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THE EAST AFRICAN COMMUNITY AND THE CLIMATE CHANGE AGENDA: AN INVENTORY OF THE PROGRESS, HURDLES, AND PROSPECTS

by James Forole Jarso*

“Climate change cannot be addressed by a single nation. We must lay emphasis on a regional approach since whatever happens in our individual nations affects the entire region. This means that we must act both individually and collectively, especially in instituting effective and sufficient measures towards mitigation against the adverse effects of climate change.”

— H.E. Mwai Kibaki¹

INTRODUCTION

In the early and mid-1960s, the United Nations Economic Commission for Africa (“UNECA”) championed regional integration in Africa, calling for division of the vast continent into regions (“economic blocs”).² Almost immediately, African countries responded by grouping based on their geographic proximity and the congruence of their individual interests.³ The call would bear more fruits when, in April 1980, the defunct Organization of African Unity (“OAU”), the predecessor to the African Union (“AU”), launched the Lagos Plan of Action (“The Plan”).⁴ The Plan, reaffirmed in the 1991 Abuja Treaty,⁵ established three regional arrangements: separate but convergent integration arrangements for West Africa, Central Africa, and East and Southern Africa. Over the years, various initiatives have seen the light of day, as part of African governments’ efforts to implement The Plan.⁶ One such initiative is the re-establishment, in November 1999, of the East African Community (“EAC”).⁷

The initiatives aim to ensure sustainable growth and development in the regions concerned.⁸ The EAC’s constitutive treaty tasks the EAC to ensure, *inter alia*, the attainment of sustainable growth and development, the promotion of sustainable utilization of natural resources, and effective protection of the natural environment, in the Partner States.⁹ Similar provisions are found in the EAC’s yet-to-be-operationalized Protocol on Environment and Natural Resource Management,¹⁰ as well as the EAC’s Fourth Development Strategy.¹¹

So far, the EAC has made remarkable strides in steering the sub-region towards sustainable growth and development.¹² Be that as it may, like many other sub-regional entities, the EAC faces numerous challenges.¹³ Primary among these is climate change, which poses one of the biggest impediments to the region’s sustainable growth and development.¹⁴

This article details efforts to combat climate change within the framework of the nascent EAC. The discourse begins by providing a clear picture of the EAC’s establishment, membership,

purpose, and mandate, and the relevance of the latter two to EAC’s climate change agenda. This is followed by a general overview of the evidence and impacts of climate change in the sub-region. In the substantive sections, the article takes stock of the achievements registered by the EAC in its efforts to address climate change in the sub-region, as well as the challenges impeding these efforts. Weighing these achievements and challenges, it then attempts to paint the picture of the prospects for addressing climate change issues in the sub-region within the EAC’s prevailing framework. Finally, the author submits recommendations for addressing climate change issues in the sub-region.

UNDERSTANDING THE EAC

In 1967, Kenya, Uganda and Tanzania formalized socio-economic ties by heralding a cooperation-based integration framework — the first East African Community.¹⁵ Unfortunately, the EAC was not to live beyond its tenth birthday; in 1977, it met its demise.¹⁶ In November 1999, the EAC was reincarnated as the three countries committed themselves to a renewed regional cooperation framework¹⁷ under a second EAC Treaty that took effect on July 7, 2000.¹⁸

The new EAC was primarily established to “develop policies and programmes aimed at widening and deepening co-operation among the Partner States in political, economic, social and cultural fields, research and technology, defence, security and legal and judicial affairs, for their mutual benefit.”¹⁹ The revived EAC establishes mutual responsibility for the States’ socio-economic and political legacies. The latter includes the ravages of poverty, perpetual debt, the HIV/AIDS menace, economic exploitation, natural resource depletion, civil wars, and ethnic violence.²⁰

In addition to Kenya, Uganda, and Tanzania, the Treaty opens avenues for an expanded membership.²¹ It was on this basis that Rwanda and Burundi were admitted when the two acceded to the Treaty on June 18, 2007, and became full members July 1, 2007.²² Expectations are high that the newly independent South Sudan may also soon join the growing EAC.²³

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The Sudan expressed a similar intention, which was turned down by the EAC Summit.²⁴

The EAC exists to ensure sustainable growth and development in the Partner States.²⁵ It recognizes that “a clean and healthy environment is a prerequisite for sustainable development.”²⁶ Thus, the Treaty tasks member states to take measures to “preserve, protect and enhance the quality of the environment;”²⁷ “contribute towards the sustainability of the environment;”²⁸ and “ensure sustainable utili[z]ation of natural resources.”²⁹ This mandate guides the implementation of a climate change agenda in the sub-region.

CLIMATE CHANGE IN EAST AFRICA: EVIDENCE AND IMPACTS

Over the years, climate change has vividly presented itself as not just an environmental problem, but also as a legal, political, social, economic, cultural, planning and financing problem. In the last decade, climate change has posed one of the biggest impediments to the sub-region’s realization of sustainable growth and development.³⁰ Unprecedented floods and droughts have slowed economic growth in the sub-region.³¹ Now the area stands a very marginal chance of registering meaningful progress towards achievement of the Millennium Development Goals (“MDGs”).³² Particularly affected is the sub-region’s poverty reduction agenda.³³

Climate change has also created serious food security threats in the sub-region. Due to floods and droughts, the sub-region’s appalling humanitarian catastrophes have garnered international media attention.³⁴ Consequently, news of failed harvests, massive livestock deaths, malnutrition and nutrition-related ailments has not been uncommon,³⁵ a situation that has stirred a growing food insecurity crisis in the sub-region.³⁶ The catastrophes have been reported even beyond the traditionally food insecure areas, to include areas that had hitherto been regarded as the sub-region’s “food baskets.”³⁷

Further, climate change has generated serious challenges for human security in the sub-region. On one hand, it continues to impact the health of millions of the region’s inhabitants as it unleashes vector- and water-borne diseases.³⁸ As health catastrophes impact previously unaffected areas,³⁹ women and children have borne the brunt of these impacts.⁴⁰ This fact erodes from the gains achieved by in implementing MDGs relating to child mortality and maternal health.⁴¹ On the other hand, violent conflicts in agricultural areas of Kenya,⁴² Uganda,⁴³ and Tanzania have been attributed to climate related stresses.⁴⁴ The frequent floods and droughts have compounded human suffering,⁴⁵ deprivation, and displacement.⁴⁶

In addition, climate change has, over the years, heavily impacted the sub-region’s ecosystem sustainability. For instance, the iconic snowcaps on mounts Kilimanjaro, Kenya and Ruwenzori are fast disappearing, posing significant threats to downstream ecosystems and livelihoods.⁴⁷ Furthermore, rivers are continually running dry,⁴⁸ threatening the lives of both human and wildlife populations.⁴⁹ With rising sea levels, the sub-region continues to experience varying extents of coastal

erosion,⁵⁰ destruction of mangrove forests, and the submergence of small islands.⁵¹ The rise in seawater temperature has also threatened marine life.⁵² Cumulatively, these changes pose a serious threat to tourism, one of the major income-earners for the local economies.⁵³

THE EAC AND THE CLIMATE CHANGE AGENDA: TAKING STOCK OF THE ACHIEVEMENTS

NORMATIVE PROGRESS WITHIN THE EAC FRAMEWORK

A discourse on climate change within the EAC framework should commence with an understanding of the relevant provisions of the EAC Treaty. These provisions task the EAC and, by extension, the Partner States to take measures to preserve and protect the environment.⁵⁴ The Treaty stressed the need for environmental impact assessments (“EIAs”) for all development projects with potential to affect the environment.⁵⁵ Over the years, in response to the challenges created by climate change, the EAC has taken numerous steps to enhance regulatory regimes on environmental protection. Examples include:

The Protocol on Environment and Natural Resources Management

In October 1998, even before the EAC was re-established, the initial three Partner States created a Memorandum of Understanding (“MoU”) to govern mutual cooperation in matters relating to environmental management.⁵⁶ Upon re-establishment of the EAC, the Treaty preserved this *ad hoc* arrangement.⁵⁷ Further, the Treaty allowed Partner States to enact new Protocols to promote the Treaty’s mandate.⁵⁸ In April 2006, the EAC’s Council of Ministers adopted the Protocol on Environment and Natural Resources Management, formalizing the MoU.⁵⁹

The purpose of the Protocol is to promote “cooperation [among the Partner States] in the management of the environment and natural resources within their jurisdiction.”⁶⁰ It applies to the management of transboundary resources,⁶¹ biodiversity,⁶² forest and tree resources,⁶³ water resources,⁶⁴ wetland resources,⁶⁵ coastal and marine resources,⁶⁶ energy resources,⁶⁷ mountain ecosystems,⁶⁸ and rangelands.⁶⁹ Its application also extends to fight desertification and mitigation of the effects of droughts.⁷⁰ More importantly, the Protocol applies to mitigation of the effects of climate change.⁷¹ Further, it includes provisions in respect of protection of ozone layer,⁷² pollution control and management,⁷³ environmental impact assessments and audits,⁷⁴ environmental standards,⁷⁵ public participation and access to justice (and information),⁷⁶ as well as environmental disaster preparedness and management.⁷⁷ The Protocol’s normative framework is grounded in a number of international environmental law principles, including the right to a clean and healthy environment.⁷⁸ Thus far, all EAC Partner States have ratified the Protocol save Tanzania,⁷⁹ which is reportedly “[in] the process of finalizing the ratification of the Protocol.”⁸⁰ Once in force, the Protocol has potential to provide a normative framework and boost the sub-region’s climate change agenda.

The EAC Common Position on Climate Change

To facilitate effective participation in the on-going regional and international climate change negotiations, the EAC has adopted a common position on climate change negotiations,⁸¹ culminating after roundtable meetings convened in all five Partner States — Burundi,⁸² Kenya,⁸³ Rwanda,⁸⁴ Tanzania,⁸⁵ and Uganda.⁸⁶ The position, which is aligned with the five pillars of the Bali Plan of Action,⁸⁷ prioritizes adoption of the five pillars.⁸⁸ Other areas of focus are mitigation,⁸⁹ technology development and transfer,⁹⁰ capacity building,⁹¹ and financing.⁹²

The EAC Climate Change Policy Framework

The search for a sub-regional climate change policy framework has consistently been on the EAC's policymakers' agendas.⁹³ In April 2011, the Ninth Extraordinary Summit adopted and approved the *Declaration on Food Security and Climate Change*,⁹⁴ the *EAC Climate Change Policy*,⁹⁵ and the *EAC Food Security Action Plan, 2010-2015*.⁹⁶ The EAC Climate Change Policy contributes to sustainable development in the region through harmonized and coordinated climate change actions.⁹⁷

In May 2011, the EAC Secretariat convened the Multi-Sectoral Meeting on Food Security and Climate Change to facilitate expert deliberation on the modalities of implementing these documents.⁹⁸ The eventual outcome was the adoption of the EAC Climate Change Master Plan.⁹⁹ Together with the EAC Climate Change Policy, the Master Plan provides a number of guidelines that partner states and other stakeholders can use in the preparation and implementation of collective measures to address climate change.¹⁰⁰

Climate Change Programming

Climate change has, to a large extent, been mainstreamed in all programs of the EAC. In fact, the EAC's recently adopted five-year development plan recognizes climate change as a threat to EAC development, calling for "climate-sensitive planning."¹⁰¹ With the growing body of normative instruments relevant to the climate change agenda, it can be only envisaged that climate-related issues will only be further mainstreamed in the EAC's operations.

