

# Legislating the Paris Agreement in Africa

Approaches to climate legislation in Eswatini, Kenya, Nigeria, and Uganda

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## INTRODUCTION

“Domestic legislation on climate is the absolutely critical, essential linchpin between action at the national level and international agreements,” Christiana Figueres, then Executive Secretary of the United Framework Convention on Climate Change (UNFCCC), said in 2013.<sup>1</sup>

Many countries, including in Africa, have heeded this call and taken steps to review domestic policies and laws, and to develop new legal and institutional frameworks in the context of implementing their Nationally Determined Contributions (NDCs) and other commitments under the 2015 Paris Agreement. While national strategies and policies can help address immediate climate concerns, climate legislation can help provide longer-term certainty in a policy direction that cannot be easily reversed; and provide transparency, predictability, and legitimacy to regulate citizen’s activities. It also encourages coordination and consistency of policies across government agencies, which is critical for a cross-sectoral issue like climate change.<sup>2</sup>

Sharing experiences – particularly on the merits of different legislative approaches, lessons learnt, and good practices – can help drive efficient and successful implementation of climate action on the ground, and ultimately more ambitious action under the Paris Agreement. Moreover, it is these experiences, based on national circumstances and priorities, that should drive the future evolution of decisions, support, and collaboration under the UNFCCC. This paper considers the experience of four countries in Sub-Saharan Africa that have completed or initiated the process of developing framework laws: Kenya (the first country in Africa to adopt a climate change framework law), Eswatini, Nigeria, and Uganda. It highlights challenges and opportunities faced in this process, and then seeks to draw out lessons and recommendations that will, we hope, be useful to other countries embarking on this journey.

## ESWATINI

The Kingdom of Eswatini is a landlocked and mountainous country situated in south-east Africa. With the exception of a short border stretch with Mozambique in the east, the country is surrounded by the Republic of South Africa. Eswatini is one of the smaller members of the Southern African Development Community, but it has considerable variation in landscape, geology, soils, climate, and biodiversity.<sup>3</sup> Nearly 40% of the population of Eswatini (of 1.2 million) were below the international US\$ 1.90 poverty line in 2016 and 2017.<sup>4</sup>

Climate change and variability has, and is projected to have, a huge impact on the country’s economy and society. Both urban and rural areas will be affected, particularly in the key national sectors of biodiversity and ecosystems, water, agriculture, and health.

**Biodiversity and ecosystems:** A large section of the Eswatini’s rural poor is heavily dependent on a range of biodiversity and ecosystem services, as their sources of livelihoods. Climate change threatens a number of species and ecosystems.

**Water:** Eswatini is a water-scarce country, mainly reliant on surface water (rivers and reservoirs), ground water, and atmospheric moisture – all totally reliant on rainfall. Water scarcity is further compounded by high temperatures, especially during summer months. Climate change is predicted to have negative impacts on the quality and quantity of water, with knock-on impacts on hydropower generation, agriculture, and sanitation.

**Agriculture:** More than 70% of the rural population in Eswatini depends on subsistence agriculture, and the agricultural sector accounts for 9.5% of the country’s gross domestic product (GDP). Variable precipitation

patterns, droughts, higher temperatures, and increased storm intensities have already significantly impacted the agricultural sector. For instance, the 2016-2017 regional drought caused by El Niño resulted in significant declines in rain-fed crops (particularly maize and cotton), along with irrigated crops (mainly sugar cane).<sup>5</sup>

**Health:** The health sector is impacted by extreme weather events such as heat waves, floods, droughts, and storms; and also by the impacts of climate change on the other sectors – including, for instance, heightened food insecurity, and water quality and quantity.

## Existing legal and policy framework

As a Party to the UNFCCC, the Kyoto Protocol, and the Paris Agreement, Eswatini is active in defining and implementing mitigation and adaptation measures. Climate change is identified as a threat to sustainable development under the various policy frameworks of Eswatini:

- **Vision 2022**, the National Development Strategy (NDS), emphasises sustainable economic development, social justice, and political stability. It focuses on poverty eradication, employment creation, gender equity, social integration, and environmental protection.
- The **National Development Plan** (NDP) for 2019/2020-2021/2022 is linked to the NDS, and seeks to ensure a more inclusive, sustainable, and effective management of natural resources and the environment; while building climate resilience and a sustainable disaster risk management mechanism.
- The **2016 National Climate Change Policy** aims to adopt an integrated approach to combating climate change. It provides an enabling environment for communities and investors to take advantage of the opportunities presented by climate change to invest in activities that work to eliminate poverty and build a climate-resilient Eswatini.
- The National Climate Change Strategy and Action Plan (NCCSAP), also adopted in 2016, is intended to guide climate change efforts towards low-carbon and climate resilient development.
- The **NDC**, submitted in September 2015, supports the achievement of Eswatini's developmental objectives of sustainable development, poverty eradication, and enhanced adaptive capacity. It is aligned with the NDS and the NCCSAP.

Eswatini also has a number of sector specific strategies, policies, and plans.

## Drafting the national climate change Bill

Based on a recommendation in the National Climate Change Policy, Eswatini started work on developing a Bill on climate change in 2017 to support climate resilience and economic development through low carbon pathways, while taking into account the priorities set out in national economic development policies and the NCCSAP. The draft Bill is expected to be finalised by September 2021, and go before Parliament by December 2021.

The main objectives of the Bill are to:

- Provide an enabling policy framework for effective implementation of climate change adaptation and mitigation measures.
- Enhance climate-resilient and inclusive low-carbon green growth investments.
- Promote public education, information and awareness on climate change.
- Establish and maintain an effective institutional framework to mainstream climate change responses into relevant sectors and into planning, budgeting, decision-making and implementation, at both the national and community levels.

