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Signed, Sealed, but Not Delivered: the Credibility of Nigeria's Climate Change Act 2021 in Mitigating and Adapting to Climate Change in Nigeria

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Signed, Sealed, but Not Delivered: The Credibility of Nigeria's Climate Change Act 2021 in Mitigating and Adapting to Climate Change in Nigeria

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Abstract

Since, under the Paris Agreement, parties are obliged to submit Nationally Determined Contributions (NDCs) which are in effect unenforceable, many countries have enacted domestic climate legislation which, by their nature, serve to better induce countries toward compliance with their climate obligations. This article investigates what climate legislation should include to enable countries to better achieve the Paris Agreement's climate change adaptation and mitigation goals. This article critically analyses Nigeria's Climate Change Act (CCA) 2021 to determine the extent to which it can address climate change in Nigeria. Considering the peculiarities of Nigeria, the article compares the CCA with the UK Climate Change Act 2008. It also compares the Petroleum Industry Act as a piece of climate-related legislation with the CCA's objective in respect of gas flaring. The article argues that considering Nigeria's circumstances, it is unlikely that it will be able to achieve its climate target under the NDCs and the CCA. This article therefore attempts to foreshadow the likely path forward.

Keywords

Climate Change – Nigeria's Climate Change Act – Nationally Determined Contributions – Adaptation and Mitigation – Paris Agreement – UK Climate Change Act 2008.

1 Introduction

According to the Intergovernmental Panel on Climate Change (IPCC) 6th Assessment Report, human activities through the emissions of greenhouse gases (GHGs) without doubt have been a main determinant of global warming, with the earth's surface temperature now 1.1°C above pre-industrial levels.¹ This suggests that more severe climate change effects, greater than those currently experienced, are imminent. The adoption of the United Nations Framework Convention on Climate Change (UNFCCC) in 1992 and the Paris Agreement demonstrates the importance of law in combating climate change.² The Grantham Institute reports that as of September 2022, 193 parties to the Paris Agreement have at least one law (legislative enactments or policies issued by the executive government) to address climate change or

¹ IPCC, 'Synthesis Report. Contribution of Working Groups I, II, and III to the sixth Assessment Report of the Intergovernmental Panel on Climate Change' (IPCC, 2023).

² Margaret Rosso GROSSMAN, 'Climate Change and the Law' (2010) 58 American Journal of Comparative Law 223.

facilitate the transition to a low-carbon economy.³ This raises the question of what climate legislation should contain to be credible in addressing climate change. An effective piece of climate change legislation should consist of some mitigation/adaptation targets, measures, institutional arrangements, progress monitoring/reporting, and public participation.⁴

While it is a binding obligation for parties to submit Nationally Determined Contributions to global efforts on climate change (NDCs) under the Paris Agreement and to pursue measures to achieve them, the achievement of a NDC goal is not an enforceable commitment, unless reflected in national climate legislation.⁵ Thus, ‘domestic legislation on climate is the critical, essential linchpin at the national level (...)’⁶ to achieve the Paris Agreement’s goal of keeping global warming below 2° Celsius and to ‘make efforts’ to keep it to 1.5°C.⁷ Further, it is worth noting that binding national climate legislation, ‘if properly designed and credible’⁸ while integrating the Paris Agreement is not only crucial in enabling governments to make strategic efforts to reduce GHG emissions, but it also gives climate change litigants the possibility to compel governments to act according to the law, through climate litigation.⁹

Nigeria’s climate change vulnerability is exacerbated by its extensive dependence on climate-sensitive resources, with 70% of the workforce employed in the agriculture, forestry, and fishing sectors.¹⁰ By virtue of Nigeria being a party to the UNFCCC and the Paris Agreement,¹¹ and under the principle of common but differentiated responsibilities and respective capacities (CBDR-RC),¹² it is obligated to mitigate climate change (ie reduce its GHG emissions) and adapt to its impact in light of its national circumstances. Nigeria enacted its first climate

³ Shaikh ESKANDER, Sam FANKHAUSER, and Joana SETZER, ‘Global Lessons from Climate Change Legislation and Litigation’ (2021) 2(1) *Environmental and Energy Policy and the Economy* 44; The London School of Economics and Political Science and Grantham Research Institute on Climate Change and the Environment, ‘What is climate change legislation?’ (*LSE*, 4 October 2022) <<https://www.lse.ac.uk/granthaminstitute/explainers/what-is-climate-change-legislation/>> accessed 26 October 2023.

⁴ World Bank, ‘World Bank reference guide to climate change framework legislation’ (*World Bank*, 2020) <<https://openknowledge.worldbank.org/handle/10986/34972>> accessed 26 October 2023.

⁵ Ralph BODLE, Lena DONAT, and Matthias DUWE, ‘The Paris Agreement: Analysis, Assessment and Outlook’ (2016) 10(1) *Carbon & Climate Law Review* 5; Shaikh M. ESKANDER, Sam FANKHAUSER, and Joana SETZER, *Global Lessons from Climate Change Legislation and Litigation* (National Bureau of Economic Research 2020).

⁶ Constance DLAMIN and others, *Legislating the Paris Agreement in Africa: Approaches to climate legislation in Eswatini, Kenya, Nigeria, and Uganda* (European Capacity Building Initiative 2021) 1.

⁷ Louis J KOTZÉ and Anél du PLESSIS, ‘Putting Africa on the Stand: A Bird’s Eye View of Climate Change Litigation on the Continent’ (2020) 50(3) *Environmental Law* 615.

⁸ Thomas L MUINZER, ‘What Do We Mean When We Talk about National “Climate Change Acts” and How Important are They in the Context of International Climate Law?’ in Thomas L MUINZER (ed), *National Climate Change Acts: The Emergence, Form, and Nature of National Framework Climate Legislation*, (Bloomsbury Publishing Plc 2020) 40.

⁹ Sam ADELMAN, ‘Climate Change Litigation in Africa: A Multi-Level Perspective’ in Ivano ALOGNA, Christine BAKKER, and Jean-Pierre GAUCI (eds), *Climate Litigation: Global Perspectives* (Brill 2021).

¹⁰ DLAMIN and others (n 6).

¹¹ Federal Ministry of Environment of Nigeria, ‘Second Biennial Update Report (BUR2) to the United Nations Framework Convention on Climate Change’ (*UNFCCC*) <<https://unfccc.int/sites/default/files/resource/NIGERIA%20BUR%202%20%20Second%20Biennial%20Update%20Report%20%28BUR2%29.pdf>> accessed February 27, 2023.

¹² United Nations Framework Convention on Climate Change (adopted 9 May 1992, entered into force 21 March 1994) 1771 UNTS 107 (UNFCCC) art 3(1); Paris Agreement (12 December 2015, entered into force 4 November 2016) 3156 UNTS, art 2(2).

legislation — the Climate Change Act (CCA)¹³ — in 2021 and submitted an updated NDC to the UNFCCC in July 2021.¹⁴

Although climate mitigation and adaptation cannot be achieved solely by climate legislation, the credibility of climate legislation is dependent on its provisions. This article will critically examine the CCA to determine its credibility in addressing climate change in Nigeria, by exploring the necessary content of climate legislation in order to meet the objectives of the Paris Agreement. Section 3 of this article will analyse the nature of climate change legislation (CCL) and what it should contain. It is against this backdrop that the article will further compare Nigeria's CCA 2021 with the UK's Climate Change Act 2008.¹⁵ Also, this section will examine the Petroleum Industry Act 2021 (PIA)¹⁶ as a piece of climate-related legislation while section four of the article will make proposals to enhance Nigeria's efforts in mitigating and adapting to climate change.¹⁷

Before evaluating the content of climate change legislation, the credibility of the CCA and the PIA taking into account the CCA's objective on gas flaring, in section 2 of this article, we will analyse some international/regional legal frameworks governing climate change, the applicability of these frameworks in Nigeria and Nigeria's updated NDC.

