

Inside Nigeria's Climate Change Act, 2021:

What Is Clear, What Is Unclear, and What Needs to Happen

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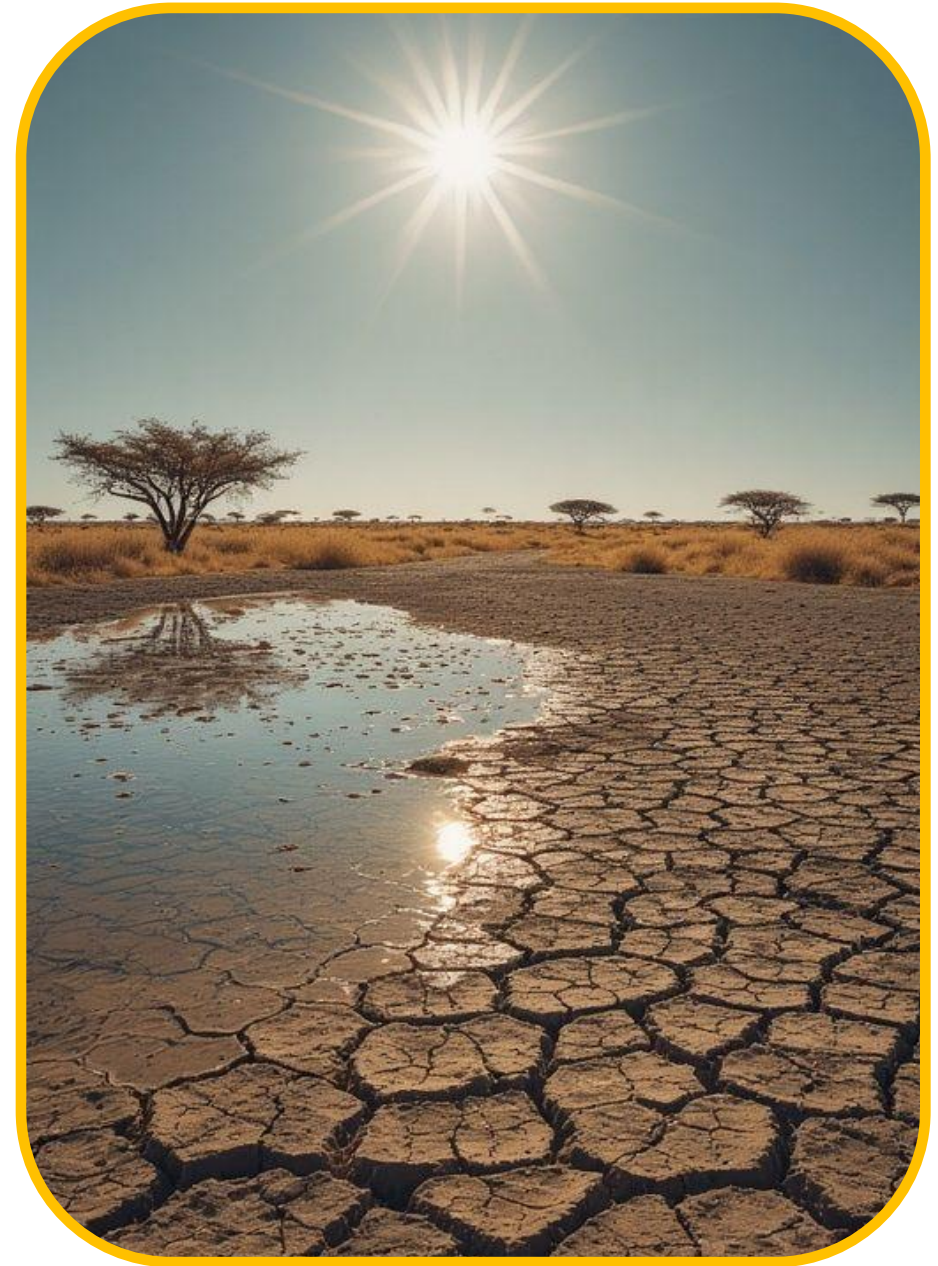
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Understanding our Objectives

1. Review the Act to understand what structural flaws, ambiguities and gaps exist.
-
2. Prepare participants in recommending drafting amendments that can enhance the law's clarity, workability and alignment with relevant policy intent.