- Enhance and incentivise public and private sector involvement in building climate change resilience and inclusive low carbon green growth development, investment, and opportunities.
- Support the provision of means of implementation – finance, capacity building, and technology development and transfer.

The drafting process faced several challenges. To begin with, work on drafting started before the adoption of the Paris Agreement. A review is therefore necessary to ensure that it is aligned with the Agreement and its rulebook. The Ministry is currently putting together a new drafting team and the exercise will be driven by the Ministry through coordination of the key stakeholders.

Secondly, the Bill is based on the National Climate Change Policy, but it is also meant to serve as the overarching law on climate change matters for Eswatini. An in-depth analysis of relevant national laws showed a number of gaps in terms of both institutional and legal support for climate action in Eswatini. The Bill is expected to plug these gaps.

The task of developing the Bill, under the Ministry of Tourism and Environmental Affairs, was initiated through the involvement of an international consultant. This posed some challenges – the international consultant had no prior knowledge or understanding of local dynamics and context. As a result, the draft did not take contextual challenges into account initially. This was later corrected, by involving a national legal expert and through a consultation process involving all stakeholders.

The Bill seeks to include a chapter on climate finance, key for climate action, and the government is currently undertaking a comprehensive review and studies on structuring climate finance. This is a time-consuming process, however, which is further slowing down the finalisation of the Bill.

The **2002 Environmental Management Act** established the Eswatini Environment Fund. No decision has yet been made on whether to strengthen the existing Fund to incorporate climate change action, or to create a dedicated climate fund. As experiences in other countries show, establishing a national climate fund can help to mainstream climate action and shift capital allocation decisions to climate change mitigation and adaptation responses.<sup>6</sup>

In parallel, Eswatini is also pursuing a strategy to encourage private sector involvement in climate change action by creating an enabling environment through a combination of fiscal measures, regulatory policies, legislative changes, capacity building, and environmental impact assessments.

Defining the role and mandate of existing national institutions, if any, is also proving challenging, as are decisions on whether new institutions (for instance, a new Monitoring, Reporting, Verification and Transparency Unit) should be developed.

The drafting of the Bill presents opportunities, not only to ensure effective implementation of the Paris Agreement, but also to incorporate progressive provisions – for instance, on gender. A number of consultations on gender integration are currently being conducted, to inform the drafting process.

## Lessons and recommendations

During the process of drafting the Bill, Eswatini has learned that climate change legislation should be developed through an inclusive process involving all stakeholders, including vulnerable groups who will be most impacted. Doing so will promote buy-in and support the implementation process. Key sectors and public

institutions are now closely providing support to the drafting process, and representatives of civil society, academia, and the private sector are being consulted, as mandated by Eswatini's **Constitution**. For instance, stakeholders have provided constructive guidance on the governance structure for the legislation, for effective implementation.

The importance of taking into account existing national policies and plans while drafting legislation has also emerged as a learning, as has the need to ensure that the drafting process is informed by the outcomes of ongoing assessment programmes, research, and studies to ensure it is fit for purpose.

Finally, some of the implementing guidelines to the Paris Agreement are still being negotiated – including on climate finance and the transparency framework, which will need to be provided for. Sufficient flexibility will therefore be needed in the Act, once it is adopted, to ensure these elements can be included.

## KENYA

The Republic of Kenya is a low middle-income country, located in the Greater Horn of Africa, which is highly vulnerable to climate change. Its natural ecosystems have been adversely affected by climate change, including through variations of temperature and precipitation.<sup>7</sup> A large portion of the land area (84%) is arid and semi-arid – these areas are particularly vulnerable to climate impacts, especially in the absence of sufficient investments to build resilience.<sup>8</sup> Temperature increase, irregular precipitation, sea-level rise, and ocean acidification pose great challenges to these ecosystems. In addition, the water, forestry, agriculture (including livestock and fisheries), energy, and health sectors are particularly vulnerable.

**Water:** Increased water scarcity is a core concern, increasing the challenges of resource management and the likelihood of conflicts. Potential impacts include declining forest coverage, reduced water quality and quantity for domestic and industrial use, high water pricing, and increases in water borne diseases.

**Forestry:** Forests provide environmental goods and are a major source of biomass energy in Kenya, but they are highly sensitive to climate change. Forest degradation and deforestation, exacerbated by climate change, have led to reduced canopy cover and altered biodiversity composition.<sup>9</sup> Deforestation and forest degradation also increase GHG emissions.

**Agriculture, livestock and fisheries:** These are some of the most vulnerable sectors in Kenya. Over 70% of rural livelihoods depend on rain-fed subsistence agriculture, and are therefore significantly impacted by declining agricultural production due to unpredictable rainfall, reduced soil productivity through erosion, and increased evapotranspiration. In the fisheries sector, temperature changes in the aquatic environment affect the breeding and feeding behaviour of fish, with a significant effect on the species composition.<sup>10</sup>

**Energy:** Over 50% of Kenya's electricity comes from hydropower, which is affected by extreme events such as droughts. Reduced reservoir levels have decreased hydroelectricity generation, leading to higher energy prices and greater use of fossil fuels (which, in turn, results in higher greenhouse gas emissions). However Kenya possesses significant renewable energy potential, including geothermal, wind, solar, biomass, and biofuels.<sup>11</sup>

**Health:** Kenya faces a high degree of risk from climate-sensitive infectious diseases, such as diarrhoea, hepatitis A, typhoid fever, malaria, dengue fever, and Rift Valley fever.