2 International/Regional Legal Frameworks for Addressing Climate Change

The most relevant international and regional legal frameworks for addressing climate change are as follows:

2.1 United Nations Framework Convention on Climate Change (UNFCCC)

A key outcome of the Earth Summit held in Rio de Janeiro in June 1992 was the adoption of a framework convention by the United Nations General Assembly which stands as a foundational text to address human-induced climate change.¹⁸ This was because of the concern that GHG emissions caused by human activities are responsible for climate change.¹⁹ The primary objective of the UNFCCC is to stabilize 'GHG concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system'.²⁰ Rowena maintains that by article 7 (1), this objective also applies to any related legal instrument that the parties may adopt and by extension to national legal instruments.²¹

¹³ Climate Change Act, 2021 (CCA).

¹⁴ UNFCCC, 'Nigeria First NDC (Updated submission)' (UNFCCC, 2 June 2022) <<https://unfccc.int/documents/497790>> accessed 26 October 2023.

¹⁵ Climate Change Act 2008, C 27 (UK CCA).

¹⁶ Petroleum Industry Act (PIA) LFN 2021.

¹⁷ International Bar Association, *Model Statute for Proceedings Challenging Government Failure to Act on Climate Change: An International Bar Association Climate Change Justice and Human Rights Task Force Report* (International Bar Association 2020).

¹⁸ UNGA, Res 48/189, 'United Nations Framework Convention on Climate Change' (20 January 1994) UN Doc A/RES/48/189.

¹⁹ UNFCCC (n 12) preamble.

²⁰ *ibid* art 2.

²¹ Rowena MAGUIRE, 'Foundations of International Climate Law: Objectives, Principles and Methods' in Erkki J HOLLO, Kati KULOVESI, and Michael MEHLING (eds), *Climate Change and the Law* (Springer 2013) 85.

The Convention itself does not regulate climate change; rather it creates a basis and relies on the parties to reach multilateral and national solutions to mitigate and adapt to climate change.²² It is on this premise that it established institutions and supporting bodies to further its aim, principal amongst them being the Conference of the Parties (COP).²³ In articles 3 and 4, the Convention creates common obligations for parties (developed and developing) to adopt national policies and take measures to address climate change but differentiates this responsibility based on their respective capabilities and levels of development. Nigeria became a party to the UNFCCC in 1994.²⁴

2.2 *The Paris Agreement (PA)*

The Paris Agreement was adopted by parties to the UNFCCC in 2015 to intensify the global response to climate change with the specific goal of limiting global warming to ‘well below 2°C’ above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C.²⁵ To meet this goal, article 4 (1) indicates that, parties should strive to reach global peaking of GHG emissions as soon as possible while acknowledging that peaking will take longer for developing countries.

According to the IPCC, limiting warming to 1.5°C demands achieving net zero carbon dioxide emissions globally in the early 2050s. For 2°C, this must be achieved in the early 2070s and this requires GHG emissions to peak before 2025 at the latest and be reduced by a quarter by 2030.²⁶ Article 3 obligates all parties (regardless of development status) to undertake efforts to mitigate climate change and adapt to its effects while recognizing the need to support developing countries in their efforts. By article 4 (4) developed country parties are to continue taking the lead by undertaking economy-wide absolute emission reduction targets, and developed countries are expected to perform their climate obligations in the light of CBDR-RC.

The Paris Agreement’s key strategy for achieving its goals is for all parties to prepare, communicate, and maintain successive and more ambitious NDCs reflecting CBDR-RC, in the light of different national circumstances.²⁷ The NDCs must contain plans on how each party intends to contribute to mitigation. Article 4 (9) requires NDCs to be submitted every 5 years with new NDCs expected to be more ambitious than the previous ones.²⁸

According to Falkner, allowing countries to determine their mitigation targets through their NDCs is the most outstanding feature of the Paris Agreement.²⁹ On the other hand, Lawrence and Wong rightly argued that ‘the Paris Agreement’s use of non-binding NDCs has come at a

²² Alan BOYLE, Navraj S GHALEIGH, ‘Climate Change and International Law beyond the UNFCCC’ in Kelvin R GRAY, Richard TARASOFSKY, and Cinnamon P CARLARNE (eds), *The Oxford Handbook of International Climate Change Law* (Oxford Academic 2016) 27 and 30.

²³ UNFCCC (n 12) art 7.

²⁴ Federal Ministry of Environment of Nigeria, ‘Second Biennial Update Report (BUR2) to the United Nations Framework Convention on Climate Change’ (n 11).

²⁵ Paris Agreement (n 12) art 2(1)(a).

²⁶ IPCC, ‘The evidence is clear: the time for action is now. We can have emissions by 2030’ (*IPCC*, 4 April 2022) <<https://www.ipcc.ch/2022/04/04/ipcc-ar6-wgiii-pressrelease/>> accessed 26 October 2023.

²⁷ Paris Agreement (n 12) art 4(2).

²⁸ *ibid.*

²⁹ Robert FALKNER, ‘The Paris Agreement and the New Logic of International Climate Politics’ (2016) 92(5) *International Affairs* 1107.

cost in terms of likely effectiveness’ because of the very wide level of discretion that could prove problematic to the overall goal of the Paris Agreement.³⁰

Another integral aspect of the Paris Agreement is that it recognises the need for developing country parties to be supported to meet their NDCs target,³¹ and demands that developed country parties provide support to developing country parties through finance,³² technology transfer,³³ and capacity building.³⁴ Pauw et al in their analysis of 168 countries’ NDCs observed that 136 NDCs of developing countries were made conditional to one or more kinds of international support.³⁵ Cléménçon also noted that the biggest factor impacting how quickly developing countries will implement their NDCs is financing, given that most NDCs are conditional pledges.³⁶ Yet, developed countries do not prioritize finance or other support to developing countries.³⁷ The unfulfilled commitment by developed countries to deliver the \$100bn a year in climate finance by 2020 to low and middle-income countries remains an example. It is stated that the total climate finance provided is \$83.3bn in 2020.³⁸ Contrarily, Oxfam estimates that the ‘real value of financial support specifically aimed at climate action was only around \$21bn to \$24.5bn — much less than officially reported figures suggest ... with much of the finance having been provided as loans, which means that it risks increasing the debt burden of those countries it is supposed to help.’³⁹

Again, neither the demands of poor countries nor their crippling debt levels were adequately addressed during the June 2023 Paris Climate Finance Summit.⁴⁰ The World Bank agreed to start suspending debt payments for countries hit by climate disasters, but the suspension will only apply to new loan agreements, whereas about \$100bn (£80bn) is to be provided to climate-vulnerable countries through special drawing rights (SDRs).⁴¹ Given that most of these countries are in debt distress, coupled with the uncertainties that developed countries will provide adequate support, it is highly unlikely that conditional NDCs will be implemented.