Externally, the EAC has partnered with other Regional Economic Communities ("REC"). In December 2011, in partnership with the Common Market for Eastern and Southern Africa ("COMESA") and the Southern Africa Development Community ("SADC"), the EAC launched a joint five-year Programme on Climate Change Adaptation and Mitigation.¹⁰² The initiative, funded by the Royal Government of Norway, the European Union ("EU") Commission and UK's Department of International Development ("DfID"), was launched on the sidelines of 17th Conference of the Parties to the United Nations Framework Convention on Climate Change ("COP-17") in Durban, South Africa.¹⁰³

EAC INSTITUTIONS RELEVANT TO THE CLIMATE CHANGE AGENDA

In tandem with the search for an appropriate normative framework, the EAC embarked on the establishment of specialized institutions to coordinate climate change actions within the sub-regional framework.¹⁰⁴ In December 2010, the Council of

Ministers established the Climate Change Coordination Unit ("CCCU") under the EAC Secretariat and appointed a Unit Coordinator.¹⁰⁵ Since that time, the unit has been instrumental in driving the sub-region's climate change agenda, working closely with other EAC institutions.¹⁰⁶

But any climate change initiative requires adequate financial support to actualize its objectives. For this reason, in December 2010, the EAC Summit endorsed the establishment of the EAC Climate Change Fund.¹⁰⁷ Modalities to operationalize the fund were recently developed.¹⁰⁸ If well harnessed, the Fund has the potential to enhance climate change adaptation and mitigate actions in the sub-region.¹⁰⁹

The LVBC is a specialized institution of the EAC charged with coordination of sustainable development in the shared Lake Victoria Basin.¹¹⁰ Among its key activities are: harmonization of laws and policies on the management of the environment in the Lake and its catchment area; continued management of the Lake's ecosystems; and development of infrastructure on and around the Lake.¹¹¹ In this respect, LVBC's mandate remains relevant to the sub-region's climate change agenda.

The LVFO is another specialized institution of the EAC. It was established under the LVFO Convention¹¹² to harmonize, develop and adopt conservation and management measures for the sustainable utilization of the fisheries resources of Lake Victoria.¹¹³ In its work, the LVFO has partnered with local fishing communities to empower them to become equal and active partners with the government in matters relating to fisheries management and development.¹¹⁴ Consequently, its mandate remains pivotal in the implementation of the sub-region's agenda on climate change, poverty reduction and sustainable development.

THE EAC AND THE CLIMATE CHANGE AGENDA: AN INVENTORY OF THE PRACTICAL CHALLENGES

INCAPABLE POLITICAL LEADERSHIP

Despite some progress in setting up a climate change governance framework, the East African sub-region, like many other sub-regions of Africa, has yet to establish credible leadership on climate change. The leaders have not fully committed themselves to preventing further destruction of the sub-region's ecosystems, or to mitigating poverty and hunger, two of the biggest drivers behind environmental destruction.¹¹⁵ As vast forestlands are opened to foreign agricultural and industrial investments, the sub-region is also exposed to the threats of climate change.¹¹⁶ To make matters worse, the Partner States are yet to fully integrate climate change issues in their national development policies, plans, and strategies.¹¹⁷

CORRUPTION AND ECONOMIC MISMANAGEMENT

Over the years, East African countries have consistently ranked among the continent's "corruption heavyweights."¹¹⁸ Corruption, which has been deeply embedded in all aspects of the sub-region's public life,¹¹⁹ has profoundly plagued the sub-region's socio-economic and political life, and has not spared climate change adaptation and mitigation programs.¹²⁰ As public funds (including those from global climate financing mechanisms) are continually embezzled, corruption has proved

to be a serious threat to climate governance in the sub-region.¹²¹ The most obvious result has been the continued weakening of the local populations' resilience to the shocks of climate change.¹²²

POVERTY AND ECONOMIC INJUSTICE

East African governments have unsuccessfully struggled to eradicate poverty.¹²³ Consequently, an overwhelming majority of East Africans have been exposed to abject poverty and deprivation.¹²⁴ This unfortunate situation has compounded the climate change problem in the sub-region; the millions condemned to perpetual poverty and chronic food insecurity have largely turned to various forms of environmentally harmful means of survival, including charcoal burning,¹²⁵ illegal logging, and encroachment on sensitive ecosystems.¹²⁶

MARGINALIZATION OF VULNERABLE GROUPS

By and large, climate change discussions in the sub-region have been dominated by political elites.¹²⁷ Sadly, vulnerable groups — indigenous peoples, women, and children — have been pushed to the peripheries, effectively removing their voices from critical policy discussions.¹²⁸ This challenge, which was expressly acknowledged at the Seventh African Development Forum (“ADF-VII”), presents a serious threat to the fight against climate change because these groups are likely to suffer the consequences thereof.¹²⁹

UNRELIABLE CLIMATE FINANCING

Global commitment to the fight climate change is marked by mixed results.¹³⁰ In the realm of climate financing, the reality is far from promising; we have yet to see sustained, adequate, predictable, and reliable financing for climate change actions in the sub-region and elsewhere.¹³¹ Considering that many of these actions are capital-intensive, the absence of external financial support means that the sub-region may be able to do little on its own.¹³² This lack of financing is exacerbated firm international mandates to fight climate change.¹³³

LIMITED INSTITUTIONAL AND TECHNICAL CAPACITY

A critical review of the EAC Partner States reveals that there is a glaring gap in institutional and technical capacities to implement climate change programs and projects.¹³⁴ The lack of adequate financial and material capacities to implement climate change adaptation and mitigation actions highlights the challenges faced by the EAC Partner States. As a result, the sub-region depends heavily on external funding to drive its climate change agenda.¹³⁵ The lack of institutional and technical capacities has been exacerbated by the general lack of awareness of climate change in national development decisions, a fact largely attributable to stakeholder's limited exposure to key information.¹³⁶ Thus, climate change issues are yet to be fully integrated into national policies and strategies.

THE “INDECENT LAND RUSH”

Various multinational corporations and foreign governments have looked to Africa to acquire cheap agricultural land.¹³⁷ The East African sub-region has remained a prime target. In deals largely shrouded in secrecy, governments have leased large

tracts of land, including forestlands and other sensitive ecosystems, to the foreign investors at bargain prices; most affected are Kenya,¹³⁸ Tanzania,¹³⁹ and Uganda.¹⁴⁰ Beyond destruction of forestland and sensitive ecosystems, the deals have caused displacement of indigenous populations from their traditional farmlands.¹⁴¹ By exposing the affected populations to the ravages of poverty and food insecurity,¹⁴² the deals exacerbate the impacts of climate change.

BEYOND THE HORIZON: PROSPECTS FOR CLIMATE PROTECTION IN THE EAST AFRICAN SUB-REGION

Despite the challenges that the EAC faces in confronting climate issues, prospects for climate protection in the sub-region are relatively bright. Below is a cursory review of different realities surrounding climate change actions, each suggesting that substantial improvement to climate protection is underway.

PROLIFERATION OF CLIMATE FINANCING MECHANISMS

Recently, a proliferation of climate financing mechanisms has benefited the sub-region's countries. The salient ones are: the *Strategic Climate Fund* (“SCF”);¹⁴³ the Congo Basin Forest Fund (“CBBF”);¹⁴⁴ the Forest Carbon Partnership Facilities (“FCPF”);¹⁴⁵ the Global Climate Change Alliance (“GCCA”);¹⁴⁶ the Least Developed Countries Fund (“LDCF”);¹⁴⁷ and the Special Climate Change Fund (“SCCF”).¹⁴⁸ Despite general dissatisfaction with and criticism of these mechanisms,¹⁴⁹ the growing body of climate financing facilities can contribute to the sub-region's fight against climate change.

GLOBAL DEVELOPMENTS

The fight against climate change in the sub-region must be considered in the global context. In this respect, it is important to note that, over the last two decades, the UN system has seen normative and institutional developments intended to curb climate change. On the normative front, issues relating to climate change are addressed by treaties adopted within the UN system. These include: the UN Framework Convention on Climate Change,¹⁵⁰ the UN Convention to Combat Desertification (“Desertification Convention”),¹⁵¹ the Convention on Biological Diversity (“Biodiversity Convention”),¹⁵² the Kyoto Protocol,¹⁵³ and the Cartagena Protocol on Biosafety.¹⁵⁴ The sub-region's countries have subscribed to these (and other) multilateral environmental agreements, which hold significant promise for the global climate change fight.

REGIONAL DEVELOPMENTS

Within the AU framework, climate change has garnered significant attention of the Assembly of the Heads of State and Government. In January 2007, the Assembly called upon AU Member States to integrate climate change considerations into their national development policies, strategies and programs.¹⁵⁵ In February 2009, the Assembly approved the Algiers Declaration on Climate Change, paving the way for building a common African position on climate change.¹⁵⁶ In July of the same year, the Assembly established the Conference of African Heads of State and Government on Climate Change (“CAHOSCC”) to spearhead

climate governance in the region.¹⁵⁷ In February 2010, it requested the CAHOSCC to establish a streamlined regional negotiation structure.¹⁵⁸ Since then, the CAHOSCC has remained instrumental in refining the African Common Position on Climate Change.¹⁵⁹

Another critical institution within the AU climate change framework is the African Ministerial Conference on the Environment (“AMCEN”),¹⁶⁰ a specialized committee charged with providing leadership for environmental management and advocacy.¹⁶¹ In two special sessions on climate change—the first in Nairobi, Kenya (May 2009),¹⁶² and the second in Bamako, Mali (September 2011)¹⁶³—issues relating to climate change have dominated deliberations.¹⁶⁴

AMCEN has also offered political guidance in matters relating to environmental protection. It led the process for the development and adoption of the Action Plan of the Environment Initiative of the New Partnership for Africa’s Development (“NEPAD”),¹⁶⁵ and is playing a critical role in NEPAD’s implementation. Additionally, with the help of the UN Environment Programme (“UNEP”), it has monitored and reported on the state of the continent’s environment and plays a pivotal role in the revision of regional environmental treaties.¹⁶⁶

