

**A LEGAL REGIME ON CLIMATE CHANGE: A CATALYST FOR SUSTAINABLE
DEVELOPMENT IN AFRICAN**

BY

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Abstract

Climate change is one of the greatest challenges of our time. Goal 7 of Agenda 2063 is clear on the fact that while African countries contribute just 5 percent of global carbon emission, they however bear the greatest brunt of climate change which environmental displacement and migration is one. Furthermore, goal 7 of Agenda 2063 reinstates Africans commitment to the global effort to combat climate change and its negative effects on the earth surface. The Intergovernmental Panel on Climate Change (IPCC) first assessment report in 1990 stated that the greatest single impact of climate change may be on migration. The report estimated that by 2050 which is in tandem with the target of agenda 2063, more than 150 million people could be displaced by floods, desertification, water scarcity, global warming, storms and other climate change-related disasters. Over 28 years after, the environmental and socio-economic impacts of climate change is being felt especially across Africa and the risk of environmental displacement is 60% higher than estimated by the panel. Accordingly, the Internal Displacement Monitoring Centre's second African report on internal displacement revealed that climate change and environmental degradation are the major cause of these natural disasters that lead to displacement and migration in Africa. The report further revealed that by mid-2017, climate change induced disaster for just the year 2017 resulted in the displacement of over 552, 000 people across 33 African countries. This however resulted in huge number of African refugees in other continent and reveals African vulnerability to climate change. Nevertheless, scholars and researchers have accepted the fact that climate change is one of the reason for this number of displaced persons in Africa and may result in brain drain due to large-scale movement of Africans to other continent. To achieve the goal of agenda 2063 on sustainable development and also mitigate negative climate change effects such as environmental displacement and migration in Africa, the study using doctrinal research methodology underscores the aim of this research, which includes the urgent need for an African Convention on Climate change. The convention should be in line with goal 7 of the African Union agenda 2063 and the provisions/thematic pillars of the draft African Union Strategy on Climate Change 2014. The convention should also reaffirm African commitment towards the goals of the United Nations Framework Convention on Climate Change /Kyoto Protocol which has been ratified by most African countries. The researcher is of the opinion that the current African legal regime on climate change is inadequate, if African countries must achieve the aspirations and goals of Agenda 2063 on sustainable development.

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1.0 Introduction

Climate change is undoubtedly a global phenomenon and its negative effects are advancing rapidly and visibly than we imagined. Natural events and human activities are believed to be contributing to an increase in average global temperatures. Though, the fifth assessment report of the IPCC in 2014 attributed the major causes of climate change to human activities via anthropogenic greenhouse gas emissions from population growth and increased industrial activities.¹ Thus, it is on record that Africa will be the worst hit by the negative effects of climate due to its geographical location, limited adaptive capacity and widespread poverty which makes it difficult for the continent to effectively mitigate climate change.² Further, Climate change is also a threat to economic growth and livelihoods of vulnerable populations within the African region. It is saddening that Africa has limited capacity for disaster preparedness, risk reduction and prevention, and every natural disaster results in material destruction and loss of human lives. There are also substantial risks of land grabs and privatization of the commons, which would accentuate vulnerability to climate risks.

Climate change will continue to adversely impact Africa's development for many years to come if we do not act now, especially with the inability of the international climate change legal regime to adequately assist African countries in addressing the negative effects of

¹ Summary for Policy makers Figure (SPM 1.2) states as follows: "Anthropogenic greenhouse gas emissions have increased since the pre-industrial era, driven largely by economic and population growth, and are now higher than ever. This has led to atmospheric concentrations of carbon dioxide, methane and nitrous oxide that are unprecedented in at least the last 800,000 years. Their effects, together with those of other anthropogenic drivers, have been detected throughout the climate system and are extremely likely to have been the dominant cause of the observed warming since the mid-20th century" see 'Climate Change 2014 Synthesis Report Summary for Policy makers' . Intergovernmental Panel on Climate Change. Last modified June 3, 2018. http://ipcc.ch/pdf/assessment-report/ar5/syr/AR5_SYR_FINAL_SPM.pdf

² 'Responding to Climate Change'. UN Environment. Last modified June 3, 2018, <https://www.unenvironment.org/regions/africa/regional-initiatives/responding-climate-change>

climate change under the vulnerability principles.³The Agenda 2063 aspirations and goals on climate change is therefore an Africa effort to combat/mitigate climate change while ensuring sustainable development in Africa. Consequently, Goal 7 of Agenda 2063 has no doubt made climate change a continental priority and therefore affirms the essence of this research on the need for a legal regime/convention on combat climate change in Africa.

