

# AFRICA'S JOURNEY TO COP26

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Legal Briefings

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In August 2021, the IPCC's Sixth Assessment report confirmed that human influence has undoubtedly warmed the climate system and raised the global surface temperature. The report, which is supported by the physical science of climate change, also confirmed that some changes which already affecting the climate system are irreversible.

As in the rest of the world, climate change has, and will continue to have, a significant impact on African countries and the lives and livelihoods of Africans. Africa will be particularly affected given its lack of financial resources, technical capacity and infrastructure. Many Africans rely on ecosystem goods for livelihoods and the continent has less well developed agricultural production systems than more developed countries. According to the [UNFCCC](#), some of the more serious changes include rainfall patterns, where droughts and flooding will have a direct impact on the viability of subsistence farming, and an increase in habitats hospitable to vectors of diseases such as dengue fever, malaria and yellow fever.

The consequences of these changes will include increased competition for resources (specifically water and arable land), internal displacement, migration, poverty, and famine.

In an attempt to deal with the consequences of climate change, most African countries have signed and ratified the [Paris Agreement](#). Africa's historical contribution to greenhouse gas (GHG) emissions has to date been less than the rest of the world's (for example, in 2017 African CO<sub>2</sub> emissions were just four per cent of global fossil fuel emissions). However, if the [current projections](#) population growth and urbanisation projections are correct, Africa's emissions may rise by thirty per cent in the next decade. These increased emissions will be contrary to the objectives envisaged under the Paris Agreement.

At this juncture, over eighty per cent of Africa's emissions are produced by its [ten](#)<sup>1</sup> most developed countries. The continent's GHG emission levels could therefore be notably reduced if these ten countries developed and implemented carbon emission reduction policies<sup>2</sup>. The other 44 countries, which are in various stages of development and experiencing rapid population growth and urbanisation patterns, should not be ignored. Policy responses and undertakings which take into account each of the 54 countries' levels of development must therefore be considered during the forthcoming [26<sup>th</sup> UN Climate Change Conference of the Parties \(COP26\)](#). Subject to the outcome of these debates, the African countries should thereafter proceed to formulate and implement the policies without any delay.

In the remainder of this article, we briefly consider the current policies, laws and mechanisms of a sample of countries. We therefore look at the extent to which **Kenya, South Africa, the Democratic Republic of Congo, Angola, Gambia and Ghana** have developed and implemented in response to their undertakings under the Paris Agreement.

This sample, which provides some insight into Sub-Saharan African countries' past performance and current policies, may therefore serve as a useful starting point for discussion about what the world could and should expect from these countries at COP 26 and in the next decade.

## **KENYA - A LEADING CLIMATE CHANGE JURISDICTION IN EAST AFRICA**

Kenya is one of the leading African jurisdictions when it comes to developing and implementing measures to combat climate change.

In response to its commitments under the Paris Agreement (specifically the first Nationally Determined Contributions' (**NDCs**) objectives), Kenya promulgated the Climate Change Act, No 11 of 2016 (**Kenyan Act**) which provides a regulatory framework for enhanced responses to climate change as well as mechanisms and measures to achieve low carbon climate development.

The Kenyan Act recognises the need for public and private entities to incorporate climate change responses in their day to day activities. It also seeks to build resilience and enhance adaptive capacity. Perhaps most importantly, the Kenyan Act provides for action to be taken against persons who have acted in a manner that has or is likely to adversely affect efforts towards mitigation and adaptation.

Shortly after the Kenyan Act commenced<sup>3</sup>, Kenya submitted its first NDCs which undertook to reduce GHG emissions by thirty per cent by 2030.<sup>4</sup>

Contemporaneously, the Environment and Natural Resources Committee and Ministry of Environment began working on revised NDCs which were submitted to the United Nations Framework Convention on Climate Change in December 2020 (in advance of COP26).

Kenya's revised NDCs commit it to reducing GHG emissions by 32 per cent by 2030. They include both mitigation and adaptation components and are aligned with the United Nations' Sustainable Development Goals (**SDGs**).

As required under the Kenyan Act, the government also established an Integrated Monitoring Reporting and Verification (**Integrated MRV**) system and published Kenya's *National Climate Change Action Plan 2018-2022 (NCCAP)*<sup>5</sup>. This five year plan requires the Kenyan government to develop "action plans" to guide the normali of climate change considerations into sectoral functions. To achieve this, the NCCAP provides mechanisms to assist stakeholders in bringing about low-carbon climate-resilient development.