Other regional institutions whose work addresses the climate change agenda include: the African Development Bank (“AfDB”),¹⁶⁷ NEPAD,¹⁶⁸ the AU Conference of Energy Ministers (“CEMA”),¹⁶⁹ and the AU Commission (“AUC”).¹⁷⁰ Within the growing normative and institutional framework, a host of climate change adaptation and mitigation programmes are currently running in the region. These include: the Climate for Development in Africa (“ClimDev-Africa”) Programme;¹⁷¹ the Great Green Wall for the Sahara and Sahel Initiative (“GGWSSI”);¹⁷² the Climate Change Adaptation in Africa Program (“CCAAP”);¹⁷³ and the Africa Adaptation Programme (“AAP”).¹⁷⁴

DEVELOPMENTS WITHIN OTHER RECS

EAC Partner States have overlapping membership in other RECs. These include: the Inter-Governmental Authority on Development (“IGAD”), the Common Market for Eastern Africa (“COMESA”), and the Southern African Development Community (“SADC”).¹⁷⁵ Like the EAC, these RECS have made remarkable progress in establishing frameworks for combating climate change¹⁷⁶ and have proved to be valuable partners for the EAC in climate change programming.¹⁷⁷

PROGRESS WITHIN INDIVIDUAL PARTNER STATES

The EAC Partner States have put in place initiatives with general and specific effects on the climate change agenda. Below are several examples of EAC implemented programs within the territories of Partner States:

Progress in Kenya

Kenya, the only developing country in the sub-region, has taken numerous normative¹⁷⁸ and institutional¹⁷⁹ strides to create conducive environment for climate change action. Within this framework, Kenya is currently implementing projects that include the Climate Change Action Plan,¹⁸⁰ the Africa Adaptation Programme,¹⁸¹ the Kenya Adaptation to Climate

Change in Arid and Semi-Arid Lands (“KACCAL”);¹⁸² and the Market Transformation for Efficient Biomass Stoves.¹⁸³ Further, at the time of writing, there were five fully registered Clean Development Mechanism (“CDM”) projects in the country — the Mumias Sugar Company’s Bagasse-Based Cogeneration Project;¹⁸⁴ the Ol Karia III Phase 2 Geothermal Expansion Project;¹⁸⁵ the Ol Karia II Geothermal Expansion Project;¹⁸⁶ the Lake Turkana Wind Power Project;¹⁸⁷ and the Aberdare Range/Mt. Kenya Small Scale Reforestation Initiative.¹⁸⁸

Progress in the Other States

The four Least Developed Countries (“LDCs”) of the sub-region — Burundi, Rwanda, Tanzania and Uganda — have made remarkable progress in implementing the climate change agenda. First and foremost, they have developed their National Adaptation Programmes of Action (“NAPAs”).¹⁸⁹ In addition to the NAPAs,¹⁹⁰ the LDCs have various normative tools which bear on the climate change agenda.¹⁹¹ This growing wealth of normative gains is buttressed by subscription to various multilateral environmental agreements (“MEAs”) relevant to climate change, including the UNFCCC,¹⁹² the Desertification Convention,¹⁹³ the Biodiversity Convention,¹⁹⁴ the Kyoto Protocol,¹⁹⁵ and the Cartagena Protocol.¹⁹⁶ Further, the LDCs have taken measures to establish institutions to manage climate change issues. For instance, the Rwanda Environment Management Authority (“REMA”), oversees CDM projects.¹⁹⁷ In Tanzania, key institutions include the Environment Division of the Vice President’s Office and the National Environment Management Council (“NEMC”).¹⁹⁸ Uganda has an even more elaborate institutional framework for advancing the climate change agenda.¹⁹⁹ Within their respective normative frameworks, the LDCs are currently implementing a number of CDM projects: Uganda has the lion’s share with five — a series of reforestation projects targeting the Nile Basin;²⁰⁰ Rwanda follows with three;²⁰¹ while Tanzania has one.²⁰² Burundi has none at the moment.²⁰³ Further, alongside Kenya, Tanzania and Rwanda are participating in the AAP²⁰⁴ while Uganda is in the process of incorporating climate change in the national education curriculum.²⁰⁵

PARTNERSHIP OPPORTUNITIES

Recently, various multilateral and bilateral development agencies have supported national climate change actions in the sub-region within the frameworks of COMESA, IGAD and AU.²⁰⁶ These partnerships seek to enhance resource mobilization, mitigation and adaptation, capacity building, and technology transfer.²⁰⁷

THE FOREIGN DIRECT INVESTMENT (“FDI”) RUSH

The FDI rush holds immense promise for the sub-region’s climate change agenda despite potential negative impacts on poverty reduction and food security. The sub-region has a huge potential for investment in renewable energy,²⁰⁸ especially in Kenya, where large-scale foreign investments have supported development of geothermal²⁰⁹ and wind power.²¹⁰ If well harnessed, the FDI rush, which has spread its tentacles to all the EAC Partner States, can be a valuable driving force supporting the sub-region’s climate change agenda.

CONTRIBUTIONS OF THE CIVIL SOCIETY AND THE PRIVATE SECTOR

East African civil society organizations (“CSOs”) continue to play an indispensable role in shaping the sub-region’s climate change agenda. Though long excluded from mainstream discussions on the subject, they have gradually come to occupy a special niche, particularly through their environmental advocacy activities.²¹¹ At the recently concluded COP 17 in Durban, South Africa, African CSOs played an active role in advancing the region’s climate change position.²¹²

For its part, the East African private sector has proved critical in supplementing financing mechanisms projects aimed at combating climate change.²¹³ Through their private foundations, private sector companies have vitally injected funds to support “green project.”²¹⁴ In June 2008, the Nairobi-based Alliance for a Green Revolution in Africa (“AGRA”) established the Africa Enterprise Challenge Fund (“AECF”) to provide competitive grants and interest-free loans to African entrepreneurs who wish to implement innovative climate change adaptation projects in agriculture, financial services, renewable energy, and technology sectors.²¹⁵ For instance, in Kenya, financing mechanisms include UAP Insurance Company’s insurance products targeting the agriculture Sector²¹⁶ and the Index-Based Livestock Insurance (“IBLI”) initiative.²¹⁷ UKAID, USAID, and the World Bank are the primary funding sources of the latter project.²¹⁸

CONTINUED TERRITORIAL GROWTH OF THE EAC

Since the admission of Rwanda and Burundi in June 2007 several other States in the larger East Africa sub-region have expressed their desire to join the EAC, including the Central African Republic (“CAR”),²¹⁹ the Democratic Republic of Congo (“DRC”),²²⁰ Ethiopia,²²¹ the Sudan,²²² and the newly independent South Sudan.²²³ With growth of the EAC set to extend to Africa’s biggest carbon sink — the Congo Basin Forest—the EAC’s geographical sphere of influence continues to spread. Still, it must be remembered that climate change is a transnational problem, and can be best dealt with through concerted international cooperation.


BEYOND RHETORIC: THE WAY FORWARD FOR THE EAC

To enhance the sub-region’s capacity to implement a holistic climate change agenda that includes sustainable adaptation,

mitigation, technology development and transfer, capacity building and financing mechanisms the sub-region’s leaders should:

- secure adequate, reliable and predictable financing for climate change actions in the sub-region;
- strengthen partnership with other RECS, relevant AU institutions, and global mechanisms relevant to the climate change agenda;
- operationalize of the Protocol on Environment and Natural Resources Management;
- support public engagement and representation in the climate change discourse, in order to accommodate the views of vulnerable and marginalized groups;
- enhance institutional capacity to monitor climate change, to warn and report on threats from climate change, and to link climate change and disaster risk reduction;
- combat corruption by enhancing transparency and accountability in management of climate financing funds and integrating corruption safeguards in the design of climate change actions;
- climate-proof agriculture (through, e.g., investment in conservation agriculture and appropriate rainwater harvesting technologies);
- identify investment opportunities presented by climate change such as emissions trading, and upscale investment in clean and renewable energy sources (e.g., geothermal, wind, solar and hydropower options); and
- further mainstream climate change issues in national and sub-regional laws and policies and initiate a radical paradigm shift from sectoral planning to integrated, climate-sensitive planning for development projects;

CONCLUSION

Climate change is, the greatest long-term threat facing the East African sub-region. This article has demonstrated that climate change is real and its effects in the sub-region result in adverse consequences. It has also taken stock of the progress made, as well as the challenges the sub-region faces. Although the East African sub-region has made remarkable strides in tackling climate change, much remains to be done. Accordingly, it is time the EAC and the individual Partner States focused their attention on climate issues because the cost of inaction far outweighs the cost of taking appropriate and timely action.²²⁴ 

Endnotes: The East African Community (“EAC”) and the Climate Change Agenda: An Inventory of the Progress, Hurdles, and Prospects

¹ Mwai Kibaki, President, Republic of Kenya, Statement at the East African Community Heads of State Retreat on Food Security and Climate Change, Arusha, Tanzania, at 3 (Dec. 2, 2010), http://www.eac.int/environment/index.php?option=com_docman&task=doc_download&gid=136&Itemid=186.

² See ALAN MATTHEWS, REGIONAL INTEGRATION AND FOOD SECURITY IN DEVELOPING COUNTRIES CH. 6 (2003), <http://www.fao.org/docrep/004/y4793e/y4793e0a.htm>.

³ *Id.*

⁴ LAGOS PLAN OF ACTION FOR THE ECONOMIC DEVELOPMENT OF AFRICA, 1980-2000, OAU Doc. ECM/ECO 19 (XIV) Rev. 2 (Apr. 1980), http://www.uneca.org/itca/ariportal/docs/lagos_plan.PDF.

⁵ Treaty for the Establishment of the East African Economic Community, Nov. 30, 1999, 2144 U.N.T.S. 255 [hereinafter *EAC Treaty*].

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¹⁴⁷ Morgan & Cameron, *supra* note 139 (giving an optimistic report of COP 17, saying that while there was much work to be done, things are moving in the right direction).

¹⁴⁸ *Territorial Approach to Climate Change*, *supra* note 146 (“Climate change mitigation and adaptation requires concerted action at multiple levels and by different actors.”).

¹⁴⁹ CENTER FOR AMERICAN PROGRESS, *BREAKING THROUGH ON TECHNOLOGY: OVERCOMING THE BARRIERS TO THE DEVELOPMENT AND WIDE DEPLOYMENT OF LOW CARBON TECHNOLOGY* 19 (2009), http://www.americanprogress.org/issues/2009/07/pdf/gcn_report.pdf (discussing the private sector as the solution to innovation barriers).

¹⁵⁰ *Id.*

¹⁵¹ Morgan & Cameron, *supra* note 139 (“Tackling climate change will be a multi-generational effort requiring sustained political engagement and a complete transition to a low-carbon economy.”).

¹⁵² See generally DANIEL BODANSKY, CENTER FOR CLIMATE AND ENERGY SOLUTIONS, *MULTILATERAL CLIMATE EFFORTS BEYOND THE UNFCCC* (2011), <http://www.c2es.org/publications/multilateral-climate-efforts-beyond-unfccc> (setting forth a series of regimes touching on the subject of climate change).