For a detailed research work and also to achieve the Africa we want which is significant in this research work and the key focus of agenda 2063, this paper has been divided into the following parts, part one is the introduction, conceptual clarification of the key terms examined in this research work forms part 2, Part three of this work will examine the legal framework on climate change in Africa, Part four is on the legal regime for climate change: A catalyst for sustainable development in Africa and is the crux of this research work , part five is recommendations and conclusion.

2.0 Conceptual Clarification of Terms

2.1 Climate Change

The term Climate change generally refers to changes in the earth's weather, including changes in temperature, wind patterns and rainfall, especially the increase in the temperature of the earth's atmosphere that is caused by the increase of particular gases, especially carbon dioxide. Climate change is a long-term change in the statistical distribution of weather patterns over periods of time that range from decades to millions of years. It may be a change in the average weather conditions or a change in the distribution of weather events with

³ 'Climate change and Africa: The Normative framework of the African Union' . North –West University. Last Modified June 5, 2018. <http://dspace.nwu.ac.za/handle/10394/14193>

respect to an average, for example, greater or fewer extreme weather events.⁴The term according to Intergovernmental Panel on Climate Change (IPCC)⁵ refers to ‘a statistically significant variation in either the mean state of the climate or in its variability, persisting for an extended period (typically decades or longer).’⁶ Further, climate change is a change in the climate which is attributed directly or indirectly to human activity that alters the composition of the global atmosphere and which is in addition to natural climate variability observed over comparable time periods.⁷

The United Nations Framework Convention on Climate Change (UNFCCC),⁸ makes a distinction between climate change attributed to human activities altering the atmosphere composition and climate variability attributable to natural causes. However, environmental scientist have attributed the human activities to constant burning of fossil fuels, such as oil and coal, which emits greenhouse gases into the atmosphere.⁹ Agriculture and deforestation are also seen as contributory factors to the proliferation of greenhouse gases which are the major cause of climate change. While natural causes are due to natural internal processes which are in form of persistent changes in the composition of the atmosphere.¹⁰

The effects of climate change on the environment include flood, desertification, erosion, food insecurity and global warming. Combating climate change is a global concern and has

⁴ Climate change: Causes and Consequences’. Ekoenergy. Last Modified May 30, 2018. <https://www.ekoenergy.org/extras/background-information/climate-change/>

⁵Intergovernmental Panel on Climate Change ‘.Last Modified May 19, 2018. <http://www.ipcc.ch/>

⁶ Intergovernmental Panel on Climate Change ‘.Last Modified May 19, 2018. <http://www.ipcc.ch/>

⁷ ‘United Nations Framework Convention on Climate Change 1992, Article 1’. United Nations Framework convention on Climate Change. Last modified May 18, 2018. <https://unfccc.int/resource/docs/convkp/conveng.pdf>

⁸ United Nations Framework Convention on Climate Change 1992, Article 1’. United Nations Framework convention on Climate Change. Last modified May 18, 2018. <https://unfccc.int/resource/docs/convkp/conveng.pdf>

⁹ ‘Climate Change and Health’. World Health Organisation. Last modified May 23, 2018 <http://www.who.int/mediacentre/factsheets/fs266/en/>

¹⁰ APM Baede, ‘Working Group One: The Scientific Bases’, May 20, 2018, <<https://www.ipcc.ch/ipccreports/tar/wg1/518.htm>

resulted in the adoption of some international,¹¹ continental,¹² regional¹³ and national legal¹⁴ regime on climate change. It is saddening that African legal regime on climate change is grossly inadequate despite being addressed as the most vulnerable to climate change effects in the world.