Laws and Policies as Tools for Governance

Law is the essential tool that ensures that policy is executed

Policy





- Policies outline goals, principles, planned actions
- Policy sets the direction.

Law

- Laws provide the enforceable legal framework.
- Law ensures compliance.

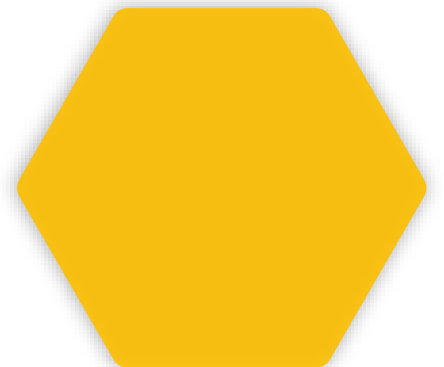


Nigeria's Critical Policy Instruments on Climate Change

National Climate Change Policy (2021 – 2030) 	Nigeria's Energy (Transition Policy) 	Nigeria's Energy (Transition Policy) 	National Policy on Environment 
<ul style="list-style-type: none"> ▪ Reducing greenhouse gas emissions. ▪ Enhance climate resilience. ▪ Promote sustainable low carbon economic growth. 	<ul style="list-style-type: none"> ▪ Achieving net zero emissions by 2060. ▪ Tackling energy poverty. ▪ Power cooking industry transport oil & gas . 	<ul style="list-style-type: none"> ▪ Commitment to reduce GHG emissions by 2035 compared to 2018 levels. ▪ 60% reduction in fugitive emissions ▪ Increasing renewable energy by 52%. ▪ Reduce deforestation by 60% ▪ Mobilize \$25 billion for implementation. ▪ Phase out routine flaring by 2030 	<ul style="list-style-type: none"> ▪ Sustainable development ▪ Quality environment for health; ▪ Promote sustainable use; ▪ Restore ecosystems.

Fundamentals of a Climate Change Law

Effective Legal & Institutional Framework ↓	Clear Targets & Binding Obligations ↓	Adaptation & Resilience ↓
<ul style="list-style-type: none">▪ Governance structure;▪ Accountability mechanisms for enforcement;▪ Transparent reporting process (mandatory GHG emissions monitoring, reporting, verification).	<ul style="list-style-type: none">▪ Net – Zero Emissions Target.▪ Specific, scheduled targets to track progress (e.g. 5 – year carbon budgets).▪ Sector specific obligations.▪ Private Sector Regulation (mandatory reporting for businesses etc.).	<ul style="list-style-type: none">▪ Comprehensive strategy to enhance adaptive capacity and strengthen resilience.▪ Risk Assessment.



Fundamentals of a Climate Change Law..

Principles of Climate Justice & Equity



- Just transition.
- Protection of vulnerable groups.
- Public participation (communities and vulnerable populations).
- Access to Justice (avenues for citizens to challenge government inaction).

Implementation Mechanism



- Integrating climate change considerations into all sectors of government policy.
- Dedicated funding mechanisms (to support mitigation and adaptation).

Digging Deep – Access to Justice



- Provisions defining specific duties of Agencies.
- ❖ Duty to set standards on air quality or emissions limits (*Judicial Review*)
- ❖ Whether Action Plan is rational, science – based and able to achieve objectives (*Judicial Review*).
- Provisions stipulating time – bound plans for adapting to climate change.
- Provisions indicating EIA to include *cc impacts*.
- Provisions mandating government to set 5 – year carbon budgets.
- Provisions that enshrine legally binding date for net – zero emissions (*basis that current actions are inadequate*).
- Provisions requiring government to take reasonable actions to prevent dangerous *cc* (*linked to human rights*).