Under the Integrated MRV system all public and private entities (as climate change actors) are obliged to monitor and report on all their climate change activities annually.

The Kenyan Parliament plays an active role in advancing the implementation of national actions on Action for Climate Change Empowerment (ACE). The Parliament, among other things, has created mechanisms to promote public access to information, public participation on climate change policy decisions, and public awareness<sup>6</sup>.

As is the case with most African countries, Kenya's ability to achieve its commitments is contingent on it securing the necessary funding. Kenya has reached out to the international community for assistance in this respect.

## **SOUTH AFRICA - THE MOST DEVELOPED COUNTRY IN SUB-SAHARAN AFRICA**

After ratifying the Paris Agreement on 1 November 2016, the South African government indicated its commitment to following a peak-plateau-decline (**PPD**) trajectory. Under this [model](#), SA's emissions would peak between 2020 and 2025 as reflected in South Africa's National Climate Change Response Policy and then plateau for approximately a decade before declining in absolute terms.

Owing to the country's weak 2030 emission reduction targets and its failure to commit to net-zero carbon emissions, critics described SA's initial NDCs as "[Highly Insufficient](#)".

To address this, in March 2021, SA published *draft* updated NDCs stating that it intended to commit to net-zero carbon emissions by 2050. This time round, SA intends to limit "absolute emissions levels", with the upper limit being 28 per cent lower than its initial NDC, and the lower limit remaining unchanged<sup>7</sup>.

As required by Article 4 of the Paris Agreement, in February 2020, SA submitted its [Low Emission Development Strategy 2050 \(LED Strategy\)](#) to the UNFCCC. Among other things, Phase One<sup>8</sup> of the Strategy identifies approaches for Sectoral Emissions Targets (**SETs**) and carbon budgets for high emitting entities. It also provides for Sector Jobs Resilience Plans (**SJRPs**) to support a just transition and a climate resilient society.

In a parallel process, on 10 September 2020, the South African Cabinet approved the establishment of the Presidential Climate Change Coordinating Commission (**P4C**). This multi-stakeholder group includes representatives from government, state entities, business, labour, academia and research institutions, civil society, and traditional leadership. The objective of the P4C is to "[advise on South Africa's climate change response to ensure realisation of the vision for effective climate change, and the long-term just transition to a climate resilient and low-carbon economy and society](#)". The P4C has adopted a number of models aimed at presenting the most effective and equitable route toward a net-zero carbon emission future.

The Draft Climate Change Bill (**Bill**)<sup>9</sup> due to be tabled this year encapsulates South Africa's overarching legislated response to climate mitigation and adaptation. The Bill proposes a framework to enable coordinated planning and action to address climate change, and provide a single legal reference point to determine public and private sectors obligations relating to climate change.

In the interim, other regulatory and legal mechanisms are in place; these require GHG-related reporting and emission reduction plans from high emitting industries, and that climate change considerations be factored into decision making.

Finally, numerous sectors have also developed Climate Change Sectoral Adaptation Plans<sup>10</sup> and the government has developed a Climate Change Policy Framework for state-owned companies and rural human settlements. All nine of South Africa's provinces have developed climate change response plans, and all 44 district municipalities and metropolitan municipalities have received support from the national government to mainstream climate change into municipal Integrated Development Plans.

## **DEMOCRATIC REPUBLIC OF THE CONGO (DRC) - A LEAST DEVELOPED COUNTRY**

The DRC's NDCs commit the country to a seventeen per cent reduction by 2030 in emissions compared to "business as usual" (**BAU**). As one of Africa's "least developed countries", its success is however contingent on a number of external factors, including financial support. Current estimates suggest that the DRC requires at least US\$ 21.6 billion to meet its GHG emission reduction targets.

As part of its strategy the government has sought to make the most of country's natural resources, which include the world's second largest tropical rain forest. The rain forest is an important buffer against climate change and is major carbon sink.<sup>11</sup>

Notwithstanding its importance, between 2010 and 2015, over 300 000 hectares of the forest were lost. This suggested that international assistance was needed to curb deforestation and forest degradation. Accordingly, in 2018 the DRC signed an Emission Reductions Payment Agreement (**ERPA**) and established the [Mai-Ndombe Emission Reductions Program](#) which creates a mechanism for rewarding community efforts to tackle deforestation and degradation. For verified emission reductions performance-based payments of up to US\$ 55 million for verified emission reductions are available. The ERPA will also allow the DRC to secure long-term public and private finance to provide [alternatives to deforestation](#) and reward efforts to mitigate climate change, reduce poverty, and sustainably manage natural resources.