Nevertheless, it is worthy of note that several alliances have been developed after the Paris Agreement to support climate action and the transition to a low-carbon economy. Some of these financial structures include the Green Climate Fund (GCF), Climate Bonds Initiative, Carbon Pricing Mechanisms, Climate Investment Funds, Sustainable Development Goal (SDG) Bonds,

³⁰ Peter LAWRENCE and Daryl WONG, ‘Soft Law in the Paris Climate Agreement: Strength or Weakness?’ (2017) 26(3) *Review of European, Comparative & International Environmental Law* 276.

³¹ Paris Agreement (n 12) art 4(5).

³² *ibid* art 9(1).

³³ *ibid* art 10(6).

³⁴ *ibid* art 11(3).

³⁵ W P PAUW and others, ‘Conditional Nationally Determined Contributions in the Paris Agreement: Foothold for Equity or Achilles Heel?’ (2020) 20(4) *Climate Policy* 468, 469 and 473.

³⁶ Raymond CLÉMENÇON, ‘The Two Sides of the Paris Climate Agreement’ (2016) 25(1) *Journal of Environment & Development* 3, 11.

³⁷ PAUW and others (n 35).

³⁸ OECD, *Climate Finance Provided and Mobilised by Developed Countries in 2016-2020: Insights from Disaggregated Analysis* (OECD 2022).

³⁹ Bertram ZAGEMA and others, *Climate Finance Shadow Report 2023: Assessing the Delivery of the \$100 Billion Commitment* (OXFAM International 2023) 2-3.

⁴⁰ Fiona HARVEY, ‘Paris climate finance summit fails to deliver debt forgiveness plan’ (*The Guardian*, 24 June 2023) <<https://www.theguardian.com/world/2023/jun/23/paris-climate-finance-summit-fails-to-deliver-debt-forgiveness-plan>> accessed 26 October 2023.

⁴¹ *ibid*.

as well as the Glasgow Financial Alliance for Net Zero (GFANZ) which was launched in April 2021.⁴² The GFANZ is taking steps to increase renewable energy investments in emerging markets and developing economies (EM&DE) in its action to mobilise private capital into EM&DE through public-private collaboration.⁴³ Its drive to scale up renewable investments in EM&DE is done in the areas of data and transparency, support for EM&DE transition, and investment.⁴⁴ However, ‘private finance cannot substitute for public finance, and it cannot flow in the absence of public policies that support the creation of an investible pipeline of projects’.⁴⁵

Although the Paris Agreement is lauded for engineering a collective effort to address climate change, some argue it is flawed. One major criticism of the Paris Agreement is its voluntarist and unenforceable nature,⁴⁶ so even though parties are legally obligated to submit NDCs, they cannot be forced to implement them,⁴⁷ even though the success of the Paris Agreement’s goal hinges on such implementation. Also, due to the Paris Agreement’s reliance on voluntary contributions, monitoring and tracking compliance is challenging.

Nigeria signed the PA in 2016, ratified it in 2017, and thereafter submitted its NDC.⁴⁸ An updated NDC was submitted in 2021.⁴⁹

2.2.1 Applicability of the UNFCCC and the Paris Agreement in Nigeria

Nigeria is a Petro-economy as it depends largely on revenue from its oil and gas exports (93% of export revenue) for economic growth.⁵⁰ In 2021, it was ranked the world’s 4th highest carbon dioxide emitter.⁵¹ The gas flaring from its petroleum sector alone has contributed an estimated 48 million tonnes of GHG emissions into the atmosphere, which is more than the entirety of sub-Saharan Africa.⁵² Other sources of GHG emissions emanate from agriculture, waste, forestry and land use, and industrial process sectors.⁵³ On the other hand, Nigeria’s geography, and large population combined with high exposure and low adaptive capacity

⁴² GFANZ, ‘Our history’ <<https://www.gfanzero.com/about/>> accessed 4 March 2024.

⁴³ GFANZ, ‘Mobilizing Capital for Emerging Markets and Developing Economies’ <<https://www.gfanzero.com/our-work/mobilizing-capital-for-emerging-markets-and-developing-economies/>> accessed 4 March 2024.

⁴⁴ GFANZ, ‘GFANZ Actions to Mobilize Capital to Emerging Markets and Developing Economies’ (GFANZ, November 2022 Report) <<https://assets.bbhub.io/company/sites/63/2022/10/GFANZ-Actions-to-Mobilize-Capital-to-Emerging-Markets-Developing-Economies.pdf>> accessed 4 March 2024.

⁴⁵ *ibid.*

⁴⁶ Sam ADELMAN, ‘Editorial: Beyond the Paris Agreement – Ambitions, Hopes, Fears and Flaws’ (2018) 9(1) *Journal of Human Rights and the Environment* 1; BODLE, DONAT, and DUWE (n 5) 5-22.

⁴⁷ Lavanya RAJAMANI and Jutta BRUNEE, ‘The Legality of Downgrading Nationally Determined Contributions under the Paris Agreement: Lessons to Learn from the US Disengagement’ (2017) 29(3) *Journal of Environmental Law* 537.

⁴⁸ Urenmisan AFINOTAN, ‘How Serious Is Nigeria about Climate Change Mitigation through Gas Flaring Regulation in the Niger Delta?’ *Environmental Law Review* (2022) 24(4) 288, 290.

⁴⁹ UNFCCC, ‘Nigeria First NDC (Updated submission)’ (n 15).

⁵⁰ Daisy DUNNE, ‘The Carbon Brief Profile: Nigeria’ (*CarbonBrief*, 17 February 2023) <<https://www.carbonbrief.org/the-carbon-brief-profile-nigeria/>> accessed 26 October 2023.

⁵¹ Doris D SASU, ‘Production-based carbon dioxide (CO₂) emissions in Africa in 2021, by country (in metric tons)’ (*Statistica*, 28 April 2023) <<https://www.statista.com/statistics/1268395/production-based-co2-emissions-in-africa-by-country/>> accessed 28 October 2023.

⁵² AFINOTAN (n 48) 290.