Endnotes: WHAT LITIGATION OF A CLIMATE NUISANCE SUIT MIGHT LOOK LIKE

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¹⁸ See JAN PAUL ACTON & LLOYD S. DIXON, INST. FOR CIV. JUSTICE, RAND CORP., *SUPERFUND AND TRANSACTION COSTS: THE EXPERIENCES OF INSURERS AND VERY LARGE INDUSTRIAL FIRMS* (2002), <http://www.rand.org/content/dam/rand/pubs/reports/2007/R4132.pdf> (finding on average that transaction costs were 88% of total expenditures; individual expenditures ranged from 80% to 96%).

¹⁹ 28 U.S.C. § 1407 (2006) (codifying the establishment of multidistrict litigation).

²⁰ Alien Tort Statute, 28 U.S.C. § 1350 (2006). *But see* *Sosa v. Alvarez-Machain*, 542 U.S. 692 (2004) (holding that, in establishing a valid Alien Tort Statute,

“courts should require any claim based on the present-day law of nations to rest on a norm of international character accepted by the civilized world and defined with a specificity comparable to the features of the 18th-century paradigms we have recognized”); *Kiobel v. Royal Dutch Petroleum Co.*, 621 F.3d 111 (2d Cir. 2010) (imposing liability on corporations for violations of customary international law “has not attained a discernible, much less universal, acceptance among nations of the world in their relations inter se” and would therefore not meet the requirements of *Sosa*).

Endnotes: AN UN-CONVENTIONAL APPROACH: ECUADOR’S YASUNÍ-ITT INITIATIVE IS IN DISCORD WITH THE UNFCCC

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⁶³ COAL. FOR RAINFOREST NATIONS, <http://www.rainforestcoalition.org> (last visited Apr. 20, 2012).

⁶⁴ Abate, *supra* note 60, at 97 (citing *About REDD+, UN-REDD Programme*, UN-REDD.ORG, <http://www.un-redd.org/AboutREDD/tabid/582/language/en-US/Default.aspx> (last visited Apr. 20, 2012)).

⁶⁵ Bali Delegates Agree to Support Forests-for-climate (REDD) Plan, MONGABAY.COM (Dec. 16, 2007), <http://news.mongabay.com/2007/1215-redd.html>.

⁶⁶ *Id.*

⁶⁷ See generally, United Nations Collaborative Programme on Reducing Emissions from Deforestation and Forest Degradation in Developing Countries Sixth Policy Board Meeting, Mar. 21-22, *National Programme Document – Ecuador*, U.N.R.E.D.D./PB6/2011/V/1 (Feb. 28, 2011).

⁶⁸ *Id.* at 2.

⁶⁹ *Id.* at 69-74.

⁷⁰ *Id.* at 2.

⁷¹ *Id.* at 41.

⁷² *Id.* at 43.

⁷³ See *infra*, notes 14 – 17. (The proposal does not mention REDD+, and proposes a compensation system predicated on the market value of the foregone oil, rather than the benefits of deforestation and reduction in greenhouse gas emissions.)

⁷⁴ Davis, *supra* note 8, at 247 (citing Lucas, *supra* note 6).

⁷⁵ See PAUL VARGHESE, THE ENERGY AND RES. INST., *AN OVERVIEW OF REDD, REDD PLUS AND REDD READINESS AT INTERNATIONAL CONFERENCE ON COMMUNITY RIGHTS, FORESTS AND CLIMATE CHANGE* (2009).

Endnotes: THE EAST AFRICAN COMMUNITY AND THE CLIMATE CHANGE AGENDA: AN INVENTORY OF THE PROGRESS, HURDLES, AND PROSPECTS

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⁶ See generally Rene N’Guettia Kouassi, *The Itinerary of the African Integration Progress: an Overview of the Historical Landmarks*, 1(2) AFR. INTEGRATION REV. 1 (2007), <http://www.africa-union.org/root/ua/Newsletter/EA/Vol.%201,%20No.%202/Kouassi.pdf>.

⁷ See *EAC Treaty*, *supra* note 5, art. 2.

⁸ *EAC Treaty*, *supra* note 5, art. 5(2)(a),(c),(g).

⁹ *Id.* art. 3.

¹⁰ See generally East African Community Protocol on Environment and Natural Resources Management, Nov. 30, 2006, (not in force), http://www.eac.int/environment/index.php?option=com_content&view=article&id=122:eac-gender-a-community-development-framework&catid=3:key-documents (The Protocol has been ratified by all EAC Partner States, save for Tanzania) [hereinafter *Environment & NRM Protocol*].

¹¹ See generally EAST AFRICAN COMMUNITY [EAC], *DEEPENING AND ACCELERATING INTEGRATION, EAC DEV. STRATEGY* (2011/2012 – 2015/2016) (Aug. 2011), http://www.eac.int/advisory-opinions/doc_download/650-4th-eac-development-strategy.html.

¹² EAC, *EAC DEVELOPMENT STRATEGY* (2011/12 – 2015/16) 17 (2011), http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0C00QFjAA&url=http%3A%2F%2Fwww.eac.int%2Fadvisory-opinions%2Fdoc_download%2F650-4th-eac-development-strategy.

http://www.eac.int/html&ei=pVFqT4ODDqGQ0gG_nv2fDw&usq=AFQjCNHg29isyEL68ZUNY0GuVzTKNoxBkA&sig2=5TrZInAjPA0X16gxZ5g_Jg [hereinafter *EAC DEVELOPMENT STRATEGY*].

¹³ DIODORUS BUBERWA KAMALA, *THE ACHIEVEMENTS AND CHALLENGES OF THE NEW EAST AFRICAN COMMUNITY CO-OPERATION* 3 (2006), <http://www2.hull.ac.uk/hubs/pdf/memorandum58.pdf>.

¹⁴ See generally PETER COOPER, WALKER INST., *EVIDENCE-BASED ADAPTATION TO CLIMATE CHANGE IN EAST AFRICA: COMPLEXITIES, CHALLENGES AND OPPORTUNITIES* (2012), [http://www.walker-institute.ac.uk/events/seminars/Cooper%20Reading%20Seminar%20\(feb.%201st\).pdf](http://www.walker-institute.ac.uk/events/seminars/Cooper%20Reading%20Seminar%20(feb.%201st).pdf).

¹⁵ Baruti Katembo, *Pan Africanism and Development: The EAC Model*, 2 PAN AFR. STUDIES no. 4 107, 109 (2008), http://www.jpanafrican.com/docs/vol2no4/2.4_Pan_Africanism.pdf.

¹⁶ Mothae Maruping, *Challenges for Regional Integration in Sub-Saharan Africa: Macroeconomic Convergence & Monetary Coordination*, in *AFRICA IN THE WORLD ECONOMY - THE NATIONAL, REGIONAL AND INTERNATIONAL CHALLENGES* 137 (2005), <http://www.fondad.org/uploaded/Africa%20in%20the%20World%20Economy/Fondad-AfricaWorld-Chapter11.pdf>.

¹⁷ *History of the EAC*, EAC, <http://www.eac.int/about-eac/eac-history.html?showall=1> (last visited March 23, 2012).