2.2 Sustainable Development

Sustainable development is defined as the development that meets the needs of the present generation without compromising the ability of the future generations to meet their needs¹⁵. It may also be defined as a development that satisfies the needs of the present without compromising the capacity of future generations, guaranteeing the balance between economic growth, care for the environment and social well-being.¹⁶ The idea of sustainable development emerged from the Brundtland report of 1987 titled "Our Common Future", through ` it was

¹¹ John Knox, 'The International legal Framework for addressing Climate change', June 13, 2018, <https://heinonline.org/HOL/LandingPage?handle=hein.journals/pensaenlar12&div=10&id=&page=>. Though there are other legal instruments however this research will align with the main international framework on climate change which includes; The United Nations Framework Convention on climate change (UNFCCC), 1992, The Kyoto Protocol and the Paris Convention

¹² 'Draft African Union Strategy on Climate Change 2014', June 13, 2018, http://www.un.org/en/africa/osaa/pdf/au/cap_draft_aclimatestrategy_2015.pdf

¹³ The East African Community (EAC), Common Market for Easter and Southern Africa (COMESA) and Southern Africa Development Community (SADC) Common tripartite agreement on climate change adaptation and mitigation in Easter and Southern Africa signed on July 12, 2012. The East African Community Climate Change Policy (EACCCP). Eldrine Wanyama et al., *International Legal Framework for Climate Change Adaption and Mitigation: Prospects and Challenges*. Accessed June 14, 2018. http://www.academia.edu/14920258/International_Legal_Framework_for_Climate_Change_Adaptation_and_Mitigation_Prospects_and_Challenges

¹⁴ Kenya. No.11, Kenya Climate Change Act. Laws of Kenya 2016. June 13, 2018 <http://www.kenyalaw.org/lex/rest/db/kenyalex/Kenya/Legislation/English/Acts%20and%20Regulations/C/Climate%20Change%20Act%20-%20No.%2011%20of%202016/docs/ClimateChangeAct11of2016.pdf> accessed., Dr. Thierry Giordano et al., South African National Climate Change Response Policy 2011, Governance of Climate Change In South Africa. June 13, 2018. https://www.environment.gov.za/sites/default/files/docs/climate_change_governance.pdf, 2018, 'Ghana Climate Change Policy 2013 <http://www.un-page.org/files/public/ghanacclimatechangeepolicy.pdf> accessed 13 June 2018 Nigerian National Policy on Climate Change 2015. June 13, 2013. <http://climatechange.gov.ng/climate-knowledge/official-publications/policies/national-policy-on-climate-change/accessed>

¹⁵ Sustainable development contains two key concepts and they include *a) the* concept of needs, in particular the essential needs of the world's poor, to which overriding priority should be given; and *b) the* idea of *limitations* imposed by the state of technology and social organization on the environment's ability to meet present and future needs see what sustainable development is? June 3, 2018. <http://www.iisd.org/sd/>.

¹⁶ 'Sustainable Development'. ACCIONA .June 12, 2018. <https://www.accionacom/sustainable-development/>

recognized that the natural resources are exhaustible¹⁷. The idea of sustainable development was sustained in the United Nations Conference on Environment and Development of 1992 and recently the United Nations Sustainable Development Goals also known as global goals adopted in the year 2015.¹⁸

Accordingly, all definitions of sustainable development requires, that we see the world as a system, a system that connects space and a system that connects time¹⁹. When we see the world as a system, we will understand that air pollution from one country affects air quality in another. It is noteworthy that an adequate legal regime in form of a convention, that seeks to combat climate change while promoting sustainable development is key if Africa must achieve the aspirations and goals of Agenda 2063 on environmental sustainability.

3. 0 Existing Legal Regime on Climate Change in Africa

This section seeks to examine the existing legal and policy framework on climate change in Africa with a view to determine the adequacy or otherwise of the existing legal framework on climate change in Africa. The research however, is not unaware of the key institutions and initiatives as well as their enabling instruments with a clear mandate on climate change. In Africa²⁰ However, our focus is strictly on existing continental legal regime on climate change in Africa.

