legislation that aims to address climate change challenges across various sectors. It also seeks to facilitate the realisation of the Country's net-zero carbon emission target, provide for adequate climate finance measures and mainstream climate change actions into national development priorities. This new law is an essential tool to translate Nigeria's emission pledges as contained in its Nationally Determined Contribution made under the Paris Agreement into action. Against this backdrop, this minor dissertation provides a critical review of Nigeria's contemporary climate change law against certain elements identified by scholars as essential components of a climate change framework law. It also examines how the framework law interact with other climate change policies and how they all fit together under a regulatory regime. Where anomalies or deficiencies are identified, it proffers solutions that are compatible with the political and socio-economic realities of the Country.

CHAPTER 1. INTRODUCTION

1.1 The Context

Climate change has been identified as a current global threat in response to which firm and immediate actions must be taken to eliminate or mitigate its imminent and irreversible impacts.¹ It is defined as a change in climate variability which is directly or indirectly caused by human activities (energy production, industrial activities and those related to forestry, land use and land-use change), and alters the composition of the global atmosphere over comparable time periods.² The cause of climate change have been attributed mainly to anthropogenic (human) factors resulting from emission of greenhouse gases (GHGs) and other environmentally-harmful practices.³ The impacts of climate change extend to both developed and developing countries as it affects all sectors of the global society. However, these impacts are disproportionately felt by poor and developing countries even though the majority of the emissions are produced by developed countries.⁴ This is because the economies of developing countries are highly dependent on climate sensitive sectors such as agriculture and water.⁵

The Intergovernmental Panel on Climate Change (IPCC) has consistently highlighted the need to take both urgent and timely actions to address climate change.⁶ The IPCC reveals further that worldwide climate change projected risks, observed impacts, adaptation limits and vulnerabilities now require more urgent action than previously assessed.⁷ Similarly, the Climate Action Tracker, which tracks government actions and presents independent scientific analysis and current assessment of the global gap in climate action/progress across the world reports that much greater ambition and action is urgently needed for

¹ Rumble O "Climate change legislative development on the African continent" in Kameri-Mbote Paterson et al (eds) *Law| Environment| Africa* 31-60 36-37.

² United Nations Framework Convention on Climate Change (UNFCCC), New York. 1992. *United Nations, General Assembly*. Article 1(2).

³ IPCC 2022: Summary for Policymakers in Porter Roberts et al (eds) *Climate Change 2022: Impacts, Adaptation and Vulnerability. Contribution of Working Group II to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change* (2022) University Press Cambridge UK and New York, NY USA doi:10.1017/9781009325844.001 1–33 33.

⁴ Adejowon-osho O "Nigeria's commitments under the climate change Paris Agreement: legislative and regulatory imperatives towards ensuring sustainable development" In Kameri-Mbote Paterson et al (eds) *Law| Environment| Africa* 61-82 66.

⁵ Adejowon-osho "Nigeria's commitments under the climate change Paris Agreement" In *Environment| Africa* 66.

⁶ IPCC *Sixth Assessment Report of the Intergovernmental Panel on Climate Change* 6.

⁷ *ibid* 6-7.

countries to meet their international targets and objectives to pursue efforts to limit the effects of climate change.⁸

The IPCC reports that climate change contributes to humanitarian crises.⁹ It also highlights regions with considerable development constraints particularly in Africa, South Asia, Central and South America and small developing Island states and how the effects of climate change continue to exacerbate the vulnerabilities in those areas. Violent conflicts and high levels of climate-sensitive livelihoods are more prevalent in these vulnerable regions.¹⁰ Furthermore, human mortality from floods, droughts and storms are higher in these regions, compared to regions with very low vulnerability.¹¹ The vulnerability in these areas is exacerbated by inequity and marginalization linked to gender, ethnicity, low income or a combination of these factors for many indigenous peoples and local communities.¹² Already, the rise in temperatures and climate extremes have led to some irreversible impacts to which immediate steps must be taken to adapt and mitigate.¹³

Nigeria is among the ten most vulnerable countries that will be hit by the impacts of climate change¹⁴ and ranks as one of the countries with the highest number of the poorest people in the world.¹⁵ The degree of vulnerability to climate change in the Country varies across regions and sectors.¹⁶ Some of the highest overall exposure is concentrated in coastal states in the southern part of the Country where there is a large population of poor households living in slums which are prone to flooding and storm surges.¹⁷ For example in October 2022, Nigeria experienced her most devastating flood in a decade, with at least 600 people dead and over 1.4 million residents displaced.¹⁸ In the Niger Delta region, the effects of gas flaring

⁸ World Resources Institute State of Climate Action 2022 Available at https://climateactiontracker.org/documents/1083/2022-10-26_StateOfClimateAction2022_kR0sbBZ.pdf. Accessed on 05/01/2023.

⁹ *ibid* 11.

¹⁰ *ibid* 12-15.

¹¹ *ibid* 9, 11 & 17.

¹² *ibid* 12, 21 & 27.

¹³ *ibid* 9 & 13.

¹⁴ World Bank *Climate risk Country profile: Nigeria 2021* (2021) World Bank Group Washington DC 11.

¹⁵ World Bank *Poverty and Shared Prosperity 2018: Piecing Together the Poverty Puzzle* (2018) World Bank Washington DC, USA 32. In 2018, Nigeria overtook India to become the Country with the highest number of poor people in the world with about 87 million Nigerians (51% of the population) living in extreme poverty.

¹⁶ World Bank *Country Partnership Framework for the Federal Republic of Nigeria for the Period FY21-FY25* (2020) World Bank Washington DC USA 1-182 21.

¹⁷ Croitoru L et al *The Cost of Coastal Zone Degradation in Nigeria: Cross River, Delta and Lagos States* (2020) World Bank Group Washington DC USA 1-65 29.

¹⁸ Climate Action Tracker 2022 Update for Nigeria Available at <https://climateactiontracker.org/countries/nigeria/> Accessed on 05/01/2023.

are manifest in the rise in temperature, acid rain, retarded crop yield, and different types of respiratory diseases among residents.¹⁹ In the northern part of Nigeria, the combination of rising heat and less rain has hastened desert encroachment, with loss of the wetlands, and rapid reduction in the amount of surface water, flora and fauna resources on land.²⁰ The security challenges in the Northern region is further exacerbated by desertification and consistent loss of farmlands, which often results in conflicts between pastoralist and local farmers over grazing rights.²¹ Due to the Country's heavy reliance on climate-sensitive industries (agriculture, forestry, oil, and gas extraction), it is estimated that climate change inaction will cost Nigeria between 6%–30% of Nigeria's GDP by 2050, equivalent to a loss of US\$100–460 billion.²² Nigeria also has one of the highest deforestation rates in the world. According to the Food and Agricultural Organisation (FAO), the Country lost 55.7% of its primary forests between 2000 and 2005 due to farming and urban expansion.²³

In addition to its vulnerabilities, Nigeria also contributes to global emissions and a major emitter of GHGs on the African continent.²⁴ The Country has one of the largest natural gas reserves in the world and flares 17.2 billion m³ yearly in the process of exploring its crude oil in the Niger Delta.²⁵ The level of gas flaring in Nigeria is equal to approximately one quarter of the current power consumption of the African continent.²⁶ It has been estimated that more than 400 million tons of carbon dioxide are injected into the world's atmosphere yearly from gas flaring activities in Nigeria.²⁷

As a result of the increasing impacts of climate change, there have been several national and international efforts to address same through climate governance. A major effort at the international level is the establishment of the United Nations Framework Convention on Climate Change (UNFCCC),²⁸ an

¹⁹ Haider H *Climate change in Nigeria: impacts and responses* (2019) Helpdesk Reports Institute of Development Studies Brighton UK1-33 8-9.

²⁰ Abdulkadir A et al "Climate change and its implications on human existence in Nigeria: a review" (2017) *Bayero Journal of Pure and Applied Sciences* 10(2) 152-158 155.

²¹ Ashley O et al *Fragility and climate risks in Nigeria* (2018) USAID Washington DC USA 1-19 5; Igwe I "Gas Flaring and Climate Change: Nigeria's Efforts Towards Developing Regulatory Mechanism" in *2010 Climate Change and Human Security in Nigeria* (2010) Print Serve Limited 249-251.

²² World Bank *Country Partnership Framework for Nigeria* 20.

²³ Nachmany M et al *The GLOBE Climate Legislation Study: A Review of Climate Change Legislation in 66 Countries* (2014) GLOBE International and Grantham Research Institute LSE London UK 1-683 420.

²⁴ Climate Action Tracker 2022.

²⁵ Udok U & Akpan E B "Gas flaring in Nigeria: Problems and prospects" (2017) *Global Journal of Politics and Law Research* 5.1 16-28 17.

²⁶ Udok & Akpan 2017 *Global Journal of Politics and Law Research* 5.1 17.

²⁷ *ibid* 17.

²⁸ United Nations Framework Convention on Climate Change (UNFCCC), New York. 1992. *United Nations, General Assembly*.

international framework regime under which both the Kyoto Protocol²⁹ and Paris Agreement³⁰ were negotiated. Under the Paris Agreement, many countries including Nigeria³¹ have committed to limiting global warming to well below 2°C and to pursue efforts to limit global temperature increase to 1.5 °C above pre-industrial levels in an effort to combat climate change.³² In pursuit of their international commitments under the Paris Agreement, member-states are each expected to submit their Nationally-Determined Contribution (NDC)³³ that sets out ambitions and plans put in place by each government in addressing climate change issues and measures put in place to achieving those objectives.³⁴

However, in spite of all the resources and time dedicated to combating climate change at the international level, global emissions have still not peaked.³⁵ Although there are signs of progress, the opportunity to limit warming to 1.5°C under the Paris Agreement is rapidly closing. This is so even when the national 2030 climate commitments are fully implemented, leading to an expected approximate increase in global temperatures of between 2.4°C to 2.8°C by 2030.³⁶ Furthermore, a key outcome of the United Nations Climate Change Conference (COP26) which held in Glasgow, United Kingdom in 2021 indicate that the world is in a critical decade for climate action and that implementation of current pledges by national governments put the world on track for a 2.5°C warmer world by the end of the century.³⁷ At the recently concluded Conference of the Parties (COP27) to the UNFCCC, member states again reiterated the outcomes of the COP26 and acknowledged the irreversible effects of climate change as they negotiated a breakthrough agreement on “loss and damage” fund to assist vulnerable countries cope with damages resulting from adverse effects of climate change which cannot be adapted to.³⁸

The inability of these international governance tools to effectively address the challenges of climate change have led commentators to argue in favour of a multi-level and a more polycentric approach to

²⁹ Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 2303 U.N.T.S. 162.

³⁰ Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104 Article 4.

³¹ A total of 196 countries are signatories to the UNFCCC and the Paris Agreement.

³² Paris Agreement Article 2(1).

³³ Nigeria's Updated Nationally-Determined Contribution (NDC) 2021. Under the updated NDC, Nigeria now has an unconditional contribution of 20% below business-as-usual by 2030 and a 47% contribution conditional on international support to reduce its emissions.

³⁴ Paris Agreement Article 4.

³⁵ IPCC *Sixth Assessment Report of the Intergovernmental Panel on Climate Change*.

³⁶ Climate Action Tracker 2022.

³⁷ United Nations Climate Change Conference COP26. Decision -/CP.26 Glasgow Climate Pact (2021) Glasgow Scotland United Kingdom.

³⁸ United Nations Climate Change Conference COP27 *Decision -/CP.27 -/CMA.4: Funding Arrangements for Responding to Loss and Damage Associated with the Adverse Effects of Climate Change, including a Focus on Addressing Loss and Damage* (2022) UN Sharm El-Sheikh Egypt.

climate governance.³⁹ It is believed that linking and complementing the international governance process and national policymaking processes will not only guarantee that countries' actions are aligned with their international commitments, but will also give the national pledges more certainty and credibility and ensure that policymakers keep promises to implement their pledges.⁴⁰ In other words, it will create a more stable, long-term and overarching approach to climate governance, rooted in law.⁴¹ Climate change is a problem that can only be adequately addressed if action is taken at all levels of government.⁴² This quest for a multi-level governance approach in addressing climate challenges together with the commitments by countries under these international treaties has led to the emergence of national climate change laws and policies across the globe.⁴³ The first national law to expressly regulate climate change was passed by Japan in 1998.⁴⁴ This was followed with the enactment of the Climate Change Act by the United Kingdom.⁴⁵ Since then, data has shown that there are about 3030 climate change laws and policies in operation across the world with every countries of the world having at least one climate change law in operation.⁴⁶

It is difficult to define climate change legislation in specific terms.⁴⁷ This is partly due to the existence of different models and approaches to climate change legislation. A national climate change law or policy is typically modelled either by formulating a specific climate change law that addresses some or all climate issues, or by embedding climate change considerations into multiple existing or new sectoral laws and

³⁹ Ostrom E "Polycentric systems for coping with collective action and global environmental change" (2010) *Global Environmental Change* 20(4) 550–557 555-556.

⁴⁰ Rumble "Climate change legislative development on the African continent" in *Environment| Africa* 34-35.

⁴¹ Nachmany et al *Policy brief global trends in climate change legislation and litigation: 2018 snapshot* (2018) Grantham Research Institute on Climate Change and the Environment London UK 1-8 2-4.

⁴² Corfee-Morlot J et al "Cities, Climate Change and Multilevel Governance" (2009) *OECD Environmental Working Papers N° 14 OECD publishing* 1-13 1-4.

⁴³ Eskander et al "Global lessons from climate change legislation and litigation" (2021) *Environmental and Energy Policy and the Economy* 2.1 44-82 7.

⁴⁴ Japan's Law Concerning the Promotion of the Measures to Cope with Global Warming 1998.

⁴⁵ Climate Change Act 2008 (c 27).

⁴⁶ Grantham Research Institute on Climate Change and the Environment "Climate Change Laws of the World" Available at <https://climate-laws.org/> accessed on 18/01/2023; Eskander et al (2021) *Environmental and Energy Policy and the Economy* 2.1 2.

⁴⁷ Rumble "Climate change legislative development on the African continent" in *Environment| Africa* 54-55.

policies in the Country.⁴⁸ The former has been described as a framework⁴⁹ or flagship⁵⁰ approach which is also defined as a dedicated law through which lawmakers validate other climate change policies.⁵¹ It represents a separate or stand-alone⁵² law or regulation which serves as a comprehensive and unifying basis for climate change policy, addressing diverse aspects of climate change mitigation and adaptation in a holistic and overarching manner.⁵³ The latter or sectoral approach is a situation wherein legislators seek to “climate proof” existing energy and other sectoral laws or policies rather than enacting a separate law as in the framework approach. This is done either by amending existing sectoral legislation or by formulating new sectoral laws to make them speak directly to climate mitigation and adaptation.⁵⁴ Both the framework and the sectoral approaches aim to mainstream climate change issues across government departments, agencies and sectors.⁵⁵

Some compelling arguments have been made in support of the adoption of either a framework law or a sectoral approach and whether one is preferable to the other. The argument in favour of the framework approach is that it creates a state institution to guide and ensure the implementation, mainstreaming and harmonisation of climate change actions in a coordinated manner.⁵⁶ It is also argued that a framework law creates certainty of action and accountability and eliminates the challenges of having to amend and incorporate climate actions and policies into multiple sectoral legislation.⁵⁷ On the other hand, the proponents of the sectoral approach argue that mainstreaming is faster, cheaper and better achieved under this approach because it is better to incorporate climate change considerations into laws which administrators and members of the general public are already familiar with. This is better than having to enact a new law and to educate them on the workings and implementation of the new climate change

⁴⁸ Nachmany et al "Global trends in climate change legislation and litigation: 2017 update (2017) Grantham Research Institute on Climate Change and the Environment UK 1-25 4-10.

⁴⁹ Rumble "Climate change legislative development on the African continent" in *Environment| Africa* 39.

⁵⁰ Townshend et al "How national legislation can help to solve climate change" (2013) *Nature Climate Change* 3.5 430-432 430.

⁵¹ Townshend (2013) *Nature Climate Change* 3.5 430-432.

⁵² Ladan M T "Guest commentary: A review of Nigeria's 2021 Climate Change Act: Potential for increased climate litigation" available at <https://blogs.law.columbia.edu/climatechange/2022/03/16/guest-blog-a-review-of-nigerias-2021-climate-change-act-potential-for-increased-climate-litigation/> assessed 23 June, 2022.

⁵³ Rumble "Climate change legislative development on the African continent" in *Environment| Africa*.

⁵⁴ *ibid* 54-55.

⁵⁵ *ibid* 54-55

⁵⁶ World Bank *World Bank Reference Guide to Climate Change Framework Legislation 2020* (2020) EFi Insight-Governance Washington DC USA 1-42 3.

⁵⁷ Higham C et al *Accountability mechanisms in climate change framework laws* (2021) GLOBE International and Grantham Research Institute LSE London UK 1-51.

law.⁵⁸ Although the advantages and the arguments in favour of the framework approach tend to outweigh the sectoral approach, countries often adopt the model that best reflects their unique climate change considerations and other national circumstances.⁵⁹

Despite Nigeria's numerous sectoral and cross-sectoral laws and policies operating across different levels that address climate change issues,⁶⁰ some commentators bemoaned the absence of a dedicated climate change law.⁶¹ In an effort to improve the Country's legislative efforts to tackle climate change, the national legislature recently passed the Climate Change Act, 2021 (CCA),⁶² an overarching "flagship law" that seeks to coordinate cross-cutting climate issues integrated across sectors and harmonise decision making at the highest levels of government.⁶³ The law addresses climate change mitigation and adaptation. It aims at facilitating the achievement of a net-zero carbon emission target for 2030-2050, provide adequate climate finance measures and mainstream climate change actions into national development priorities.⁶⁴ Some of the provisions in the CCA seek to build on the existing climate change policies and laws.⁶⁵ A few of the policies were made to address broad and specific climate change concerns while other policies and laws include provisions that directly or indirectly regulate climate change mitigation/adaptation.⁶⁶ These provisions also aim to pursue the Country's targets as contained in its NDC.⁶⁷

Nigeria's legislative initiative is commendable as an important tool in domestic climate change governance. This is because any climate change response requires a strong legal basis.⁶⁸ Furthermore,

⁵⁸ Rumble "Climate change legislative development on the African continent" in *Environment| Africa* 40-42.