## Existing legal and policy framework

Kenya adopted a new [Constitution](#) in 2010, which provides the foundation for the institutional and legal framework for climate change. In particular:

- Article 10 of the Constitution sets out national values and principles of governance, such as sustainable development, devolution of government, and public participation. These are mandatory when drafting or implementing any law or policy.
- Article 42 states that every person has the right to a clean and healthy environment, which includes the right to have the environment protected for the benefit of present and future generations through legislative and other measures.
- Articles 69-72 spell out obligations with respect to the environment; provide for the enforcement of environmental rights; and mandate Parliament to enact legislation relating to the environment.

**Environmental Management and Coordination Act No. 8 of 1999:** This [Act](#), amended in June 2015 (and also, to a lesser extent, in 2017, 2018, and 2019), creates an institutional and legal framework for management of the environment in Kenya. The National Environmental Management Authority (NEMA) was established under the Act, as the principal agency of the government in charge of supervision and coordination of all matters relating to the environment, and implementation of all environmental policies.

**Vision 2030:** This is Kenya's development blueprint for the period 2008-2030, which aims to provide a high quality of life to all its citizens by 2030, through a low-carbon development pathway.

**National Climate Change Response Strategy, 2010:** The 1999 Environmental Management and Coordination Act was deemed insufficient to address climate change. This led to the adoption of a [National Climate Change Response Strategy](#) (NCCRS), to mainstream adaptation and mitigation actions into all government planning and development objectives.

**National Climate Change Action Plans:** To operationalise the NCCRS, two National Climate Change Action Plans (NCCAP) have been adopted, for the [2013-2017](#) and [2018-2022](#) period. Both the NCCRS and the 2013-2017 NCCAP call for the development of a stand-alone climate change law to coordinate and mainstream climate change across government agencies.

**NDC:** Kenya's NDC was submitted on 28 December 2016, and updated on 24 December 2020. It includes both adaptation and mitigation contributions, based on conditional support. The NDC covers a timeframe up to 2030, with milestone targets in 2025. The [updated NDC](#) aims to reduce greenhouse gas emissions by 32% by 2030, relative to business as usual.

## Drafting the Climate Change Act

The idea of drafting a climate change Bill, first proposed by civil society, was tabled in Kenya's Parliament in 2008 as a Private Member's Motion on Climate Change and Greenhouse Reductions at the National Assembly. The Motion aimed to provide a framework for the implementation of key activities that would enable Kenya to meet its international climate obligations. A second Private Member's Motion on Drafting the Climate Change Authority Bill followed in 2009. However, it was strongly opposed by the government. The Ministry of Environment, in particular, was concerned that the Bill was being driven by civil society before a climate



change policy had been adopted, and that the private sector was not sufficiently involved.<sup>12</sup> The Motion was rejected by the President on grounds of inadequate public participation.

The Ministry of Environment subsequently took on the task of developing a Bill in 2014. A steering committee was set up, with representation from government ministries, civil society, and the private sector. There was also agreement to develop a national climate framework policy at the same time as the Bill.

The Bill developed by the steering committee, following stakeholder consultations, was finally approved by the National Assembly and the Senate, and assented into law by the President. It became the **Climate Change Act No. 16** on 6 May 2016.

The adoption of the 2016 Act marked a key milestone for Kenya's climate change agenda. Together with the National Climate Change Framework Policy, it sets out a comprehensive institutional and legal framework for mitigation and adaptation actions, and mechanisms and measures to coordinate and implement low carbon climate resilient development.

It is worth noting that while the Act itself does not prescribe specific measures to be taken to comply with international obligations under the Paris Agreement (such as providing specific emission reduction targets), it sets out processes under which these will be implemented. Thus, Section 6(h) of the Act stipulates that a National Climate Change Council shall set the targets for the regulation of greenhouse gas emissions; and Section 13(3)(m) further stipulates that the National Climate Change Action Plan shall prescribe measures and mechanisms to review levels and trends of greenhouse gas emissions, among other measures.

**National Climate Change Council:** Sections 5 and 7 of the 2016 Act establish a National Climate Change Council with 10 members, to provide an overarching national climate change coordination mechanism. The Council is chaired by the President. The Deputy President serves as Vice Chairperson, and the Cabinet Secretary Responsible for Environment and Climate Change serves as Secretary. Other relevant government departments, the private sector, civil society, marginalised communities, and academia are also represented on the Council.

**Climate Change Directorate:** The Act establishes a Climate Change Directorate under the Ministry of Environment, as the lead agency of the government to deliver operational coordination on national climate change plans and actions. Its functions include providing analytical support and technical guidance on climate change, and coordinating the implementation of, and reporting on, the NCCAPs. The Directorate reports to the Cabinet Secretary.

**National Climate Change Action Plan:** Section 13 of Act calls for a National Climate Change Action Plan to be formulated by the Cabinet Secretary through public consultation, in accordance with Article 10 of the Constitution and **Section 3** of the Act. The Plan, which is to be reviewed biennially and updated every five years, will be approved by the Council. The Act sets out its prescribed content, including measures and mechanisms to achieve low carbon, climate resilient, and sustainable development, and mainstream climate change into national and sectoral planning.

**Duties relating to climate change:** The Act imposes duties on public and private entities. Public entities are required, among other thing, to integrate climate change into sectoral strategies, action plans, and other implementation projections for the assigned legislative and policy functions; report on sectoral greenhouse gas emissions for the national inventory; and designate a unit with adequate staff and financial resources, with a

senior officer to head the unit to coordinate the mainstreaming of climate change into sectoral strategies for implementation.