Further, in 2019, the Ministry of the Environment and Sustainable Development and the UN Development Programme in 2019 launched a Green Climate Fund (**GCF**) for the DRC. The GCF focuses on medium-term investment for adaptation in climate-sensitive sectors in the country and seeks to advance the DRC's National Adaptation Programme (**NAP**).

The NAP was developed in 2006 to provide a bridge between existing policies and plans and the country's overall development. It takes into account the National Strategic Plan for Development (**NSPD**), the DRC's overarching development strategy for 2017 to 2050. It also provides an opportunity for the DRC to integrate adaptation priorities identified in its NDCs, as well as climate-relevant SDGs, into the plans and budgets for each economic sector.

## **ANGOLA - AN AMBITIOUS LATE JOINER**

Although Angola only ratified the Paris Agreement in November 2020, it already has some of the most [ambitious targets](#) for transition to low carbon development in Africa. In May 2021 in its revised NDC submission, Angola confirmed unconditional commitment to reducing up to fourteen per cent of its GHG emissions<sup>12</sup> and conditionally committed to an additional ten per cent reduction by 2030. Largely because of its reliance on the hydrocarbon industry, Angola's NDCs have been met with some scepticism<sup>13</sup>.

Since ratifying the Paris Agreement, Angola has developed a [national development plan](#), established a climate observatory, and implemented a continuous national emissions monitoring system.

In addition, Angola has set a five year goal to reduce carbon intensity in the production of electricity: the plan is to develop large hydroelectric plants capable of producing 78 per cent of the country's electricity.

Further, the National Strategy for Renewable Energies provides for the development of other forms of renewable energies including wind power and electric power from biomass. Through the strategy Angola intends to reach a seventy per cent renewable capacity by 2025.

Owing to the absence of any governmental intervention to date, Angola's efforts to become Paris Agreement-compliant have been criticised as being purely symbolic. There is no domestic system to track the [implementation of the NDCs](#) and data on the country's actual emissions is often dispersed, incomplete and difficult to collect. Not enough data has been collected to create an accurate GHG emission inventory and there are concerns about implementation in the absence of considerable international financial support.

## **GAMBIA - A LEADING CLIMATE CHANGE JURISDICTION IN WEST AFRICA**

[Gambia](#), notable for its vigorous efforts to utilise renewable energy is another African country regarded as a global climate leader.

Gambia's NDC implementation plan started when it passed the *New Renewable Energy Law* in 2013. Prioritising expanded green energy, this law sets aside funding for renewable energy infrastructure, research and development and the promotion and production of local equipment. In 2018, the World Bank financed Gambia's first solar photovoltaic plant (**PV plant**) which has an expected production output of ten to twenty MW of electricity. With financing from the World Bank and the European Investment Bank, further renewable energy projects now in the pipeline will be implemented between 2020 and 2025.

Gambia's NDCs confirmed in the first half of 2021, commit it to reducing its GHG emissions by 2025 unconditionally by 2.4 per cent compared to BAU and conditionally by 55 per cent. Both contributions would see a downward trend in Gambian emissions. The country has also committed to terminating oil importation by 2025.

Gambia has actively sought funding to make possible the meeting of its conditional objectives. In 2015, it implemented the Sustainable Energy Action Plan (**the Plan**) in 2015, which sets out the country's renewable energy targets and the corresponding measures required to achieve them. In essence, it is a ['pitch' to foreign investors](#), who could finance the objectives if they so wished.

## **GHANA - AN AFRICAN NDC PIONEER**

Ghana is regarded as one of [Africa's pioneers](#) in respect of the NDCs revision process. Its approach is consistent with Article 4.9 of the Paris Agreement, which requires successive updates from its signatories every five years.

Ghana's first NDC submission stated that by 2030 GHG emissions would be unconditional lowered by fifteen per cent and, subject to provision of external financial support, conditionally lowered by an additional thirty per cent. Ghana could therefore achieve a [reduction of 45 per](#) cent of its GHG emissions should financing become readily available.

Ghana's NDCs highlighted that financial support would need to be in the form of international private capital investments or bilateral and multilateral funds (including the Green Climate Fund (**GCF**)). Ghana proposes to implement twenty mitigation and eleven adaptation programmes in the years 2020 to 2030. The mitigation measures, developmental in nature, focus on seven key economic sectors (energy, agriculture, industry, transport, waste, forestry and other land use). They focus on renewable energy for clean cooking and lighting and the establishment of double energy efficiency in households and industry. In September 2020, Ghana was granted US\$ 54.5 million from the GCF to help communities in Northern Ghana with climate adaptation efforts. Further essential funding is still being sought from the broader international community.