¹⁸ *Id.*

- ¹⁹ See *EAC Treaty*, *supra* note 5, art. 5(1).
- ²⁰ *Id.*, at prml. paras. 12, 15 & 16.
- ²¹ *Id.*; see *id.*, art. 3(2)-(6) (stating the procedure for granting membership status).
- ²² See, e.g., Dave Opiyo & PPS, *East Africa: Rwanda and Burundi Join EAC*, ALLAFRICA.COM (June 19, 2007), <http://allafrica.com/stories/200706190458.html>; Angelo Izama, Emmanuel Gyehazo & Risdal Kasasira, *East Africa: Rwanda, Burundi Join EAC Today*, ALLAFRICA.COM (June 18, 2007), <http://allafrica.com/stories/200706180030.html>.
- ²³ See, e.g., EAC, *Admission to the Community*, <http://www.eac.int/about-eac/admission-to-the-eac.html> (last visited Feb. 11, 2012); see also David Muwanga, *East Africa: South Sudan Ready to Join EAC – Salva Kiir*, ALLAFRICA.COM (Jul. 24, 2011), <http://allafrica.com/stories/201107261840.html> (last visited Feb. 11, 2012); *East Africa: South Sudan ‘Free to Join EAC’*, ALLAFRICA.COM (Jul. 12, 2011), <http://allafrica.com/stories/201107130907.html>; Zephania Ubwani, *East Africa: Why EAC Doors Are Wide Open to Juba*, ALLAFRICA.COM (Jul. 8, 2011), <http://allafrica.com/stories/201107110002.html>.
- ²⁴ See, e.g., EAC, *Admission to the Community*, <http://www.eac.int/about-eac/admission-to-the-eac.html> (last visited Feb. 11, 2012); *Sudan’s bid to join EAC rejected as South Sudan’s deferred*, SUDAN TRIBUNE (Nov. 30, 2011), <http://www.sudantribune.com/Sudan-s-bid-to-join-EAC-rejected,40873>; *Sudan’s bid to join EAC quashed by Uganda & Tanzania*, SUDAN TRIBUNE (Nov. 27, 2011), <http://www.sudantribune.com/Sudan-s-bid-to-join-EAC-quashed-by,40840>.
- ²⁵ See generally *EAC Treaty*, *supra* note 5, art. 5(2)(a),(c),(g).
- ²⁶ *Id.*, art. 111(1).
- ²⁷ *Id.*, art. 111(2)(a).
- ²⁸ *Id.*, art. 111(2)(b).
- ²⁹ *Id.*, art. 111(2)(c).
- ³⁰ WWF, *CLIMATE CHANGE IMPACTS ON EAST AFRICA 2* (2006), http://www.wwf.or.jp/activities/lib/pdf_climate/environment/east_africa_climate_change_impacts_final.pdf.
- ³¹ See, e.g., STOCKHOLM ENV’T INST., *ECONOMICS OF CLIMATE CHANGE: KENYA 3-9* (2009); NICK HEPTWORTH & MARISA GOULDEN, *CLIMATE CHANGE IN UGANDA: UNDERSTANDING THE IMPLICATIONS AND APPRAISING THE RESPONSE* (2008); George Obulutsa, *Climate change to Hit Tanzania GDP, Farmers: Study*, REUTERS (Oct. 1, 2009), <http://www.reuters.com/article/2009/10/01/us-tanzania-climate-idUSTRE59033D20091001>; Finnigan wa Simbeye, *Tanzania: Climate Change Dogs Economic Growth*, ALLAFRICA.COM (Nov. 14, 2011), <http://allafrica.com/stories/201111150188.html>.
- ³² Dr. Moses Amweelo, *Africa: Climate change could affect our growth*, ALLAFRICA.COM (June 18, 2010), <http://allafrica.com/stories/201006210578.html>.
- ³³ See, e.g., CHARLES EHRHART & MICHELLE TWENA, *CLIMATE CHANGE AND POVERTY IN TANZANIA: REALITIES AND RESPONSE OPTIONS FOR CARE*, CARE INT’L POVERTY-CLIMATE CHANGE INITIATIVE (2006).
- ³⁴ See, e.g., ACTIONAID, *East Africa Drought* (describing recurrent droughts), <http://www.actionaid.org/what-we-do/emergencies-conflict-current-emergencies/east-africa-drought> (last visited Feb. 10, 2012); Felicity Lawrence, *Drought in East Africa the result of climate change and conflict*, THE GUARDIAN, 4 (July 4, 2011), <http://www.guardian.co.uk/world/2011/jul/04/drought-east-africa-climate-change>; *Tanzania: Zanzibar Helps Flood Victims*, ALLAFRICA.COM (Feb. 13, 2012) (describing raging floods) <http://allafrica.com/stories/201202140448.html>.
- ³⁵ See, e.g., Katy Migiyo, *East Africa: Region Should Be Prepared for Further Food Insecurity – Weather Forecasters*, ALLAFRICA.COM (Feb. 13, 2012), <http://allafrica.com/stories/201202132278.html>.
- ³⁶ According to the Washington-based International Food Policy Research Institute (IFPRI), the sub-region’s aggregate hunger index is worrying, with the hunger situation in Kenya and Uganda ranked as “serious”, that in Tanzania and Rwanda “alarming”, and Burundi’s stubbornly remaining “extremely alarming”. See IFPRI, *GLOBAL HUNGER INDEX 2011*, 4 (2011), <http://www.ifpri.org/sites/default/files/publications/ghi11.pdf> (showing a percentage increase in hunger index of +21, Burundi was the biggest loser, globally).
- ³⁷ See REPUBLIC OF UGANDA, *CLIMATE CHANGE: UGANDA NATIONAL ADAPTATION PROGRAMMES OF ACTION 12* (2007); see also ADAM CORNER, *HIDDEN HEAT: COMMUNICATING CLIMATE CHANGE IN UGANDA, CHALLENGES AND OPPORTUNITIES* (2011); Adam Corner, *Climate Change in Uganda: “The biggest unreported story of our time”*, THE CARBON BRIEF BLOG (Mar. 14, 2011), <http://www.carbonbrief.org/blog/2011/03/hidden-heat-climate-change-in-uganda>.
- ³⁸ NIDOS, *KENYA CLIMATE CHANGE FACTSHEET 3* (2009), <http://www.nidos.org.uk/downloads/KenyaFactsheet.pdf>; NIDOS, *TANZANIA CLIMATE CHANGE FACTSHEET 3* (2006), <http://www.nidos.org.uk/downloads/TanzaniaFactsheet.pdf>; NIDOS, *UGANDA CLIMATE CHANGE FACTSHEET 2* (2009), <http://www.nidos.org.uk/downloads/UgandaFactsheet.pdf>.
- ³⁹ For instance, the Inter-Governmental Panel on Climate Change (“IPCC”) has noted the recent observations of malaria vector in the central highlands of Kenya, where no such vectors have previously been recorded; this has largely been attributed to observed micro-climate change due to land-use changes, including reclamation of swamps for agricultural use. See IPCC, *CLIMATE CHANGE 2007: SYNTHESIS REPORT. CONTRIBUTION OF WORKING GROUPS I, II AND III TO THE FOURTH ASSESSMENT REPORT OF THE INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE* (IPCC) (2007).
- ⁴⁰ See *Impacts of Climate Change*, OXFAM, <http://www.oxfam.org.au/explore/climate-change/impacts-of-climate-change/> (last visited March 23, 2012).
- ⁴¹ THE WORKING GRP. ON CLIMATE CHANGE AND DEV., *AFRICA, UP IN SMOKE?* 18 (2005), http://www.cana.net.au/sites/default/files/Africa_Up_in_smoke.pdf.
- ⁴² See, e.g., Meera Selva, *Kenyan Army Steps in as Cattle Rustling Turns Lethal*, THE INDEP.T. (July 23, 2005), <http://www.independent.co.uk/news/world/africa/kenyan-army-steps-in-as-cattle-rustling-turns-lethal-499867.html>; *Kenya: Schools closed as cattle raids force thousands to flee*, IRIN (May 29, 2007), <http://www.irinnews.org/report.aspx?ReportId=72430>; *Kenya: Hundreds displaced in cattle rustling clashes*, IRIN (May 14, 2007), <http://www.irinnews.org/report.aspx?reportid=72129>; see also, *Tens of thousands flee northern Kenya violence*, AFP (Feb. 8, 2012), <http://www.capitalfm.co.ke/news/2012/02/tens-of-thousands-flee-northern-kenya-violence/>.
- ⁴³ See, e.g., U.S. AGENCY FOR INT’L DEV. (“USAID”), OFF. OF CONFLICT MG’T & MITIGATION (CMM), *CLIMATE CHANGE AND CONFLICT IN UGANDA: THE CATTLE CORRIDOR AND KARAMOJA*, CMM DISCUSSION PAPER NO. 3 (2011), http://www.fess-global.org/Publications/Other/Climate_Change_and_Conflic_%20in_Uganda.pdf; *Uganda: Climate Change and Conflicts*, ALLAFRICA.COM (Feb. 23, 2009) (reporting on the “potent mix of the impact of climate change” in the semi-arid Karamoja region in Northeastern Uganda — droughts, violent conflicts and armed cattle raids), <http://allafrica.com/stories/200902240702.html>; see also, OLI BROWN & ALEC CRAWFORD, INT’L INST. FOR SUSTAINABLE DEV., *CLIMATE CHANGE AND SECURITY IN AFRICA: A STUDY FOR THE NORDIC-AFRICAN FOREIGN MINISTERS MEETING* (2009), http://www.iisd.org/pdf/2009/climate_change_security_africa.pdf.
- ⁴⁴ See, e.g., *Tanzania: Pastoralists Conflicts Threaten Peace and Stability*, ALLAFRICA.COM (June 18, 2011), <http://allafrica.com/stories/201106220123.html>.
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- ⁴⁶ See, e.g., Adam Robertson, Colin Crowley, & Michael Tait, *Kenya’s Drought Crisis: Starving to Death*, THE GUARDIAN (Oct. 28, 2009), <http://www.guardian.co.uk/world/video/2009/oct/27/kenya-drought-childs-eye?INTCMP=ILCNETTXT3487>; see also, Xan Rice, *Almost 4 million Kenyan on food aid as drought deepens*, THE GUARDIAN (Sept. 17, 2009), <http://www.guardian.co.uk/world/2009/sep/17/kenya-drought-cattle-deaths>.
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- ⁵⁰ See, e.g., ABIY S. KEBEDE ET AL., *IMPACTS OF CLIMATE CHANGE AND SEA LEVEL RISE: A PRELIMINARY CASE STUDY OF MOMBASA, KENYA*, TYNDALL CENTRE WORKING PAPER 146 (2010), <http://www.tyndall.ac.uk/sites/default/files/twp146.pdf>; E. Darling, T. McClanahan & I. Côté, *Combined effects of two stressors on Kenyan*

coral reefs are additive or antagonistic, not synergistic, 3(2) CONSERVATION LETTERS 122 (2010).

⁵¹ So far, the sub-region has lost Tanzania's Maziwe and Fungu la Nyani islands to the "glutinous" Indian Ocean. See, e.g., Ceven Shemsanga et al., *The Cost of Climate Change in Tanzania: Impacts and Adaptation*, 6 J. AM. SCI. 3, 182-96 (2010); Deodatus Mfugale, *Rising sea levels threaten safety of Pangani residents*, DAILY NEWS (Feb. 14, 2011), <http://www.dailynews.co.tz/feature/?n=17260>.

⁵² KENYA'S NAT'L ENV. MGMT. AUTH., KENYA'S CLIMATE CHANGE TECHNOLOGY NEEDS AND NEEDS ASSESSMENT (DRAFT) 36 (2005), <http://unfccc.int/tclear/pdf/TNA/Kenya/TNA%20%20REPORT%20Kenya%20final%20nov05.pdf>.

⁵³ *Id.* at 27.

⁵⁴ See generally *EAC Treaty*, *supra* note 5, art. 111(2).

⁵⁵ *Id.* art. 111(1).

⁵⁶ See generally Memorandum of Understanding between the Republic of Kenya, the United Republic of Tanzania and the Republic of Uganda for Cooperation on Environment Management, Kenya-Tanz.-Uganda, Oct. 22, 1998, TRE-001332 (1998).

⁵⁷ See *EAC Treaty*, *supra* note 5, art. 142(1)(i).

⁵⁸ *Id.* art. 151(1).

⁵⁹ See Environment & NRM Protocol, *supra* note 8, art. 51.

⁶⁰ *Id.*

⁶¹ *Id.* arts. 3 & 9.

⁶² *Id.* arts. 3 & 10.

⁶³ *Id.* arts. 3 & 11.

⁶⁴ *Id.* arts. 3 & 13.

⁶⁵ *Id.* arts. 3 & 14.

⁶⁶ *Id.* arts. 3 & 15.

⁶⁷ *Id.* arts. 3 & 19.

⁶⁸ *Id.* arts. 3 & 20.

⁶⁹ *Id.* arts. 3 & 22.

⁷⁰ *Id.* arts. 3 & 23.

⁷¹ *Id.* arts. 3 & 24.

⁷² *Id.* arts. 3 & 25.

⁷³ *Id.* arts. 3 & 30.

⁷⁴ *Id.* arts. 3 & 31.

⁷⁵ *Id.* arts. 3 & 32.

⁷⁶ *Id.* arts. 3 & 34.

⁷⁷ *Id.* arts. 3 & 35.

⁷⁸ *Id.* art. 4(2)(a), (c)-(g), (i)-(k), (m), (n), (q), (t)

⁷⁹ See *Tanzania Yet to Sign Key Regional Protocol*, TRADEMARK S. AFR. (May 25, 2011), <http://www.trademarksa.org/news/tanzania-yet-sign-key-regional-protocol>.

⁸⁰ See EAC Secretariat, *Multi-Sectoral Meeting on Food Security and Climate Change (Permanent Secretaries' Session)*, EAC Doc. EAC/SR/26/2011 (2011), http://www.eac.int/environment/index.php?option=com_docman&task=doc_download&gid=152&Itemid=106, at 4; EAC Secretariat, *Multi-Sectoral Meeting on Food Security and Climate Change (Session of Ministers)*, EAC Doc. EAC/SR/26/2011, at 5 (May 27, 2011), http://www.eac.int/environment/index.php?option=com_docman&task=doc_download&gid=153&Itemid=106.

⁸¹ EAC POSITION ON CLIMATE CHANGE NEGOTIATIONS (2009), http://www.eac.int/advisory-opinions/doc_download/702-eac-position-on-climate-change-negotiations.html.

⁸² EAC Secretariat & Republic of Burundi, Min. of Water, Env't, Territory Mg't & City Planning, *Report of the Roundtable on Climate Change*, Bujumbura, Burundi (April 29-30, 2009), http://www.eac.int/environment/index.php?option=com_docman&task=doc_download&gid=108&Itemid=126.