**Monitoring and compliance:** Section 17 of the Act assigns the duty to monitor, investigate and report on whether public and private entities are in compliance of the Act to NEMA.

**County governments:** Section 19 of the Act requires county governments to mainstream the implementation of the NCCAP into County Integrated Development Plans (CIDPs), and into other county planning, budgeting, and implementation activities, taking into account national and county priorities. County governments play an important part in setting county policies, and working with local communities to manage climate change.

**Public participation and access to information:** Section 24 requires public entities at all levels of government to, at all times when developing strategies, laws and policies relating to climate change, undertake public awareness and conduct public consultations.

**Climate Change Fund:** Section 25 of the Act establishes a Climate Change Fund as a financing mechanism for priority climate change actions and interventions approved by the Council. The sources of funding for the Fund include monies appropriated from the Consolidated Fund by an Act of Parliament; donations, endowments, grants and gifts; and monies "*under an Act payable to the Fund*" (Section 25(3)). The Fund will also provide a platform for tracking climate finance flows into and within the country.

**Gender considerations:** Section 3 of the Act envisages that intergenerational and gender equity will be mainstreamed in all aspects of climate change responses. The Climate Change Action Plan also incorporates and addresses gender issues.

## Lessons learnt and recommendations

Kenya was the first country in Africa to enact a dedicated climate change framework law. Through the introduction of new structural, normative, institutional, policy, and administrative standards, the Act has broadened and streamlined governance structures, and provided more opportunities for addressing and mainstreaming climate change in Kenya. Despite its adoption five years ago, however, the Act is yet to be fully operationalised. This is due to a number of factors:

Having the Head of State as chair of the National Climate Change Council has the potential to elevate the status of climate change in national policy making. However, the Council has not yet been fully constituted, despite Section 35 of the Act requiring members of the Council to be appointed within three months after the Act enters into force. The Council has therefore not yet met, and the delay has affected the operationalisation of the Act, including the Climate Change Fund.

The delay in establishing the Council was in part due to a lack of clear framework on the resolution of disputes related to the composition of the members of the Council. This led to a protracted litigation process affecting the nomination of the civil society representative to the Council.

Sections 22 and 36 of the Climate Change Act require the Environment Cabinet Secretary to develop subsidiary legislation for the effective implementation and operationalisation of the Act. However, these regulations are yet to be developed.

Kenya's experience highlights the importance of setting clear timelines for enacting regulations, policies or strategies, including ways to enforce timelines; establishing clear dispute settlement procedures; and the need for broad (state and non-state) stakeholder engagement.

## NIGERIA

Nigeria, situated in west Africa, is projected to be the third most populous country in the world by 2050 (with an anticipated population increase of 200 million, from the current population of over 190 million).<sup>13</sup> The large population, combined with high exposure and low adaptive capacity, makes Nigeria highly vulnerable to the impacts of climate change, including increased temperatures, flooding, droughts, desertification, sea-level rise, and changing rainfall patterns.<sup>14</sup>

The country's vulnerability is exacerbated by its extensive dependence on climate-sensitive resources, with 70% of the workforce being employed in the agriculture, forestry, and fishing sectors. Farmers, for example, are still heavily dependent on rain-fed farming, and thus threatened by changing rainfall patterns. Most of the country's industry is concentrated in areas that are threatened by sea-level rise (such as Lagos and the Niger Delta).<sup>15</sup> Decarbonising the economy by 2050 presents a particular challenge for Nigeria, as crude oil revenue accounts for approximately 10% of the country's GDP and about 86% of the total revenue from exports.<sup>16</sup> In 2019, Nigeria ranked as the seventh highest gas flaring country in the world.<sup>17</sup>

### Existing institutional mechanisms and policies

Nigeria has a federal system of government, where both federal and states governments can legislate on matters listed in the Constitution, including the environment. The Federal Ministry of Environment holds the mandate to safeguard and protect Nigeria's environment. The Ministry has a Department of Climate Change, which is responsible for coordinating, implementing, monitoring, and evaluating climate change responses at all levels of government, and by private entities. State governments have state ministries of environment, which coordinate environmental matters at the state level.

As a Party to the UNFCCC, Kyoto Protocol, and the Paris Agreement, Nigeria submitted its first NDC on 15 May 2017. The NDC includes both mitigation and adaptation measures. It includes an unconditional commitment for a 20% reduction of greenhouse gas emissions from five sectors (power, agriculture, transport, industry, and oil and gas) by 2030 compared to 1990 emissions; and a conditional commitment for a further 45% reduction in emissions from the same baseline.<sup>18</sup> A process is currently underway to update and review the NDC, by including two new sectors (water and waste); assessing new data; defining clear pathways for funding; and strengthening implementation measures.<sup>19</sup>

Nigeria has several policies and plans aimed at achieving low-carbon, climate resilient economic growth, including:

- **National Policy on the Environment:** Adopted in 1989, this Policy provides a broad roadmap for mainstreaming environmental protection and sustainability in 14 sectors of the economy. The Policy was revised in 2016 to address emerging areas such as climate change.<sup>20</sup>
- **National Climate Change Policy:** Developed in 2013, this Policy defines strategies for building a climate resilient society, and promoting low-carbon, high economic growth in key sectors (energy, mining, industry, population and settlements, health, tourism, and transport).<sup>21</sup> The Policy also highlights other climate-related policies, such as the 2007 National Policy on Drought and Desertification.