Digging Deep – Just Transition



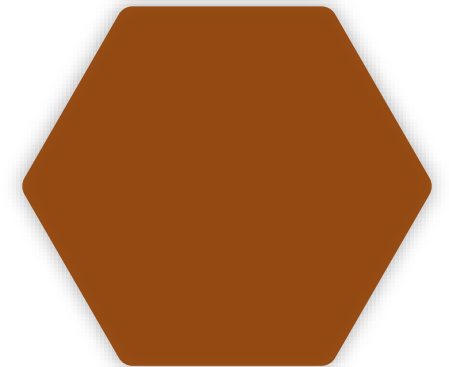
- Provisions mandating Social Impact Assessment.
- Statutory requirement for funding & implementing training for workers in fossil fuel dependent industries to transition to green jobs.
- Provisions mandating economic diversification planning for areas likely to be affected by decline of carbon – intensive industries.
- Inclusive stakeholder engagement
- Sector specific transition agreements
- Financial support for workers likely to be displaced (*compensation, unemployment benefits*)

Nigeria's Climate Change Act



Structure

- I. Objectives and Application.
- II. Establishment of National Council on Climate Change.
- III. Administration and Control of the National Council on Climate Change.
- IV. Financial Provisions.
- V. Carbon Budget and National Climate Change.
- VI. Obligation Relating to Climate Change.
- VII. Nature – Based Solution.
- VIII. Miscellaneous Provisions.
 - Schedule



Net – Zero Target Setting



S.1 (f)

“setting a target for year 2050 - 2070 for the attainment of a net – zero GHG emissions, in line with Nigeria’s international climate change obligations”

What should guide target setting for attainment of a net – zero GHG emission?

- Nationally Determined Contribution.
- International Obligations.

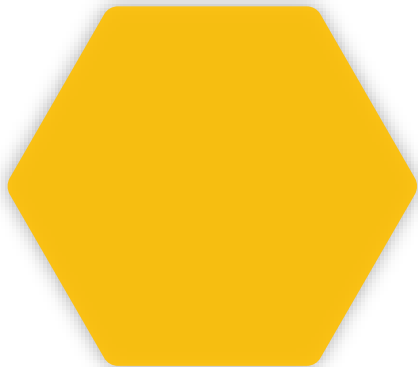
Broad Objectives and Potential for Conflict

- **Antinomy**, laws appearing to contradict.
 - **Conflict of laws**, specialized laws, customary laws.
 - **Overlapping jurisdiction**
 - **Normative conflict**, norms or rules fundamentally incompatible.
- Need for an overriding or prevalence clause as safeguard to:
 - Rule of Harmonious Construction.
 - Specific over general.
 - Later in time over earlier.
 - Mandatory Rules Overriding Public Policy.
 - Contra Proferentem.
 - Conflict of laws principles.

Delineation of Roles

Governing Council strongly presupposes the existence of an implementing body/mechanism

S. 4 (a) – (q) stipulates the roles of the Governing Council.



Role Differentiation

- Council (Governing Body)
- Strategy / policy making oversight.
- What are we doing, *(not how are we doing it)*.
- Approve Budget & monitor spends *(not preparation of budget or spending)*.
- Hire/evaluate Chief Executive *(not hire / manage staff)*

Membership of the Governing Council

S. 5: The Council shall consist of –

- a) *The President*
- b) *The Vice President*
... 11 Ministers (named)
... CBN, NSA, Chairman Governors Forum etc., and
- c) *DGNCCC*
(23 in all)

Should President and Vice President be involved together?

Downside

- Decreased efficiency
- Slow decision – making process
- Increased operational cost
- Reduced accountability
- Increased internal conflict

Advantage

- Diverse perspectives

Meeting of the Council

S 5 (2):
*The Council shall meet, as
and when necessary...*

How about mandating
minimum number of
meeting to monitor
performance?