⁵⁹ Ibid 38-39.

⁶⁰ Some of the Laws and Policies include: The Constitution of the Federal Republic of Nigeria 1999 (as amended) CAP C23 LFN; Nigeria's Federal Ministry of the Environment *National Climate Change Policy for Nigeria 2021-2030*; Nigeria's Federal Ministry of the Environment *National Adaptation Plan Framework 2021*; *Petroleum Industry Act 2021*; *Associated Gas Re-Injection Act CAP 26 LFN 2010* and others as discussed later on in Chapter 3 of this Dissertation.

⁶¹ Nigeria's NDC 2021 17; Ladan (2021) *blogs.law.columbia*.

⁶² Climate Change Act 2021.

⁶³ Townshend et al (2013) *Nature Climate Change* 3.5 430.

⁶⁴ Nigeria's NDC 2021. 5; Ladan 2021 *Blogs.law.columbia*.

⁶⁵ Ladan M T "Nigeria's Climate Change Act and Policy 2021 and the Future of Climate Litigation" (2022) Available at SSRN 4019698 1-12 2.

⁶⁶ Ladan (2022) available at SSRN 4019698 2.

⁶⁷ Ladan (2021) *blogs.law.columbia*.

⁶⁸ Rumble "Climate change legislative development on the African continent" in *Environment| Africa* 54-55.

Nigeria's national emission pledges at the international level are not credible unless the targets, and the measures enacted to achieve them, are rooted in law.⁶⁹

1.2 Purpose and Scope

This dissertation critically reviews the climate change legislative model introduced under the CCA by applying certain identified elements as a frame against which the effectiveness of the law is assessed. The research is significantly motivated by the need to examine an under-researched area – the framework legislative approach to climate change in Nigeria. It aims to fill the void in the available literature given the contemporary nature of the CCA and critically explores the potential advantages of the framework approach in relation to the Country's unique legal, political and socio-economic realities.

Due to the dearth of academic discussions on the CCA as Nigeria's maiden framework law and what this might mean for the climate change regime in the Country, this dissertation seeks to provide an overview of some legislative reforms and how these provisions interact and operate along-side other national legislation and policies on climate change. The aim is to distil possible lessons and examples of best practices, challenges or innovations introduced by the regime. On this basis, the research seeks to contribute to the growing literature on the topic of climate change in Nigeria and a reliable guide to policymakers.

This dissertation is focused on Nigeria's national climate change legislative framework - the CCA, - in the same vein, it acknowledges the fact that other spheres/levels of government (states and local governments) also have the constitutional competence to legislate on the environment and climate change.⁷⁰ Lagos State is however the only State (out of the 36 States in Nigeria) with a climate change policy.⁷¹ The focus of the dissertation is also informed by the fact that the provisions of the CCA as a national law will trump state laws in cases of conflict.⁷² Furthermore, the power and energy sectors, both of which contribute more than 60% of the total GHG emissions in the Country⁷³ is under the exclusive control of the federal government.⁷⁴ The federal government also exercises political, economic and fiscal dominance over other levels of government, this arrangement allows climate change issues to be given

⁶⁹ *ibid* 57.

⁷⁰ Lagos State is however the only state in the Country with a climate change policy known as the Lagos Climate Action Plan 2020-2025. Lagos is also a member of the C40 Cities Climate Leadership Group, a global network of cities taking urgent actions to confront the climate crisis by committing to develop and implement inclusive and ambitious action plans in line with the goals of the Paris Agreement.

⁷¹ Lagos State Ministry of Environment and Water Resources *Lagos State Climate Action Plan 2020-2025* 2020 Lagos State, Nigeria.

⁷² Constitution of the Federal Republic of Nigeria, 1999. CAP. C23 (as amended) Section 4(5).

⁷³ Nigeria's NDC 2021 17.

⁷⁴ Nigeria's Constitution Schedule 1 & Section 4(7).

the priority it deserves.⁷⁵ The federal government has also represented the Country in major international climate conferences and signed international treaties that are binding on the entire Country,⁷⁶ this underscores the significance role of these national instruments in meeting Nigeria's climate targets.

1.3 Methodology and Structure

The principal method of research underpinning this minor dissertation is desk-top analysis. This method involves the review and distillation of information from existing primary and secondary resources, with the purpose of this review being twofold. Firstly, it seeks to identify the different models of climate change legislation, outline their respective strengths and weaknesses and highlight the essential general elements that are commonly found in a climate change framework law. This forms the focus of Chapter 2, with it effectively providing the necessary theoretical frame of reference that will then be used to critically assess Nigeria's CCA. While several sources will be relied upon to scope the form, nature and different approaches underpinning climate change legislation generally, heavy reliance will be placed on the World Bank's recent survey of over thirty countries' climate change framework laws titled World Bank Reference Guide to Climate Change Framework Legislation.⁷⁷ this survey distils an array of elements under various themes which should characterise framework legislation. These elements are: long-term targets; intermediate and sectoral targets; risk and vulnerability assessments; climate change strategies and plans; policy instruments; independent expert advice; coordination mechanism; stakeholder engagement; subnational government; financial implementation; measurement, reporting and verification; oversight and accountability mechanism.

Having outlined the theoretical frame, Chapter 3 presents a brief overview of the key elements of Nigeria's climate change regime in order to distil its different components and how they fit together. This overview sets the necessary context for the detailed critical review of the core national components of the CCA in order to critique the extent to which it reflects the elements outlined in Chapter 2. The detailed critique forms the focus of Chapter 4. This critique is structured using the elements outlines in Chapter 2 as a reflection on opportunities seemingly available to refine the CCA or other associated legislation where certain elements are absent or insufficiently provided for. Chapter 5 comprises of the conclusion.

⁷⁵ Ohazuruike K "leadership and power sharing in Nigerian federalism: issues and perspectives" (2022) *Journal of Global Social Sciences* September 3.11 75-87 83.

⁷⁶ Nachmany (2014) *A Review of Climate Change Legislation in 66 Countries* 421-425.

⁷⁷ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance.

CHAPTER 2: THEORETICAL FRAMEWORK

This Chapter is focused on examining the various models and approaches to climate change as well as the essential elements that have been identified by commentators as commonly found in a climate change framework law. The elements highlighted and discussed in this Chapter serve as the theoretical frame of reference that will then be used to critically assess the effectiveness and compliance of Nigeria's framework model in Chapter 4. An inquiry into *effectiveness* in this context takes a broader view and distills to what extent the regime reflects core elements of a climate change framework legislation. An inquiry on *compliance*, on the other hand, seeks to answer the question of how to determine whether or not a given actor has complied with a given obligation and to what extent the law ensures compliance.⁷⁸ Both are important because policy makers and legislators should strive to ensure that good climate change framework legislation will be subject to processes by which both effectiveness and compliance can be assessed.⁷⁹ To be effective, the elements in this Chapter 2 should be accompanied by enforceable obligations, otherwise it may result in a mismatch between the intension behind the inclusion of these elements and their enforcement.⁸⁰ Both effectiveness and compliance aim to identify good practices, highlight innovations as well as the challenges and potential weaknesses in the system, and address the challenges and lessons that can be learnt therefrom.

It is pertinent to reiterate that Nigeria's climate change legislation operates within the context of the broader legal system. Therefore, it may be impossible to carry out a critique of the framework based exclusively on elements or provisions found in the CCA or those found in a number of selected regulations or policies. This is because a given element may be addressed separately within the context of the broader legal system. Nevertheless, for one to successfully rely on the broader and existing legal structure, a climate change framework legislation must contain a degree of certainty, sufficiency, precision and clarity regarding the unique obligations and duties the law impose on entities.⁸¹ Consequently, where there are voids or concerns about the inadequacy or weakness of existing laws and institutions, this approach strengthens the case for including explicit detail on all elements within the provisions of a framework law itself rather than relying on implicit provisions created by the broader legal

⁷⁸ Higham et al *Accountability mechanisms in climate change framework laws* 13.

⁷⁹ Price R A *Climate adaptation: lessons and insights for governance, budgeting, and accountability* (2021) K4D Helpdesk Report 1073 Institute of Development Studies DOI: 10.19088/K4D.2022.008 UK 7-8; Higham et al *Accountability mechanisms in climate change framework laws* 7.

⁸⁰ Higham et al *Accountability mechanisms in climate change framework laws* 1.

⁸¹ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 13-16.

system to fill the void.⁸² Furthermore, an effective climate change legislation is one that contains provisions that ensures compliance with obligations created by the law.⁸³

Before discussing the models and elements, the Chapter presents a brief overview of the approaches under international climate change regime and highlights the major international climate change obligations. The brief highlight of the main international obligation is to demonstrate the extent to which these obligations have influenced, determined and shaped the emergence and content of domestic climate change laws.

2.1 The International Climate Change Regime

The UNFCCC is the first international framework established to address climate change. It represents the constitution of the international climate change regime.⁸⁴ The Framework presents the broad architecture of the international climate change regime and anticipates the adoption of subsequent instruments or protocols with more details and commitments on how to achieve its broad objectives subject to the emergence of new scientific evidence, social understandings, and political changes.⁸⁵ It was adopted following the recognition of climate change as a common concern of humankind.⁸⁶ Although the UNFCCC is itself a treaty, and hence “legally binding” under the Vienna Convention on the Law of Treaties,⁸⁷ Article 4(2) was formulated as a non-binding aim rather than as a legal obligation.⁸⁸ Its ultimate objective to achieve the stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent “dangerous anthropogenic Interference with the climate system” represents a non-binding and vague target.⁸⁹

The UNFCCC’s guiding principle is to “protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities.”⁹⁰ It introduced a system of differentiation between Annexure 1&2 Countries (developed

⁸² Higham et al *Accountability mechanisms in climate change framework laws* 11.

⁸³ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 13-16; Higham et al *Accountability mechanisms in climate change framework laws*.

⁸⁴ Kuyper J et al "The Evolution of the UNFCCC" (2018) *Annual Review of Environment and Resources* 43 344-368 344-345; Bodansky D "The legal character of the Paris Agreement" (2016) *Review of European, Comparative & International Environmental Law* 25.2 142-150.

⁸⁵ Kuyper et al (2018) *Annual Review of Environment and Resources* 43 345.

⁸⁶ Kuyper et al (2018) *Annual Review of Environment and Resources* 43 349.

⁸⁷ Vienna Convention on the Law of Treaties 1969 Article 2.1 (a).

⁸⁸ Bodansky (2016) *Review of European, Comparative & International Environmental Law* 25.2 144.

⁸⁹ Murgan, M G A "Revisiting the role of United Nations Framework Convention on Climate change (UNFCCC) and the Kyoto protocol in the fight against emissions from international civil aviation" (2021) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 12.1 112-126 118-119.

⁹⁰ UNFCCC Preamble and Article 3(1).

countries) and the Non-Annex Countries (developing countries). Developed countries are required to “take the lead in combating climate change” and assist the developing country Parties that are particularly vulnerable to meeting costs of adaptation.⁹¹ Developed countries are also required to promote, facilitate and finance the transfer of technology, particularly to developing countries and to adopt and periodically report on “policies and measures”⁹² adopted towards the reduction of anthropogenic emissions and protection of sinks.⁹³

General obligations of all parties to the UNFCCC require members to make inventories of anthropogenic emissions and removals by sinks of all greenhouse gases, to formulate, implement, publish and regularly update national programmes containing measures to mitigate climate change, to cooperate technologically, to promote the sustainable management and conservation of forests and enhancement of sinks and to cooperate in adaptation.⁹⁴

The Convention however fails to clearly state the timeframe for the achievement of its targets.⁹⁵ It also does not define major concepts such as the meaning of “policy and measures” (PAMs) to be adopted by developed countries. These vague commitments and target resulted in the emergence of the Kyoto Protocol which introduced legally binding and strict obligations.

The Kyoto Protocol aimed to address the vaguely phrased and non-binding commitments under the UNFCCC and to provide elaborations on PAMs.⁹⁶ It was negotiated and adopted under the UNFCCC in 1997 and came into force in 2005. It retained and built on the distinction between Annex 1 and Non-Annex Countries under the UNFCCC. Unlike the UNFCCC however, Annex1 Countries took up strict and binding emission reduction targets as well as timetable to achieve them.⁹⁷ In addition, Annex 1 Countries committed to frequent reporting and financial obligations to assist developing countries in their emission reduction projects and conservation of sinks.⁹⁸ Annex 1 Countries’ overall target under the First Commitment Period of the Protocol (2008-2012) was to cumulatively reduce their GHG emissions to at least 5% below 1990 levels.⁹⁹ Two important Annexes under the Protocol relating to this overall target/commitment was Annexures A and B. Annex A contained the list of GHGs included for the broad

⁹¹ Kyoto Protocol Article 3(1).

⁹² UNFCCC Article 4(2)(a) & (b).

⁹³ UNFCCC Article 4(1).

⁹⁴ UNFCCC Article 4.

⁹⁵ The Convention aim to cumulatively achieve GHG emission reduction below 1990 levels but does not state the timeframe within which this reduction should be achieved.

⁹⁶ Kyoto Protocol Article 2(1).

⁹⁷ Kyoto Protocol Articles 3, 4 & 5.

⁹⁸ Kyoto Protocol Article 10(a) and (c).

⁹⁹ Kyoto Protocol Article 3(1).

commitment while Annex B sets out the amount of GHG that could be emitted by each country. Each country was given Assigned Amount Units (AAUs) which they must not exceed to meet their targets under the Protocol. Annex 1 countries who emitted much less than they had committed to emit during the first commitment period were allowed to bank up their credit over to be used in anticipation of a second commitment period.¹⁰⁰

At the UNFCCC COP18 held in Doha in 2012, Parties adopted the Doha Amendment¹⁰¹ which ushered in the Second Commitment Period (2013-2020) with revised targets and timeframes for Annex 1 Countries to cumulatively reduce GHG emissions to at least 18% below 1990 levels. Amendments were also made to both Annex A and Annex B. Annex A was revised to reflect the addition of one new GHG while Annex B was revised with amendments made to individual country's commitments. An indicative list of PAMs¹⁰² was also defined to include enhance energy efficiency, protection of sinks, promotion of sustainable agriculture, increase the use of renewable energy, reduction of transport and methane emissions.¹⁰³

The Kyoto Protocol's approach to climate change which imposed strict emission reductions on certain countries is regarded as a top-down approach.¹⁰⁴ It is characterised by clear and concise commitments imposed on countries regarding the reduction of their emission and which they must achieve.¹⁰⁵ At the national/domestic level, the top-down is a monocentric approach where governmental units at higher levels make all decisions while units at lower levels simply follow the commands issued from above.¹⁰⁶

The Non-Annex countries/developing countries under the Kyoto Protocol, on the other hand, had no binding emission reduction commitments.¹⁰⁷ The Protocol however introduced certain "flexibility

¹⁰⁰ Kyoto Protocol Article 3(13).

¹⁰¹ Doha Amendment to the Kyoto Protocol. TREATIES-XXVII. 7. c of 7 August 2013 (Proposal of corrections to the Chinese authentic text of the Doha Amendment to the Kyoto Protocol) and C.N. 966.2013.

¹⁰² Kyoto Protocol Article 2(1)(a). Countries were required to formulate and implement PAMs in accordance with their national circumstances.

¹⁰³ Kyoto Protocol Article 2(1).

¹⁰⁴ Banda M L "The bottom-up alternative: The mitigation potential of private climate governance after the Paris Agreement" (2018) *Harv. Envtl. L. Rev.* 42 1-325. 332.

¹⁰⁵ Cole D H "Advantages of a Polycentric Approach to Climate Change Policy" (20(15) *Articles by Maurer Faculty* 144-118 1415.

¹⁰⁶ Cole 2015 *Articles by Maurer Faculty* 1415.

¹⁰⁷ Banda 2018 *Harv. Envtl. L. Rev.* 42 325.

mechanisms”¹⁰⁸ that allowed for the implementation of emission reduction projects in Non-Annex countries by Annex 1 countries.¹⁰⁹

Unfortunately, the strong commitments by Annex 1 countries under the Protocol did not result in global reduction of GHG emission.¹¹⁰ The second commitment period only came into force the following year (2021) after its expiration in 2020, due to delayed implementation.¹¹¹ This effectively rendered the second commitment period null and void within the context of international law.¹¹² Despite its failure to achieve global GHG emission reduction, the Protocol signifies a strong commitment by countries to address climate change issues as more countries continue to enact domestic laws with binding targets or commitments.¹¹³ The Kyoto Protocol’s general framework laid the structural foundation of a carbon emissions market and the concept of carbon pricing.¹¹⁴ Furthermore, its voluntary measures and the flexibility mechanisms influenced the design of the Paris Agreement.¹¹⁵

The Paris Agreement was signed at the Conference of the Parties (COP) to the UNFCCC in 2015, and came into force in 2016. It is the most contemporary international legal framework on climate change.¹¹⁶ Although it was negotiated under the UNFCCC, it is not a protocol but a separate treaty on its own within the definition of the Vienna Convention.¹¹⁷

¹⁰⁸ Kyoto Protocol Article 6; These mechanisms include the European Union Emissions Trading System (EU ETS); the Clean Development Mechanism (CDM), and Joint Implementation (JI). These mechanisms allow Annex I countries to earn emission reduction units by helping to lower GHG in other countries in addition to their own domestic efforts in doing so.

¹⁰⁹ Kyoto Protocol Article 12; Kuyper et al (2018) *Annual Review of Environment and Resources* 43 349.

¹¹⁰ Kuyper et al 2018 *Annual Review of Environment and Resources* 43 346-347.

¹¹¹ Obergassel W et al "Phoenix from the ashes—an analysis of the Paris agreement to the United Nations framework convention on climate change" (2016) *Wuppertal Institute for Climate, Environment and Energy* 1 1-54 45-46.

¹¹² Leggett J A *The United Nations Framework Convention on Climate Change, the Kyoto Protocol, and the Paris Agreement: A Summary* (2020) Congressional Research Service R46204 New York USA 1-12 1-4.

¹¹³ Leggett (2020) *The UNFCCC, Kyoto Protocol & Paris Agreement: A summary* 2.

¹¹⁴ Fawzy S et al "Strategies for mitigation of climate change: a review" (2020) *Environmental Chemistry Letters* 18 2069-2094 2072.