- National Policies on Solid Waste and Plastic Management: These two distinct Policies, adopted in 2020, seek to provide effective mechanisms for the disposal of solid and plastic waste, with the aim of fostering a climate resilient economy.

Other related policies include:

- National Agricultural Resilience Framework Nigeria (2014)
- National Gas Flare Commercialization Programme (2016)
- Nigerian Sovereign Green Bonds Programme (2017)
- National Renewable Energy and Energy Efficiency Policy (2015)
- National Action Plan on Gender and Climate Change for Nigeria (2020)
- National Adaptation Strategy and Plan of Action on Climate Change for Nigeria (2011)
- National Integrated Infrastructure Master Plan (2015-2043)
- Draft Sectoral Action Plan for the Nationally Determined Contributions (2017)
- Economic Recovery and Growth Plan (2017)
- Nigeria Economic Sustainability Plan (2020)

There is currently no statutory coordination mechanism for the myriad of national policies, programmes, and plans to ensure cohesion and effective tracking and monitoring of implementation. The need for an appropriate legal framework that defines clear roles and responsibilities for government, private, and individual entities, and ensures adequate funding and reporting, is compelling.

## Developing a climate change framework law

The national implementation of the UNFCCC, Kyoto Protocol, and Paris Agreement will not be backed by the force of law in Nigeria until a law is enacted by the National Assembly. So far, there have been three attempts to push for a climate change framework law: first by a private and public coalition; then by a member of the House of Representatives; and finally by the federal Ministry of Environment.

Efforts started in 2007, when a civil society and public and private sector coalition (including non-government organisations, a bank, an oil company, and prominent private citizens and academics) converged to draft a Bill under the auspices of the Nigerian Climate Action Network (NCAN). The coalition sought to create a national commission on climate change to coordinate, mainstream, and implement Nigeria's climate-related obligations. Drawing on experience from the Energy Commission Act, the draft Bill proposed that the President of Nigeria chair a commission to ensure leadership from the highest political level. It also proposed the setting up of a climate change fund, with statutory allocation from the federal budget.

Although the Bill had the support of the National Assembly and was passed by both the House of Representatives and the Senate in 2009, it was not endorsed by the Federal Ministry of Environment, who saw the creation of a commission under the Presidency as a direct take-over of the Ministry's mandate. The President at the time concurred with the position of the Ministry and refused to assent the Bill on the basis that it sought to create an entity with a mandate that was already covered by the federal Ministry of Environment.

The second attempt followed in 2017, led by the House of Representatives Committee on Climate Change who sought to sponsor a climate change framework Bill. It built on the earlier draft, and proposed the creation of a Climate Change Agency with a Council on Climate Change as the supervising body, a Technical Advisory Committee, and a Fund. Once again, the Bill was supported by the National Assembly and civil society, but lacked the support of the Executive. The government was not keen on creating new bureaucracies, and in 2018,

President Muhammadu Buhari refused assent on grounds that the Bill sought to create additional entities at a time when government was down-sizing.

In the third attempt in 2019, the federal Ministry of Environment established a Legal Working Group (LWG), initially to support the Department of Climate Change during UNFCCC negotiations, and subsequently to work on a legal framework for climate change. The LWG includes legal advisers from federal and state ministries, departments and agencies, and representatives from civil society and the private sector.

The LWG and the Department of Climate Change are currently in the process of revising the draft 2018 Bill. The aim is to develop an overarching framework law that recognises existing and entrenched statutory institutions, and ensures their mandates contribute to emission reductions, accounting, and reporting in order to meet the Paris Agreement goals. There is no agreed draft for the Bill as yet, but once this is agreed, the Bill will go through a public hearing before it is passed by the National Assembly and agreed by the President.

## Lessons learnt and next steps

The Nigerian government has shown interest and commitment in participating in the global drive to reduce carbon emissions and ensure a sustainably developed global economy. To turn this into reality on the ground for the country, Nigeria needs a legal framework to guide and guard this path.

A review of the strategies employed in the first two attempts suggests that the absence of consensus on what the framework law should include, and inadequate inclusion and consultation of all stakeholders in the drafting process, contributed to failure. Learning from this, the coalition between the LWG and the Department of Climate Change seeks to ensure a collaborative approach towards producing a framework law that has the support and buy-in of all stakeholders.

Nigeria's experience points to the critical need for:

- Ensuring early engagement of all key stakeholders, namely, the Federal Ministry of Environment, the National Assembly, and the President, to get their buy-in and address potential areas of disagreement.
- Increasing public awareness and engagement amongst other key decision-makers in government on the importance of a framework law.
- Ensuring that the new legal framework can enhance the implementation of the NDC and aligns with national development plans.
- Ensuring that the proposed Bill includes: a specific focal entity with clear functions, which is geared towards realising a climate-resilient and low-carbon economy in Nigeria; a climate fund, with a body responsible for disbursement; and a clear mechanism for enforcing climate change obligations amongst public and private entities.