⁵³ *ibid.*

makes it highly vulnerable to the adverse impacts of climate change, including increased temperatures, incessant flooding and sea-level rise in the Niger Delta, desertification, and droughts in the North, and changing rainfall patterns.⁵⁴

Section 12 of the Constitution of the Federal Republic of Nigeria (CFRN) 1999 (as amended) governs the procedures for the applicability of international treaties in Nigeria.⁵⁵ By this provision, merely signing a treaty by the executive (president of Nigeria) is not enough for it to gain the force of law in Nigeria; it must be re-enacted as national legislation by the National Assembly.⁵⁶ The legal consequences are that both the UNFCCC and the Paris Agreement cannot be enforced against the Nigerian government in Court where it fails to carry out its obligations.⁵⁷

2.2.2 Nigeria's Updated NDC (2021)

In the updated NDC submitted to the UNFCCC on July 2021, Nigeria commits unconditionally to reduce its emissions by 20% by 2030 compared with 2018 levels, while a 47% reduction, which is an improved target from the 45% set in the 2015 NDC, is conditional on international support.⁵⁸ The NDC target is anchored on a revised baseline projection that GHG emissions in 2030 will be about 453MtCO₂, around half of the 2015 NDC forecast, that is, a 31% increase in GHG emissions between 2018 and 2030 or a 2.6% rise per year.⁵⁹ It identified energy (60.2% of total emissions), agriculture (15.7%), forestry and other land use (FOLU- 9.3%), Waste (9.4%), and industrial process and other product use (IPPU-5.3%) as priority sectors for mitigation.⁶⁰

Unlike the 2015 NDC, the updated version is expanded to cover four GHGs, eleven pollutants for mitigation assessment, and emission reductions from the waste sector for the first time.⁶¹ To achieve the NDC mitigation targets the government pledges to end gas flaring by 2030; implement off-grid solar PV of 13GW (13,000MW); install efficient gas generators; achieve 2% yearly energy efficiency gains (30% by 2030); shift transport to bus; improve the electricity grid; and implement climate-smart agriculture and reforestation,⁶² which would align with article 4 (1)(1)(c) of the UNFCCC and article 5 (1) PA, on the obligation of parties to develop and transit to renewable energy pathways.

While the NDC may seem ambitious with its targets, it has some loopholes that need to be addressed. First, unlike the energy, agriculture, and FOLU sectors, it lacks measures to tackle emissions from the Industrial Processes and Product Use (IPPU) and waste sectors which do

⁵⁴ Federal Ministry of Environment of Nigeria, 'Nigeria's Nationally Determined Contributions' 9 <<https://unfccc.int/documents/497790>> accessed 26 October 2023; Nigeria's Federal Ministry of Environment, 'Nigeria's National Adaptation Plan Framework' (June 2020) <<https://napglobalnetwork.org/wp-content/uploads/2021/06/napgn-en-2020-Nigeria-National-Adaptation-Plan-NAP-Framework.pdf>> accessed 26 October 2023.

⁵⁵ *Abacha v Fawehinmi* (2000) 6 NWLR (Pt 660) 228.

⁵⁶ *ibid.*

⁵⁷ AFINOTAN (n 48) 304.

⁵⁸ UNFCCC, 'Nigeria First NDC (Updated submission)' (UNFCCC, 2 July 2021), iii <https://unfccc.int/sites/default/files/NDC/2022-06/NDC_File%20Amended%20_11222.pdf> accessed 28 October 2023.

⁵⁹ *ibid* iv.

⁶⁰ *ibid* 17.

⁶¹ *ibid* iv.

⁶² *ibid* 22.

not align with article 4 (1)(c) of the Paris Agreement that obligates parties to reduce GHG emissions by adopting practices and processes on waste management. Also, the extent to which the NDC provides detailed implementation plans for renewable energy deployment is unclear. However, this lacuna seems to be partly filled by the recently enacted Electricity Act that includes measures to boost the development and deployment of renewable energy, both on-grid and off-grid renewables.⁶³ But as Ngozi and Olusola noted, Nigeria is impeded from fully harnessing its renewable energy resources such as wind, solar, hydro, biomass, etc., due to a lack of technological and technical capacity, worsened by a lack of funding.⁶⁴ The NDC acknowledges this problem and mentions renewable energy as one of the areas needing capital injection.

Also, whilst the NDC's target of ending gas flaring by 2030 aligns with article 6 (8) of the Paris Agreement, with more than 10 unsuccessful attempts to end gas flaring via legislation and regulations, 'it remains to be seen if the goal of a complete end to gas flaring by 2030 will be achieved.'⁶⁵ Furthermore, the NDC lacks clear and measurable targets to track progress on adaptation, including the absence of a monitoring and evaluation framework to track implementation.⁶⁶ A possible explanation for this gap could be the existence of a national adaptation plan made in 2020 that includes these measures. The problem with Nigeria's adaptation policies and initiatives is that they are 'hardly developed, insufficient, and inefficient' as Helen et al noted.⁶⁷

Given that Nigeria's NDC is not enforceable in court when the Nigerian government fails to perform its climate obligations, articles 6 (1) of the PA, 4 (2)(a), and 4 (1)(f) in the UNFCCC obligate parties to integrate climate change obligations into national policies, and the most significant approach is via national legislation because of its binding nature.

2.3 *African Charter on Human and Peoples' Rights (ACHPR)*

The ACHPR⁶⁸ is a regional human rights instrument adopted by the Organisation of African Unity (now African Union) in 1981.⁶⁹ While the ACHPR does not specifically address climate change, its provisions, especially articles 24, 16, and 4 which establish individual and collective rights to a clean and healthy environment, right to health, and right to life respectively, can be

⁶³ Tiwalade ADEREMI and David A OLAJIDE, 'Overview and Key Innovations of the Nigerian' (*Electricity Bill 2022*, 14 September 2022) <<https://ssrn.com/abstract=4218901>> accessed 10 June 2023.

⁶⁴ Ngozi Chinwa OLE, Kamoru LAWAL, and Adesola Oyewunmi OMOTOWO, 'The Nigerian National Determined Contributions 2021: Legal Implications for off-Grid Renewable Electricity' (2023) 3(1) *Journal of Jurisprudence and International Law* 1; Olusola J OLUJOBI, 'Legal Analysis of Erratic Supply of Electricity in Nigeria: Is Renewable Energy a True Alternative?' (2022) 2 *Journal of Jurisprudence and International Law* 14, 15.

⁶⁵ AFINOTAN (n 48) 295.

⁶⁶ Mujidah AJIBOLA and Olusegun M OGUNDELE, 'Nigeria: NDC Equity Tracker' (*Care about climate*, July 2021) <<https://www.ndcequitytracker.org/nigeria>> accessed 10 November 2023.

⁶⁷ Agu HELEN, Onyeabor EMMANUEL, and Agu SUSSAN, 'Legal and Policy Responses to Climate Change-Induced Migration and Conflict: Insights from Nigeria' (2020) 99 *Journal of Law, Policy & Globalization* 6.

⁶⁸ African Charter on Human and Peoples' Rights (adopted 27 June 1981, entered into force 21 October 1986) (1982) CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (Banjul Charter).

⁶⁹ *ibid*; Louis J KOTZÉ and Anel Du PLESSIS, 'The African Charter on Human and Peoples' Rights and Environmental Rights Standards' in Stephen J TURNER and others (eds), *Environmental Rights: The Development of Standards* (CUP 2019) 93 and 98.

invoked to address the human rights impact of climate change and demand African governments to take appropriate measures to mitigate climate change.

Nigeria, as a member of the African Union, domesticated the ACHPR as national legislation via its African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act,⁷⁰ and is bound by the provisions of the ACHPR. The efficacy of the ACHPR as an instrument in indirectly addressing climate change is demonstrated in the case of *Gbemre v Shell*,⁷¹ in which the Nigerian High Court relied on articles 4, 16, and 24 of the Charter to issue an injunction against Shell to stop gas flaring (a major driver of GHG emissions) in the plaintiff's community on the basis that it infringes on their right to a clean and healthy environment, life and healthy life as guaranteed under the Charter.⁷²

At this juncture, before starting our analysis, it is important to determine what constitutes climate change legislation (CCL).