¹¹⁵ Obergassel et al (2016) *Wuppertal Institute for Climate, Environment and Energy* 1 33-36; Paris Agreement Articles 6 & 13.

¹¹⁶ Jacquet J & Dale J "Soft but significant power in the Paris Agreement" (2016) *Nature Climate Change* 6.7 643-646 644.

¹¹⁷ Vienna Convention on the Law of Treaties (Vienna, 23 May 1969; in force 27 January 1980) Article 26.

The Agreement contains a mix (hybrid approach)¹¹⁸ of binding and non-binding obligations or commitments.¹¹⁹ The main mitigation and adaptation obligations/objectives of the Agreement can be inferred from Articles 2(1) and 4. Article 2(1) seeks to create a limit to global temperature increases to well below 2°C above pre-industrial levels and to pursue efforts to limit it to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change. The adaptation component of Article 2 seeks to increase the ability to adapt to the adverse impacts of climate change and foster climate resilience and low greenhouse gas emissions in a manner that does not threaten food production.¹²⁰ The latter part of Article 2(1) also has a financial component that provides for efforts to making finance flows consistent with a pathway towards low greenhouse gas emissions and climate resilient development. Article 4 contains two major components as well. The first relates to reaching global peaking of GHG emissions as soon as possible, recognizing that peaking may take longer for developing countries. The second component seeks to achieve net zero emission by 2050 and refers to the achievement of balance between anthropogenic emissions by sources and removals by sinks of GHGs in the second half of this century.

Both Articles 2 and 4 do not create legally-binding obligations. This is because obligations under Articles 2 and 4 are to be pursued in the light of different national circumstances and in the context of sustainable development and poverty eradication. These Articles invariably recognise the principle of common but differentiated responsibilities.¹²¹ Unlike the UNFCCC and the Kyoto Protocol, the Paris Agreement does not adopt the strict differentiation between developed and developing countries. However, developed countries are expected to “continue taking the lead” by undertaking economy-wide absolute emission reduction targets and to provide financial resources to assist developing country parties with respect to mitigation and adaptation.¹²² Developed countries are also expected to continue to take the lead in mobilizing climate finance and enhance support for capacity-building actions in developing Country Parties.¹²³

¹¹⁸ Corfee-Morlot J et al "Cities, climate change and multilevel governance" (2009) *OECD Environmental Working Papers N° 14 2009 OECD publishing* 54; The hybrid approach is a mix of both the top-down and the bottom-up approaches. It often involves a joint and coordinated arrangement involving national and regional governments, working closely and cooperatively with local authorities to encourage experimentation and innovation at the local level to respond to climate change.

¹¹⁹ Jacquet 2016 *Nature Climate Change* 6.7 644; Bodansky 2016 *Review of European, Comparative & International Environmental Law* 25.2 146.

¹²⁰ Paris Agreement Article 2(1) (b).

¹²¹ Paris Agreement Articles 2(2) and 4(3).

¹²² Paris Agreement Article 4(4).

¹²³ Paris Agreement Article 9(3).

The main strategy adopted by the Paris Agreement for countries to pursue their targets and obligations is the NDC. The Agreement creates a system of self-differentiation, blended with a legally binding procedure that involves the formulation and submission of NDCs. This procedure allows countries to voluntarily determine what their contributions or commitments will be and what steps they intend to take to achieve them.¹²⁴ To this extent, the process of the NDC creates an obligation of conducts but not results.¹²⁵ This is because even though Parties are mandated to periodically formulate, update and submit their targets through NDCs, Parties are not compelled to achieve the projected results or targets set therein.¹²⁶ Unlike the top-down approach of the Kyoto Protocol, the Paris Agreement adopts a flexible system which allows countries to self-determine their targets and take steps towards achieving them, which commentators have described it as a bottom-up approach.¹²⁷

The bottom-up approach involves a multi-level action and participation wherein regional, national, subnational and non-state actors are actively involved in formulating and implementing policies to address problems posed by climate change. It entails the engagement of independent governance actors operating at different levels, resulting in the fragmentation of authority towards achieving a common goal.¹²⁸

A major rationale underpinning the bottom-up approach is that climate change actions and responses should be formulated and implemented at the lowest feasible level of an organization.¹²⁹ This model is built on the notion that climate change is a global public issue which cannot be successfully resolved without global cooperation.¹³⁰ This does not mean that everything should be done at the local community level. However, where actions are best suited to address unique local, regional or national level circumstances, then it is better to focus policy attention there, without having to fit it into a formal global charter for action.¹³¹ Furthermore, It is believed that complementing the international governance process and efforts with domestic laws and policies will not only guarantee that countries' actions are aligned with

¹²⁴ Obergassel et al (2016) *Wuppertal Institute for Climate, Environment and Energy* 1 1-54 15.

¹²⁵ Bodansky (2016) *Review of European, Comparative & International Environmental Law* 25.2 146.

¹²⁶ *ibid.*

¹²⁷ Held D & Charles R "Three models of global climate governance: From Kyoto to Paris and beyond" (2018) *Global Policy* 9.4 527-537; Corfee-Morlot et al (2009) *OECD Environmental Working Papers N° 14 2009 OECD publishing* 46.

¹²⁸ Tan et al "Research on the carbon neutrality governance under a polycentric approach" (2022) *Advances in Climate Change Research* 13.2 159-168 162.

¹²⁹ Rayner S "How to eat an elephant: a bottom-up approach to climate policy" (2010) *Climate Policy* 10.6 615-621 617.

¹³⁰ Tan et al (2022) *Advances in Climate Change Research* 13.2 161.

¹³¹ Rayner (2010) *Climate Policy* 10.6 617.

their international commitments, but will also give the national pledges more certainty and credibility and ensure that policymakers keep promises to implement their pledges.¹³²

2.2 International Influence on National Climate Change Legislation

While the Kyoto Protocol has had little influence on national climate change laws especially with regard to Non-Annex1 Countries,¹³³ the bottom-up approach has resulted in a substantial shift in focus from negotiating globally agreed emission reduction targets to national contributions through NDCs.¹³⁴ It has been argued that the Paris Agreement has had a significant impact on national climate change laws by the inclusion of economy-wide net-zero emissions target (the balance between emissions and their removal by sinks from the atmosphere).¹³⁵ An increasing number of national laws now contain specific references to the Paris Agreement.¹³⁶ Domestic efforts at enacting a climate change law or policy continues to grow and the likelihood of enacting a national climate legislation is heavily influenced by the passage of similar laws elsewhere, suggesting a strong role for peer pressure or learning effects.¹³⁷

Commentators have also identified other international and domestic factors which influence the passage and adoption of particular model of climate change legislation.¹³⁸ The reasons identified are predominantly motivated by a blend of political legal and economic factors. For instance, a country's electoral cycle and the existence of a strong executive government with parliament play important roles. It is also argued that new laws are generally passed in the year immediately preceding an election year and more climate laws are expected to be passed when the ruling party has little or no opposition in parliament.¹³⁹ Furthermore, power exchange cycle between left-wing and right-wing governments reveal that left-wing governments are more inclined to pass climate legislations than its right-wing counterpart.¹⁴⁰ The existence or non-existence of a good quality/quantity of existing legislation in a country and the

¹³² Rumble "Climate change legislative development on the African continent" in *Environment| Africa* 37-42.

¹³³ Fankhauser S et al "Do international factors influence the passage of climate change legislation?" (2016) *Climate Policy* 16.3 318-331 14.

¹³⁴ Iacobuta G et al "National climate change mitigation legislation, strategy and targets: a global update" 2018 *Climate policy* 18.9 1114-1132 1115.

¹³⁵ Eskander et al (2021) *Environmental and Energy Policy and the Economy* 2.1 14.

¹³⁶ World Bank *Reference Guide to Framework Legislation* EFi Insight-Governance 13.

¹³⁷ Rumble "Climate change legislative development on the African continent" in *Environment| Africa* 57.

¹³⁸ Fankhauser S et al "Domestic dynamics and international influence: What explains the passage of climate change legislation?" (2014) *Centre for Climate Change Economics and Policy Working Paper* 1-33.

¹³⁹ Fankhauser S et al "The political economy of passing climate change legislation: Evidence from a survey" (2015) *Global Environmental Change* 35 52-61.

¹⁴⁰ Fankhauser et al (2015) *Global Environmental Change* 35 52-61.

anticipation/expectation of hosting a climate submit may also encourage the enactment of a domestic climate law.¹⁴¹

2.3 Overview of Climate Change Legislative Models

The two main models of national climate change legislation are the sectoral and the framework models.¹⁴² A country's climate legislative model is often tailored to fit its unique national circumstances.¹⁴³ These circumstances may include national legal practice, institutional, political, cultural and socio-economic contexts. Both models are however aimed at mainstreaming of climate issues into national priorities.¹⁴⁴

2.3.1 Sectoral Model

The sectoral climate change model represents a system where climate issues are built into existing sectoral legislation or policies, either by amending existing sectoral legislation or by formulating new policies in order to make them speak directly to climate mitigation and adaptation.¹⁴⁵ In the absence of a specific law on climate change, the sectoral model provides a system through which the executive arm can embed climate change considerations into new or existing policies, pending the enactment of a separate law.¹⁴⁶ This model allow countries to focus efforts on regulating climate sensitive and vulnerable sectors of the economy without the legislative rigours of enacting a new law.¹⁴⁷ This way, a Country is able to focus its laws and policies on unique climate sensitive areas such as preservation of forests, energy efficiency, agriculture, water or human health.

¹⁴¹ *ibid.*

¹⁴² Rumble "Climate change legislative development on the African continent" in *Environment| Africa* 37-42.

¹⁴³ World Bank *Reference Guide to Framework Legislation* EFi Insight-Governance 17.

¹⁴⁴ Rumble "Climate change legislative development on the African continent" in *Environment| Africa* 34 & 57.

¹⁴⁵ Rumble "Climate change legislative development on the African continent" In *Environment| Africa* 54-55.

¹⁴⁶ Nachmany et al *Global trends in climate change legislation and litigation: 2017 update* (2017) Grantham Research Institute on Climate Change and the Environment UK 1-24 10.

¹⁴⁷ Rumble "Climate change legislative development on the African continent" in *Environment| Africa* 35-41; The Clean Air Act of 1970 which was passed by the Congress to address GHG emission and in the Republic of South Africa, Carbon Tax Act 15 of 2019.

2.3.2 Framework Model

This model, also known as the flagship model¹⁴⁸ involves the existence of a key piece of legislation through which lawmakers validate climate change policies.¹⁴⁹ It represents a separate or stand-alone law¹⁵⁰ which serves as a comprehensive and unifying basis for climate change policy, addressing diverse aspects or areas of climate change mitigation and adaptation¹⁵¹ in a holistic and overarching manner.¹⁵² Such law often set national long-term and short-term mitigation and adaptation objectives and establish institutions and processes needed to meet those objectives.¹⁵³

2.4 Review of the Models

This review examines the arguments which underscore commentators' preference for the framework model. This is not to say that the sectoral approach is without its merits. One argument proffered by Rumble in favour of the sectoral model is that it is cheaper when compared to the expensive and rigorous procedure involved in enacting a framework law.¹⁵⁴ She added that the sectoral approach is a better way to achieve the mainstreaming of climate issues since relevant authorities are often familiar with their powers and duties under sectoral laws relevant to their spheres of governance than under a new law.¹⁵⁵ However, some of the arguments in favour of the sectoral approach can be extended to the framework model on the basis that the latter already envisages and recognises the existence of sectoral policies, laws and institutions which the framework law itself seeks to coordinate.

The preference for a framework model rests on the notion that actions against climate change need a strong legal and democratic basis to promote certainty of action and accountability.¹⁵⁶ Certainty is better ensured under the framework model due to its element that sets long-term climate goals and direction.

¹⁴⁸ Townshend et al "How national legislation can help to solve climate change" (2013) *Nature Climate Change* 3.5 430-432 430-431.

¹⁴⁹ Rumble "Climate change legislative development on the African continent" in *Environment| Africa* 38.

¹⁵⁰ Ladan (2021) blogs.law.colombia.edu.

¹⁵¹ Mitigation involves a process of removal of carbon and other harmful substances caused by anthropogenic emissions which causes climate change while adaptation is the act of preventing or minimising the impacts of climate change by taking steps to building resilience for households and businesses; World Bank *Reference Guide to Framework Legislation* EFi Insight-Governance 21

¹⁵² Rumble "Climate change legislative development on the African continent" in *Environment| Africa* 38.

¹⁵³ World Bank *Reference Guide to Framework Legislation* EFi Insight-Governance 14.

¹⁵⁴ Rumble "Climate change legislative development on the African continent" in *Environment| Africa*. 34-36.

¹⁵⁵ Duwe M et al "'Paris compatible" governance: long-term policy frameworks to drive transformational change"' (2017) *Ecologic* 1-103 3-7; Rumble "Climate change legislative development on the African continent" In *Environment| Africa* 40.

¹⁵⁶ Higham et al *Accountability mechanisms in climate change framework laws*.

The better way to create long-term goals and certainty of climate actions which are not easily affected by political fluctuations and unfettered discretion is through a framework law.¹⁵⁷ This helps to guarantee continuity and encourages households and businesses to invest in stable climate policies in line with national climate change objectives. Framework laws in most countries are aligned with the long-term goals under the Paris Agreement.¹⁵⁸ Scholars often prefer a stable, long-term and integrated approach to climate governance, rooted in law, with parliament as the natural place to address any socio-political conflicts.¹⁵⁹

Because framework laws contain provisions for future formulation and adoption of regulations, policies, strategies and plans, the model is able to strike a balance between predictability and flexibility.¹⁶⁰ Laws are more binding and involve a more rigorous legislative process to amend when compared to policies. This ensures continuity, predictability and certainty.¹⁶¹ Flexibility under a framework law is often guaranteed by inclusion of provisions for executive discretions, expert consultations and the formulation of future regulations on specific issues and procedures. To this extent, a framework law is able to provide for mechanisms which accommodates growth, innovations and changes in technology as well as change in international obligations or scientific knowledge.¹⁶² The argument that authorities may encounter difficulty in getting familiar with a new law is mitigated by the element of a framework law which allows for the creation of institutions for the formulation and implementation of novel climate policies. Furthermore, independent advisory body created under a framework law can provide technical advice on climate mitigation, adaptation and other issues based on available science.¹⁶³ The technical support provided by this body of experts can promote the achievement of mitigation and adaptation which are the two most significant components in a typical climate change legislation.¹⁶⁴ A framework law also contains provisions which help to build these components in order to properly respond to climate change issues.¹⁶⁵

Although a country's choice of a climate change model is largely dependent on unique local circumstances, a framework law, when properly crafted can enhance the state's ability to coordinate

¹⁵⁷ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 17-19.

¹⁵⁸ Averchenkova A et al "The impact of strategic climate legislation: evidence from expert interviews on the UK Climate Change Act" (2021) *Climate Policy* 21.2 251-263 251.

¹⁵⁹ Averchenkova et al (2021) *Climate Policy* 253; World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 13-14.

¹⁶⁰ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 14.

¹⁶¹ Averchenkova et al (2021) *Climate Policy* 261.

¹⁶² World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 13-15.

¹⁶³ *ibid*.

¹⁶⁴ Averchenkova A et al "The influence of climate change advisory bodies on political debates: evidence from the UK Committee on Climate Change" 2(2021) *Climate Policy* 21.9 1218-1233 1221.

¹⁶⁵ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 21.

interaction of the different actors whose cooperation are essential for transformation and effective delivery of a country's climate goals.¹⁶⁶ To this end, the model is preferred because it reduces fragmentation and is generally more difficult to ignore, weaken or abolish than policies.¹⁶⁷

2.5 Elements which are Commonly Found in a Climate Change Framework Law

There are certain core elements which commentators have identified as components of climate change laws. These elements serve both as a reference guide when formulating climate change laws and provide a reliable reference against which to review these laws.¹⁶⁸ In discussing these elements, reliance is placed on the World Bank's recent survey of over thirty countries' climate change framework laws, which distils an array of elements under various themes which characterise the framework of climate change legislation.¹⁶⁹ The World Bank Reference Guide shows that some elements (Measurement, Reporting and Verification, Climate Change Strategies and Plans and Policy Instruments) appear more frequently in the majority of the framework laws reviewed than some other elements (Long-Term Targets, Risk and Vulnerability Assessments, and Intermediate and Sectoral Targets).¹⁷⁰ However, the purpose of these elements is to provide an overall view of the incidence of these key elements and to offer a snapshot of examples for countries to use to guide the development of new or updated climate legislation and not to assess individual country legislation. This is because some of the elements may be useful in some countries, but may not be relevant in the context of other countries.¹⁷¹ The guide provided does not represent a model law. A framework law should be appropriate for a country's unique circumstances.¹⁷² The elements are discussed below.

2.5.1 Long-Term Targets

Long-term climate targets provide a vision into the future and encompass broad spectrum of policy areas.¹⁷³ This component of a framework law usually aims to determine a country's strategic pursuit of long-term adaptation and emission reduction targets.¹⁷⁴ These long-term targets provide sufficient time for stakeholders to make the necessary structural and economic adjustments and other pathways which

¹⁶⁶ Averchenkova et al (2021) *Climate Policy* 253.

¹⁶⁷ Rudinger A et al "Towards Paris-compatible climate governance frameworks; An overview of findings from recent research into 2050 climate laws and strategies" (2018) *Studies N°04/18 IDDRI* 1-20 8.

¹⁶⁸ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 7 & 35.

¹⁶⁹ *ibid* 11.

¹⁷⁰ *ibid* 35.

¹⁷¹ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 35.

¹⁷² *ibid* 11.

¹⁷³ Haase I & Duwe M "Long-term strategies: state of play, challenges and possible support through the G20" (2022) *Climate Recon 2050* 1-138 1.