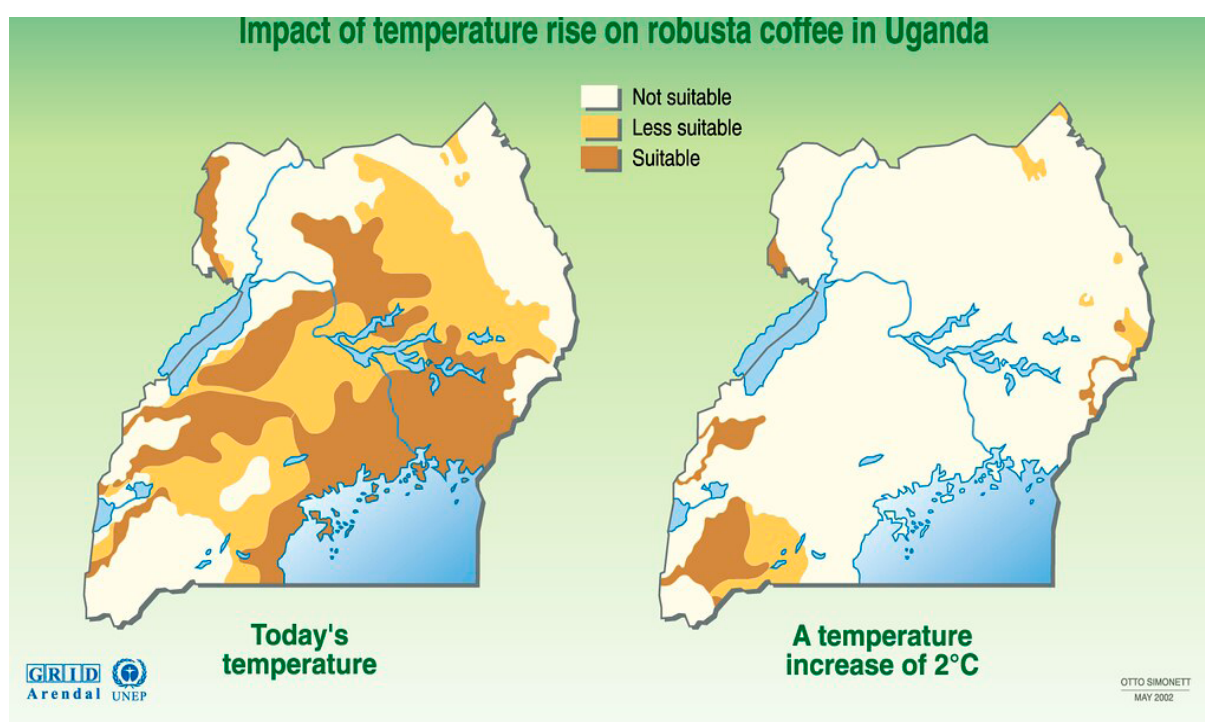
## UGANDA

The Republic of Uganda's extreme climate vulnerability is driven by its reliance on climate-sensitive natural resources, low levels of economic development, population pressures, and environmental degradation. The country is heavily reliant on natural resources (including forests, wetlands, water resources, wildlife, biodiversity, land and soils), which provide a livelihood for 40% of the population.<sup>22</sup> The population is expected to increase to 70 million by 2040, from 41.6 million in 2020.<sup>23</sup> Uganda's forest cover reduced significantly

between 1990 and 2015, by 60.4%, mainly due to the conversion of forest land into agricultural land and the high demand for fuel wood.<sup>24</sup>

The country has already experienced the shrinking of ice caps on Mount Rwenzori,<sup>25</sup> variations in seasonal rainfall,<sup>26</sup> reduced potential for hydropower development, and damage to physical infrastructure, with losses estimated at 0.1-0.4% of Uganda's GDP in 2050.<sup>27</sup> Climate change is affecting a wide variety of sectors, including agriculture, water, health, and forestry. Climate impacts include severe flooding leading to outbreak of waterborne diseases such as diarrhoea and cholera, prolonged and severe droughts, and reducing water levels.

Coffee is a major foreign exchange earner, and contributes about 20% of Uganda's total export revenue. However, projections show that coffee production will fall by half by 2050 due to the contraction of the area that can support its growth, and associated losses are estimated at US\$ 1.2 billion.<sup>28</sup> As shown below, a 2°C rise in temperature is projected to significantly reduce areas that support coffee growing in Uganda.



Source: Otto Simonett, Potential impacts of global warming, GRID-Geneva, case studies on climatic change. Geneva, 1989.

## Existing legal and policy framework

Uganda does not currently have a substantive law on climate change. The country has a [National Environment Act 2019](#) and a [National Forestry and Tree Planting Act \(2003\)](#), but these laws are not designed to directly respond to the threat of climate change. A review of the National Environment Act (2019) reveals that while the Act has some relevant provisions on climate change, they are grossly inadequate. For instance, the Act lacks provisions on greenhouse gas emissions trading; a measuring, reporting, and verification framework; and climate finance.

Key development planning frameworks such as [Vision 2040](#)<sup>29</sup> and the National Development Plan II<sup>30</sup> and III<sup>31</sup> address climate change issues.



A **National Climate Change Policy** was adopted in 2015 with the goal of ensuring a harmonised and coordinated approach towards a climate-resilient and low-carbon development path for sustainable development in Uganda. The overarching objective of the Policy is to ensure that all stakeholders address climate change impacts and their causes through appropriate measures while promoting sustainable development and a green economy. However, the Policy lacks an enabling law for enforcement.

New climate legislation will help the country enforce the implementation of climate policy priorities and strategies, including those included in Uganda's NDC. It will help translate international obligations into enforceable actions at the national level.<sup>32</sup> This is especially important given that adaptation and mitigation targets communicated by Parties under the Paris Agreement are voluntary in nature and can only be meaningful if they are supported by national laws.

Moreover, Uganda will not be able to achieve its development aspirations unless the threat of climate change is adequately addressed. The economic case is in favour of meeting the cost of adaptation now, rather than doing nothing at all, which will ultimately be more expensive. A new law will enable Uganda to pursue enhanced adaptation and mitigation actions in line with the Paris Agreement.