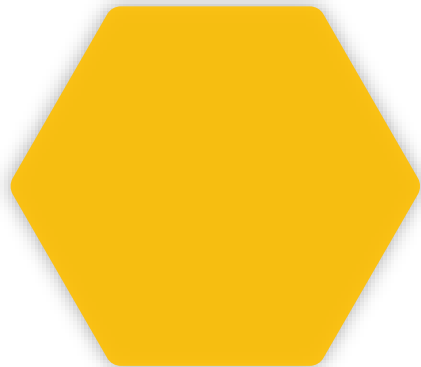
Tenure of Representatives of Private Sector, Women, Youth, Persons with Disabilities, and CSOs

S 5 (4) (a):

***To hold office for a term of four years
and not be eligible for reappointment..***

Considerations

- Independence and stability.
- Undue political interference.
- International Best Practice.



Secretariat as “Implementing Body” for the Council

S 7:

Establish a secretariat as the administrative, scientific and technical arm of the Council.

- Again, delineation of Roles???

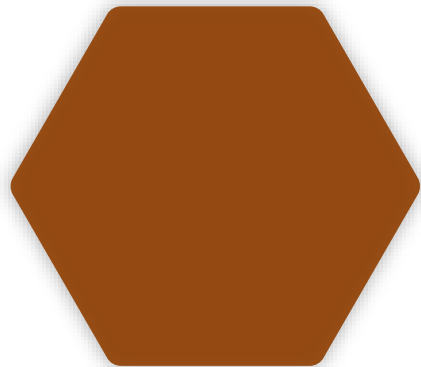


Role of the Secretariat

- How clear are the roles of the Secretariat on the fundamentals of a climate change law?

The Fundamentals

- Public and private entity reports and data;
- Establishment and management of a national registry;
- Mobilization of financial resources.

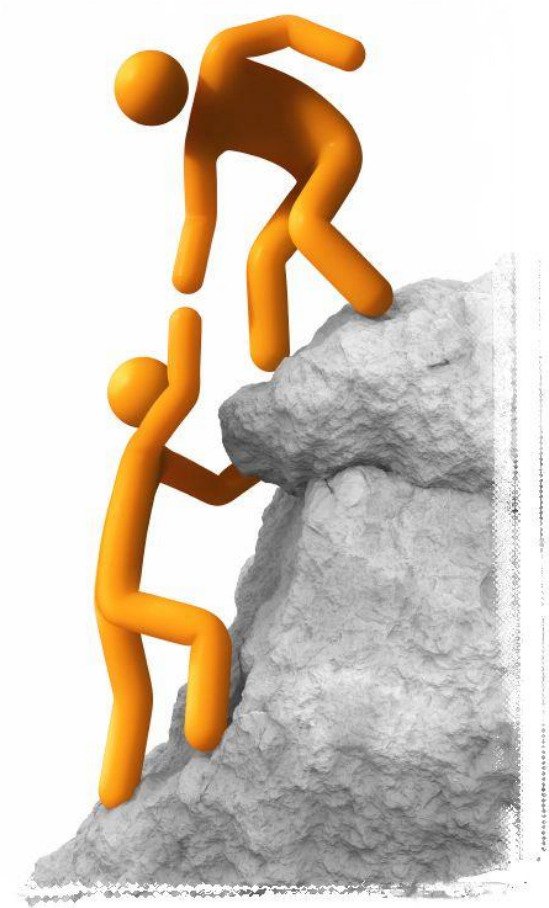


Tenure of the Director – General

S 10 (3):

The Director – General shall hold office for a term of four years, and may be re-appointed for another term of four years..

- Crisis prone
- Undue political interference
- Best practice



Appointment of Zonal Coordinators and State Directors

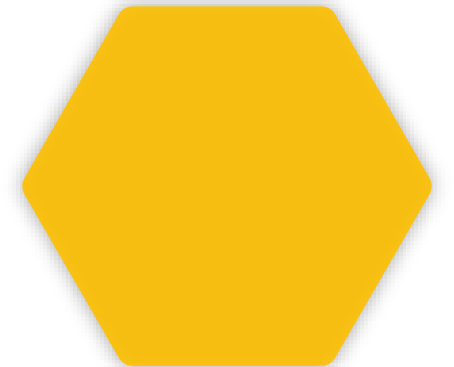
S 11 (1) – (3): Council to appoint/terminate

- ***Zonal Coordinators from six geo-political zones***
- ***State Directors for each state.***

How appropriate is this as an effective institutional framework in a federal system?