¹⁷ Panigrahi Ashok Kumar and Nirakar Jena. 'Environmental Protection and Sustainable development'. June 3, 2018. <http://www.articlesbase.com/environment-articles/environmental-protection-and-sustainable-development-438789.html>

¹⁸ 'World Leaders adopt Sustainable Development Goals'. United Nations Development Programme. 10 June, 2018. www.undp.org

¹⁹ 'What is sustainable development'. International institute for sustainable development. May 18, 2018. <http://www.iisd.org>

²⁰ These institutions and initiatives are the Committee of African Heads of State and Government on Climate Change (CAHOSCC), the African Ministerial Conference on the Environment (AMCEN), the ClimDev-Africa Programme which operates through the three channels of African Climate Policy Centre (ACPC), the Climate Change and Desertification Unit (CCDU) and ClimDev Special Fund (CDSF). Other institutions and initiatives are the African Union Commission (AUS), New Partnership for African Development (NEPAD), Pan-African

3.1 African Charter

The right to healthy and sustainable environment is guaranteed under section 24 of the African Charter.²¹ The African Charter which is the bedrock of all African U conventions has therefore provided a lead way for the need for a legal regime on climate change in Africa. The Right to healthy and sustainable environment cannot be guaranteed in a flooded environment or an environment threatened by erosion, drought and desertification, tsunami, earthquake and sandstorms. This research work therefore argues that the charter laid the foundation for the adoption of a legal regime/AU convention on climate change in Africa by recognising the right to a healthy and sustainable environment.

3.2 Agenda 2063

The African Union Agenda 2063 is a strategic framework for the socio-economic transformation of the continent over the next 50 years. Launched in 2013, the AU Agenda 2063 aims at inclusive growth and sustainable development of all African countries. It builds on, and seeks to accelerate the implementation of past and existing continental initiatives for growth and sustainable development.²² Further, Agenda 2063 emphasizes the importance of rekindling the passion for pan –Africanism, a sense of unity, self –reliance, integration and solidarity that was a highlight of African development in 20th century. It is anchored on the Constitutive act, the AU Vision, the 50th Anniversary Solemn Declaration and African aspirations. Thus, national, regional and continental priorities are the centre of Agenda 2063. The Agenda 2063 builds on seven aspirations and 18 goals.

Parliament and the Peace and Security Council (PSC). Ademola Oluborode Jegede. 'The Climate Change Regulatory Framework and Indigenous Peoples Lands in Africa: Human Rights Implication' (Pretoria University Law Press, South Africa) (2016)

²¹ 'African (Banjul) Charter on Human and Peoples Rights' June 13, 2018. http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf

²² 'African Agenda 2063'. African Union. Last modified June 13, 2018. <http://www.un.org/en/africa/osaa/pdf/au/agenda2063-presentation.pdf>

However, this research work will align itself with goal seven (7) which is on environmentally sustainable and climate resilient economies and communities. Goal 7 contains some priority areas which includes:

- a. Societies produce and consume goods and services in a sustainable manner
- b. Biodiversity including forests, genetic resources, land, coastal and marine ecosystems conserved and used sustainably
- c. Water security domestic, agricultural and industrial use assured
- d. Climate resilience low carbon production systems in place and significantly minimizing vulnerability and natural disasters
- e. Renewable energy (wind, solar, hydro, bio and geothermal) as the main source of power from households, businesses and organisations.

These areas of priority are important but needs to be compelling due to the enormous vulnerability of the continent to climate change effects. Hence, the need for a hard Law/ convention on climate change in Africa.

3.3 Draft African Union Strategy on Climate Change 2014

In July 2009, the African Union Summit adopted a decision on the African Common Position on Climate Change, which was to be based on the Algiers Platform and its continued refinement by the African Group of Negotiators.²³The Assembly further took note of the Commission's efforts to develop a comprehensive African Strategy on Climate Change, and requested the Commission, in collaboration with partners, to elaborate a comprehensive African Strategy on Climate Change, including development of sector technical backup data on the impacts of climate change, its cost to the economy and amount of carbon sequestered

²³ 'Draft African Union Strategy on Climate Change'. Common African Position. June 4,2018.<http://cap.africa-platform.org/resources/draft-african-union-strategy-climate-change>

in various African ecosystems. This is the premise upon which the elaboration of the Strategy is based on.²⁴

The vision of the African strategy is to provide the AU as a whole, the regions, Member States and other stakeholders with a reliable source of strategic guidance to enable them effectively address climate change challenges. The strategy also proposes to carry out other interventions to address some specific priority areas including adaptation and risk management, Nationally Appropriate Mitigation Actions (NAMAs) and as well as some specific cross-cutting issues. The strategy also identifies specific goals for each thematic area. For each of the goals, several actions are identified. These are used in defining an implementation matrix.