3 What is Climate Change Legislation?

CCL has been described as framework legislation (FL) made by parliament (or equivalent) to address climate change in a broad and overarching manner while serving as a foundation and guide for climate policies.⁷³ The Grantham Institute shares a similar perspective.⁷⁴ According to Gerrard and Fischer, CCL need not necessarily take the form of a framework (overarching and covering all areas); it can take a sectoral approach through the incorporation of climate change-related provisions into laws such as those governing energy, transport, and forestry.⁷⁵ Hence Scotland and Minas maintain that CCL can either be direct or indirect, meaning that while CCL that takes a direct approach would seek to address climate mitigation and or adaptation (eg the CCA), CCL taking an indirect approach would have a different primary focus, including provisions or measures relating to climate change.⁷⁶ For instance, while the Nigeria Petroleum Industry Act's main objective is 'to provide legal, governance, regulatory and fiscal framework for the Nigerian Petroleum Industry and the development of host communities',⁷⁷ its relevance in climate mitigation lies in its prohibition of gas flaring (although partial) and includes penalties aimed at discouraging companies engaging in such activities.

⁷⁰ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, LFN 2004.

⁷¹ *Gbemre v Shell* (2005) 6 AHRLR 152.

⁷² Bukola FATUROT, Godswill AGBAITORO, and Obinna ONYA, 'Environmental Protection in the Nigerian Oil and Gas Industry and Jonah Gbemre v. Shell PDC Nigeria limited: Let the Plunder Continue?' (2019) 27 African Journal of Information and Comparative Law 225.

⁷³ MUINZER, 'What Do We Mean When We Talk about National "Climate Change Acts" and How Important are They in the Context of International Climate Law?' (n 8) 11-42; Terry TOWNSHEND and others, 'Legislating Climate Change on a National Level' (2011) 53(5) Environment: Science and Policy for Sustainable Development 5.

⁷⁴ The London School of Economics and Political Science and Grantham Research Institute on Climate Change and the Environment (n 3).

⁷⁵ Michael GERRARD and Katerina FISCHER, *The law adaptation to Climate Change: United States and International Aspects* (American Bar Association Natural Resources Law Section 2012) 277.

⁷⁶ Eloise SCOTLAND and Stephen MINAS, 'Probing the Hidden Depths of Climate Law: Analysing National Climate Change Legislation' (2019) 28(1) Review of European Comparative & International Environment Law 67, 75.

⁷⁷ Petroleum Industry Act (n 16).

Townshend et al argue that framework climate legislation (FCL) in the form of a CCL as a single piece of legislation is preferable to sectoral CCL, as it is more comprehensive and broader in scope, and cites the UK's Climate Change Act 2008 as an example.⁷⁸ In contrast, Clare, et al contend that FCL does not offer a complete treatment of all issues (which would imply the need for fewer subsequent laws).⁷⁹ However, as Scotford et al rightly noted, each country is best placed to consider its national circumstances, administrative culture, governance framework, and legal system before determining the most appropriate legislative approach,⁸⁰ as both approaches (FCL or sectoral) offer different benefits.⁸¹

The focus of this article is on Nigeria's direct FCL- the Climate Change Act 2021. As the first FCL with binding effect, careful analysis of its provisions is crucial to determine its credibility in addressing climate mitigation and adaptation, alignment with the updated NDC and the Paris Agreement because any NDC pledge not included therein would be unenforceable.

3.1 *What Should Climate Change Legislation (CCL) Contain?*

The World Bank's Reference Guide to Climate Change Framework Legislation provides a list of 12 essential elements that a CCL should include, of which 5 are considered crucial as they align with the Paris Agreement.⁸² The International Bar Association,⁸³ the Grantham Research Institute,⁸⁴ and the European Climate Foundation⁸⁵ have also emphasised these 5 elements, which are: mitigation/adaptation targets, measures, institutional arrangements, progress monitoring/reporting, and public participation.

A CCL needs to include targets for both mitigation and adaptation to align with the Paris Agreement's article 4 (4). These targets guide states in their efforts to reduce GHG emissions and adapt to climate change.⁸⁶ Some countries, including Denmark, France, Germany, and the United Kingdom, set a goal of achieving net-zero emissions by 2050 to limit global temperature increase to 1.5°C above preindustrial levels.⁸⁷ However, targets are only meaningful if supported by practical measures and strategies that offer a realistic roadmap to achieve them.⁸⁸

⁷⁸ TOWNSHEND and others (n 73).

⁷⁹ Abbie CLARE, Sam FANKHAUSER, and Caterina GENNAIOL, 'The National and International Drivers of Climate Change Legislation' in Alina AVERCHENKOVA, Sam FANKHAUSER, and Michal NACHMANY (eds), *Trends in Climate Change Legislation* (Elgar Online 2017) 24.

⁸⁰ Eloise SCOTFORD, Stephen MINAS, and Andrew MACINTOSH, 'Climate Change and National Laws across Commonwealth Countries' (2017) 43 Commonwealth Law Bulletin 318.

⁸¹ Olivia RUMBLE, 'Facilitating African Climate Change Adaptation Through Framework Laws' (2019) 13(4) Carbon & Climate Law Review 237.

⁸² World Bank, 'World Bank reference guide to climate change framework legislation' (*World Bank*, 2020) <<https://openknowledge.worldbank.org/handle/10986/34972>> accessed 10 November 2023.

⁸³ International Bar Association (n 17).

⁸⁴ The London School of Economics and Political Science and Grantham Research Institute on Climate Change and the Environment (n 3).

⁸⁵ European Climate Foundation, 'Climate laws in Europe: Good practices in net-zero management' (*European Climate*, February 2020) <<https://europeanclimate.org/wp-content/uploads/2020/02/04-02-2020-climate-laws-in-europe-full-report.pdf>> accessed 10 November 2023.

⁸⁶ *ibid.*

⁸⁷ *ibid.*

⁸⁸ *ibid.*

The element of institutional arrangements is crucial in determining which government institutions (departments, ministries, and agencies), should be responsible for implementing and supervising the measures.⁸⁹ For example, the UK's Committee of Climate Change (CCC) was established in order, among other duties, to scrutinize the nation's decarbonization process and advise the secretary of state (where necessary) on key aspects of the Act.⁹⁰

On the element of monitoring and reporting, the Paris Agreement establishes an 'enhanced transparency framework' in Article 13 to monitor progress on NDC implementation and a review mechanism to assess the quality of inventory and Biennial reports submitted by parties. This is vital for the CCL to be able to track national progress on mitigation and adaptation targets.⁹¹ In the UK Climate Change Act, the CCC has to monitor progress on climate mitigation and adaptation in the UK by assessing whether plans are in place or being developed to address the challenges identified by the UK's climate change risk assessment.⁹² Finally, on public participation, a CCL should specify which parties' governments should engage in the climate action process, including experts, civil society organizations, NGOs, etc.