⁸³ Min. of Env't & Mineral Resources (MEMR) & Off. of the Prime Minister, *Kenya Roundtable Workshop on Climate Change*, Naivasha, Kenya (Mar. 30-Apr. 2, 2009), http://www.eac.int/environment/index.php?option=com_docman&task=doc_download&gid=104&Itemid=126.

⁸⁴ Republic of Rwanda, *Rwanda Position on Climate Change, Report From a Two Days Country Round Table on Climate Change* (May 7-8, 2009), http://www.eac.int/environment/index.php?option=com_docman&task=doc_download&gid=105&Itemid=126.

⁸⁵ EAC Secretariat, *Report of the National Climate Change Round Table Meeting*, Dar Es Salaam, Tanzania (June 15-17, 2009), http://www.eac.int/environment/index.php?option=com_docman&task=doc_download&gid=106&Itemid=126.

⁸⁶ EAC Secretariat & Uganda Min. of Water & Env't, *Uganda Round table on Climate Change*, Kampala, Uganda

(Apr. 16-18 2009), http://www.eac.int/environment/index.php?option=com_docman&task=doc_download&gid=107&Itemid=126.

⁸⁷ The five pillars of the Bali Action Plan are adaptation, mitigation, technology development and transfer, capacity building and financing. Conference of the Parties to the United Nations Framework Convention on Climate Change, Bali, Indon., Dec. 3-15, 2007, Report of the Conference of the Parties in its Thirteenth Session, Dec. 1/CP.13, U.N. Doc. FCCC/CP/2007/6/Add.1 (Mar. 14, 2008), <http://unfccc.int/resource/docs/2007/cop13/eng/06a01.pdf> [hereinafter *Bali Action Plan*].

⁸⁸ Under the Adaptation pillar, the policy aims at, *inter alia* — strengthening early warning systems; enhancing preparedness and disaster risk management; scaling up efficient use of water and energy resources; enhancing irrigation-based crop agriculture and livestock production; protecting wildlife and key vulnerable ecosystems; improve land use; and intensifying control of diseases, vectors and pests. *Bali Action Plan*, *supra* note 87.

⁸⁹ Among the key mitigation measures prioritized by the Policy are: afforestation, reforestation, forest conservation, access to carbon credit facilities, promotion of energy efficiency, efficient and sustainable crop and livestock production systems, and promotion of efficient transport and waste management systems. *Bali Action Plan*, *supra* note 87.

⁹⁰ The Policy focuses on, for instance, enhancing technology development and transfer, addressing technology transfer barriers, enhancing research capacity, and enhancing South-South and North-South cooperation for enhanced technology development and transfer within the sub-region. *Bali Action Plan*, *supra* note 87.

⁹¹ The Policy aims to, for instance, introduce climate change issues into education curricula, skills training in technology development and transfer, and harnessing of indigenous knowledge on climate change. *Bali Action Plan*, *supra* note 87.

⁹² The policy envisages an elaborate financing mechanism for climate change actions in the sub-region, including the establishment of an EAC Climate Change Fund. *Bali Action Plan*, *supra* note 87.

⁹³ See EAC Secretariat, *Communiqué of the 11th Ordinary Summit of EAC Heads of State*, Arusha, Tanzania, ¶ 10 (Nov. 20, 2009), http://www.eac.int/news/index.php?option=com_docman&task=doc_download&gid=84&Itemid=77; See, e.g., EAC Secretariat, *Preparatory Meeting for the Extra Ordinary Summit on Food Security and Climate Change*, Moshi, Tanzania (Feb. 15-19, 2010), http://www.eac.int/environment/index.php?option=com_docman&task=doc_download&gid=116&Itemid=159; EAC Secretariat, *2nd Preparatory Meeting for the Extra Ordinary Summit on Food Security and Climate Change*, Nairobi, Kenya (Feb. 22-26, 2010), http://www.eac.int/environment/index.php?option=com_docman&task=doc_download&gid=115&Itemid=159.

⁹⁴ East African Community, *Declaration of the 9th Extraordinary Summit of the Heads of State on Food Security and Climate Change*, Dar es Salaam, Tanzania (Apr. 19, 2011).

⁹⁵ EAC CLIMATE CHANGE POLICY (2011), http://www.eac.int/environment/index.php?option=com_docman&task=doc_download&gid=128&Itemid=159.

⁹⁶ EAC FOOD SECURITY ACTION PLAN (2010-2015), http://www.eac.int/environment/index.php?option=com_docman&task=doc_download&gid=129&Itemid=159.

⁹⁷ *Id.*

⁹⁸ UNITED NATIONS OFFICE IN BURUNDI, EAC MINISTERS CALL FOR ACTION TO ENHANCE FOOD SECURITY (2011), <http://bnub.unmissions.org/Default.aspx?tabid=2961&ctl=Details&mid=5312&ItemID=3118&language=en-US>

⁹⁹ See *Id.*

¹⁰⁰ *Id.*

¹⁰¹ See EAC DEVELOPMENT STRATEGY, *supra* note 12.

¹⁰² See, EAC Secretariat, *EAC-COMESA-SADC Launch Five-Year Climate Change Initiative*, EAST AFRICAN COMMUNITY PORTAL (Dec. 8, 2011), <http://www.eac.int/about-eac/eacnews/878-tripartite-climate-change-initiative.html>.

¹⁰³ Generally, it aims to harmonize climate change programmes in the three regional blocs, mainstream climate change in national and regional policies and strategies, and particularly enhance investments in climate resilience and carbon efficient agriculture ("climate-smart agriculture"). *Id.*

¹⁰⁴ See EAC, 21 Meeting of the Council of Ministers, Dec. 1, 2010, *Decision 60*, EAC/CM/21/Decision 60 (2010).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ The establishment of the Fund was endorsed by the Summit at the Special Retreat on Food Security and Climate Change, Dec. 2, 2003. *EAC Official Calls for Involvement of Regional Blocs in Climate Change Initiatives*, S. AFR. TRADE

HUB (Sept. 22, 2011), <http://www.satradehub.org/in-the-news/sath-content/newsroom/in-the-news/environment-global-warming/page-7>.

¹⁰⁸ *Multi-Sectoral Tech Meeting of Experts on Preparation of Key Documents for the 9th Extra-Ordinary Summit*, Apr. 19-21, 2010, Dar es Salaam, Tanzania (Apr. 21, 2010).

¹⁰⁹ See *EAC Official Calls for Involvement*, *supra* note 107.

¹¹⁰ The LVBC succeeded the Lake Victoria Development Programme, which had been established in 2011 as a mechanism for coordinating the various interventions on the Lake and its Basin. *Lake Victoria Basin Commission (LVBC)*, East African Community Portal, <http://www.eac.int/lvdc.html?showall=1> (last visited Mar. 23, 2012).

¹¹¹ See, LVBC SECRETARIAT, HARMONIZATION OF REGIONAL POLICIES, RULES AND REGULATIONS GOVERNING UTILIZATION OF WATER RESOURCES IN THE LAKE VICTORIA BASIN: DRAFT REPORT 77-78 (July 2011).

¹¹² Convention for the Establishment of the Lake Victoria Fisheries Organization, Kenya-Tanz.-Uganda (entered into force May 24, 1996), <http://www.fao.org/docrep/w7414b/w7414b01.htm>.

¹¹³ *Id.*, art. II(2).

¹¹⁴ See, LVBC SECRETARIAT, *supra* note 111, at 79.

¹¹⁵ See, e.g., Annie Kelly, *Uganda's Response to Climate Change 'Inadequate'*, THE GUARDIAN (Mar. 12, 2009), <http://www.guardian.co.uk/society/katineblog/2009/mar/12/uganda-climate-change>.

¹¹⁶ See *id.*

¹¹⁷ See GEMMA NORRINGTON-DAVIES & NIGEL THORNTON, OECD & AFR. DEV. BANK (AfDB), CLIMATE FINANCING AND AID EFFECTIVENESS: KENYA CASE STUDY (DRAFT) 7, 19 (Mar. 2011), <http://www.oecd.org/dataoecd/23/8/48458443.pdf> (stating that climate change issues do not feature in Kenya's long-term development blueprint, "Vision 2030", nor its initial Medium Term Plan for Delivery (MTP), though the government has hinted that the issues will be incorporated in the next delivery MTP).

¹¹⁸ See TRANSPARENCY INT'L, GLOBAL CORRUPTION PERCEPTIONS INDEX 2011 (2011). See also, TRANSPARENCY INT'L – KENYA, THE EAST AFRICAN BRIBERY INDEX 2011 I (2011) (indicating the Bribery Indices (BIs) in Rwanda, Kenya, Tanzania, Uganda and Burundi as standing at 5.1%, 28.8%, 31.6%, 33.9% and 37.9%, respectively).

¹¹⁹ See, e.g., U.S. Embassy Nairobi, *Visas Donkey: Corruption 212(F) Visa Revocation* (Sept. 1, 2009) (leaked cable giving an account of how former Attorney-General Amos Wako reportedly benefited from official corruption in the government, while using his position to frustrate the anti-corruption crusade), <http://www.wikileaks.ch/cable/2009/09/09NAIROBI1830.html>; U.S. Embassy Nairobi, *Visas Donkey: Corruption 212(F) Visa Denial* (Sept. 16, 2009), <http://www.wikileaks.ch/cable/2009/09/09NAIROBI1938.html> (leaking cable giving an account of how a former Director of the KACC frustrated anti-corruption efforts).

¹²⁰ See, e.g., *Climate change spending 'at risk of fraud and corruption'*, IN2EASTAFRICA, <http://in2eastfrica.net/climate-change-spending-%E2%80%99at-risk-of-fraud-and-corruption%E2%80%99/> (last visited Feb. 12, 2012).

¹²¹ See, generally, TRANSPARENCY INT'L, GLOBAL CORRUPTION REPORT: CLIMATE CHANGE (2011).

¹²² *Id.*

¹²³ See UNDP, SUSTAINABILITY AND EQUITY: A BETTER FUTURE FOR ALL — HUMAN DEVELOPMENT REPORT 2011 (2012) (revealing that out of the 187 countries ranked — with an HDI of 0.509, Kenya ranked 143th; Tanzania came 152nd (HDI, 0.466); with an HDI of 0.446, Uganda was 161st; Rwanda, with an HDI of 0.429, was 166th; and, with a dismal HDI of 0.316, Burundi ranked 185th).

¹²⁴ *Id.*

¹²⁵ See, e.g., Anthea Rowan, *Africa's charcoal burning problem*, BBC NEWS (Sept. 25, 2009), <http://news.bbc.co.uk/2/hi/africa/8272603.stm>; *BURUNDI: Shrinking lakes and denuded forests*, IRIN (June 5, 2007), <http://www.irinnews.org/Report.aspx?ReportId=72543> *UGANDA: Charcoal boom a bust for forests*, IRIN (Feb. 7, 2012), <http://www.irinnews.org/report.aspx?reportid=94810>; see also, IRIN, *Life in northern Kenya: 'We either burn charcoal or die of starvation'*, THE GUARDIAN (Jul. 20, 2011), <http://www.guardian.co.uk/global-development/2011/jul/20/drought-food-crisis-northern-kenya?INTCMP=ILCNETTXT3487>.