The strategy takes cognizance of the multidisciplinary and cross cutting nature of climate change, both in terms of disciplines and sectors. It also recognizes that most aspects of this strategy will only be realized through partnerships and close collaboration among various sectors, institutions and stakeholders at continental, regional and national levels. The reason behind this strategy includes:

- i. To fill up the climate change governance gap, without which responses to climate change will be far from optimal;
- ii. To reduce vulnerability and impacts of climate change in the continent, hence need to integrate climate change into development and to climate proof African economies
- iii. To deal with challenges and to exploit opportunities of climate change, through sharing, transfer and use of knowledge ; technology, and climate change finance;

²⁴‘Draft African Union Strategy on Climate Change’. Common African Position. Last modified June 9, 2018.<http://cap.africa-platform.org/resources/draft-african-union-strategy-climate-change>

- iv. To have effective regional, continental and international cooperation and collaboration to deal with climate change.

The strategy is based upon these key reasons and result in four “pillars of action” that reflects the continental priorities in dealing with climate change and its impacts.²⁵ The thematic pillars are as follows:

- i. Climate Change Governance
- ii. Promotion of research, education, awareness raising and advocacy
- iii. Mainstreaming and integrating climate change imperatives in planning, budgeting, and development processes; and
- iv. Promotion of national, regional, continental and international cooperation

A look at the existing legal framework on climate change in Africa reveals that the existing frameworks are grossly inadequate and cannot solve the problems/ challenges emanating from impact of climate change.

3.4 Challenges posed by the existing legal framework on climate change in Africa.

Consequently, it is obvious from the discussions above that there are no hard law on climate change in Africa and the existing policy framework grossly inadequate and in fragments. Though, some climate change policies are featured in the mandate of a range of institutions and initiatives as well as their enabling instruments. Yet the inadequacy of these policies threaten Africa’s struggle to combat climate change. This once again reemphasises the goal of this research on the need for an African Convention on climate change.

²⁵‘The African Strategy on Climate Change’. Eco- Build Africa. Last Modified June 14, 2018.http://www.ecobuild-africa.com/home/?page_id=467

4. A Legal Regime for Climate Change: A Catalyst for Sustainable Development in Africa

Although Africa is the least contributor to greenhouse gas emissions (approximated at 3.8% at global level), the continent is the most negatively impacted continent by the effects of climate change.²⁶ This is mainly due to its high levels of vulnerability and low adaptive capacities. The continent relies heavily on climate sensitive sectors for its growth and development. Africa is currently bearing the brunt of climate change, hence a paradox which threatens its entire development. It is noteworthy that continental legal regime will assist in shaping regional and municipal laws of member States. It is against this backdrop, that the goal of this research work is premised.

4.1 A Legal Regime on Climate Change in Africa: Towards Realisation of Agenda 2063

The importance of a continental legal regime/convention on climate change cannot be overemphasised. This is based on the fact that implementation of climate change policies in Africa remains weak and vague while traditional sector based management strategies overburden climate governance at domestic levels. It is noteworthy, that a continental legal regime on climate change will not only serve as a veritable tool in shaping both regional and domestic compliance with the emission reduction strategies but will also help achieving the goals of agenda 2063 especially the goal on environmental sustainability. Furthermore, the legal regime will affirm Africa's commitment to the United Nation Convention on Climate Change, the Kyoto protocol, the Paris agreement and the UN Sustainable Development Goals (SDGs) on environmental sustainability.