¹⁷⁴ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 17-18.

are compatible with a country's other socio-economic goals towards achieving its climate targets.¹⁷⁵ The long period of adjustment is in recognition of the disruptive nature of climate change which gives rise to unique multi-dimensional issues that are not addressed by existing frameworks.¹⁷⁶ Commentators have argued that clear long-term objectives stands out as the single most important factor to drive the low-carbon transition over time¹⁷⁷ and a pathway to regulatory certainty.¹⁷⁸ A high threshold of knowledge is required in designing effective long-term goals in order to ensure accuracy of plans and predictions.¹⁷⁹ One efficient way to design an emission-reduction plan that accounts for the long-term is to consider the cost, potential climate benefits and the time needed to implement such plans. For instance, plans that are viable, capital intensive but slow to reach their full potential should be commenced early if the long-term goal is to be reached.¹⁸⁰

These long-term targets are often set to achieve emission reduction by 2050 or shortly thereafter in line with Paris Agreement's target for a net-zero emission.¹⁸¹ These long-term targets should be properly aligned with other broader socio-economic and financial long-term goals of a country for the avoidance of conflicts.¹⁸² Without long-term emission targets, framework laws risk becoming directionless and easy to be abandoned.¹⁸³ In a country of high political instability and uncertainty, long-term goals can help to establish "political logic" and safeguard climate policies for long-term and ensure continuity for policymakers.¹⁸⁴

2.5.2 Intermediate and Sectoral Plans

An effective framework law depends on the existence of short or intermediate plans and targets which ensure that current policy measures are periodically and systematically evaluated against their

¹⁷⁵ *ibid* 17-18.

¹⁷⁶ Fisher E et al "The legally disruptive nature of climate change" (2017) *The Modern Law Review* 80.2 173-201 184-187.

¹⁷⁷ Rudinger (2018) *Studies N°04/18 IDDRI* 12.

¹⁷⁸ Sridhar A et al "Climate Law and Governance as Indicators of 'Ability' to implement the Paris Agreement" (2019) *Global Stocktake Submission (19/CMA.1) UNFCCC.Int* 9 1-9 5.

¹⁷⁹ Higham et al *Accountability mechanisms in climate change framework laws* 3-5

¹⁸⁰ Vogt-Schilb A & Hallegatte S "Climate policies and Nationally Determined Contributions: Reconciling the Needed Ambition with the Political Economy" (2017) *IDB Working Paper Series No. IDB-WP-818* 1-35 6.

¹⁸¹ Rudinger (2018) *Studies N°04/18 IDDRI* 12.

¹⁸² Averchenkova et al (2021) *Climate Policy* 21.2 252.

¹⁸³ ClientEarth "Navigating Net-zero; Global Lessons in Climate Law-Making" (2021) *ClientEarth* 36; For instance, Denmark has set a target to reduce its emissions by 70 percent in 2030 compared to 1990 and climate neutrality by 2050 (Climate Act. No 965 of 26 June 2020 Section 1).

¹⁸⁴ Worker J & Niki P "A Guide to Assessing the Political Economy of Domestic Climate Change Governance" (2021) *World Resources Institute* 36 10.

compatibility with the long-term ambition.¹⁸⁵ Intermediate plans are intricately linked and aim to serve as a pathway towards achieving a country's long-term targets.¹⁸⁶ In other words, a country should actively pursue its short-term goals in order to meet its long-term goals. NDCs are a good example of short and intermediate target-setting strategy.¹⁸⁷ Another reoccurring approach to target-setting adopted in framework laws is to intricately link long-term target with periodic or intermediate carbon budgets on a fixed amount of GHG emissions that should not be exceeded within a given period.¹⁸⁸ Short-term plans are also provided for in subsequent regulations by applying carbon budgets as a tool to progressively achieve emission limits per period of time.¹⁸⁹ Establishing a link between short and long-term plans is however not easy. It involves Presenting a coherent plan and mapping out concrete steps to achieve it.¹⁹⁰ Planning should be future oriented and should provide guidance for intermediate steps.

Furthermore, an intermediate plan can be applied to gauge the progress made in achieving long-term climate goals.¹⁹¹ This makes long-term goals more easily enforceable because intermediate plan(s) provide a clearer process and shorter timelines for measurement of actions.¹⁹² Short-term climate policies and NDCs should be ambitiously aligned to provide a credible pathway toward zero net emissions by the end of the century and should be socially and politically acceptable.¹⁹³

Intermediate plans should be in line with the Paris Agreement which sets a five-year cycle of increased ambition in emissions reduction and a periodic stocktaking to assess global progress.¹⁹⁴

While it is important for a framework law to provide broadly for both immediate and long-term targets to guide policy actions, these broad targets on their own do not trigger the key drivers for GHG emission reductions. Intermediate plans should be complemented by sectoral targets and intervention in areas such as energy efficiency in buildings, decarbonisation of transports, renewable energies, carbon pricing, sustainable agriculture and forestry.¹⁹⁵

Sectoral targets should consist of the details of breakdown in the emission reduction contributions from every key sector towards a progressive achievement of long-term targets. Sectoral targets should also

¹⁸⁵ Rudinger (2018) *Studies N°04/18, IDDRI* 12.

¹⁸⁶ *ibid* 8.

¹⁸⁷ *ibid* 15.

¹⁸⁸ Higham et al *Accountability mechanisms in climate change framework laws* 15.

¹⁸⁹ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 19 & 36.

¹⁹⁰ Haase (2022) *Climate Recon 2050* 6.

¹⁹¹ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 19.

¹⁹² Higham et al *Accountability mechanisms in climate change framework laws* 19.

¹⁹³ Vogt-Schilb & Hallegatte (2017) *IDB Working Paper Series No. IDB-WP-818* 24.

¹⁹⁴ Paris Agreement Articles 4 & 6.

¹⁹⁵ Rudinger (2018) *Studies N°04/18, IDDRI* 13.

be implemented through policies or strategies that are predictable, effective, and minimize economic disruptions.¹⁹⁶

2.5.3 Risks and Vulnerability Assessments

Framework legislation should require government and other stakeholders to prepare and publish information on climate-related physical risks and vulnerabilities based on best scientific research and knowledge.¹⁹⁷ Advice on climate risks and vulnerabilities can be given by a technical advisory body which should be made-up of experts on climate change science.¹⁹⁸ An effective tool for addressing adaptation is through periodic risk assessments.¹⁹⁹ Periodic assessments and communication of information on risks and vulnerabilities to public entities, households, and businesses will assist these entities to make informed decisions about future climate change impacts and adaptation.²⁰⁰ Risks and vulnerability assessment reports can also be used in designing strategies and policies.²⁰¹ Risks assessments should also be frequently updated and should reflect changes in agroclimatic zones and ecosystems and the frequency and intensity of extreme weather events as they have significant impacts on the value of businesses and assets.²⁰² Assessment should be conducted over a wider spectrum to cover both natural events and hazards as well as socio-economic preconditions that shape the way in which people are prepared for or respond to such events.²⁰³ Reports compiled following risks assessment should be accessible by stakeholders. Findings made from risks and vulnerability assessments can be applied in developing strategies for loss and damage in order to promote risk reduction and in addressing inequalities caused by vulnerability differences.²⁰⁴

2.5.4 Climate Change Strategies and Plans

Framework laws should contain provisions for the preparation of specific and comprehensive adaptation and mitigation plans and strategies for meeting of long and short-term emission reduction targets and goals. The law could by itself decree targets and goals around which strategies are designed or provide for broad principles upon which specific plans and strategies will be based.²⁰⁵ These plans and strategies

¹⁹⁶ Vogt-Schilb & Hallegatte. (2017) *IDB Working Paper Series No. IDB-WP-818* 24.

¹⁹⁷ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 21.

¹⁹⁸ Averchenkova et al (2021) *Climate Policy* 21.9 1220.

¹⁹⁹ Sridhar et al (2019) *Global Stocktake Submission (19/CMA.1) UNFCCC.Int* 9 8.

²⁰⁰ Birkmann J et al "Understanding human vulnerability to climate change: A global perspective on index validation for adaptation planning" (2022) *Science of The Total Environment* 803; World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 21.

²⁰¹ Higham et al *Accountability mechanisms in climate change framework laws* 22-24.

²⁰² World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 21.

²⁰³ Birkmann (2022) *Science of The Total Environment* 803 1.

²⁰⁴ *ibid.* 1.

²⁰⁵ Higham et al *Accountability mechanisms in climate change framework laws* 16.

may include the development of national adaptation plans and long-term low GHG emission development strategies in line with Paris Agreement.²⁰⁶ The law can specify that these be regularly reviewed and updated, together with associated reporting frameworks.²⁰⁷

These strategies set out the policy measures that entities will undertake. They allocate resources, set targets, and assign responsibilities to entities for the achievement of those targets.²⁰⁸ Framework laws should mandate both public and private entities to prepare and publish climate strategies and plans of implementation. These strategies and plans should be integrated and aligned with existing national planning instruments, such as development plans, sectoral plans, and the annual budget process to avoid overlaps and conflicts.²⁰⁹ Short-term emission reduction strategies should not only occur in the sectors that are easier to decarbonize, they should include both economy-wide and sector specific plans.²¹⁰ They can also be stand-alone plans or they can be integrated into existing national or regional plans.²¹¹ Integration of climate plans and strategies into other existing plans helps to mainstream climate issues to make them part of government's priority plans.²¹² Climate strategies should be informed by research and properly aligned with achieving NDC goals and in meeting obligations under the Paris Agreement. Their design should be flexible enough to respond to growing urgency, evolving science and technology, and other relevant indicators.²¹³

A good a carbon pricing strategy should increase the rate steadily over time and provide credible incentive to reduce long-term emissions. This needs to be compensated by supporting actions at the sector level with focus on achieving the long-term goal of delivering zero emissions. This can be achieved by negotiating sectoral targets with stakeholders.²¹⁴ Based on the current state of climate change science and emergency, immediate development of viable mitigation and adaptation mechanisms is of extreme importance.²¹⁵

2.5.5 Policy Instruments

A good framework law should mandate a specific and competent authority to draw up mitigation policy (carbon pricing, information, regulation, public spending, and fiscal actions) and adaptation policy

²⁰⁶ Paris Agreement. Articles 4(6) & (19) and 9(3), (4) & (9).

²⁰⁷ Sridhar et al (2019) *Global Stocktake Submission (19/CMA.1) UNFCCC.Int* 9 9.

²⁰⁸ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 25.

²⁰⁹ *ibid* 22-25.

²¹⁰ Vogt-Schilb & Hallegatte (2017) *IDB Working Paper Series No. IDB-WP-818* 24.

²¹¹ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 22-25.

²¹² *ibid* 22-25.

²¹³ Sridhar et al (2019) *Global Stocktake Submission (19/CMA.1) UNFCCC.Int* 9 5.

²¹⁴ Vogt-Schilb & Hallegatte (2017) *IDB Working Paper Series No. IDB-WP-818* 14 & 24.

²¹⁵ Fawzy et al (2020) *Environmental Chemistry Letters* 18 2090.

instruments (information management, regulation, public spending, and fiscal actions) within specific timeframes.²¹⁶ Both long and short-term objective are ultimately only a declaration of intent, unless backed with detailed concrete measures for implementation which are often contained in policies.²¹⁷ Policies are important for providing these details. A framework law may remain largely unimplemented and unenforceable until certain policies are developed.

These policies should be designed periodically to provide details which are left out in the framework law. Policies should provide flexibility without compromising the long and short-term climate objectives.²¹⁸ They are often in the form of regulations, programs, carbon pricing and fiscal measures for both adaptation and mitigation.²¹⁹

2.5.6 Independent Expert Advice

An effective framework legislation on climate change should contain provisions to ensure that the government has access to independent expert advice in planning for mitigation and adaptation.²²⁰ Expert input is required in developing and reviewing policies, regulations, plans and strategies.²²¹ This will promote legitimacy and credibility in policy-making and other decision-making processes. Due to their honest and neutral status, independent advisory bodies can ensure that policy process is based on technical and scientific knowledge.²²² Commentators have argued that delegating actual decision-making powers to independent advisory bodies, free from any political influences can be an effective way in helping governments to better resolve climate issues than using them primarily for advisory and monitoring roles.²²³

This element will entail the creation of an independent technical/scientific advisory body separate from the administrative institution or body. The law should ensure that the advisory body has independence of operation and professionalism. The advantage of a domestic scientific advisory body over the IPCC under the UNFCCC is that the former is able to give unique climate advice that are Country specific.²²⁴ An efficient way to determine whether short and long-term climate goals will be met is to review whether

²¹⁶ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 22-25.

²¹⁷ Rudinger (2018) *Studies N°04/18 IDDRI* 13.

²¹⁸ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 22-25.

²¹⁹ *ibid* 22-25.

²²⁰ Nash S L et al "Climate Change Acts: Origins, Dynamics, and Consequences" (2021) *Climate Policy* 21.9 1111-1119 1113.

²²¹ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 27-28.

²²² Averchenkova A et al "The influence of climate change advisory bodies on political debates: evidence from the UK Committee on Climate Change" (2021) *Climate Policy* 21.9 1218-1233 1220.

²²³ Averchenkova et al (2021) *Climate Policy* 21.9 1220.

²²⁴ Higham et al *Accountability mechanisms in climate change framework laws* 26.

the advice of the independent experts are being acted upon.²²⁵ The advisory body can also be empowered by the law to act as a “watchdog” over the actions of the executive and the legislature. This will help to create a system of checks and balances in the decision-making process.²²⁶

While acknowledging the important role of a technical advisory body, commentators have cautioned that assigning too much power to unelected technical bodies can undermine the democratic legitimacy of a law, which can also affect the institutional power to enforce difficult choices.²²⁷ Concerns have also been expressed about the dangers of political weaponization of expert advice to achieve selfish political goals.²²⁸ To ensure effectiveness, the law should mandate a response to the expert advice within a reasonable timeframe.

2.5.7 Coordination Mechanism

A climate change framework law is an overarching national framework for achieving a long-term emissions reduction across the economy. And because the root causes of climate change are embedded across different sectors, it is pertinent for a framework law to provide for a mechanism to coordinate climate actions across these sectors, ministries, departments and sub-national governments.²²⁹ Climate mitigation and adaptation both require structures, incentives, and mechanisms to ensure coordination and cooperation in policy development and implementation. Setting and meeting national mitigation targets will depend on contributions from all economic sectors. This, in turn, will require information and knowledge exchange.²³⁰

More often, the framework law establishes a dedicated coordination body for climate change at a senior level so that it has the requisite authority to direct and manage other agencies in the coordination of responses and resources needed for policy development, planning, implementation, and monitoring.²³¹ The importance of establishing a coordination body at the highest level of authority is to ensure that the body created is able to exercise the required influence, command obedience and to coordinate powers across sectors. This vertical and horizontal coordination of policies, targets, plans and strategies will help to reduce conflicts, overlaps, duplications and promote the proper mainstreaming of climate issues.²³²

²²⁵ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 27.

²²⁶ Rudinger (2018) *Studies N°04/18 IDDRI* 14.

²²⁷ Averchenkova et al (2021) *Climate Policy* 21.9 1219.

²²⁸ *ibid* 1219.

²²⁹ Adelle C & Russel D "Climate policy integration: A case of déjà vu?" (2013) *Environmental Policy and Governance* 23.1 1; World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 28.

²³⁰ Worker (2021) *World Resources Institute* 36 7.

²³¹ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 28.

²³² *ibid*.

2.5.8 Stakeholder Engagement

An effective framework law should include a system for engaging with the private sector, civil society organizations and the general public.²³³ Direct participation of stakeholders at the various phases of elaboration, decision-making and implementation of climate policies strengthen the legitimacy and political buy-in from all actors.²³⁴ This promotes democracy in climate processes and can also help to increase the level of transparency. Engaging stakeholders in climate processes can booster their sense of responsibility and belonging which is capable of promoting compliance with climate policies and laws.²³⁵

The scope of engagement should be wide enough to include public engagement or participation, formulation and implementation of key policies and plans, as well as the review of monitoring reports.²³⁶ The law should define the forum, mode and manner of engagements and special consideration should be given to relevant indigenous groups and other vulnerable groups such as minorities and low-income communities with a limited voice and high vulnerabilities to the adverse effects of climate and policies.²³⁷ There should also be consequences for failure to engage stakeholders in order to ensure compliance.²³⁸ Engagement should be applied in the formulation of the framework law and in the development and review of sectoral plans, policies, Instruments, monitoring of results and identification of gaps.²³⁹ A separate and dedicated institution can be created by the law to ensure stakeholder engagement and participation.²⁴⁰

2.5.9 Subnational Government

A good climate change framework legislation should contain provisions which require subnational governments to set targets, prepare plans, and report on implementation.²⁴¹ This will ensure that stakeholders at all levels of government can contribute directly to emissions reductions and indirectly by supporting new policies, business models, capacity building and political support.²⁴²

²³³ *ibid* 29.

²³⁴ Rudinger (2018) *Studies N°04/18 IDDRI* 14.

²³⁵ *ibid* 11.

²³⁶ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 28.

²³⁷ IPCC *Sixth Assessment Report of the Intergovernmental Panel on Climate Change* 12.

²³⁸ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 29.

²³⁹ *ibid*.

²⁴⁰ Rudinger (2018) *Studies N°04/18 IDDRI* 14.

²⁴¹ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 30.

²⁴² Worker (2021) *World Resources Institute*. 36. 7& 8.

The law should also provide incentives and equip regional and local governments to decarbonize and adapt.²⁴³ The role of the subnational government must however be consistent with the power sharing formula under the organic law or the constitution to eliminate administrative frictions and duplications and promote cooperative governance.²⁴⁴ Creating a synergy with existing structures will not only ensure administrative efficiency but also help to mitigate the disruptive nature of climate change.

Because climate change issues are global, involving multiple actors in a complex interrelationship, it requires that governments and actors at all levels are appropriately engaged.²⁴⁵ This will help to address both broad and narrow issues and also ensure that divergent views and issues are addressed.²⁴⁶ Broad climate issues are better handled by the national government while narrow or grassroots concerns are better addressed by subnational and local governments. This system will help to bring climate issues, engagement and participation closer to the people at the local level.²⁴⁷

2.5.10 Financing Implementation

Climate actions and obligations require funds for their implementation.²⁴⁸ A good framework law therefore requires governments at all levels to address climate change risks and policy objectives in the preparation of their public financial management instruments and the publication of information on public finances. Domestic financial arrangement is very important especially when one considers the fact that International financial support requested by developing countries to implement conditional NDCs far exceeds existing funding pledges.²⁴⁹

The law can also compel companies to publish their GHG emission information to be accessible to investors and for purposes of insurance.²⁵⁰ The law should go beyond requesting the government to address climate change in their annual budget process. Allocation of financial resources should include medium and long-term fiscal planning, this is critical to achieving immediate long-term climate goals.²⁵¹ Financial provisions in framework laws are essential for building adaptation infrastructure, responding to

²⁴³ Rudinger (2018) *Studies N°04/18 IDDRI* 10.