¹²⁶ See, e.g., Green Africa Foundation, *Spotlight on Kenya's Environment*, <http://www.greenafricafoundation.org/section.asp?ID=42> (last visited Feb. 14, 2012) (citing the period 1990-2005 as "the worst [time] for Kenya" as it lost up to five percent of its forest cover through illegal lumbering and human encroachment); *10 Most Endangered Forests on Earth*, ITS NATURE.ORG, <http://www.itsnature.org/what-on-earth/10-most-endangered-forests-on-earth/> (last

visited Feb. 13, 2012) (ranking the Mau Forest as the second most endangered forest in the world); see also IRIN, *supra* note 125.

¹²⁷ See Seventh African Development Forum, Oct. 10-15, 2010, *Acting on Climate Change for Sustainable Development in Africa: Consensus Statement* (Oct. 15, 2010), <http://www.uneca.org/adfvii/documents/ADF-VII-Consensus-Statement.pdf>, at 2.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ See, e.g., SMITA NAKHOODA ET AL., OVERSEAS DEV. INST., REGIONAL BRIEFING: SUB-SAHARAN AFRICA, BRIEF NO. 7 1 (2011), <http://www.odi.org.uk/resources/docs/7474.pdf>.

¹³¹ *Id.*

¹³² See generally *Bali Action Plan*, *supra* note 87 (showing that the concept of "climate change financing" emerged in response to the need for "adequate, predictable and sustainable" mechanisms to support climate change actions in vulnerable countries).

¹³³ See, e.g., *Canada pulls out of Kyoto Protocol*, CBC NEWS (Dec. 13, 2011), <http://www.cbc.ca/news/politics/story/2011/12/12/pol-kent-kyoto-pullout.html>; *Canada pulls out of, denounces Kyoto protocol*, CBS NEWS (Dec. 13, 2011), http://www.cbsnews.com/8301-202_162-57341907/canada-pulls-out-of-denounces-kyoto-protocol/; *Anger at US climate retreat*, BBC NEWS (Mar. 29, 2001), <http://news.bbc.co.uk/2/hi/science/nature/1248278.stm>.

¹³⁴ See, e.g., NORRINGTON, *supra* note 117, at 7 (showing lack of institutional and technical capacity in Kenya).

¹³⁵ *Id.*

¹³⁶ *Id.*

¹³⁷ See generally OAKLAND INST., THE GREAT LAND GRAB (2011).

¹³⁸ See, e.g., FIAN, LAND GRABBING IN KENYA AND MOZAMBIQUE (2010); see also JEANETTE SCHADE, CENTER ON MIGRATION, CITIZENSHIP AND DEVELOPMENT, HUMAN RIGHTS, CLIMATE CHANGE, AND CLIMATE POLICIES IN KENYA: HOW CLIMATE VARIABILITY AND AGROFUEL EXPANSION IMPACT ON THE ENJOYMENT OF HUMAN RIGHTS IN THE TANA DELTA (2011), http://www.uni-bielefeld.de/tidrc/ag_comcad/downloads/final_study_ifa.pdf.

¹³⁹ See, e.g., OAKLAND INST., UNDERSTANDING LAND INVESTMENTS DEALS IN AFRICA: TANZANIA (2011).

¹⁴⁰ See, e.g., Fred Ojiambo, *Uganda Lawmakers to Mull Rainforest Allocation to Sugar Company*, BLOOMBERG (Sept. 5, 2011), <http://www.bloomberg.com/news/2011-09-05/uganda-lawmakers-to-mull-rainforest-allocation-to-sugar-company.html>; *Uganda President Museveni proposes land giveaways to international business interests*, WWSW.ORG (Sept. 10, 2011), <http://www.wsws.org/articles/2011/sep2011/ugan-s10.shtml>.

¹⁴¹ *Id.*

¹⁴² See generally Olivier De Schutter, UN Special Rapporteur on the Right to Food, *Access to Land and the Right to Food*, Report to the 65th General Assembly of the United Nations, UN Doc. A/65/281 (Aug. 11, 2010) (on the relationship between access to land and food security), http://www.srfood.org/images/stories/pdf/officialreports/20101021_access-to-land-report_en.pdf; Olivier De Schutter, UN Special Rapporteur on the Right to Food, *Large-Scale Land Acquisitions and Leases: A Set of Minimum Principles and Measures to Address the Human Rights Challenge*, Report presented to the UN Human Rights Council, UN Doc. A/HRC/13/33/Add.2 (Dec. 28, 2009) (noting how human rights violations can be addressed in the context of the global land rush), http://www.srfood.org/images/stories/pdf/officialreports/20100305_a-hrc-13-33-add2_land-principles_en.pdf.

¹⁴³ See *Strategic Climate Fund*, CLIMATE FUNDS UPDATE, <http://www.climatefundsupdate.org/listing/strategic-climate-fund> (last visited Feb. 10, 2012).

¹⁴⁴ See *Congo Basin Forest Fund*, CLIMATE FUNDS UPDATE, <http://www.climatefundsupdate.org/listing/congo-basin-forest-fund> (last visited Feb. 10, 2012); see also, *Congo Basin Forest Fund (CBFF)*, AFR. DEV. FUND (AfDB), <http://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/congo-basin-forest-fund/> (last visited Feb. 11, 2012).

¹⁴⁵ See *Forest Carbon Partnership Facility*, CLIMATE FUNDS UPDATE, <http://www.climatefundsupdate.org/listing/forest-carbon-partnership-facility> (last visited Feb. 10, 2012).

¹⁴⁶ See *Global Climate Change Alliance*, CLIMATE FUNDS UPDATE, <http://www.climatefundsupdate.org/listing/global-climate-change-alliance> (last visited Feb. 10, 2012).

¹⁴⁷ See *Least Developed Countries Fund*, CLIMATE FUNDS UPDATE, <http://www.climatefundsupdate.org/listing/least-developed-countries-fund> (last visited Feb. 10, 2012); *Funded Projects*, CLIMATE FUNDS UPDATE, <http://www.climatefundsupdate.org/projects> (last visited Feb. 10, 2012).

¹⁴⁸ See *Special Climate Change Fund*, CLIMATE FUNDS UPDATE, <http://www.climatefundupdate.org/listing/special-climate-change-fund> (last visited Feb. 10, 2012).

¹⁴⁹ See, e.g., Ramesh Jaura, *Africa Paves the Way for Climate for Development*, INDEPTHNEWS (Oct. 23, 2010) (arguing that while Brazil, Mexico, India and China enjoy hundreds of projects funded under CDM, Africa has only a handful of such projects), <http://www.indepthnews.net/news.php?key1=2010-10-23%2017:07:57&key2=1>.

¹⁵⁰ United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc No. 102-38, 1771 U.N.T.S. 107 (entered into force Mar. 21, 1994), <http://unfccc.int/resource/docs/convkp/conveng.pdf>.

¹⁵¹ United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, Particularly in Africa, Jun. 17, 1994, 1954 U.N.T.S. 3 (entered into force Dec. 26, 1994), <http://www.unccd.int/convention/text/convention.php?annexNo=0>.

¹⁵² Convention on Biological Diversity, Jun. 5, 1992, 1760 U.N.T.S. 79 (entered into force Dec. 29, 1993), <http://www.cbd.int/convention/text/>.

¹⁵³ Kyoto Protocol to the UN Framework Convention on Climate Change, Dec. 11, 1997, 2303 U.N.T.S. 148 (entered into force Feb. 16, 2005), <http://unfccc.int/resource/docs/convkp/kpeng.pdf>.

¹⁵⁴ Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Jan. 29, 2000, 2226 U.N.T.S. 208 (entered into force Sept. 11, 2003), <http://www.cbd.int/doc/legal/cartagena-protocol-en.pdf>.

¹⁵⁵ See Assembly of the African Union, Eighth Ordinary Session, Jan 29-30, 2007, *Decision on Climate Change and Development, in Decisions and Declarations*, Assembly/AU/Dec.134 (VIII); Assembly of the African Union, Eighth Ordinary Session, Jan. 29-30, 2007, *Declaration on Climate Change and Development in Africa, in Decisions and Declarations*, Assembly/AU/Decl.4 (VIII).

¹⁵⁶ Conference of African Ministers of the Environment, *Algiers Declaration on Climate Change* (Nov. 19, 2008), http://www.oss-online.org/index.php?option=com_content&task=view&id=622&Itemid=643&lang=en (last visited Feb. 14, 2012).

¹⁵⁷ See *First Meeting of the Conference of African Heads of State and Government on Climate Change (CAHOSCC) and African Lead Experts on Climate Change* (Aug. 24, 2009), .

¹⁵⁸ Tumusiime Rhoda Peace, *A Brief on AUC's Coordination and Engagement in Climate Change Negotiation Process 2* (2010), <http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0CC0QFjAB&url=http%3A%2F%2Fwww.docstoc.com%2Fdocs%2F74395348%2FCOMMISSIONER-Report-at-CAHOSCC-May-11-2010&ei=tON-T9eKH5GY8gTl3MmRDg&usq=AFQjCNHe6WwHSjraDWaH28kSQp9MAnAfsA&sig2=2T8InwYVwBwSSaNIRGqIdA>.

¹⁵⁹ See, e.g., Assembly of the African Union, Seventeenth Ordinary Session, June 30 – July 1, 2011, *Decision on Africa's Preparation for Seventeenth Conference of the Parties/Seventh Meeting of the Parties to the Kyoto Protocol*, ¶ 5, Assembly/AU/Dec.375(XVII), <http://www.au.int/pages/sites/default/files/Assembly%20%20Decision%20375%20-%20July%202011%20Engl..pdf> (requesting the CAHOSCC to convene a meeting to consider and take forward the updated African Common Position to CoP17/CMP7); *Addis Ababa: Africa prepares for Climate Change meet in Durban*, AFR. REPORT (Nov. 16, 2011), <http://www.theafricareport.com/index.php/north-africa/addis-ababa-africa-prepares-for-climate-change-meet-in-durban-50175382.html>; *Committee of African Heads of State and Government on Climate Change (CAHOSCC) Meeting*, STARAfrica.COM (Nov. 14, 2011), <http://www.starafrica.com/en/news/detail-news/view/committee-of-african-heads-of-state-and-202346.html>.

¹⁶⁰ See United Nations Environment Programme, Regional Off. for Afr., *AMCEN at a glance*, http://www.unep.org/roa/Amcen/About_AMCEN/default.asp (last visited Feb. 14, 2012).