²⁶The African Strategy on Climate Change'. Eco- Build Africa. Last modified June 14, 2018 http://www.ecobuild-africa.com/home/?page_id=467

The legal regime/convention will however serve as a continental architecture for environmental governance and thus useful in resolving trans boundary environmental problems, particularly those associated with climate change in Africa.

Accordingly, the essence of a legal regime on climate change in Africa is anchored on the need to provide an adequate framework for integrated and coordinated mechanisms that will enhance environmental sustainability and also combat climate change in Africa. The legal regime will also give strategic direction to regions, member states and other stakeholders in addressing the mitigation strategies and other challenges and opportunities associated with climate change in the continent with the view of improving the livelihoods of the African people.²⁷

Therefore, an effective climate change legal regime/convention entails vision, inclusive of AU member States, persistent commitment, must be adequate and similar to what Africa has in the Kampala Convention on internally displaced Persons.²⁸ Fundamentally, the legal regime/convention should be ICT driven,²⁹ encourage continental funding³⁰ and local content especially on emission reduction / other climate change mitigation strategies among African countries. This will not only reduce African vulnerability to climate change, speed up low-carbon and climate resilient development in Africa, but will catapult Africa to environmental

²⁷ Robert Mhuri, 'African Climate Change Policy: An Adaptation and Development Challenge in a dangerous world', June 9, 2018, http://www.fao.org/fsnforum/sites/default/files/discussions/contributions/AFRICA_CLIMATE_CHANGE_POLICY-CEI_3.pdf

²⁸ 'African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)' African Union. Last modified June 10, 2018 <https://au.int/en/treaties/african-union-convention-protection-and-assistance-internally-displaced-persons-africa>

²⁹ Information technologies can help deliver innovative environmental solutions as the importance of data in adoption of climate change mitigation and adaptation strategies cannot be overemphasised. See 'The potential of ICT to combat Climate Change and improve environmental performance'. OECD. Last modified June 9, 2018. <http://www.oecd.org/newsroom/the-potential-of-ict-to-combat-climate-change-and-improve-environmental-performance.htm>

³⁰ Olivia Ndong Obiang, et al., 'African Development Bank Takes Landmark Lead on Formation of African Financial Alliance for Climate change'. Last modified June 10, 2018. <http://venturesafrica.com/apostories/african-development-bank-takes-landmark-lead-on-formation-of-african-financial-alliance-for-climate-change/undefined>

leadership. Finally, the Legal regime/convention should be legally binding on all AU member States and must conform to the thematic areas of the draft African Strategy³¹ on climate change and Agenda 2063.

4.2 The Experience in other Continents

This section will examine what is obtainable in other continent vulnerable to climate change. These continents has a robust legal regime/policy framework on climate change. Their legal regimes are legally binding on member States, detailed on emission reduction strategies and implementation mechanisms. The scope of this section will be limited to Europe and Australia.

4.2.1 European Union Law on Climate Change and Protection of the Ozone Layer

The European Union³² can be said to be on track in the struggle to combat climate change. The continent is close to winning the war against climate change through a robust legal and policy framework³³ that are legally binding on member states. In the legal and policy framework, the continent has been able to act swiftly and in accordance with the target of the international legal regime on climate change. The continent, through priority setting³⁴ via series of robust instruments has no doubt affirmed their commitment to the UNFCCC, the Kyoto protocol and the Paris agreement on the global fight against climate change and global warming. The strategy and legal regime of the EU, on the struggle to combat climate change can serve as a lesson for the African Union.

³¹ 'Draft African Union Strategy on Climate Change'. Common African Position. Last Modified June 10, 2018 < <http://cap.africa-platform.org/resources/draft-african-union-strategy-climate-change>

³²The European Union is a unique economic and political union between 28 European countries that together cover much of the continent. 'The EU in brief. . European Union. Last modified June 11,2018' https://europa.eu/european-union/about-eu/eu-in-brief_en

³³ Adrien Fourmon., 'EU Legislation on Climate Change', June 10,2018, <https://gettingthedealthrough.com/area/42/article/29178/climate-regulation-eu-legislation-climate-change/>