²⁴⁴ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 30.

²⁴⁵ Ostrom (2010) *Global Environmental Change* 20(4) 550–552.

²⁴⁶ Fisher et al (2017) *The Modern Law Review* 80.2 182.

²⁴⁷ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 30.

²⁴⁸ Boston J & Lawrence J "Funding climate change adaptation: The case for a new policy framework" (2018) *Policy Quarterly* 14.2 40-49 41; IPCC *Sixth Assessment Report of the Intergovernmental Panel on Climate Change* 26; World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 31.

²⁴⁹ Pauw W P et al "Conditional nationally determined contributions in the Paris Agreement: foothold for equity or Achilles heel?" (2020) *Climate policy* 20.4 468-484 480.

²⁵⁰ Sridhar et al (2019) *Global Stocktake Submission (19/CMA.1) UNFCCC.Int* 9 6.

²⁵¹ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 31-32.

loss and damage and for promoting green growth in a less disruptive manner. The law should make provision for multiple sources of funds which could include funds from donations, fines for exceeding carbon budgets, green bonds domestic budgetary allocations and foreign aid. The ability to attract and mobilise foreign and domestic aid will often depend on factors such as the credibility built through narrative and direction-setting, stable mechanisms articulated through short- and long-term strategies, and a strong system of accountability.²⁵² Climate funds can also be applied in addressing effects of loss and damage where communities do not have the capacity to adapt.²⁵³

2.5.11 Measurement, Reporting and Verification

A climate change framework law should make provisions for information and data collection. In other words, the law should define the information to be collected, empower information collection, and require periodic reporting and assessment of progress and provide for public access to the information collected.²⁵⁴ The data gathered is relevant to track progress and for fulfilling the reporting obligation for attracting international financial support.²⁵⁵ The data collected can also provide the necessary knowledge to support policymakers in formulating and implementing climate policies, monitor compliance with international commitments, raise awareness and facilitate climate debates. This will promote checks and balances in the decision-making process, help the public to engage meaningfully and assist businesses to access market opportunities.²⁵⁶ The data presented in the reporting process can be applied in measuring the progress made towards achieving both short and long-term targets. The law should provide that periodic reports be submitted to and verified by both the legislature and an independent, technical or scientific body created by the law.

In order to successfully track progress over time, it is not enough to track the quantity of emission reduction in the short term alone, it is important to also monitor how emission reductions are delivered, and in particular in which sectors and with which technology.²⁵⁷ One way to enhance MRV is for the framework law to mandate the creation of an open mitigation and GHG emission registry. This will promote access, scrutiny and verification of climate data.²⁵⁸

²⁵² Sridhar et al (2019) *Global Stocktake Submission (19/CMA.1) UNFCCC.Int* 9 6.

²⁵³ Roberts E & Pelling M "Climate change-related loss and damage: translating the global policy agenda for national policy processes" 2018 *Climate and Development* 10.1 1-17 11.

²⁵⁴ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 33.

²⁵⁵ Umemiya C et al "Understanding support needed for climate mitigation and adaptation in developing countries from the national reporting under the UNFCCC" (2021) *Institute for Global Environmental Strategies (IGES)* 1-18 3.

²⁵⁶ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 33.

²⁵⁷ Vogt-Schilb & Hallegatte (2017) *IDB Working Paper Series No. IDB-WP-818* 2.

²⁵⁸ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 33.

2.5.12 Oversight

An effective framework law should provide for a combination of parliamentary, judicial and technical/scientific oversight of executive actions on climate.²⁵⁹ Oversight functions can also be performed by the highest institution or administrative body created by the framework law. Such oversight provision can require the executive arm to table progress reports before the legislature or before independent expert/advisory body.²⁶⁰ The law should define the frequency of this oversight procedure, what the legislature should do with such reports and the legal consequences for failure to comply.²⁶¹

The law can mandate the legislature to liaise with a scientific or technical advisory body in the process of considering reports brought before it. This is to ensure that the legislature will act on reports based on expert advice. Furthermore, the law can mandate that periodic audit of the executive or stakeholders by experts who will then present the report of such audits to parliament. It is also important that the law should create a unique mechanism and empower the courts to hear and determine cases from parties seeking compliance with the framework law where other forms of reliefs are not sufficient to address unique climate issues or harm.²⁶² The law can also create avenues and incentives for self-reporting.²⁶³

2.5.13 Accountability Mechanism

An effective climate change framework law should contain provisions which makes it easily enforceable against individuals and entities and to hold stakeholders accountable for acts, omissions or negligence.²⁶⁴ It is important that a climate change framework law specify accountability mechanism for the implementation of the core obligations contained in the laws in order to avoid the situation of a mismatch between intentions and actions.²⁶⁵ The accountability elements which should be contained in a framework law can be identified by asking the following questions: “*What obligations are created?*” (what are the duties, functions or tasks created by the law?); “*Who is accountable to whom?*” (who are the persons, entities or stakeholders charged with carrying out the obligations created and to whom the obligations are owed?); “*How is compliance assessed?*” (what is the mechanism or procedure for assessing compliance with obligations?) and; “*What happens in the case of non-compliance?*” (what are the consequences, punishments or fines/penalties under the law for wrongful acts, omissions and

²⁵⁹ *ibid* 34.

²⁶⁰ Higham et al *Accountability mechanisms in climate change framework laws* 3.

²⁶¹ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 34.

²⁶² *ibid*.

²⁶³ Sridhar et al (2019) *Global Stocktake Submission (19/CMA.1) UNFCCC.Int* 9 7.

²⁶⁴ Higham et al *Accountability mechanisms in climate change framework laws* 1.

²⁶⁵ *ibid*.

negligence?).²⁶⁶ These elements will be applied as a guide in assessing both the effectiveness and efficiency of the framework law.²⁶⁷ The fulfilment of these accountability elements is however dependent on other factors such as how well a framework law is drafted to suit unique and existing national culture.²⁶⁸ Stakeholders should also have sufficient financial and technical resources to perform their obligations.²⁶⁹ Also, the existence of a strict system of compliance with the rule of law will promote accountability.²⁷⁰

²⁶⁶ Price R A *Climate adaptation: budgeting and accountability* (2021) K4D Helpdesk Report 1073 Institute of Development Studies. DOI: 10.19088/K4D.2022.008 UK 7-8.

²⁶⁷ Price R A *Climate adaptation: budgeting and accountability* (2021) K4D Helpdesk Report 1073 Institute of Development Studies. DOI: 10.19088/K4D.2022.008 UK 7-8; Higham et al *Accountability mechanisms in climate change framework laws* 1-3.

²⁶⁸ *ibid* 1-3.

²⁶⁹ *ibid* 11.

²⁷⁰ *ibid* 11.

CHAPTER 3. OVERVIEW OF NIGERIA'S CLIMATE CHANGE REGULATORY FRAMEWORK

This chapter presents an overview of the main components of Nigeria's climate change regulatory framework relevant to achieving its climate change targets. The chapter highlights how these components of the regulatory framework overlap and interact with one another and the manner in which they all fit together. The main components include the Constitution of the Federal Republic of Nigeria 1999 (As Amended),²⁷¹ the CCA, climate change policies and other laws and broad national planning instruments which have direct and indirect impacts in the regulation of climate change in Nigeria. The Chapter also highlights relevant sectoral mitigation and adaptation initiatives and efforts, which are unevenly spread among sectors as follows; energy (power generation and distribution), oil and gas, health, manufacturing, transport, water and waste, and Energy and Agriculture, Forestry and Other Land Use (AFOLU) sectors.²⁷² A proper coordination and cooperative governance between the framework law and the other instruments is required for a coherent response in addressing climate issues and achieving the targets in the NDC.²⁷³ Majority of these other laws and policies preceded the enactment of the CCA in 2021, while a number of others were updated in 2021.²⁷⁴

It is pertinent to note herein that the focus of this chapter also acknowledges the fact that due to the cross-cutting nature of climate change, there may well be other legal and administrative rules and procedures existing within the larger Nigerian legal system which are not discussed but which may have direct or indirect bearings with climate change. These often include general administrative law rules applicable in the public service and common law rules operating in Nigeria as a result of the Country's colonial past.

3.1 The Constitution of Nigeria

Nigeria's Constitution is relevant to climate change because the CCA and other policies derive their existence and validity from it.²⁷⁵ Although the Constitution does mention climate change, Section 20 relates to the protection and improvement of the environment generally. It provides that "the state shall

²⁷¹ Nigeria's Constitution Section 3(1).

²⁷² Ladan 2022 Available at SSRN 4019698 2 & 3.

²⁷³ World Bank Reference Guide to Framework Legislation EFI Insight-Governance 22-26; Ladan 2022 Available at SSRN 4019698 2.

²⁷⁴ Nigeria's Ministry of the Environment *National Climate Change Policy for Nigeria 2021-2030* (2021) FGN Nigeria *Medium-Term National Development Plan 2021-2025* FGN both commenced along with the CCA in 2021, while the Federal Government of Nigeria *Nigerian Energy Transition Plan 2022* (2022) FGN commenced a year after in 2022.

²⁷⁵ Nigeria's Constitution Section 3(1).

protect and improve the environment and safeguard the water, air, forest and wild life of Nigeria”.²⁷⁶ This Section was recently expanded by the Nigerian Supreme Court (the apex court) to include the protection of the fundamental right to life.²⁷⁷ Commentators have argued that the Section has the potential to be applied by policymakers and the judiciary in addressing climate change issues and concerns.²⁷⁸

3.2 Overview of the Climate Change Act, 2021

The CCA represents Nigeria’s legislative effort aimed at pursuing the Country’s international climate change obligations and commitments.²⁷⁹ 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 (NCCC).²⁸⁰ It is divided into parts made up of thirty-six sections and a Schedule. The Act applies to individuals, private and public entities, MDAs and across sectors of the economy.²⁸¹ An overview of the main parts of the Act is presented below.

3.2.1 Objectives and Application

This part of the Act contains broad objectives that serve as a guide for the implementation of the CCA. It provides a framework for the attainment of low carbon emissions, promotion of inclusive green growth and sustainable economic development by ensuring that Nigeria develops climate change mitigation and adaptation strategies and ensure the close out of climate change action and incorporates it into national development priorities.²⁸² The Act also aims to mobilise for the financing necessary to ensure that climate change policies and actions are implemented and integrated across sectors. It sets a target for the year 2050–2070 for the attainment of net-zero emission and aims at identifying risks and vulnerabilities,

²⁷⁶ The Section was however generally considered non-binding by Nigerian Courts. In the Case of *Chinda v Shell-BP*. (1974) 2 RSLR 1 and the Case of *Amoco Production Co. v Village of Gambell, Alaska* 480 US 531 (1987), Nigerian courts held that Section 20 is non-justiciable as a fundamental principle of state policy and have generally maintained a default attitude of placing the economic interests of the oil and gas industry way above the need to ensure environmental and climate justice in relation to the activities in the industry.

²⁷⁷ The Supreme Court applied the provision of Section 20 in the Case of *Centre for Oil Pollution Watch vs. NNPC*. 2019] 5 NWLR (PT 1666) page 518 in establishing a right to sue and the link between the fundamental right to life and the right to a healthy environment.

²⁷⁸ Etemire U "The Future of Climate Change Litigation in Nigeria: COPW v NNPC in the Spotlight" (2021) CCLR 158-170; Ladan 2022 Available at SSRN 4019698 3-5.

²⁷⁹ Ladan (2022) Available at SSRN 4019698 2 & 3.

²⁸⁰ CCA Section 3.

²⁸¹ CCA Section 2.

²⁸² CCA Section 1; Section 24 of the CCA however excludes private companies with less than 50 employees.

especially ensuring that private and public entities abide by stated climate change strategies, targets, and National Action Plan.²⁸³

3.2.2 Establishment of the National Council on Climate Change

Section 3 establishes the NCCC as the highest decision-making body to oversee the general implementation of the Act. The obligations of the NCC are to formulate and oversee the implementation of the National Action Plan on Climate Change (Action Plan), Climate Change Fund and supervise and review actions of the Secretariat along with other oversight functions.²⁸⁴ The Council is chaired by the President of Nigeria and assisted by the Vice-President, with members drawn from both the public and private sectors, civil societies, women, youth and persons with disabilities. The NCCC has the duty to mobilise resources to support climate actions, and collaborate with Nigerian Sovereign Green Bond in meeting the Country's NDC in line with the Paris Agreement.²⁸⁵

3.2.3 Administration and Control of the NCCC

Part three establishes a Secretariat which is the administrative arm of the NCCC.²⁸⁶ The Secretariat is headed by a Director-General²⁸⁷ and assisted by Zonal Coordinators²⁸⁸ and State Directors²⁸⁹ who are appointed by the NCCC for the geo-political zones and states respectively. The State Directors are supported by other members of staff.²⁹⁰ The Secretariat reports to the NCCC along with other function which include the provision of general administrative and technical advice, implementation of the Action Plan, establishment of a registry to capture adaptation and mitigation actions, preparation of guidelines and dissemination of information as well as collaboration with relevant entities among others.²⁹¹

3.2.4 Financial Provisions

The Act contains broad financial provisions to fund the administration and implementation of the Act.²⁹² Section 15(1) of the Act establish a Climate Change Fund which shall be maintained by the NCCC. The Act draws from multiple sources of funding which include allocation from the national legislature, subventions, grants and donations, fees and charges from administrative services rendered by the

²⁸³ CCA Section 1.

²⁸⁴ CCA Section 4.

²⁸⁵ CCA Section 4.

²⁸⁶ CCA Section 7.

²⁸⁷ CCA Section 10(1).

²⁸⁸ CCA Section 11(1) (a).

²⁸⁹ CCA Section 11(1) (b).

²⁹⁰ CCA Section 11 (3).

²⁹¹ CCA Section 8 & 9.

²⁹² CCA Section 15(2).

Secretariat, fines for flouting climate change obligations by entities, Carbon Tax and Emission Trading.²⁹³ Other sources include borrowing from financial institutions²⁹⁴ and gifts.²⁹⁵ Section 15(2) provides that the NCCC must apply the funds in the administering the Act.

3.2.5 Carbon Budget and National Climate Change Action Plan

The Act provides that the Federal Ministry of Environment in consultation with the ministry responsible for national planning shall set carbon budgets²⁹⁶ and budget cycles²⁹⁷ in line with the Country's obligations under the Paris Agreement.²⁹⁸ The Carbon Budgets and Action Plans are Strategies adopted under the Act to keep average increases in global temperature within 2°C and pursue efforts to limit temperature increase to 1.5°C above pre-industrial levels by applying them in setting emission targets and mitigation plans. The life cycle for the Action Plan is for every five years and must be approved by the NCCC and the Federal Executive Council.²⁹⁹ The Action Plan will provide measures for setting actions for mainstreaming climate change responses into sector functions; identify actions for adaptation and mitigation against climate change; and enhance energy conservation, efficiency and use of renewable energy across sectors.³⁰⁰

Section 19(5) mandates the Federal Ministry of Environment to publish climate vulnerabilities and risk assessments as well as guidelines for measurement, reporting and verifying of national emissions which will inform the adaptation components of the Action Plan and basis for setting the annual review of carbon budgets. This will promote a system of reporting and verification of information and data. Similarly, Section 21(1) mandates the Director-General to submit a detailed report on the state of the nation on climate change to the NCCC and the National Legislative Committee on Climate Change. While Section 21(3) mandates the Director-General to publish publicly and submit evaluation reports on performance of climate change duties by private and public entities to the National Legislature to trigger the oversight function of the legislature.

²⁹³ CCA Section 15.

²⁹⁴ CCA Section 17.

²⁹⁵ CCA Section 18 (the gifts must not be inconsistent with the provisions of the Act).

²⁹⁶ Carbon Budget is defined in Section 38 of the Act as the approved quantity of GHGs emission that is acceptable over a period of time.

²⁹⁷ CCA Section 19.

²⁹⁸ Paris Agreement Article 4.

²⁹⁹ CCA Sections 20(1) and 20(3).

³⁰⁰ CCA Section 20(4)(a).

3.2.6 Obligations Relating to Climate Change

Several climate change obligations are created by the Act for public entities,³⁰¹ private entities³⁰² and MDAs. Public entities providing services to the public on behalf of the Nigerian government are required to comply with the periodic regulations issued by the NCCC.³⁰³ Private entities are required to develop a process to achieve the annual carbon emission reduction target as stated in the Action Plan.³⁰⁴ Furthermore, Private Entities are required to appoint a Climate Change Officer or an Environmental Sustainability Officer. This officer's responsibility is to prepare and submit annual reports detailing the company's effort at complying with climate change obligations for the review period.³⁰⁵ MDAs are also required to establish a climate change desk under the supervision of a director.³⁰⁶ This Desk would carry out all compliance and planning activities relating to the climate change obligations. A fine could be levied should an MDA fail to comply.³⁰⁷

Collaboration is required between the Secretariat and Civil Society Organisations (CSOs), women, youths and others to monitor climate programmes and activities and engage in climate advocacy.³⁰⁸ Section 26(1) contains provisions relating to climate education and access to information. It requires the Secretariat to advise MDAs in charge of education to integrate climate change issues into education curriculum across educational levels and to make information available to CSOs upon request in accordance with the Freedom of Information Act.³⁰⁹

3.2.7 Nature-Based Solutions

Part seven of the Act makes provisions for nature-based solutions in addressing mitigation and adaptation.³¹⁰ Section 28(1) adopts the REDD+ strategy in conserving forests and pursuit of nature-based solutions in line with the Paris Agreement.³¹¹ This strategy is also adopted under other climate policies discussed later on in this chapter.

Section 29 contains provisions relating climate data capture, access and use. This shall be achieved through the National Bureau of Statistics who shall ensure that the data captured is reflected in the

³⁰¹ CCA Section 23.

³⁰² CCA Section 24.

³⁰³ CCA Section 23.

³⁰⁴ CCA Section 24(1)(a).

³⁰⁵ *ibid* 24(1)(b).

³⁰⁶ CCA Section 22(1).