The next limb of this article analyses the Nigerian Climate Change Act in conjunction with the UK Climate Change Act 2008 as a reference point. The UK's Act is globally recognised for its comprehensive approach, clear targets, and institutional mechanisms. Although not perfect, 'the experience of the UK's Climate Change Act since 2008 provides several lessons for climate law-making (...) for the UK and other countries, on how climate legislation is best structured'.⁹³ By juxtaposing these two diverse legislative approaches and taking into consideration the elements of a FCL, the article seeks to assess the credibility of the CCA and unearth its strengths, weaknesses, and limitations while recognising the differing socio-economic capacities and challenges of the two countries.

3.2 Analysis of Nigeria's Climate Change Act (CCA) 2021

The CCA was enacted in 2021 to operate as a FCL for climate mitigation and adaptation at the national level. The Act consists of eight parts with thirty-six sections, and these include part I (objectives and application) which sets a target of achieving net-zero emissions between 2050 and 2070 and applies to all government institutions, and public and private entities. Parts II, III, and IV establish and empower the National Council on Climate Change (NCCC) to drive the implementation of the Act as well as how the NCCC is to be funded. Part V (carbon budget and National climate change action plan) empowers the Federal Ministry of Environment to make an action plan and a carbon budget in five-year intervals. While part VI stipulates climate mitigation obligations of government ministries, departments, and public and private entities,

⁸⁹ Catherine HIGHAM and others, *Accountability mechanisms in climate change framework laws* (Grantham Research Institute on Climate Change and the Environment and the London School of Economics, Policy Insight 2021).

⁹⁰ Sam FANKHAUSER, Alina AVERCHENKOVA, and Jared FINNEGAN, *10 Years of the UK Climate Change Act* (Grantham Research Institute on Climate Change and the Environment and the Centre for Climate Change Economics and Policy 2018).

⁹¹ Matthias DUWE and Nick EVANS, *Professionalizing Climate Policy via Legislation: Good Practices in Long-Term National Climate Framework Laws* (Policy Paper series, Israel Public Policy Institute and Heinrich Boll Foundation Tel Aviv 2021) 8.

⁹² Climate Change Committee, 'Assessing Progress in Preparing for Climate Change in the UK' <<https://www.theccc.org.uk/wp-content/uploads/2020/10/CCC-Insights-Briefing-7-Assessing-progress-preparing-for-climate-change.pdf>> accessed 21 June 2023, 2.

⁹³ FANKHAUSER, AVERCHENKOVA, and FINNEGAN (n 90) 1.

part VII empowers the NCCC to promote and adopt nature-based solutions for reducing GHG emissions. Part VIII provides for the reporting obligations of the NCCC and makes non-compliance with the obligations created in the Act an offence.

Notably, the Act establishes the National Council on Climate Change (NCCC) to make policies and decisions on all matters of climate change and drive the implementation of the Act.⁹⁴ The NCCC's statutory duties, as set out in the CCA, are to coordinate the implementation of targets, and action plans, formulate climate change policies, recommend to the legislature measures for mitigation and adaptation, and formulate guidelines for determining climate change vulnerability and risk assessment.⁹⁵ However, unlike the UK's Climate Change Committee (CCC) which is independent and made up of experts in climate change, low-carbon technology, climate resilience, economics, natural environment, and climate science etc.,⁹⁶ who do not represent particular party interests,⁹⁷ the NCCC is not independent of the government as its members include the president, vice president, and eleven federal ministers,⁹⁸ neither of whom is required to have climate change expertise, except for the director general.⁹⁹ This does not only raise the question of the competence of the NCCC but also the question of accountability. In the same vein, the current governing structure of the NCCC could pose some potential challenges such as institutional bottlenecks, capacity constraints, political interference, lack of coordination, and ineffective monitoring and evaluation of climate change policies. Accordingly, the NCCC which ought to play a critical role in advancing Nigeria's climate change initiatives has not assisted in the achievement of Nigeria's NDC targets and compliance with the provisions of the CCA because of the constitution of its governance. Averchenkova et al, aptly stated that 'whether the concern is ... targets or carbon budgets, an independent institution, led by technical experts may be better equipped to take a long-term view than politicians'.¹⁰⁰

Also, the Canadian Institute for Climate Choices in proposing that the UK's CCC be replicated in Canadian climate legislation stated that the CCC has established a strong reputation with a variety of stakeholders in the UK, including across political parties, as a reliable, authoritative, and trustworthy voice on climate change.¹⁰¹ Its recommendations have been widely accepted despite changes in government, including the first five UK carbon budgets all having been formulated based on its recommendations.¹⁰² This highlights the importance of having an independent, expert advisory body to ensure consistent and credible climate policy, as well as evidence-based decision-making.¹⁰³

⁹⁴ CCA (n 13) s 3.

⁹⁵ *ibid* s 4.

⁹⁶ UK Climate Change Act s 1.

⁹⁷ Alina AVERCHENKOVA, Sam FANKHAUSER, and Jared FINNEGAN, *The Role of Independent Bodies in Climate Governance: The UK's Committee on Climate Change* (Grantham Research Institute on Climate Change and the Environment 2018).

⁹⁸ CCA (n 13) s 5.

⁹⁹ *ibid* s 10.

¹⁰⁰ AVERCHENKOVA, FANKHAUSER, and FINNEGAN (n 97) 6.

¹⁰¹ Anna KANDUTH, 'Climate Legislation in the United Kingdom' (*Canadian Institute for Climate Choices*, March 2020) <<https://climateinstitute.ca/publications/climate-legislation-in-the-united-kingdom/>> accessed 10 November 2023.

¹⁰² *ibid*.

¹⁰³ *ibid*.

Further, the CCA mandates the Federal Ministry of Environment (FME) to set a carbon budget that will guide the country's emissions (i.e. the approved quantity of GHG emission that is acceptable to meet the mitigation target Anna Kanduth) and an action plan set at five-year intervals, subject to the approval of the NCCC and federal executive council, with the first meant to be prepared within 12 months of the Act, which was due in November 2022.¹⁰⁴ Besides stating that the action plan is to outline and ensure that mitigation and adaptation measures taken by the government are consistent with the carbon budget,¹⁰⁵ the Act does not express clarity regarding the start and end dates of the different five-year cycles of the carbon budget, as is the case with the UK Climate Change Act (stating that the carbon budget shall be for the periods of 2008-2012, 2013-2017 and 2018-2022 and for later periods).¹⁰⁶ Also, the implementation of this obligation has suffered setbacks as the director general of the NCCC was only appointed in July 2022, and the action plan set in February 2023, while the carbon budget is yet to be published.¹⁰⁷

While a carbon budget could as Anderson et al suggest, force the government to maintain climate change as a priority on the political agenda, resulting in frequent monitoring and reporting to track progress within time frames,¹⁰⁸ the period elapsing until a carbon budget is set can be considered to be a failure of government, rather than a weakness in the Act. Since setting a carbon budget is an enforceable obligation, climate litigants could compel the FME and the NCCC to act.

The CCA compels both public and private entities (having at least fifty employees) to set and implement mechanisms towards fostering low-carbon emissions in line with the action plan and designate a climate change officer responsible for submitting annual reports to the NCCC, defaults of which may be liable for fines.¹⁰⁹ Although this obligation aligns with the NDC target of reducing emissions from the industrial sector, it seems too restrictive and reduces the tendency to cut down emissions from the sector since it excludes private entities with less than fifty employees from implementing this obligation even if their activities are harmful to the climate.