What other options can better serve?

- Federal
- State



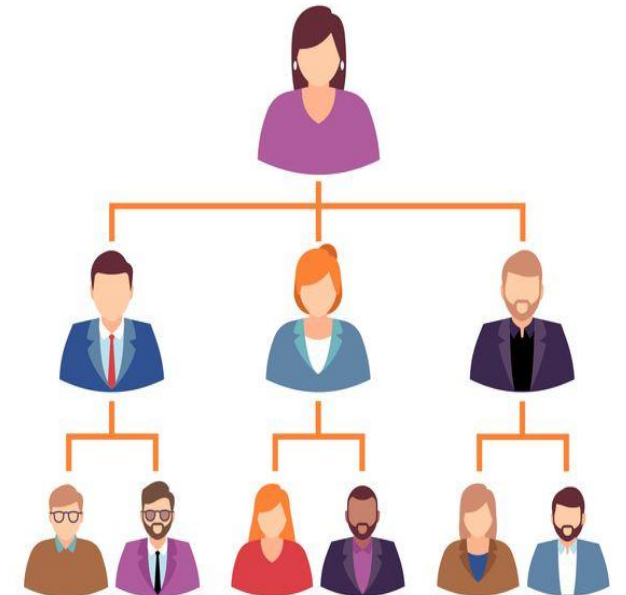
Governance Structures Existing Prior to Act

S. 13 (1) – Secretariat may with approval of Council appoint such staff and employees as it deems necessary...

S. 13 (4) – Council shall make staff regulations... such regulations may provide for the appointment, promotion, transfer and disciplinary control of staff.

What implications on functions, powers and reporting obligations of the Department of Climate Change (DCC)?

- Overlap/tension



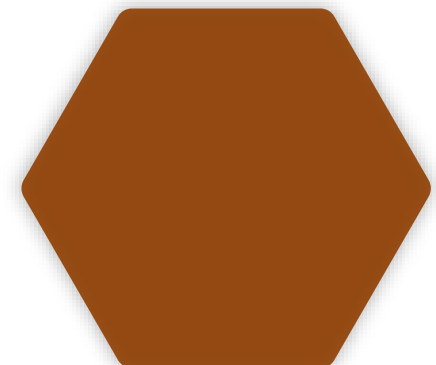
Focus of Financial Provisions

S. 15 (1): Establishment of Climate Change Fund

S. 15 (2):

- a) Cost of administration of Council...;***
- b) Payment of emoluments...***
- c) Payment of Salaries...***
- d) Maintenance of property...***
- e) ...***
- f) Funding... mitigation & adaptation.***

- How will this attract the private sector?
- How about sources of the funds.
 - Consider Ecological fund; Natural Resources Development fund; Gas flaring penalties etc.



Underscoring a Focused Climate Fund

Thematic Alignment for Impact	Rigorous Monitoring / Management of Funds for Impact
<ul style="list-style-type: none">▪ Catalytic Function – finance activities/projects aimed at reducing GHG emission.▪ Facilitative Functions – build capacity for reporting/creating bankable green projects.▪ Innovative Function – fund innovative green business.▪ Operational Function – cost of administration etc.	<ul style="list-style-type: none">▪ Reputable fund manager with experience in climate finance to manage in conjunction with Council/Secretariat.▪ Clear outline of functions/responsibilities of fund manager.▪ Requisite accreditation by relevant international bodies

The Carbon Budget

Independent purpose – built Council, rather than a government ministry should set/ allocate carbon budget

S. 19 (1) – Federal Ministry Responsible for Environment to in Consultation with the Federal Ministry responsible for National Planning set carbon budget for Nigeria.