³⁰⁷ CCA Section 22(6).

³⁰⁸ CCA Section 25(1).

³⁰⁹ Freedom of Information Act No. 4 2011.

³¹⁰ CCA Section 27.

³¹¹ CCA Section 28; Paris Agreement Article 5.

National Action Plan and applied in the development of Nigeria's Capital Accounts, Climate Change Action Plan, Carbon Budgets and for financial planning.

3.2.8 Miscellaneous

Miscellaneous issues in the Act are addressed in part eight.³¹² This covers public participation and engagement, conflict of interests by NCCC members, power of the NCCC to make regulations, limitation of suits, offences/penalties and the definition of some key words and concepts.

Section 30(1) mandates the publication of public engagement strategies that informs the public about Action Plans and to encourage them to contribute to the achievement of the objectives in these plans.

Section 32 empowers the NCCC to make regulations on specific issues, including the power to require entities to report on GHG emission reductions, to supervise market-based mechanisms on climate change, to create further offences and any other issues necessary for the implementation of the Act.

Another important highlight of the miscellaneous part is that it defines what constitute offences under the law. Section 34(1) defines offences broadly to mean the commission of any acts which negatively affects mitigation and adaptation measures. While Section 33(2) deals with limitation of suits. It provides that suits can no longer be brought three months after the expiration of the acts, neglect or default complained. However, when the complained act is continuous, then the action must be instituted within six months after the damage or injury has ceased.

3.2.9 Overview of Nigeria's Sectoral Laws and Policies

This sectoral overview aims to highlight some of the laws, policies and plans which forms part of the Country's mitigation, adaptation and climate-compatible initiatives for sustainable development. Some of the policies examined contain broad and overarching provisions while others are sector-specific. To ensure policy implementation and co-ordination, the Federal Ministry of Environment established the Department of Climate Change (DCC). The DCC coordinates activities towards implementation of the UNFCCC and the Kyoto Protocol and collaborates with relevant entities under a committee known as the Inter-ministerial Committee on Climate Change (IMCCC). The IMCCC also serves as the authority for the implementation of Clean Development Mechanism (CDM) projects in Nigeria³¹³ and the National Climate Change Policy for Nigeria (NCCP).

³¹² CCA Sections 30-36.

³¹³ The CDM is a Flexibility Mechanism under the Kyoto Protocol which allows developed countries to reduce emissions by financing emission reduction projects, such as planting a forest in developing countries.

3.2.10 National Climate Change Policy for Nigeria (NCCP)

The NCCP³¹⁴ predates the CCA and represents the Country's broad and overarching climate change vision under which other sector specific policies and programs are created.³¹⁵ The Policy applies to several climate change sensitive sectors/areas, including agriculture (Crops and Livestock), water, forests, biodiversity, health, human settlements, energy, transportation and communications, industry and commerce, security, information and communication technology (ICT), and vulnerable groups and education.³¹⁶ It contains broad adaptation strategies and measures and also adopts the detailed adaptation plans and measures under the NAPF.³¹⁷ To this extent, the NAPF complements the NCCP on adaptation.

The development and implementation of the NCCP aligns with Nigeria's NDC and covers the same period from 2021 to 2030.³¹⁸ It is structured into seven Parts. Parts one and two present the Country's broad climate change background/context and how the Policy aims to align with the Paris Agreement³¹⁹ and relevant domestic climate policies.³²⁰ Part Three and Four contain the Policy's guiding principles,³²¹ statements and measures needed to accelerate climate change mitigation.³²² Part five highlights the key policy directions for adaptation³²³ while parts six and seven are focused on conditions necessary for the actualization of the Policy's vision for ensuring a climate resilient economy and sustainable development.³²⁴

The Policy has key commendable features.³²⁵ It contains a strategy to achieve the overall goal of promoting a low-carbon, climate-resilient and gender-responsive sustainable socio-economic development.³²⁶ It also contains provisions on multisectoral mitigation measures to reduce both direct and fugitive GHG emissions across sectors (energy/power, oil and gas, AFOLU, health, manufacturing, transport, water and waste). Its adaptation measures seek to promote a climate-resilience and compatible

³¹⁴ Nigeria's Federal Ministry of the Environment *National Climate Change Policy for Nigeria 2021-2030* FGN.

³¹⁵ Nigeria's NDC 2021 4.

³¹⁶ NCCP 17-35.

³¹⁷ NCCP 8 & 33.

³¹⁸ Nigeria's NDC 2021 4.

³¹⁹ NCCP 10-14.

³²⁰ NCCP 2-9.

³²¹ NCCP 15 & 16.

³²² NCCP 17-24.

³²³ NCCP 25-32.

³²⁴ NCCP 37-47.

³²⁵ NCCP.

³²⁶ Federal Government of Nigeria *National Action Plan on Gender and Climate Change for Nigeria (2020)* FGN.

nation and meaningful participation of women and other vulnerable groups. The Policy compliments the CCA to the extent that it recognises and advocates for a legal framework as one of the core enablers for an integrated climate resilient development and the establishment of a legislative authority for the appropriation of resources for climate responses.³²⁷ The NCCP is also complemented by the National Policy on the Environment (NPE)³²⁸ especially on core environmental law principles such as the polluter pays principle and the public trust principle.

3.2.11 National Adaptation Plan Framework

The NAPF³²⁹ is Nigeria's most detailed plan on adaptation.³³⁰ It contains detailed response to climate change adaptation challenges under the Country's NDC.³³¹ Its adaptation measures and goals are also adopted by the NCCP in addressing climate risks and vulnerabilities and for building climate change resilience.³³² The objectives of the NAP are to build appropriate capacity for adaptation action, define adaptation options at the various levels of governance, mobilise fund for effective climate change adaptation, and to develop adaptation strategies and effective monitoring and evaluation plan to facilitate implementation. The process to implement these objectives is called the National Adaptation Plan process (NAP process).³³³ This process sets the objectives for and determines the principles, approaches, and structure of climate change adaptation planning and implementation in Nigeria. This is done by identifying priority adaptation actions across sectors in the medium and long terms as well as defining and facilitating institutional coordination and alignment with adaptation. It also entails exploring resource mobilization to facilitate the implementation of various adaptation programs and projects.³³⁴ The NAP process is also adopted by Nigeria's NDC in the pursuit of MDAs' adaptation targets.³³⁵ The Process involves multiple sectors and agencies as well as private sector organizations, working at the national, state, and local government levels. The NAPF underscores the significance of the sectoral approach to the realization of adaptation objectives.³³⁶

The NAPF proposes an institutional arrangement that follows the broader climate change governance in Nigeria, with the DCC as the institution for the coordination and implementation of the framework.³³⁷ It

³²⁷ NCCP.

³²⁸ Federal Government of Nigeria *National Policy on the Environment* (2016) FGN.

³²⁹ Nigeria's Federal Ministry of the Environment *National Adaptation Plan Framework* (2021) FGN.

³³⁰ Nigeria's NDC 2021 11.

³³¹ Nigeria's NDC 2021 11.

³³² NCCP 8 & 33.

³³³ NAPF 4-5.

³³⁴ NAPF 6.

³³⁵ Nigeria's NDC 2021 12.

³³⁶ NAPF 6-8.

³³⁷ NAPF 9.

recognizes the crucial role of funding³³⁸ and provides for financial resources to support the various aspect of the NAP process recognizing the size of the Country and the diversity of ecological and social systems, which require different adaptation strategies.

The framework contains nine key parts. These parts provide for details of the NAP process; the integration (horizontal and vertical integration) of adaptation components of the Paris Agreement into domestic national plans and policies across entities and levels of government and into national development priorities. The target sectors for the NAP process include the Ministry of Agriculture, the Ministry of Budget and Finance, Energy and the Oil & Gas Sectors, in order to achieve synergy and avoid overlaps and conflicts.³³⁹ The NAPF also relies on afforestation strategies such as the REDD+ and the National Shea Tree Restoration Advocacy Programme (NASTREP: 2019–2025), which is aimed at enhancing the production of the shea butter tree.³⁴⁰ The NAPF afforestation and forest conservation measures are also complemented by the National Forest Policy,³⁴¹ and the National Environmental (Desertification Control and Drought Mitigation) Regulations.³⁴²

The Framework acknowledges that adaptation strategy in Nigeria is largely conceived as a short or medium-term strategy, with a potential to lead to mal-adaptation because short-term adaptation measures may not be able to address the long-term impacts of climate change. It therefore seeks to address this challenge by integrating climate change adaptation into Nigeria's medium and long-term development priorities and strategies through the NAP process.³⁴³

3.2.12 Oil & Gas/Energy Sectors

The oil and gas and energy sectors in Nigeria are the two largest contributors to GHG emissions in Country.³⁴⁴ The main GHG emissions sources are from gas flaring, fugitive methane emissions, on-site fuel use (upstream and midstream) and on-site fuel use from refineries. The combined contribution of flaring and venting to the environment is about 80% of emissions.³⁴⁵

Oil and natural gas, and biomass constitute the main sources of energy for Nigeria. Consequently, exploration and utilisation of natural gas for electricity generation in Nigeria has direct impact on climate

³³⁸ NAPF 30.

³³⁹ NAPF 22.

³⁴⁰ NAPF 10.

³⁴¹ Nigeria's Federal Ministry of the Environment *National Forest Policy* (2020) FGN.

³⁴² Nigeria's Federal Ministry of the Environment *National Environmental (Desertification Control and Drought Mitigation) Regulations* 13/2011 (2011) FGN.

³⁴³ NAPF 13.

³⁴⁴ Nigeria's NDC 2021 17; NCCP 22.

³⁴⁵ NCCP 22.

change.³⁴⁶ However, Nigeria is one of the least energy efficient economies in the world.³⁴⁷ This inefficiency has resulted in heavy reliance on private carbon emitting power generators and forest woods.³⁴⁸ Because gas flaring in Nigeria's petroleum sector is a major contributor to GHG emissions, the sector has a number of laws and policies targeted specifically at reducing both direct and fugitive emissions of GHGs.³⁴⁹

The Petroleum Act (PA)³⁵⁰ was the main law regulating the oil and gas sector in Nigeria before it was repealed by the Petroleum Industry Act (PIA).³⁵¹ However, sections 104(1-4) and 107 of the repealed PA has been retained under PIA's transitional provisions.³⁵² These sections are retained to regulate gas flared from old oil exploration fields granted under the PA. The sections provide that a licensee can only flare or vent natural gas in the case of emergencies and safety practice where it is required for facility start-up or strategic operational reasons. The fees received as gas-flaring penalties will be utilised for environmental remediation. The PIA does not contain specific reference to climate change, however, Section 64(h) of the Act provides that the Country will engage in the business of renewables and other energy investments through a state-owned oil company.

Apart from the provisions on gas flaring contained in the PA and the PIA, the first law specifically dedicated to phase out gas flaring in Nigeria was the Associated Gas Re-injection Act.³⁵³ The Act has been replaced by the Flare Gas (Prevention of Waste and Pollution) Regulation (FGR).³⁵⁴ The FGR penalises gas flaring and imposes a fine of \$2(US Dollars) per thousand standard cubic feet of gas flared.³⁵⁵

Harmful gases which are not covered by the Regulation are contained in Nigeria's National Action Plan to Reduce Short-lived Climate Pollutants (SLCPs).³⁵⁶ This policy is also adopted in the Country's NDC³⁵⁷

³⁴⁶ World Bank *Climate risk Country profile: Nigeria* (2021) World Bank 21.

³⁴⁷ *ibid* 21.

³⁴⁸ *ibid* 21-22.

³⁴⁹ Nigeria's NDC 2021 17; Olujobi O J et al "The Legal Framework for Combating Gas Flaring in Nigeria's Oil and Gas Industry: Can It Promote Sustainable Energy Security?" (2022) *Sustainability* 14.13 7626 1-20.

³⁵⁰ Petroleum Act CAP 350 LFN 1990.

³⁵¹ Petroleum Industry Act 2021 (PIA).

³⁵² PIA Section 311(9)(a).

³⁵³ Associated Gas Re-Injection Act CAP 26 LFN 2010.

³⁵⁴ Flare Gas (Prevention of Waste and Pollution) Regulation GN No.59 2018, made by Minister under Section 9 of the Petroleum Act and Section 5 of the Associated Gas Re-injection Act.

³⁵⁵ FGR Regulation 21(g).

³⁵⁶ Nigeria's National Action Plan to Reduce Short-lived Climate Pollutants (SLCPs) 2019 2-4.

³⁵⁷ Nigeria's NDC 2021 I & 17.

as a strategy to reduce the emission of these SLCPs from a range of socio-economic sectors. These SLCPs³⁵⁸ have been identified to cause climate change.³⁵⁹

Another relevant policy in the oil and gas sector is the National Gas Policy (NGP),³⁶⁰ which aims at setting goals and implementing an institutional framework for the Gas Sector. It encourages the domestic use of Liquefied Petroleum Gas (LPG) to replace wood as a way to combat climate change, reduce deforestation and improve community health.

With respect to power and electricity generation, the primary law is the Electric Power Sector Reform (EPSR) Act.³⁶¹ The Act does not make specific reference to climate change. However, section 88(9) (c) provides that the Minister shall submit periodic reports to the president on efforts made on the implementation of renewable energy power generation. This provision is complemented by the Regulations on Feed-in Tariff for Renewable Energy Sourced Electricity in Nigeria.³⁶² The regulation aims to exploit Nigeria's vast potential for renewable energy by stimulating private investment. It provides that a total of 1,000MW by 2018 and 2,000 MW by 2020 should be generated through renewable sources and connected to the grid.³⁶³ The regulation also mandates power distribution companies to source minimum of 50 per cent of their total supply from renewables. This goal to transit to clean, renewable and affordable energy is further complemented by the National Renewable Energy and Energy Efficiency Policy (NREEEP).³⁶⁴ The NREEEP broadly defines the government's position on how to strengthen renewable energy and energy efficiency in the Country. Details of the NREEEP measures are however left to the National Energy Efficiency Action Plans (NEEAP) 2015-2030.³⁶⁵ The NCCP also adopts the NEEAP as an energy efficiency plan that will be implemented within the overall objective of reducing GHG emissions in the Industrial Sector.³⁶⁶ The specific programmes adopted by the NEEAP to achieve its targets include the Energy Efficiency Housing Scheme, The Abuja Green City, Abuja Centenary City, and The Nigerian Clean Energy Access Programme.³⁶⁷

³⁵⁸ SLCPs 2.

³⁵⁹ Nigeria's NDC 2021 I & 17.

³⁶⁰ Federal Government of Nigeria's *National Gas Policy* (2017) FGN.

³⁶¹ Electric Power Sector Reform Act No. 6 of 2005.

³⁶² Regulations on Feed-in Tariff for Renewable Energy Sourced Electricity in Nigeria 2015.

³⁶³ Regulations 4 and 8.

³⁶⁴ National Renewable Energy and Energy Efficiency Policy (NREEEP) 2015.

³⁶⁵ NEEAP 6-7.

³⁶⁶ NCCP 21.

³⁶⁷ NEEAP 6-7; NCCP 21.

A broad financial architecture for the realisation of Nigeria's transition to a clean, renewable and affordable energy is provided under the recently launched Nigeria's Energy Transition Plan (NETP).³⁶⁸ The Plan is implemented by the Energy Transition Implementation Working Group (ETWG), a body set up by the Presidency to supervise the implementation of the clean energy transition program.³⁶⁹ One of the main objectives of the ETWG is to secure at least \$10 billion funding to kickstart the implementation of NETP.³⁷⁰ It can be argued that the framing of the financial provisions under the CCA will provide the necessary legal backing for NEPT and the entire oil/gas and energy sectors..

3.2.13 Broad National Plans and Strategies

National plans and strategies contain a country's broad political and socio-economic goals (long and short-term goals) and blueprints for the actualising them. The Long-term targets in these broad national plans signal the direction, pace, and extent of structural changes needed to achieve climate change goals and guide the response of the public sector, businesses, and households.³⁷¹ These plans may make direct or indirect references to climate change objectives and their implementation.³⁷² Effective implementation of climate change strategies and plans requires that the relevant institutions integrate climate goals and targets with national planning instruments, such as development plans, strategies, sector plans, and the annual budget process.³⁷³ It is also hoped that the framing of the long-term mitigation goals under the CCA (2050-2070) will allow for the needed legal alignment of climate goals with these broader goals.³⁷⁴

It is pertinent that both short-term and long-term climate goals and targets are properly aligned with broad national planning instruments in order to ensure that their implementation are guaranteed and that necessary budgetary plans (funds) are factored in by successive governments. A number of these national plans have been adopted under the NCCP and the NDC³⁷⁵ as measures for implementing

³⁶⁸ Nigeria's Energy Transition Plan (NETP) 2022.

³⁶⁹ Information on the Energy Transition Implementation Working Group is available at <https://www.energytransition.gov.ng/implementation/> accessed on 01/01/2023.

³⁷⁰ *ibid.*

³⁷¹ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 17.

³⁷² *ibid* 22-25.

³⁷³ *ibid* 26-27.

³⁷⁴ CCA Section 1(c) & (f).

³⁷⁵ Updated NDC 2021. 4.

climate goals in the area of renewable energy,³⁷⁶ climate funding,³⁷⁷ climate change infrastructure,³⁷⁸ socio-economic and human capital development³⁷⁹ and in pursuit of a just transition in line with national priorities and the Paris Agreement.³⁸⁰

A good example is the Medium-Term National Development Plan (MTNDP),³⁸¹ a short-term strategy that aims towards achieving government's 2050 agenda. This plan focuses on economic growth and development, infrastructure, public administration, human capital development, social development and regional development. It seeks to increase awareness to climate issues, boost the production and use of renewable energy sources, and generally create the conditions for making the economy sustainable. The implementation period for this plan is substantially aligned with the 2050 emission reduction period under the NDC.

³⁷⁶ Nigeria's Economic Sustainability Plan (NESP) 2020 is focused on stimulating the Nigerian economy and driving it towards socio-economic sustainability and self-sufficiency. The plan notably contains provisions which encourages private sector climate financing a solar power strategy to create 250,000 jobs and power 5 million households by 2023 and addresses science and technology, renewable energy resources and especially how these can be intergraded with agricultural, housing, roads and solar power projects.