The CCA includes reporting measures and progress monitoring by mandating the NCCC to submit a report to the National Assembly, every five years, to include the country's progress on the action plan, the extent to which the mitigation profile is consistent with the carbon budget, assessment of risk and management of risk and vulnerability.¹¹⁰ Despite satisfying the progress/reporting element of a FCL, it is inadequate and does not foster the monitoring of annual emissions necessary to ensure emissions do not exceed the 5-year carbon budget, which is what section 36 of the UK Climate Change Act seeks to achieve.

¹⁰⁴ CCA (n 13) ss 19 and 20.

¹⁰⁵ *ibid* s 20(4).

¹⁰⁶ UK CCA s 4(2).

¹⁰⁷ Climate Action Tracker, 'Nigeria' (*Climate Action Tracker*, 13 July 2023) <<https://climateactiontracker.org/countries/nigeria/net-zero-targets/>> accessed 15 November 2023; Alfred Ajayi, 'Carbon neutrality: Is Nigeria on course?' (*Radio Nigeria*, 11 August 2023) <<https://radionigeria.gov.ng/2023/08/11/carbon-neutrality-is-nigeria-on-course/>> accessed 15 November 2023.

¹⁰⁸ Kevin ANDERSON, Alic BOWS, and Sarah MANDER, 'From Long-Term Targets to Cumulative Emission Pathways: Reframing UK Climate Policy' (2008) 36(10) *Energy Policy* 3714.

¹⁰⁹ CCA (n 13) ss 23 and 34.

¹¹⁰ *ibid* s 21.

Unlike the 5 years reporting mandate on the NCCC, the UK's CCC is obligated to produce an annual report on the progress made towards meeting the carbon budget, further actions needed to meet the budget, and whether those budgets are likely to be met, as well as a bi-annual adaptation progress report.¹¹¹ Annual reporting offers the chance to remedy any increases where emissions reduction performance for one year in a five-year cycle proves to be worse than anticipated, ensuring that emissions are always within the carbon budget.¹¹² The absence of regular monitoring and reporting under the CCA could make tracking progress on the carbon budget difficult.

Another point worth mentioning is the fact that the NCCC's advising, and reporting functions are more focused on mitigation than adaptation. This could amount to a flaw in the framework. Nigeria faces various climate change impacts, including increased temperatures, changes in rainfall patterns, sea-level rise, and extreme weather events. It has been observed that in the Niger Delta region of Nigeria, climate change-induced phenomena, including heightened heatwaves and unpredictable, prolonged rainfall, have led to extreme floods, deforestation, pollution, and food shortages.¹¹³ Studies have also shown that rising sea levels, erratic weather patterns, and increased flooding impact women's roles in agricultural activities and the very foundations of most communities in Nigeria.¹¹⁴ These impacts highlight the need for adaptation measures to protect communities, ecosystems, and infrastructure. The NCCC's advising and reporting function should focus more on adaptation in order to meet the CCA's objectives.¹¹⁵

The NCCC is required by section 8 to report on the extent to which the national emission profile is consistent with the carbon budget. It did not, however, specify to whom the NCCC should report or what should happen next. According to the Grantham Institute, an FCL must be considered to form a part of a 'public accountability system' and for it to achieve a degree of accountability, it must be clear who is responsible for an action, and to whom they are responsible.¹¹⁶ It further stated that for example, the FCL could 'specify that the minister is required to present the plan to parliament, making parliament the body to which the minister becomes responsible. Alternatively, the minister could have to present the action plan to the cabinet, making the minister responsible to another executive body'.¹¹⁷ This is demonstrated in the UK CCA's sections 36 and 37 which require the CCC's reports on mitigation and adaptation to be laid before parliament to which the secretary of state is then required to respond on what needs to be done and submit the response to parliament.

¹¹¹ UK CCA s 36.

¹¹² Thomas L MUINZER, *Climate and Energy Governance for the UK Low Carbon Transition: The Climate Change Act 2008* (Palgrave Macmillan 2019) 51.

¹¹³ Ahmed A YUSUF and Ismaila ALIYU, 'Climate Change Induced Challenges on Deforestation: The Needs to Reduce Mitigation Measures in Nigeria' (2019) 29 *Analele Universității Din Oradea, Seria Geografie* 64; Balogun S YUSUF and Andrew G. ONOKERHORAYE, 'Climate Change Vulnerability Mapping across Ecological Zones in Delta State, Niger Delta Region of Nigeria' (2022) 27 *Climate Service* 100304; Turnwait Otu MICHAEL, 'A Qualitative Exploration of the Influence of Climate Change on Migration of Women in the Riverine Area of Bayelsa State, Nigeria' (2024) 89(13) *Social Sciences* 2.

¹¹⁴ Ibrahim BACHAR and Henry MENSAH, 'Rethinking Climate Migration in Sub-Saharan Africa from the Perspective of Tripartite Drivers of Climate Change' (2022) 2 *SN Social Sciences* 87; Merem C EDMUND and others, 'Regional Assessment of Climate Change Hazards in Southern Nigeria with GIS' (2019) 8 *Journal of Safety Engineering* 9.

¹¹⁵ CCA (n 13) s 1.

¹¹⁶ HIGHAM and others (n 89) 9.

¹¹⁷ *ibid.*

The CCA refers to a market-based mechanism but fails to clarify the type of market-based instrument that will be adopted. Given the variety of market-based instruments available (eg carbon tax, subsidies, emission trading schemes, etc.) that can regulate GHG emissions, it is essential to identify the types that will be utilised in Nigeria. Nonetheless, as pointed out earlier, one weakness of an FCL is its lack of completeness and the need to create additional regulations as a supplement.¹¹⁸ On that basis, the CCA empowers the NCCC to make regulations that will specify and regulate market-based mechanisms.¹¹⁹

The CCA allows for public participation and engagement in the development and implementation of the Action Plan, which aligns with the obligation created in Article 6 UNFCCC and Article 12 PA, for parties to enhance citizens' participation in climate actions at the local level. However, the Act does not state how the public will be selected and involved in the process. Section 30 merely requires the NCCC to annually prepare and publish a public engagement strategy without explicitly stating how the public (eg NGOs and CSOs) will be selected. Section 2 (4) provides that NGOs are to be included in the NCCC membership, to be appointed by the President on the minister of environment's recommendation, but the Act does not specify the exact number or type of NGOs that should be part of the NCCC, leaving it to the President's whims and caprices. It is imperative to state who the 'public' is and their role because according to Demski, public engagement selected by the government (top-down initiatives) can enhance understanding and acceptance of policies, while bottom-up initiatives (those organised by local communities) can encourage grassroots actions.¹²⁰

Similarly, it is worth noting that the Paris Agreement's inclusion and prominence accorded to non-state actors reflect a larger change in the international regulation of climate change, where non-governmental organisations (NGOs), trade unions, and transnational networks take an active role in mitigating the adverse impact of climate change.¹²¹ Accordingly, there is a nexus between the Paris Agreement and the recent role of non-state actors in mitigating climate change in Nigeria. The involvement of civil society groups in climate mitigation in Nigeria has led to a paradigm shift regarding the principle of *locus standi*.¹²² The shift in this principle was demonstrated in the case of *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation*,¹²³ where the Court recognized public interest litigation and relaxed the principle of *locus standi* on environmental issues and held that public individuals and organisations (e.g. climate change/environmental NGOs, climate change activists, etc.) acting in the interest of public good, and not their personal interest, can institute an action in court to compel government and private entities to carry out the obligations imposed upon them by law, for the protection of the environment because the environment is a 'public good' that belongs to

¹¹⁸ CLARE, FANKHAUSER, and GENNAIOL (n 79) 24.