- Independence
- Technical expertise
- Science – led approach

[Establish a baseline for GHG reduction policy and meeting th NDCs]



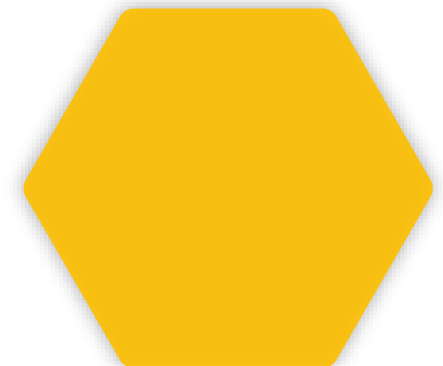
Clear Considerations for Setting/ Allocating Carbon Budgets

Ss 19, 20 and 21

- Socio – economic impact of imposing the carbon budget.
- Best available science, evidence and information.
- Best practicable environmental options available and alternative to mitigate emission of GHG.
- National strategic priorities.
- Alignment of the carbon budget with the national greenhouse gas emissions trajectory.

Provision must be able to sufficiently enable:

- Transparency
- Accountability
- Monitoring of compliance on carbon budget allocation



Obligations Relating to Climate Change

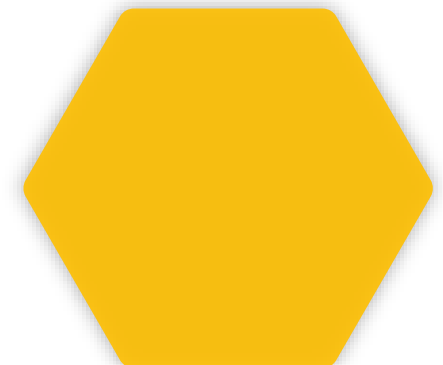
S 22 (1) –

MDAs shall establish a climate change desk to be supervised by an officer not below the Directorate cadre...

Need to include:

- Private entities shall designate climate change/sustainability officers with responsibility to integrate climate change activities.

(See s. 24 (1) (b))

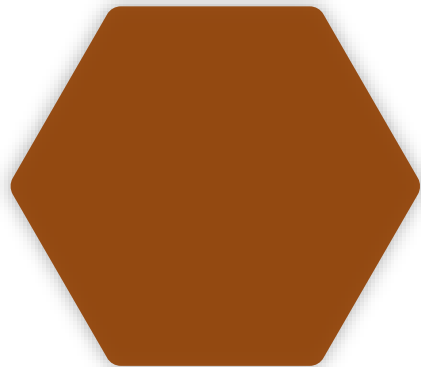


Scope of Coverage of Private Entities

S. 24 (1) –

Any private entity with employees numbering 50 and above to put in place measures to achieve annual carbon emission reduction...

- Private entities with less than 50 employees may generate emission beyond prescribed limits
- Need for balance to protect from undue burdens
[proportionate regulation | streamlined compliance |]



Stipulating Specific Emission Targets

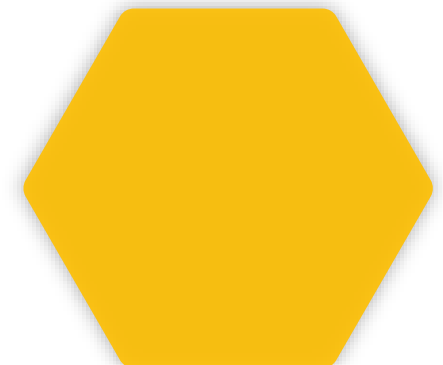
- Legally binding long term targets (e.g. net-zero gas emission by year 2060)
- Intermediate milestones (e.g. X% reduction by year 2030).
- Target periods (5 year periods)
- Sector Specific caps
- Specific measures (e.g. total ban on gas flaring)

Scientific Basis &
Independent Reviews



Implementation and
Monitoring Mechanisms

***[Note: Dependency on oil economy
and achieving net – zero]***



Subnational Coordination

- How clear is the Act on subnational coordination to ensure that national goals are effectively translated into local action?

Refer S.11 on appointment of Zonal/State Director

Challenges of:

- Bridging gap between federal ambition and implementation;
- Fragmented policies;
- Lack of structured multi-level collaboration.

Sanctions and Penalties

S. 31 (4) –

- ***Fine of not more than N1,000,000.00 or to imprisonment for a term of not more than one year.***
 - ***Forfeiture of any benefit derived from non – disclosure.***
- How much of a deterrence is this fine, particularly for businesses?
 - What provisions are in place for fair hearing in the enforcement and imposition of penalty?
 - Should provisions relating to penalty be limited only to the Act or be expanded to include Regulation's made under the Act?