³⁷⁷ Nigeria's Green Bonds Programme 2017 is an innovative financing strategy in achieving emissions reduction and climate change adaptation adopted by Nigeria's NDC, the NCCP and the NAPF. The Nigerian government has launched and issued Green Bonds as an innovative and alternative way of raising climate finance. It targets about \$250 million in climate finance to support national projects in key areas include environment, agriculture, power and energy efficiency-transportation.

³⁷⁸ National Integrated Infrastructure Master Plan (NIIMP)2021 represents Nigeria's blueprint on infrastructural development which complements adaptation plans and measures under the NAPF. This plan acknowledges that climate change effects cause damages to properties, as well as to socioeconomic infrastructures. it seeks to make the Country's infrastructures resilient to the adverse impacts of climate change, enable a low carbon development of the transport sector, and prepare the Country against natural disasters.

³⁷⁹ National Action Plan on Gender and Climate Change for Nigeria 2020 specifically adopted under Nigeria's NDC and it complements the NAPF in achieving climate gender goals. It focuses on effective strategies for integrating gender into the implementation of national climate change initiatives. This is in recognition of the vulnerability of women to the effects of climate change.

³⁸⁰ Paris Agreement. Preamble.

³⁸¹ Medium Term National Development Plan (MTNDP) 2021-2025.

Other Plans relevant to the implementation of the NDC³⁸² include the Economic Recovery and Growth Plan Agenda³⁸³ and Medium-Term Economic Growth Acceleration Plan.³⁸⁴

³⁸² Nigeria's NDC 2021 4.

³⁸³ Federal Government of Nigeria *Economic Recovery and Growth Plan Agenda 2050* (2017) FGN.

³⁸⁴ Federal Government of Nigeria *Medium-Term Economic Growth Acceleration Plan 2021-2025* (2021) FGN.

CHAPTER 4. CRITIQUE OF NIGERIA'S CLIMATE CHANGE REGULATORY FRAMEWORK.

Following the general description of the climate change regulatory framework in Nigeria and its main components in the previous chapter, this chapter aims to provide a critical assessment of the effectiveness of this framework as well as the extent to which it reflects the elements that are usually found under a framework model. This is achieved by applying the elements identified in Chapter 2 as a benchmark to determine the effectiveness of the Country's climate change framework.

The questions critically examined in this Chapter are as follows; What model of climate change legislation is reflected? Is this model suitable for the Nigerian context and why? To what extent does the CCA provide for elements commonly provided for in a climate change framework legislation? Are there omissions in the law, if yes, are they significant? Are there problematic provisions, if so, what are these problems? How can the problems and issues raised be remedied?

4.1 Climate Change Model Choice and Appropriateness

Nigeria's climate change regulatory regime examined in the preceding Chapter reveals a framework model. This regime consists of the CCA as the overarching statute which seeks to integrate other existing laws and policies and coordinate climate change actions across government levels and sectors. This is evident in the objectives of the Act, particularly in Sections 1(b)&(e) and 2. Section 1(b) & (e) states that the Act seeks to facilitate the coordination of climate change action needed to achieve long term goals, ensuring that climate change actions and policies are integrated with other related policies for promoting socio-economic development. Section 2 provides that the Act applies across all sectors of the economy and levels of government. In essence, no industry or sector of the economy is exempted from the CCA.

The CCA is also reflective of a top-down approach. This is because it provides for an institutional arrangement with predominant decision-making power moving from the national government to the regions and state levels. It applies national policies to steer regional and state authorities to take climate change actions.³⁸⁵ In other words, climate actions, targets and obligations under the CCA are determined at the national level of government and then handed down through the Secretariat as binding on the state governments as well as on public and private entities.

As stated in Chapter 3, the CCA establishes the NCCC as the highest decision-making authority at the national level with a Secretariat which takes charge of implementing all of the NCCC's administrative functions. The offices created and the officers appointed under the Secretariat are all done at the national

³⁸⁵ Corfee-Morlot et al (2009) *OECD Environmental Working Papers N° 14* OECD publishing 10.

level by the NCCC and made to function at the regional and state levels and across sectors without inputs from the pre-existing state and local government structure in the Country.³⁸⁶ Furthermore, the power to formulate National Action Plans and the determination of periodic carbon budgets and emission trajectories are done by the Secretariat and implemented at all levels of government through climate change desks maintained by federal MDAs.³⁸⁷ This top-down approach excludes and ignores the existing structure of the states and local government especially the roles of State Commissioners for the Environment who are the executive officials in charge of environmental issues in the various 36 States of the Federation under Section 197 of the Nigerian Constitution.

Nigeria's adoption of the framework model and the top-down approach to climate change is largely appropriate given the existing federal system of government and the unique power sharing structure in the Country. Under the Nigerian federal system, political and economic power is unequally concentrated at the federal level to the exclusion of other levels of government.³⁸⁸ The enormous power wielded at the national level of government also extends to economic and fiscal/budgetary allocation.³⁸⁹ This arrangement allows the federal government to determine the Country's economic policy objectives and budgetary plans, allocations and focus.³⁹⁰ Problems may therefore have arisen if the CCA were to create a structure unreflective of the Country's system of government and power sharing formula.

Other reasons for the suitability of the framework and the top-down approach include the fact that the power and gas sectors, which contribute more than 60% of the total GHG emissions in the Country³⁹¹ are under the exclusive control of the federal government.³⁹² Therefore, any law that aims to effectively reduce or eliminate GHG emission should therefore be made by the federal government. Furthermore, national laws often trump over states/regional laws in cases of conflict.³⁹³ Due to its power dominance over states and regional governments, the federal government is predisposed to make better and superior

³⁸⁶ CCA Part 3.

³⁸⁷ CCA Sections 2 & 22(1).

³⁸⁸ Ohazuruike (2022) *Journal of Global Social Sciences* September 3.11 83; Ewetan O O "Fiscal federalism in Nigeria: Theory and practice" (2012) *International Journal of Development and Sustainability* 1.3 1075-1087 1082.

³⁸⁹ Ohazuruike (2022) *Journal of Global Social Sciences* September 3.11 83; Ewetan 2012 *International Journal of Development and Sustainability* 1.3 1083.

³⁹⁰ Ohazuruike (2022) *Journal of Global Social Sciences* September 3.11 83; Ewetan (2012) *International Journal of Development and Sustainability* 1.3 1082.

³⁹¹ Nigeria's NDC 2021 24.

³⁹² Nigeria's Constitution Schedule 1 and section 4(7).

³⁹³ Nigeria's Constitution Section 4(5).

financial provisions and funds available for the formulation and implementation of climate goals and targets than states and local governments.

The framework model also presents some advantages for the peculiarities and the uniqueness of the Nigerian system. For instance, the framework model is better suited to address the problems that may arise as a result of the legislative fragmentation in the Nigerian legal system. This fragmentation is evident from the number of laws and policies reviewed in chapter 3. A framework law can provide the necessary coordination needed to promote cooperation for the proper implementation of the various laws that are scattered along the various sectors (oil & gas, power/energy, transport, waste, water and AFOLU).³⁹⁴ Similarly, a framework law will provide the necessary certainty, continuity and stability that may be lacking in the existing climate change policies and strategies.³⁹⁵ This will also show that Nigeria has the necessary legal mechanism (with the necessary force of law) as its domestic initiative towards meeting its international climate change targets and obligations as contained in its NDC.³⁹⁶

The legal obligations created under the CCA is enforceable against entities and officials compared to obligations that are contained in policies which have no force of law. This advantage will also enhance the accountability mechanisms and legislative oversight elements and other necessary scrutiny required to enforce climate targets.³⁹⁷ Furthermore, the disruptive nature of climate change may require the creation of new offences/crime to address unique climate violations. These can only be created by a law and not policy.³⁹⁸

4.2 The Extent Which Nigeria's Framework Law Reflects Elements Commonly Found in Climate Change Framework Legislation

The discussion below focusses on critically examining the extent which the framework under the CCA reflects the elements identified in chapter 2. This critique is discussed under each of the elements below.

4.2.1 Long-term Targets

A commendable feature of the framework is its ambitious and overarching provisions towards achieving long-term mitigation and net-zero GHG emission by 2050-2070 in line with international climate change obligation. This is more so when the provisions of the CCA as well as the adaptation objectives of the NAPF, the NCCP and other key policies and national plans which address climate change issues are considered and implemented in a complementary manner. The provision in the CCA which addresses

³⁹⁴ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 28-30.

³⁹⁵ Rumble "Climate change legislative development on the African continent" in *Environment| Africa* 37.

³⁹⁶ Paris Agreement Articles 4(2) & 7(9).

³⁹⁷ Higham et al *Accountability mechanisms in climate change framework laws*.

³⁹⁸ Fisher et al (2017) *The Modern Law Review* 80.2.

long-term climate targets is limited to Section 1. This section only deals with broad long-term climate change objectives for the Country. The section does not contain any other details nor set absolute emission targets with greater clarity on the intended outcome and the direction of travel of plan to achieve long-term targets within the period stated.³⁹⁹ However, the CCA provides the legal platform upon which detailed provisions can be provided through other policies and strategies. Also, the NDC emission target is set for 2030 while similar adaptation provisions are contained in the NAPF. In this way, the periodic formulation of Carbon Budgets if well implemented could constitute the intermediate steps towards achieving long-term targets.

4.2.2 Intermediate and Sectoral Targets

As discussed in chapter 3, the CCA makes provisions for the periodic formulation of Action Plans, Carbon Budgets and emission reduction targets for public and private entities which are mechanisms capable of being translated into short-term or intermediate targets. The Action Plans are to be reviewed every five years and the Carbon Budgets are to be reviewed periodically to enable the government set intermediate or short-term targets. The NDC emission target is also set for 2030 while similar intermediate adaptation plans are contained in the NAPF. However, while the CCA does not specifically make provisions for setting sectoral emission targets, it is hoped that the design of Carbon Budgets and Action Plans will reflect more focus on the oil/gas and power sectors and other sectors identified by the NDC as the sectors producing the highest amount of GHGs.

In terms of intermediate targets in the CCA, a major challenge is that these targets are futuristic and do not address the urgent need to cut down on GHG emissions. Furthermore, the CCA does not provide that carbon budgets cannot be arbitrarily transferred between entities. In the absence of this important legislative limitation, big GHG emitters can manipulate the system by assigning excess carbon emissions to shelf companies or entities created by them to avoid sanctions. There is therefore need for an amendment to the law to prevent entities from creating shelf corporation to which their excess GHG emissions can be assigned.

4.2.3 Risk and Vulnerability Assessments

The element relating to risks and vulnerability assessments are sparingly reflected in Sections 1(g) and 8(f) of the CCA. These sections only respectively identify the risks and provide that the Secretariat shall collect data and disseminate information on climate risks. There are no provisions relating to the manner in which data will be collected as well as measures or processes for the assessment of these risks and

³⁹⁹ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 17.

vulnerability. Furthermore, there is no provision regulating the frequency data collation.⁴⁰⁰ The law should be amended to state the persons and entities responsible for climate risks assessments, the timeframe for assessments, how the risk data should be applied and the consequences for failure to comply.

4.2.4 Climate Change Strategies and Plans

The CCA mentions the formulation of Action Plans, Carbon Budgets and Regulations, and the adoption of the REDD+ strategy. The NCCP and the NAPF and other policies also contain references to adoption of climate strategies towards mitigation and adaptation.⁴⁰¹ These strategies are essential to provide decarbonisation and adaptation details which are not contained in the framework law. The periodic updates of the strategies will also enable policymakers to make necessary adjustments to accommodate changes which may prove onerous in the case of amending the framework law itself. However, there is a challenge with this provision.

Section 19(2) provides that carbon budget must be presented to the NCCC within 12 months of the commencement of the Act. However, this section fails to provide for timeline within which the NCCC must approve or disapprove of such budget and the consequences if the NCCC fails to act.⁴⁰² The mention of a specific timeline in the framework law will emphasise the urgency needed to address climate change challenges.⁴⁰³ The law should be amended to provide for specific timelines within which actions relating to approvals and disapprovals of Carbon Budgets. This will promote legal certainty, accountability and urgency in addressing climate issues.

4.2.5 Policy Instruments

The CCA makes provision for the formulation of Regulations in Section 32. This section grants the NCCC discretionary power to make Regulations to provide additional details on certain important issues, including the creation of additional offences,⁴⁰⁴ fiscal planning and budget,⁴⁰⁵ and information gathering and sharing.⁴⁰⁶ Although the CCA does not specifically refer to the overarching policies (NCCP and NAPF) and many other existing law or policies, it can be argued that from the framing of section 32, that these policies will be implemented alongside the CCA.

⁴⁰⁰ CCA Section 19(5)(a).

⁴⁰¹ NCCP 8&27; NAPF 10.

⁴⁰² CCA Section 19(2).

⁴⁰³ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 7 & 14.

⁴⁰⁴ CCA Section 32.

⁴⁰⁵ CCA Section 29.

⁴⁰⁶ CCA Section 30.

The Act however fails to provide for timeline within which the NCCC must perform the obligation to make Regulation. Similarly, the provisions of Section 32 of the CCA provides that the NCCC may make Regulations requiring public and private entities to report annually on GHG emission reduction. This provision also impliedly excludes MDAs from such Regulations because MDAs are not mentioned in the section. Furthermore, the use of the word “may” suggest that this duty is discretionary.⁴⁰⁷ In other words, the NCCC can choose not to make the Regulations. This provision is problematic and capable of causing further problems should the NCCC fails to act within a reasonable time. The CCA should be amended to provide specific timeline and details in this regard.

4.2.6 Independent Expert Advice

The CCA makes no provision for the establishment of an independent expert or advisory body to advise on important climate issues which include: review and comment on climate risks and vulnerabilities; offer technical advice on setting climate targets; policies and strategies or to perform oversight functions on technical issues.⁴⁰⁸ The CCA also does not have provisions which grants agencies or decision-makers access to expert advice. There are no provisions made for independent scientific scrutiny and validation, similar to the role played by the IPCC at the international level.

Section 8(j) of the CCA provides that the Secretariat shall provide analytical, technical and scientific advice to the NCCC on climate risks and options for mitigation and adaptation. However, this provision is grossly inadequate because the Secretariat is not independent of the NCC. Furthermore, provisions which states the qualification of employees of the Secretariat does not require them to be experts.⁴⁰⁹ This absence of provisions requiring consultation with independent scientific and technical experts in the CCA is a significant omission in the law. This is because the technical advisory role played by these bodies are necessary in reaching crucial decisions which will in turn ensure that government actions and decisions on climate change are not arbitrary or made by unqualified persons or entities. Decisions and actions taken without the role of an expert body to act as a “watchdog” may become vulnerable to political manipulations.⁴¹⁰

There is a need to amend the law in order to make extensive provisions for independent expert advice. Members of this body should be drawn from across different fields and sectors relevant to the

⁴⁰⁷ Rilwan F "An evaluation of The Judicial Control of Administrative/Legislative Discretion in Nigeria" (2020) *Nnamdi Azikiwe University Journal of International Law and Jurisprudence* 11.1 149-160 151.

⁴⁰⁸ Averchenkova et al (2021) *Climate Policy* 21.9.

⁴⁰⁹ CCA Section 10(1-3).

⁴¹⁰ Rudinger (2018) *Studies N°04/18 IDDRI* 14.

environment and climate change to ensure meaningful contribution to the formulation of climate risks, vulnerability and assessments, strategies and plans, offer general technical advice on climate issues and to perform oversight functions over the executive and the legislature.

4.2.7 Coordination Mechanism

The CCA contains a number of provisions in relation to coordination.⁴¹¹ However, the law does not make provisions for proper institutional alignment as well as alignment with major pre-existing laws and policy initiatives. These include: NAPF and NCCP, Flare Gas (Prevention of Waste and Pollution) Regulation, Regulations on Feed-in Tariff for Renewable Energy Sourced Electricity in Nigeria and other relevant instruments which operated in Nigeria before the enactment of the CCA. Also, no climate change obligations are assigned to existing state and local government entities. It becomes unclear what the roles of these existing institution would be vis a vis the roles of the newly created Zonal and State Directors. Similarly, pre-existing laws and policies already contain detailed mitigation and adaptation provisions mimicking a carbon tax regime, the polluter pays principle, and detailed penalty payment system for gas flaring and reporting obligations.⁴¹² These are not expressly integrated into the CCA, leaving a coordination gap, pending the formulation of further regulations by the NCCC. As mentioned in chapter 2, proper integration will help to clarify possible overlaps between these pre-existing regulations and the provisions of the Act on emission targets.

Furthermore, the NCCC and Secretariat are established under the CCA to formulate and implement climate change issues across levels of government and sectors. However, the Act fails to define the roles and statuses of pre-existing institutions such as the Federal Ministry of Environment, the DCC, The ICC, National Environmental Standards and Regulations Enforcement Agency and the various State Ministries of the Environment and the Commissioners heading the Ministries at the State level. The problem created by this lack of coordination becomes apparent when one considers the fact that the two overarching climate change policies (NCCP and NAPF) already relies on and operates under the institutional framework of the Federal Ministry of the Environment and the DCC for implementation.⁴¹³

This lack of integration prompted Nigeria's President to call for an immediate review of the CCA.⁴¹⁴ A proper integration of these instruments and institutions can help to address and fill some gaps under the

⁴¹¹ The NCCC and its Secretariat are vested with the power to coordinate climate change issues across sectors under sections 4, 8 and 9 of the CCA.

⁴¹² Adejowon-oso "Nigeria's commitments under Paris Agreement" In *Environment| Africa* 76.

⁴¹³ NAPF 9.

⁴¹⁴ The President stated this in a speech made during the inauguration of the NCCC; Nigeria Punch Newspaper available at <https://punchng.com/buhari-orders-immediate-review-of-climate-change-act/> Accessed on 15/12/2022.

Act, pending the development of regulations and policies by the NCCC. Proper vertical integration between all the tiers of government is crucial in delivering on the ambitious targets set out in the NDC.

4.2.8 Stakeholder Engagement

Section 30(1) of the Act is commendable for mandating the Secretariat to make periodic publications of its public participation strategy, however, it fails to provide for the timeline within which the Secretariat must publish the maiden version of the strategy. A delay in the publication of the public participation strategy can prevent members of the public and other entities from engaging in meaningful participation in important climate change decisions and processes.