¹¹⁹ CCA (n 13) s 32(c).

¹²⁰ Christina DEMSKI, 'Net zero Public engagement and participation' (*Department for Business, Energy and Industrial Strategy*, March 2021)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/969428/net-zero-public-engagement-participation-research-note.pdf> accessed 15 November 2023.

¹²¹ Jonathan W. KUYPER, Björn-Ola LINNÉR and Heike SCHROEDER, 'Non-state Actors in Hybrid Global Climate Governance: Justice, Legitimacy, and Effectiveness in a post-Paris Era' (2018) 9(1) *Wiley interdisciplinary Reviews. Climate Change* 1.

¹²² *Adesanya v President of Nigeria* (1981) ALL N.L.R 1; Alex C EKEKE, 'Liberalization of the Rule on Locus Standi before Nigerian Courts: Lessons from India' (2022) 66(2) *Journal of African Law* 339.

¹²³ *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* (2019)15 NWLR 1666 (SC).

nobody.¹²⁴ This gives rise to optimism for climate litigation in Nigeria, and it is now up to the litigants to test it when they are able to detect non-compliance in respect of the CCA.

Additionally, the Climate Change Act outlines Nigeria's commitment to fulfill its climate obligations. However, as a petro-economy, the genuineness of this commitment can be demonstrated by its attitude towards gas flaring, which is the largest source of GHG emissions in the energy sector (36% of total energy sector emissions in 2018).¹²⁵ Hence, we will proceed in the next section to juxtapose the purpose of the Petroleum Industry Act 2021 and the CCA's objective on gas flaring.

3.3 *The Petroleum Industry Act (PIA) vis-à-vis the CCA's Objective: The Case of Gas Flaring*

One of the key measures in Nigeria's NDC is ending gas flaring by 2030. Achieving this will aid Nigeria in meeting its mitigation goals as provided in its NDC and the CCA. The PIA was enacted in 2021 to provide a legal, governance, regulatory, and fiscal framework for the Nigerian petroleum sector.¹²⁶ It contains provisions aimed at ending gas flaring. Between 1969 and 2020 and before the PIA, there have been 10 unsuccessful attempts to stop gas flaring via legislative and regulatory efforts.¹²⁷ Afinotan observed that:

'These efforts have been characterised by weak penalties, convenient loopholes, and the granting of wide discretion to the Minister of Petroleum, arguably with the potential for the continued flaring of gas in the Niger Delta. Economic gains and not climate change considerations appear to be the driving factor'.¹²⁸

The PIA prohibits gas flaring in Nigeria in section 104 (1), which would have been a plausible provision but for the exceptions that companies can flare gas in case of 'emergency' or were 'exempted' by the Regulatory Commission. The Act does not define what constitutes an 'emergency' and the circumstances within which the authority can 'exempt' companies from flaring gas. The Act also allows a licensee to flare gas for safety measures or strategic operational reasons.¹²⁹ Owing to the ambiguous provisions of 'safety measures' or 'strategic operational reasons', oil companies still flare gas in Nigeria.

Given that the PIA was enacted in the same year as the CCA, it was expected that the PIA would align with the CCA in ending gas flaring, unfortunately, it does not. Continuous gas flaring does not simply jeopardise Nigeria's efforts to combat climate change, as Adelana observed.¹³⁰ It also, as Afinotan noted, casts doubt on Nigeria's commitment to meeting its

¹²⁴ *Centre for Oil Pollution Watch v Nigerian National Petroleum Corporation* (n 123).

¹²⁵ UNFCCC, 'Nigeria First NDC (Updated submission)' (n 14) 17.

¹²⁶ Aleru C JESSICA, 'Climate Change Under the Nigeria Petroleum Industry Act (PIA) 2021' (2023) 7(1) *African Journal of International Energy & Environmental Law* 89.

¹²⁷ AFINOTAN (n 48) 295.

¹²⁸ *ibid* 302.

¹²⁹ Petroleum Industry Act (n 16) ss 102(1) (a)-(c);107.

¹³⁰ Olajide ADELANA, 'Will Nigeria's Climate Change Law put the brakes on gas Flaring?' (*Climate Home News*, 11 March 2022) <<https://www.climatechangenews.com/2022/03/11/will-nigerias-climate-change-law-put-the-brakes-on-gas-flaring/>> accessed 20 November 2023.

mitigation goals under the CCA or the NDC, and by extension, its international climate mitigation obligations.¹³¹

4 Conclusion and Recommendations

While climate change legislation is by no means a silver bullet and does not guarantee that the government will act on its climate obligations, the UK's Climate Change Act and the Nigerian Climate Change Act are emblematic of diverse approaches to tackling a shared global challenge. The UK's Act stands as a model for legally binding emissions reduction, while Nigeria's CCA highlights the complex interplay between development and climate action. Both Acts reflect their countries' unique circumstances, capacities, and priorities. While the UK's Act has made substantial progress, Nigeria's CCA is grappling with implementation barriers with identifiable weaknesses. As the world collectively addresses climate change, understanding and learning from the experiences of different nations is crucial to building effective and inclusive climate policies.

In Nigeria, developmental challenges and political complexities create a more intricate landscape. Poverty, access to energy, and a diverse cultural context influence how climate policies are crafted and implemented. As a Petro-economy that is highly vulnerable to climate impacts, balancing climate action with pressing developmental needs presents a unique challenge.

Considering the identified weaknesses of the CCA this article recommends as follows:

1. There is a need to incorporate the NDC's targets and measures into the Climate Change Act because it is only by such inclusion that citizens can hold the government accountable for its pledges under the Paris Agreement.
2. The PIA should prohibit gas flaring as the current provision not only limits the chances of meeting the NDC target but also demonstrates the country's unwillingness to mitigate climate change.
3. The NCCC should be composed of climate experts and should maintain some degree of independence from government or political affiliations as this would ensure that its statutory duties are not influenced by political sentiments or changes in government.
4. The obligation of setting and implementing mechanisms towards fostering low-carbon emissions in line with the action plan should be enlarged by the NCCC's Regulation to capture private entities with less than fifty employees when their activities are harmful to the climate.
5. The NCCC's reporting obligations should thoroughly address adaptation efforts to determine the level of progress and resilience given Nigeria's high sensitivity to climate impacts.
6. Akin to the UK's Climate Change Committee reports on mitigation and adaptation, the CCA 2021 should be amended to ensure accountability of the NCCC's report or the NCCC's Regulation should specify to whom the NCCC should report and what should happen next.

¹³¹ AFINOTAN (n 48) 299; Godwin O AIGBE, Lindsay C STRINGER, and Matthew COTTON, 'Gas Flaring in Nigeria: A Multi-level Governance and Policy Coherence Analysis' (2023) 2 *Anthropocene Science* 31, 42.