³⁴ The priority areas include, Greenhouse gas monitoring and reporting; Eu Emission Trading System; Effort sharing decision; 'carbon capture and storage; transport /fuels; Ozone layer protection; fluorinated gases, forests and Agriculture. European Commission, EU Law on Climate Change and Protection of Ozone Layer' ,June 11,2018, https://ec.europa.eu/clima/about-us/climate-law_en

4.2.2 Australia

Australia though one of the smallest continent³⁵ is also particularly vulnerable to the effects of climate change. The continent receives an average of less than 600 millimetres of rainfall a year, and prolonged droughts are already a serious problem. Increasing ambient air temperatures and changing precipitation will affect the continents food security. Sea-level rise and extreme weather events will threaten infrastructure and coastal populations.³⁶

Australia has drawn on a wide range of measures to reduce its greenhouse gas emissions. These measures are in form of climate change policies which were introduced at all levels of government since the late 1980s. These policies began with voluntary schemes such as energy labelling and the national Greenhouse Challenge Program for industry from 1995. Energy labelling became mandatory from 1992 and progressed to minimum standards on a range of devices from 1999. In 2003, New South Wales introduced its Greenhouse Gas Reduction Scheme (GGAS), one of the first mandatory emissions trading schemes in the world. In 2011, Australia legislated on the Clean Energy Future package. The Clean Energy Act established long-term goals to reduce emissions to 80 per cent below 2000 levels by 2050 and to contribute to a global response to limit global warming to 2 degrees. Other major elements include a carbon price that covers over half of Australia's emissions and the Carbon Farming Initiative (CFI), which provides incentives to reduce emissions in the land sector.³⁷

In 2017, the Government reviewed its climate change policies to ensure they remain effective in achieving Australia's 2030 target and Paris agreement commitments in the struggle to combat climate change. The review looked at the opportunities and challenges of reducing

³⁵The continent of Australia includes the islands, Tasmania and New Guinea. New Zealand is also a part of the region known as Oceania. 'The Seven Continents'. Australia. Last modified June 14, 2018 <http://www.wou.edu/~kathomas06/myweb/australia>

³⁶ Elizabeth L chalecki , 'Leading the way on climate change: Is it Australia's turn? Australia Strategic Policy Institute', June 13, 2018 <https://www.aspistrategist.org.au/leading-the-way-on-climate-change-is-it-australias-turn/>

³⁷ 'Climate Change Authority'. Australian Policies on Climate. Last modified June 13, 2018 <http://climatechangeauthority.gov.au/reviews/targets-and-progress-review/part-b>

emissions on a sector by sector basis, taking into consideration the different circumstances and characteristics of each sector.³⁸

An examination of the continents above reveals the presence of a robust legal regime on climate change, availability of resources and the political will to implement the established laws and policies. These two continents though smaller than Africa are currently winning the war against climate change.

We are not unaware of the fact that some regions and countries in Africa have adequate climate change legal regime either by domesticating the UNFCCC or by adopting policies on climate change.³⁹ While applauding those pace setters, the research work is calling for a robust African legal regime (an African Climate change Convention) that will be legally binding on AU member States and also serve as a guide to African countries who are yet to come up with a legal regime on climate change. This legal framework will address African related problems and also reduce the continents vulnerability to climate change effects. The framework will encourage effort sharing decisions and continental funding. That legal regime will affirm Africans compliance and commitment to the international instruments on Climate

³⁸ 'Australian Government Department of Environment and Energy, Review of Australian Climate Change Policies' Last modified June 13, 2018. <http://www.environment.gov.au/climate-change/review-climate-change-policies>