Also, section 20(3) of the CCA mandates the Secretariat to consult with the public on the Action Plan before such a plan is presented to the NCCC, while section 30(1) mandates the Secretariat to periodically publish its public engagement strategies. However, the term “public” is not defined in the law. This omission creates ambiguity as to what section of the populace would constitute the “public” for the purpose of consultation. In addition, the term “Consultation” is also not defined by the Act.

Likewise, section 30(2) limits the content of a Public Engagement Strategy to two objectives. Namely; to inform the public about the Action Plan; and to encourage members of the public to contribute to the development of the Action Plan. This could result in ambiguity because it can be read to exclude other important objectives such as defining what persons would constitute the public for the purpose of consultation; where and how public participation must take place; who is responsible to fund and conduct public participation; the procedure and timeline within which members of the public must raise objections; consequences if the relevant authorities fail to consider public objections, and the procedure for administrative review or appeal of decisions. It is unclear if the Act can be read to include those important objectives. The CCA also falls short on the provisions relating to stakeholder engagement.⁴¹⁵

Furthermore, the provisions of the CCA excludes all private entities with less than 50 employees.⁴¹⁶ This provision automatically exclude relevant stakeholders. This exclusion is also not justifiable under any environmental or climate change principles. This is because such an exclusion lays emphasis on the corporate size of private entities rather than the GHGs emission capacities of entities. The size of carbon emitted from sources does not have any bearing on the number of employees within such sources. The exclusion is also not reflective of the socio-economic realities of Nigeria where it is estimated that 60 million Nigerians, most of which are small businesses and households depend on carbon emitting power

⁴¹⁵ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 29.

⁴¹⁶ CCA Section 24(1).

generating sets to fill the energy supply deficits in the Country.⁴¹⁷ Consequently, it is difficult to find the link between carbon emission and the number of employees in an establishment. A larger number of employees in an establishment may not necessarily translate to larger GHG emission and *vice versa*.

The provisions relating to public participation process and strategy should be reviewed to include further vital details as suggested. Furthermore, the provision of the CCA which excludes private entities with less than 50 employees should be amended and re-focussed on GHGs emission capacities of entities and emission points and not the number of employees.

4.2.9 Subnational Government

The CCA contains provisions for the implementation of climate change actions and targets across all levels of governments and establish the NCCC and a Secretariat to perform these functions at the National, Regional and State levels.⁴¹⁸ The Act however does not require States or Local Governments to set targets, prepare plans and report on implementation. Rather, the CCA create offices of Zonal and State officials and completely excludes the Local Government in the scheme of engagements. There is a need to create and clearly define the roles of states and local governments and also engage them in setting climate targets and implementing the provisions of the CCA.⁴¹⁹ This will create synergy and eliminate conflicts, overlaps and unnecessary bureaucracy.⁴²⁰

4.2.10 Financial Implementation

To fund the implementation of its conditional targets for the period between 2021 and 2030, Nigeria will require about 177 Billion United States Dollars (USD).⁴²¹ The bulk (USD 122 billion) will be targeted at the power sector.⁴²² To meet this enormous financial obligation, the CCA and other policies combine to make both broad and detailed financial provisions for climate funding and financial implementation. The Country also places a huge reliance on foreign support⁴²³ and on the basis of the provisions of the Paris Agreement.⁴²⁴

⁴¹⁷ Nnaji C E et al "Electricity Supply, Fossil fuel Consumption, Co2 Emissions and Economic Growth: Implications and Policy Options for Sustainable Development in Nigeria" 2013 *International Journal of Energy Economics and Policy* 3.3 262-271 262-263.

⁴¹⁸ CCA Section 1.

⁴¹⁹ World Bank *Reference Guide to Framework Legislation* EFI Insight-Governance 29-30.

⁴²⁰ *ibid*.

⁴²¹ Nigeria's NDC 2021 4.

⁴²² *ibid* 4.

⁴²³ Nigeria's NDC 2021 4. The Country commits to achieve 20% GHG emission reduction below business-as-usual, and a conditional 47% reduction.

⁴²⁴ Paris Agreement Article 9.

Section 29(3) of the CCA mandates the NCCC to liaise with the Ministry responsible for Finance, Budget and National Planning to ensure that relevant data captured is included in planning and expenditure as a means of measuring the impact of climate change on sustainable development. Similarly, section 4(p) provides that the NCCC shall collaborate with the Nigerian Sovereign Green Bond,⁴²⁵ while section 15(1) establishes the Climate Change Fund whose proceeds will be applied by the NCCC in the implementation of the Act. Section 15(1) (a-f) lists the various sources from which climate funds will be sourced. The NAPF, NCCP, NESP and the NDC also contain specific financial plans for climate funding.⁴²⁶ These financial plans provide a good foundation for meeting the enormous financial obligation required to deliver the Country's NDC targets.

However, a noticeable defect is that the CCA/Policies do not mandate the NCCC to publish its financial statements or audits. Periodic publication of financial audits will not only ensure public access and scrutiny, but will promote accountability and transparency needed to attract the foreign support.⁴²⁷

4.2.11 Measurement, Reporting and Verification (MRV)

Proper data analysis and collection promotes transparency and are also relevant as one of Nigeria's international obligations under the Paris Agreement and the UNFCCC on MVR. MRV.⁴²⁸ The provisions that addresses MRV are found in sections 19(5), 8(f) and 29(1) of the CCA. Section 8(F) mandates the Secretariat to collect data and disseminate information on climate risks, impacts and Carbon budgets. Section 19(5) mandates the Federal Ministry of the Environment to publish the details of National, Regional and Sectoral risks and vulnerabilities which will serves as the adaptation component of the Action plan and for setting and reviewing annual carbon budgets. Section 29(1) & (2) mandates the NCCC to collaborate with the National Bureau of Statistics on data collection and collation for the purpose of formulating the Action Plan in line with Carbon Budget. These provisions are commendable to the extent that they provide for the need to collate data, publish the risks and vulnerability assessed. They also contain clear instructions on how the assessment should be applied.

These provisions on MRV are however weak and inadequate because they lack important details on measures to be adopted for data collection; what mode will qualify as "publication"; the need to involve

⁴²⁵ The Green Bond is a financial strategy which is aims at funding projects relating to energy efficiency, sustainable agriculture, clean transport, clean water and other similar projects.

⁴²⁶ Nigeria's NDC 2021 4.

⁴²⁷ Paris Agreement Articles 4(1) & 13.

⁴²⁸ UNFCCC Articles 9(1) and 10(1); Paris agreement Articles 13(7) & 15(3).

experts in data collection, verification and other expert scrutiny of data as well as details relating to the frequency of collection and publication data.⁴²⁹

4.2.12 Oversight

The most innovative feature of Nigeria's framework is the establishment of the NCCC. This Body is chaired by the President and members are drawn from sectors, civil societies, youth, women and the vulnerable. The inclusion of the President and the Vice-President in the NCCC is significant as the highest decision-making authority in the Country to oversee the implementation of climate issues across every sector.⁴³⁰ The establishment and investiture of powers on the NCCC to coordinate and oversee national climate actions, administer the Climate Change Fund and mobilise resources to fund climate actions are reflective of a good oversight function. Furthermore, the CCA provides for a form of parliamentary oversight in Section 21(1) and states that the Secretariat shall submit a report to the parliament on the state of climate change in the Country.

There are however a few lapses in the oversight provisions. The Section regulating to parliamentary oversight in the CCA is limited to interval progress reporting by the Secretariat without specifying the action that parliament is expected to take upon receipt of the report. In other words, the Act does not provide for duties of the National Legislature in relation to the report submitted, the timeframe within which the legislature must act on the report, and the consequences should the legislature fail to act.⁴³¹ The provision lacks vital details on the process and resources by which scrutiny is to be ensured.

The Law should be amended to reflect a strong executive, parliamentary expert as well as judicial oversight functions over climate actions without creating hurdles to governance.⁴³²

4.2.13 Accountability mechanism

A commendable feature of the CCA is the manner in which it creates obligations through which entities can be held accountable.⁴³³ Accountability mechanism in the CCA is reflected in the way obligations are created. These obligations include: functions and powers of the NCCC;⁴³⁴ functions of the Secretariat; obligation of Public and Private Entities; MDAs and NGOs as well as the assignment of specific duties to officials.⁴³⁵ Other accountability elements include oversight functions of the Parliament and the Courts.⁴³⁶

⁴²⁹ World Bank *Reference Guide to Framework Legislation* EFi Insight-Governance 33.

⁴³⁰ World Bank *Reference Guide to Framework Legislation* EFi Insight-Governance 9.

⁴³¹ Higham et al *Accountability mechanisms in climate change framework laws* 27.

⁴³² *ibid.*

⁴³³ Ladan 2022 *Available at SSRN* 4019698 5.

⁴³⁴ CCA Section 4.

⁴³⁵ CCA Sections 4, 22-25 and 32 which creates obligations.

⁴³⁶ CCA Section 21 & 34.

The obligations created and assigned to entities provides answers to two accountability questions; “*what obligations are created*”? “*who is accountable to whom*”? However, the other two accountability questions relating to “*how compliance is assessed*” and “*what happens in case of non-compliance*”? are inadequately provided for in the Act. This is because compliance/enforcement provisions and provisions dealing with the elements of oversight, measurement, reporting and verification which can be applied in gauging performance and for holding violators accountable are also not adequately provided for in the law. for example, the offence defined under section 34(1) of the CCA is ambiguous. The section defines a single offence generally to include “acts” that negatively affects efforts towards mitigation and adaptation. The Law does not indicate what “acts” will amount to an offence. This can weaken the element of certainty in the law, which can further create difficulty in holding entities and officials accountable for specific breaches. If the legislative mechanism under the CCA intends to make it an offence if Carbon Budget is exceeded and imposes a penalty in the event of such breach (which effectively take away existing rights), then it must be clearly stated and unequivocally prescribed in the law.⁴³⁷ Also, the definition of “offence” is restricted to “acts” alone, excluding “negligence”, “omissions” or a failure to act or perform an obligation. It is therefore uncertain if an omission or negligence will be punishable under the Act.

Furthermore, provisions relating to administrative measures in sections 22(5&6) and 24(2) of the CCA empower the NCCC to impose fines on MDAs and Private Entities but excludes Public Entities. It is unclear whether or not a Public Entity is excluded from an administrative fine and why this is so? These administrative powers also do not include remediation orders, directives to cease and desist from an act, compliance order, appeal procedure for challenging administrative decisions and other relevant measures that are peculiar and better suited to address urgent issues and prevent further damage. Similarly, the section dealing with offences grants the NCCC discretionary power to prescribe penalty for offences committed.⁴³⁸ It is uncertain if the administrative penalty is in addition to the right to approach a court or whether such fine is an interim or final decision on the addressing the violation.

One may argue that the mandate given to courts to review the implementation of climate change laws is often implicitly addressed through the broader domestic legal system. However, explicit provisions regulating court proceedings and dispute resolution that provide for *locus standi* (a right to sue or institute legal action) can be formulated to offer more clarity on judicial oversight.

⁴³⁷ Rumble "Climate change legislative development on the African continent" in *Environment| Africa* 47.

⁴³⁸ CCA Section 34(1).

Furthermore, it is doubtful if common law or declaratory remedies would be sufficient to address breaches under the Act. For instance, where an entity has exceeded its carbon limits, a review/order sought in court before the carbon target/budget date has passed may be declared premature. Similarly, a review sought for failure to file carbon reports or for exceeding a carbon budget after a carbon budget period has elapsed may be regarded as purely academic, since a court order would add nothing to the Act's reporting obligations.⁴³⁹ Besides, common law remedies of damages and injunctions/interdicts may generally not be insufficient to address unique environmental issues due to legal constraints (the need to establish actual damage and causation) and delays.⁴⁴⁰

Provisions of the CCA regarding general accountability/compliance mechanisms dealing with limitation of suits should be amended to remove all forms of limitations, considering that environmental or climate change damages or harm are unique and may not become discoverable for many years. Also, the Section on the definition of offence and penalty should be amended to provide clarity and certainty as to what constitute an offence under the law. Penalties should also be uniquely tailored to address environmental and climate issues within the shortest timeframes.

4.3 Other Problems

Other problems identified and discussed here are general as they are not restricted to any of the elements identified and discussed above. They are as follows:

4.3.1 Absence of a Clear Constitutional Environmental Right

Nigeria's Constitution does not provide for a clear fundamental right to a clean environment that is not detrimental to health and well-being as provided for in Constitutions of several developing countries.⁴⁴¹ The elevation of the environmental right to the status of fundamental right will help to strengthen environmental protection along with climate change issues because of the inalienable nature of human rights and the supremacy of the provisions of the Constitution in relation to other laws.⁴⁴² Although the attitude of the Country's Supreme Court in *Centre for Oil Pollution Watch vs. NNPC*, in expanding the right to life to environmental issues is commendable, yet, a distinct and clear fundamental right to

⁴³⁹ McHarg A "Climate change constitutionalism? Lessons from the United Kingdom" (2011) *Climate Law* 2.4 469-484.

⁴⁴⁰ Summers M "Common-law Remedies for Environmental Protection" in Paterson A and Kotzé L (eds) *Environmental Compliance and Enforcement in South Africa-Legal Perspectives* 40-42.

⁴⁴¹ These are countries that have included environmental right to their bill of rights/fundamental human rights and they include South Africa and Ecuador.

⁴⁴² Nigeria's Constitution Section 3.

environment can provide more certainty and eliminate or reduce the cost, time and rigour that a litigant might take in establishing the link between human rights and environmental right.⁴⁴³

4.3.2 Conflicts of laws

Nigeria's NDCs aim to achieve a flare out date by 2030.⁴⁴⁴ The major mitigation measures identified in the oil and gas sector are the enforcement of gas flaring restrictions and the development of gas-to-power plants projects. Achieving the flare out date is important for climate change mitigation and equally important for the achievement of the SDGs. However, for Nigeria to achieve its flare out date of 2030, there are important legislative and policy hurdles to be addressed. This is because there are certain legal provisions at cross purposes with the objectives of the legislation and the targets under the NDC. For instance, the critic levied against the Associated Gas Reinjection Act that the penalties recognised in the laws may be too low or insufficient to compel operators to comply can be extended to the current Flare Gas (Prevention of Waste and Pollution) Regulation.⁴⁴⁵ This means that operators could easily pay the fine for gas flaring rather than comply with emission reduction targets. Considering Nigeria's antecedence in gas flaring, it is more desirable to enact laws which prohibits gas flaring completely than those that permit it.

To achieve the trajectory and sectoral emission targets set in the NDC, many government plans and policies such as the Federal Government's plan to partner with the African Development Bank (AfDB) to fund coal projects in Nigeria which is expected to account for about 30% of the Country's power mix⁴⁴⁶ would require drastic reconsideration. This could eliminate the apparent conflict with the relevant provisions of the CCA and the NDC targets.

The need for Nigeria to address its energy crisis and the Country's reliance on crude oil and fossil fuel as a major foreign earning is also a major obstacle Nigeria needs to overcome to put it on the right path towards meeting its climate targets.⁴⁴⁷ Closely related to this is the absence of a supremacy clause in the CCA which should ordinarily state that the provisions of the Act is superior and trumps over the provisions of other laws relating to the environment or climate change. This would create certainty and eliminate

⁴⁴³ Leib L H "Theorisation of the Various Human Rights Approaches to Environmental Issues" in *Human Rights and the Environment: Philosophical, Theoretical and Legal Perspectives* Brill 69-108 71.

⁴⁴⁴ Nigeria's NDC 2021 4.

⁴⁴⁵ Ajugwo A O "Negative effects of gas flaring: The Nigerian experience" (2013) *Journal of Environment Pollution and Human Health* 1.1 6-8 8; Orji U J "Moving from gas flaring to gas conservation and utilisation in Nigeria: a review of the legal and policy regime" (2014) *OPEC Energy Review* 38.2 149-183 153.

⁴⁴⁶ Adejowon-oshon "Nigeria's commitments under Paris Agreement" In *Environment| Africa* 76.

⁴⁴⁷ Nigeria's NDC 2021 20-25.

doubts where administrators and policymakers are confused about what law is applicable in circumstances and situations that are not clear-cuts.

It is also hereby recommended that the CCA should be amended to include specific timelines for the commencement and implementation of important climate actions and for the review of existing ones. Offences or penalties for failure to act within a prescribed time should be clearly stated and defined. Legislative amendments should be targeted at filling the gaps created by the omissions highlighted and discussed in this dissertation to further promote effectiveness of the law.

CHAPTER 5. CONCLUSION

The importance of law in regulating climate change cannot be over emphasised. This is already evident in the global surge in enactment of national framework laws. The framework model adopted for Nigeria has the potential to play a critical role in empowering the government and other entities to take urgent and strategic climate actions to meet the Country's climate targets in its NDC. This is because the overview done in chapter 3 reveals that elements which are often found in a climate change framework law are to a large extent, adequately reflected in the framework. The framework therefore represents a good potential to enhance effectiveness and compliance.

The framework is also to a very large extent, suitable for the Country's peculiar political and socio-economic circumstances. The pre-existence of climate change policies and strategies in the Country and the enactment of the CCA creates legal certainty, incentives as well as disincentives to drive climate concerns. Similarly, the establishment of a strong institutional mechanism and authority at the highest level of governance is a commendable innovation to facilitate a more coordinated, effective and mandatory response to climate issues.

Despite the potentials identified however, the lapses and challenges identified and discussed in this dissertation shows that Nigeria still has a lot to do to improve and address its urgent domestic adaptation and mitigation challenges and in meeting its international climate targets. The formulation and implementation of climate targets in Nigeria poses a huge challenge especially when one considers the extent to which the Country relies on fossil fuel as its major foreign exchange earner and the existence of other more urgent and competing national interests. These other competing interests include security as well as unemployment and poverty.

Nigeria's climate change challenges are however not insurmountable. It is hoped that the recommendations proffered in this dissertation, if implemented, will go a long way in addressing the challenges raised and ensure effectiveness in addressing climate change concerns. Effectiveness is also ultimately dependent on whether or not stakeholders have sufficient technical and financial resources to fulfil their obligations under the law, the existence of a strong political will of the government and respect for the rule. This will ensure that the government gives climate change issues the priority it deserves and also ensure that violators are held accountable for breaches.

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