## **Developing a climate change framework law**

The process of drafting new legislation in Uganda started in 2017. It was coordinated by the Department of Climate Change under the Ministry of Water and Environment, and supervised by a technical working group, with technical specialists in various fields and representatives of civil society, the private sector, and academia.

A largely qualitative approach was adopted, based on literature review; stakeholder consultations; and comparative desk studies. Climate legislation from countries such as Kenya, Ghana, Gambia, Senegal, Zambia, Rwanda, Seychelles, Micronesia, Philippines, Papua New Guinea, the United Kingdom, and Ireland were reviewed to draw lessons for Uganda. A nation-wide consultation process sought the views of a wide range of stakeholders on key topical issues.

Three key disagreements emerged during the drafting process.

First, some stakeholders favoured the use of the existing Department of Climate Change as the lead government agency on climate change, while others were strongly in favour of creating a new and independent institution. Ultimately, the new law opted for the existing Department mainly for three reasons:

- It was felt that the Department is fully capable of discharging the function of coordinating climate change policy implementation across the various sectors if adequately strengthened by the new law.
- Climate change is a crosscutting policy issue, which means that specific climate change measures and actions will be implemented by various ministries, departments and agencies of government, as well as private entities and individual persons. A “one-stop” independent institution to handle the task was unnecessary.
- The current government policy prohibits the establishment of new authorities/ agencies, especially where existing government departments can handle the tasks in question.

Second, some stakeholders favoured the creation of a stand-alone national climate change fund, similar to the one in Kenya and Rwanda;<sup>33</sup> while others preferred the use of the Finance Ministry in collaboration with the Ministry for Environment. The latter option was ultimately chosen because the Finance Ministry had a policy banning the creation of new funds; and because previous funds established by the government (such as the Tree Fund and Environmental Fund) have not been effective in mobilising finance.

Third, some stakeholders were totally opposed to the new law, on the grounds that the existing environmental law already provided for climate change. However, an analysis of the 2019 National Environment Act showed that its provisions on climate change were inadequate. Through various policy dialogues and engagement meetings, stakeholders who were initially opposed to the new law later appreciated its need, especially given that climate change is not just simply an environment issue, but also a development issue.

The draft Bill had its first airing in Parliament on 30 June 2020. It was then referred to the Parliamentary Committee on Climate Change for further scrutiny. Parliament subsequently issued a public notice, seeking comments on the draft Bill. The Parliamentary Committee on Climate Change is expected to make recommendations on improving the Bill, before reporting back to the full session of Parliament. If the new law is passed by Parliament, it will be sent to the President for his approval.

The drafting process faced a number of barriers:

- The government set a stringent timeline of six months for delivering the final draft national climate law from the start of the contract. This barrier was overcome by ensuring that the team tasked with drafting the Bill was adequately staffed.
- The government did not have sufficient resources to fund the process. This affected the number of consultative meetings that could be held.
- Bureaucratic delays affected the pace of adoption by government departments. For example, while the draft Bill was submitted to government in January 2018, it took slightly over two years for the law to be officially published in February 2020, and a few more months for it to be presented to Parliament.<sup>34</sup>

Despite these barriers, there was significant interest and support for the new law from the government, the donor community, and the wider public and civil society. The government was therefore able to easily mobilise resources from the donor community to support the drafting process. Significant interest from the public and private sector enabled stakeholder consultations to be held with ease.

## Brief outline of the Bill

The Bill provides a framework of general obligations and principles, while leaving the task of formulating specific climate change actions to various stakeholders. It gives powers to the Minister responsible for climate change, in consultation with other government lead agencies, to issue regulations to implement the objectives of the Bill. It is envisaged that these regulations, as well as sector-specific strategies and plans, will lay out the specific adaptation and mitigation measures to be implemented by each sector. A framework approach was favoured because technological solutions to climate change are constantly evolving, and flexibility is essential to allow the various sectors to pursue the most cost effective and relevant strategies at any given time.

The new law makes provisions for the following key areas:

- Domestic application and enforcement of the UNFCCC, Kyoto Protocol, and Paris Agreement.
- A mandate for the Department of Climate Change to coordinate the implementation of National Climate Change Policy.
- A strengthened mandate for existing institutions, such as district and local government departments and committees responsible for climate change, to deal with climate change. These institutions were established by the 2019 National Environment Act.
- A mandate for the Policy Committee on Environment, chaired by the Prime Minister, to set national policy direction on climate change and ensure coordinated government action.
- The formulation of a Framework Strategy on Climate Change; a National Climate Change Action Plan; a



- Local Government Climate Change Action Plan; and sectoral adaptation and mitigation plans.
- A reporting mechanism for climate change action by various public and private sector actors, with the reports consolidated into an annual report on climate change.
- A requirement for lead agencies to undertake public consultations and consider the views and opinions of persons consulted when developing adaptation and mitigation plans.
- A mandate for the Minister responsible for climate change to adopt rules for the operationalisation of market and non-market mechanisms elaborated under Article 6 of the Paris Agreement.
- Mechanisms for measuring, reporting, and verification of climate change action, with the aim of enhancing accountability and transparency.
- A framework for generating climate finance from both domestic and international sources, including from the Green Climate Fund.
- Enforcement provisions, such as making non-compliance with the law a criminal offence, for which persons are liable to punishment ranging from fines to imprisonment.
- The incorporation of gender considerations into actions like the formulation of a Framework Strategy on Climate Change.