³⁹ The East African Community (EAC), Common Market for Easter and Southern Africa (COMESA) and Southern Africa Development Community (SADC) Common tripartite agreement on climate change adaptation and mitigation in Easter and Southern Africa signed on July 12, 2012, see also the East African Community Climate Change Policy (EACCCP). Eldrine Wanyama et al. *International Legal Framework for Climate Change Adaption and Mitigation: Prospects and Challenges*. Accessed June 4, 2018 http://www.academia.edu/14920258/International_Legal_Framework_for_Climate_Change_Adaptation_and_Mitigation_Prospects_and_Challenges. Kenya, No.11. Kenya Climate Change Act Laws of Kenya. June 13, 2018 <http://www.kenyalaw.org/lex/rest/db/kenyalaw/Kenya/Legislation/English/Acts%20and%20Regulations/C/Climate%20Change%20Act%20-%20No.%2011%20of%202016/docs/ClimateChangeAct1of2016.pdf>. Dr. Thierry Giordano et al., 'Governance of Climate Change In South Africa', South African National Climate Change Response Policy, 13 June, 2018, https://www.environment.gov.za/sites/default/files/docs/climate_change_governance.pdf. 'Ghana Climate Change Policy 2013'. Last modified June 13, 2018 <http://www.un-page.org/files/public/ghanacclimatechangepolicy.pdf>. 'Nigerian National Policy on Climate Change 2015'. Last Modified June 13, 2018. <http://climatechange.gov.ng/climate-knowledge/official-publications/policies/national-policy-on-climate-change/accessed>

change, the United Nations Agenda 2030 and also help in the achievement of Africa's Agenda 2063 aspirations and goals on climate change mitigation and sustainable development. This research work is therefore a call to action to all AU member States.

5.0 Recommendations and Conclusion

5.1 Recommendations

Though some of the recommendations listed here have been mentioned in the body of the work, however for easy reference they have been marshalled out in this section.

- i. The effectiveness of climate mitigation, adaptation and clean technology development in Africa is highly dependent on a robust legally binding legal regime on climate change in Africa.
- ii. The legal regime will guarantee political structure, political will, resources and structured implementation strategies that will assist Africa in winning the war against Climate change.
- iii. The legal regime should be ICT driven and research oriented as both cannot be dispensed with in the struggle to combat climate change in Africa
- iv. The legal regime should also incorporate and also bring to life the African Development Bank's (ADB) African Financial Alliance for climate Change (AFAC). The AFAC is the ADB efforts to fight climate change by mobilizing Africa's domestic private resources to support the implementation of Africa's Nationally Determined Contributions (NDCs) and to deliver the financial flows consistent with a development pathway.
- v. The legal regime should also incorporate sanction for defaulting member States
- vi. The legal regime should also incorporate a climate change monitoring committee

- vii. The legal regime should affirm Africans commitment to UNFCCC, Kyoto Protocol, Paris agreement and the United Nations Sustainable Development Goals /Agenda 2030.
- viii. The Legal regime should encourage local content in terms of emission reduction strategies and also reduce Africans vulnerability to climate change
- ix. The legal regime on climate change should incorporate monitoring mechanisms, deadlines and sanctions for defaulting AU member States
- x. The legal regime should incorporate the provisions of the Draft African Strategy on Climate Change 2014, agenda 2063 aspirations and goals on climate change and sustainable development and should also take cognisance of all AU instruments⁴⁰ with relevant provisions on climate change.
- xi.* The legal regime will no doubt reduce climate related displacements, migrations and also help end brain drain in the continent.
- xii.* The legal regime may be referred to as the AU Convention on Climate Change

5.2 Conclusion

Climate change will continue to adversely impact Africa's development for many years to come if we do not act now. In 2007, the Inter-Governmental Panel on Climate Change (IPCC) declared Africa as one of the most vulnerable continents to climate change and climate variability, a situation aggravated by the interaction of multiple stresses at various levels and the continent's low adaptive capacity. As at June 2018, Africa has also limited capacity for disaster preparedness, mitigation and prevention. Therefore, every natural disaster leaves a trail of huge human life and material destruction. This on one hand can be

⁴⁰ 'The Draft African Strategy on climate Change', AU Agenda 206. 'Draft African Union Strategy on Climate Change'. Common African Position. Last modified June 4, 2018. <http://cap.africa-platform.org/resources/draft-african-union-strategy-climate-change>

attributed to the absence of an adequate legal regime on climate change in Africa. To achieve the Africa we want, the aspirations and goals of agenda 2063 on environmental sustainability, there is an urgent need to strengthen the continental effort in the struggle to combat climate change. This will however receive the speed of light if the recommendations of this research on the need for an African Convention on climate change is considered and adopted in future.