Imposition of Fines and Penalties and Context of Judicial Act

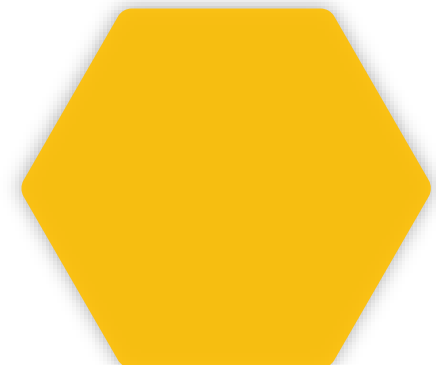
Ss 31 and 34

- *Abdullahi vs. Kano State* (2015)
LPELR – 25928 (CA)



Contra, expediency in the execution of administrative functions.

- The balance for imposition of administrative sanction:
 - Clear statutory mandate.
 - Appropriate guarantee of procedural fairness (fair hearing).
 - Provision for judicial review.



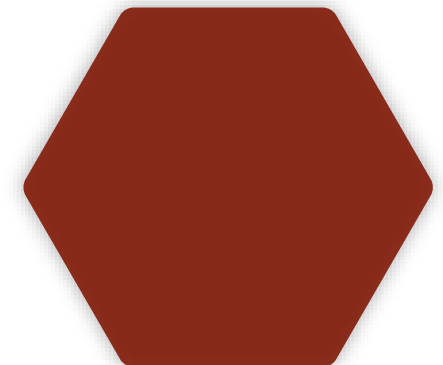
Explicit “Climate – Liability” Provision

- Formal duty of care standards for businesses, particularly in carbon intensive industries.
- Mandate adoption of Best Available Techniques.
- Provision for victims to seek compensation for damages caused by climate change.
- Strict liability and joint liability.
- Financial Responsibility Funds (Polluter Pays Principles; Insurance Mandates)

Necessary Pedestal

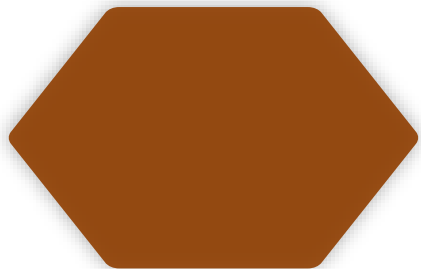


- Relax causation standards
- Broaden standing.



Current Digital Realities

- How well has the Act integrated current realities such as:
 - Hybrid Meeting Rules
 - Technology standards
 - Data Privacy & Security.



Critical Considerations



- Accessible for Non-State Actors;
- Clarity in legal standing of virtual decision – (quorum, voting etc.)
- Environmental footprint of technology.

What Needs to Happen ???

- *Legislative Revision*

- *Legislative Amendment*

What Must Continue to Happen ???

Strategies

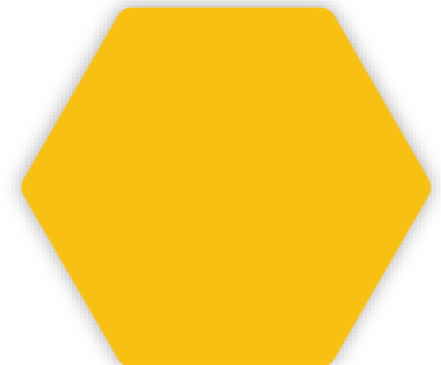


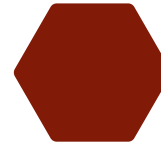
- Creative legal interpretation;
- Leveraging international norms;
- Engaging in Rights – Based Strategic Litigation;
- Corporate Accountability and ESG (Anti – Green washing, Due Diligence obligations);
- Regulatory Advocacy and Advice.

Role Actors



- Public and Civil Society Action to Spur Judicial Activism;
- Regulatory Action and Rulemaking.





THANK YOU

so much for
your attention