## Lessons learnt

Several lessons were learned from the process of developing the new Bill:

- Climate change policy priorities cannot be easily enforced by government unless there are specific laws. It is of utmost importance that climate policy instruments are backed by specific national laws.<sup>35</sup>
- The process of developing new climate change legislation should include a broad and intensive consultation process, as the impacts of climate change on different sections of society vary.
- New climate change legislation can present an opportunity to provide for innovative means of mobilising climate finance from the national budget.
- Given the emerging nature of climate change market and non-market mechanisms under Article 6 of the Paris Agreement, it is very difficult to provide for their application in national climate laws. Uganda's new law empowers the Minister to issue regulations on market and non-market mechanisms when international rules for their application are eventually agreed upon. The same applies to some extent to the new transparency rules under the Paris Agreement. The Bill makes provision for the reporting process in compliance with international obligations, but the detailed rules are yet to be developed, pending agreement on these rules by Parties to the Paris Agreement.

## CONCLUSIONS

Out of the four countries considered in this paper, only Kenya had, at the time of writing, completed the legislative process of enacting a climate change framework law. The other three countries are still working their way through this process. Already, however, their experience has thrown up considerable food for thought for other countries that may wish to embark upon a similar journey.

The specific reasons and timing for choosing to enact a climate change law will vary from country to country, but some common themes emerge. One of them is the recognition that national strategies and policies may help address immediate climate concerns, but the crosscutting nature of climate change makes coordination of policy and legislative measures necessary for effective implementation. Embedding responsibilities in law will help ensure institutions have a clear mandate and authority that cannot be easily reversed. A comprehensive

framework law that establishes institutions with clear mandates and processes for the implementation of key activities can act as an enabler for countries to meet their international climate change obligations.

Another theme is the realisation that climate change priorities may not be easily enforced in the absence of a law. This is particularly important when considering the Paris Agreement mitigation and adaptation commitments, which are nationally-determined in nature. There are no binding obligations on countries to achieve their NDCs at the international level. National climate legislation can help with the enforcement of policy priorities and strategies, including those contained in NDCs.

The experiences in all four countries attest to the fact that the legislative process is cumbersome and slow. Its success, ultimately, will depend on a wide number of factors, some of which may be unique to the particular circumstances of one country. Other factors will be common to all countries. Key amongst these will be ensuring that there is buy-in from all relevant stakeholders, from within and outside government. This can help mobilise resources to support the law drafting as was the case in Uganda. Engaging the Head of State at an early stage to get their support can also help. As Kenya and Nigeria learnt, the failure to engage with a broad range of stakeholders and build consensus resulted in failed attempts to legislate.

Climate change impacts different sections of society in different ways, and an understanding of the local context is essential. It is therefore important that there should be a nation-wide consultation process, as inclusive and transparent as possible, to ensure the views of a wide range of stakeholders on key topical issues are considered. In Eswatini, the drafting of the Bill was initially entrusted to an international consultant with no prior knowledge of local dynamics and context. As a result the draft did not take into account contextual challenges. This was later corrected through the involvement of a national legal expert and a consultation process involving representatives of different local communities and vulnerable groups. There was thus a recognition that the process needs to be nationally-led and inclusive. Ownership can also help promote compliance.

Experience in Uganda shows that having the right support infrastructure is crucial – including a large enough team with technical expertise, and sufficient resources.

Applying the law once it is enacted can be equally difficult, as Kenya's example illustrates. If there are competing and conflicting interests or priorities at play, climate change related programmes may be sidelined. Harnessing political will to give effect to the provisions of the legislation is therefore key. Including timeframes for specific actions (for instance, for a body to be established and to have its first meeting, or for secondary legislation to be enacted) in the framework law may also help ensure it does not just remain a law on the statute book.

Clarity and consensus on what the framework law should include will also be essential. Will it focus on establishing key institutions with defined mandates and processes for the formulation of climate change strategies and national, local, and sectoral action plans, but leave the task of formulating specific climate change actions to various players? The Paris Agreement imposes new and significant reporting requirements on countries, including a requirement to prepare and submit NDCs every 5 years, to submit information showing progress towards implementing NDCs, and to provide information on adaptation plans and needs, and financial support needed and received. An express reference to these requirements in the framework law, as part of the mandate of relevant bodies, will help ensure countries fully comply with and benefit from its provisions.

All countries reviewed highlighted the importance of aligning climate legislation with development plans.

Whatever approach countries opt for, the new law will need to have some built-in flexibility to accommodate the fact that further rules to implement the Paris Agreement are still being developed at the international level.

The experience of the four countries also shows that the legislative process does not only throw up challenges, but it also presents opportunities – for instance, opportunities to integrate innovative means of mobilising climate finance from the national budget, as in Uganda; and to include progressive provisions on gender, and on the inclusion of the most vulnerable.

In many cases the overarching climate legislation will need to be supplemented by further sector-specific laws and regulations based on national priorities. This requires political will. Secondary legislation is one type of measures countries will use to drive climate change responses, but this is likely to be complemented by a combination of other measures and tools, including the fiscal and other measures envisaged in Eswatini.

Where institutions are fit for purpose or can be adapted to cover climate change policies by clarifying or expanding their mandate, countries may opt for this as it will help minimise funding requirements and organisational reform. In some cases (such as Eswatini) it may be necessary to first streamline the institutional framework and clarify the role/mandate, if any, of various existing agencies and of new institutions. Clearly defined mandates/functions on policy formulation, coordination, implementation, advice and oversight/monitoring will be important to avoid a situation where different agencies have the same function.

Finally, creating institutions is a key part of the process but, as we saw in Kenya, it is essential that they do not just remain institutions on the statute book, but are put into action.

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