Ghana and Switzerland have signed a [Cooperation Agreement](#) under which Switzerland will provide the necessary funds to enable Ghana to invest in and adopt low-carbon technological solutions. Switzerland will benefit through carbon credits and the associated offset mechanisms. This investment will assist Ghana with its national clean energy access programme (**NCEP**), which focuses on reducing GHG emissions by two million tonnes and giving millions of people access to clean energy. Agreements of this kind, envisaged under Article 5 of the Paris Agreement, encourage countries to maximise private sector investment and present an innovative climate financing solution.

## CONCLUSION

As was noted in the [Africa's Adaptation Gap 2 Report](#), measures to counteract climate change will only succeed if underpinned by [comprehensive and effective national and regional policy planning](#), capacity-building initiatives and proper governance structures. Our assessment is that most African countries are pursuing NDC objectives and are trying to ensure accountability and transparency. A great deal, of course, will depend on the effective monitoring and tracking of emissions. With COP26 only two months away, time is now of the essence.

Funding remains a key impediment to reducing emission levels in Africa and meeting the commitments under the Paris Agreement. As evidenced by the cooperation agreement between Ghana and Switzerland, Article 6 of the Paris Agreement may provide mutually beneficial solutions for African countries and more developed nations. In anticipation of COP26 – and at COP26 – African signatories and developed countries should explore these possibilities.

Article 9 provides a further alternative. Under this provision "developed country Parties [ought to] provide financial resources [in order] to assist developing country Parties with respect to both mitigation and adaptation in continuation of their existing obligations". During 2017/18, the average annual *public* climate finance totalled US\$253 billion, representing 44 per cent of total commitments, while *private* finance – which accounts for the majority of climate finance (around 56 per cent) – averaged US\$ 326 billion annually.

African signatory countries may also wish to explore opportunities for greater regional alignment and cooperation, since this may even encourage regional investment and enable the monitoring and tracking of emissions required to ensure accountability and transparency.

1. The ten countries identified were South Africa, Egypt, Algeria, Nigeria, Morocco, Libya, Tunisia, Sudan, Angola, and Kenya
2. *Ibid.*
3. The Kenyan Act entered into force on 27 May 2016.
4. Westminster Foundation for Democracy, Foreign Commonwealth & Development Office, "Stronger democratic process in Kenya to tackle climate change" (05 May 2021) <https://www.wfd.org/2021/05/05/stronger-democratic-process-in-kenya-to-t...> (accessed 29 July 2021).
5. Government of Kenya (2018) *National Climate Change Action Plan (Kenya) 2018-2022*, Ministry of Environment and Forestry, Nairobi, Kenya.
6. *Ibid.*
7. Under the current draft updated NDCs SA pledges to keep CO<sub>2</sub> emissions between a 17 to 56 per cent increase above 1990 levels during the period 2026 to 2030. In this year, the P4C however recommended that South Africa put forward stronger targets than those provided under the current draft updated NDC submission. The lower limit of the P4C's proposed emission limit range is such that if South Africa were to submit current draft of the updated NDC, it would be one of the few countries with a "1.5°C Paris Agreement compatible" target rating. Under these circumstances the country would become a global leader in respect of emission reduction undertakings.
8. 'Phase One: Starting Right' is scheduled to be completed by the end of 2020/2021.
9. Bill X, 2018. The Bill has its origins in *The National Climate Change Response Policy*, which Cabinet approved in 2011.
10. These sectors are: Water, Agriculture, Forestry, Fisheries, Health and Biodiversity.
11. A natural environment viewed in terms of its ability to absorb carbon dioxide from the atmosphere
12. This is equivalent to an estimated mitigation level of 15,4 million tonnes of carbon dioxide equivalent in that year.
13. Angola is Africa's second largest oil producer.

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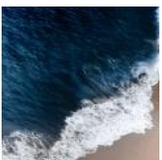


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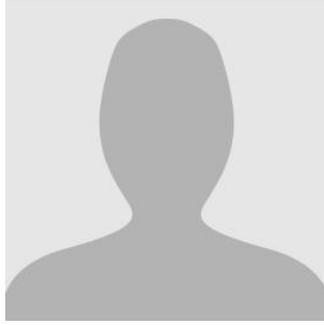
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## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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