¹⁶¹ See, e.g., AMCEN, Third Special Session, May 25-29, 2009, *Decision on the African Process for Combating Climate Change*, Annex II ¶ 6, AMCEN/SS/III/6 (May 28, 2009), (recalling the special role of AMCEN in the AU climate change framework), http://www.unep.org/roa/Amcen/Amcen_Events/3rd_ss/Docs/Decision-CC.pdf.

¹⁶² See AMCEN, May 25-29 2009, *Report of the Ministerial Segment of the Special Session on Climate Change of the African Ministerial Conference on the Environment*, AMCEN/SS/III/6 (May 28, 2009), http://www.unep.org/roa/Amcen/Amcen_Events/3rd_ss/Docs/MinisterialSegmentReport.pdf; AMCEN, Third Special Session, May 25-29, 2011, *Nairobi Declaration on the African Process for Combating Climate Change*, AMCEN/SS/III/6 Annex I (May 28, 2009), http://www.unep.org/roa/Amcen/Amcen_Events/3rd_ss/Docs/nairobi-Declaration-2009.pdf.

¹⁶³ See AMCEN, Fourth Special Session on Climate Change, Sept. 15-16, 2011, *Report of the Ministerial segment held on 15 and 16 September*, AMCEN/SS/IV/3 (Sept. 19, 2011), http://www.unep.org/roa/amcen/Amcen_Events/13th_Session/Docs/AMCEN-13-10_ENG.pdf.

¹⁶⁴ See AMCEN, Thirteenth Session, June 21-25, 2010, *Report of the ministerial segment from 23 to 25 June 2010*, UNEP/AMCEN/13/10 (June 25, 2010), http://www.unep.org/roa/amcen/Amcen_Events/13th_Session/Docs/AMCEN-13-10_ENG.pdf.

¹⁶⁵ NEPAD, ACTION PLAN FOR THE ENVIRONMENT INITIATIVE (2003), <http://www.nepad.org/system/files/Environment%20Action%20Plan.pdf>.

¹⁶⁶ See *id.*

¹⁶⁷ The AfDB, the region's multilateral development bank, has proved instrumental in the region's concerted efforts to fight climate change. Currently, it is exploring possibilities of establishing a regional climate financing mechanism.

¹⁶⁸ See NEPAD Planning & Coordinating Agency, *Climate Change and Natural Resource Management Thematic Area*, <http://www.nepad.org/climatechangeandsustainabledevelopment> (last visited Feb. 14, 2012).

¹⁶⁹ See *First Africa Energy Week Highlights Importance of Clean Energy*, AfDB (Nov. 3, 2010), <http://www.afdb.org/en/news-and-events/article/first-africa-energy-week-highlights-importance-of-clean-energy-7401/>; see also, Conference of African Ministers in Charge of Energy, Maputo, Mozambique, Nov. 1-5, 2010, *Resolution on the "All Africa Energy Week," AU/MIN/Energy/Res. 2* (Nov. 5, 2010).

¹⁷⁰ As the AU's Secretariat, the AUC has played a pivotal role in generally coordinating the various AU climate change initiatives. More importantly, it recently established a Climate Change and Desertification Control Unit to assist in tackling climate change concerns. Mention must also be made of the growing formidable partnerships with, among others, the AfDB, UNECA, UNEP, the UN International Strategy for Disaster Risk Reduction ("UNISDR"), NEPAD, RECs, and development partners.

¹⁷¹ The ClimDev-Africa Programme is a joint initiative of the AUC, UNECA and the AfDB, aims to enhance economic growth and sustainable progress towards the MDGs. It primarily focuses on mitigating the vagaries of climate change and climate-proofing development gains already registered. In this respect, it seeks to integrate Climate Risk Management (CRM) into regional development policies, strategies and programmes.

¹⁷² The initiative, which initially involved the planting of a 15km-wide forest belt ("green wall") across the continent, was conceived by the 11 countries located along the southern border of the Sahara, and their international partners. It is aimed at limiting the desertification of the Sahel zone, which is a transition zone between the Sahara in the North and Africa savannas in the south, and includes parts of Burkina Faso, Chad, Djibouti, Eritrea, Ethiopia, Mali, Mauritania, Niger, Nigeria, Senegal and Sudan. The idea was first proposed in the 1980s, and eventually presented to the AU in 2005. In January 2007, the AU Assembly adopted it, thereby committing the AU to fighting desertification in the region. See, African Union, 8th Ordinary Session, Jan. 29-30, 2007, *Decision on the Implementation of the Green Wall for the Sahara Initiative*, AU Doc. Assembly/AU/Dec.137(VIII); see also, Julio Godoy, *Great Green Wall to stop Sahel desertification*, THE GUARDIAN (Feb. 25, 2011), <http://www.guardian.co.uk/global-development/2011/feb/25/great-green-wall-sahel-desertification>.

¹⁷³ The program, funded by UK's Department for International Development (DFID) and the Ottawa-based International Development Research Centre (IDRC), has seen investment in enhancing linkage between conventional meteorological services and traditional weather forecast systems, especially in Western Kenya. See *Climate Change Adaptation in Africa*, IDRC, http://www.idrc.ca/EN/Programs/Agriculture_and_the_Environment/Climate_Change_and_Adaptation_in_Africa/Pages/default.aspx (last visited Feb. 14, 2012).

¹⁷⁴ The Programme was launched in 2008 by the UNDP in partnership with the UN Industrial Development Organization (UNIDO), the UN Children's Fund (UNICEF) and the World Food Programme (WFP), with financial support from the Government of Japan. It was established under the Japan-UNDP Joint Framework for Building Partnership to Address Climate Change in Africa, which was founded at the Fourth Tokyo International Conference on African Development (TICAD) in May 2008. Basically, it seeks to strengthen the capacities of the target countries to deliver a development agenda that makes steady progress towards the MDGs. See *About Us*, AFRICA ADAPTATION PROGRAMME, <http://www.undp-aap.org/about-us> (last visited Feb. 15, 2012).

¹⁷⁵ See SOUTH AFRICAN DEV. CMTY., <http://www.sadc.int/index/browse/page/52> (last updated Jan. 8, 2009).

¹⁷⁶ See AMCEN, Twelfth Session, June 7-12, 2008, *Subregional environmental action plans and the NEPAD national action plans on the environment – an introductory account*, UNEP/AMCEN/12/INF/2 (May 12, 2008), <http://www>.

unep.org/roa/Amcen/Amcen_Events/12th_Session_AMCEN/docs/Information/INF-2-SubregionalActionPlan.pdf; Abwao Kennedy, *East Africa Establishes Climate Monitoring Centre*, SciDevNET (Apr. 25, 2007), <http://www.scidev.net/en/news/east-africa-establishes-climate-monitoring-centre.html>; COMESA, *Climate Initiative*, http://programmes.comesa.int/index.php?option=com_content&view=article&id=80&Itemid=110 (last visited Mar. 17, 2012).

¹⁷⁷ See EAC SECRETARIAT, *supra* note 86.

¹⁷⁸ See U. N. Dev. Programme, *Local Responses to State Water Policy Changes in Kenya and Madagascar* (2006) (Richard R. Marcus), <http://hdr.undp.org/en/reports/global/hdr2006/papers/marcus%20richard.pdf>; the Water Act, Act No. 8 (2002), <http://faolex.fao.org/docs/pdf/ken37553-a.pdf>; the Forest Act, Act No. 7 (2005), <http://www.fankenya.org/downloads/ForestsAct2005.pdf>; the Energy Act, Act No. 12 (2006), <http://www.erc.go.ke/energy.pdf>; KENYA MIN. OF ENV'T & MINERAL RESOURCES (MEMR), NATIONAL CLIMATE CHANGE RESPONSE STRATEGY (EXECUTIVE BRIEF) (Apr. 2010), <http://www.environment.go.ke/images/complete%20nccrs%20executive%20brief.pdf> (explaining the Integrated Coastal Zone Management Policy); Min. of Env't & Mineral Resources (MEMR), *Climate Change Finance and Development Effectiveness in Africa: Kenya Climate Change Finance Experience*, <http://www.gcca.eu/usr/Min-of-Env-Kenya-CC-Finance-Experience.pdf> (explaining the National Climate Change Response Strategy); Ministry of Env't & Natural Resources, THE KENYA NATIONAL BIODIVERSITY STRATEGY AND ACTION PLAN (2000), <http://www.cbd.int/doc/world/ke/ke-nr-04-en.pdf>; Kenya Ministry of Finance, *Draft National Policy on Carbon Finance and Emission* (2011); See CONSTITUTION arts. 69-72 (2010) (Kenya), <http://www.kenyalaw.org/Downloads/The%20Constitution%20of%20Kenya.pdf>.

¹⁷⁹ See The Environment Management and Co-ordination Act., No. 8 § 9(1) (1999), <http://www.nema.go.ke/images/documents/emca.pdf>; See INST. FOR LAW & ENV'T GOVERNANCE (ILEG), CLIMATE CHANGE ADAPTATION & MITIGATION: WHAT ORGANIZATIONS IN KENYA ARE DOING 64-68 (Benson Owuor Ochieng & Maurice Odhiambo Makoloo, undated), <http://www.ilegkenya.org/pubs/docs/NGOs%20Booklet%20Final.pdf>

¹⁸⁰ The program focuses on research and capacity development to improve the capacity of vulnerable communities in Kenya to adapt to climate change. Naftali Mwaura, *Kenya Develop Broad Action Plans to Combat Climate Change*, AFR. SCIENCE NEWS, <http://www.africasciencenews.org/en/index.php/entertainment/52-environment/301-kenya-develop-broad-action-plans-to-combat-climate-change> (last visited March 23, 2012).

¹⁸¹ Kenya is one of the twenty African countries participating in the program, which aims to strengthen the country's institutional and systemic capacity to implement the NCCRS and to address the risks and opportunities presented by climate change. Kenya, UNDP-ADP, <http://www.undp-aap.org/countries/kenya> (last visited March 23, 2012).

¹⁸² KACCAL is a joint World Bank and UNDP programme that seeks to develop and pilot a wide range of climate change coping mechanisms for reducing the vulnerability of small holder farmers and pastoralists in the country. It was approved in 2009. WORLD BANK, PROPOSED GRANT FROM THE GLOBAL ENVIRONMENT FACILITY SPECIAL CLIMATE CHANGE FUND TO THE REPUBLIC OF KENYA FOR KACCAL (2010), http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2010/05/28/000333038_20100528011018/Rendered/PDF/390580PA D0P078101OfficialUse0Only1.pdf.

¹⁸³ This project seeks to remove market barriers to the adoption of sustainable biomass energy practices and technologies in schools, hospitals and restaurants by promoting adoption of highly energy-efficient cook stoves and establishment of woodlots. It was approved in 2009. VIOLET MATIRU & JASON SCHAFFLER, UNITED NATIONS DEVELOPMENT PROGRAMME, MARKET TRANSFORMATION FOR HIGHLY EFFICIENT BIOMASS STOVES FOR INSTITUTIONS AND MEDIUM-SCALE ENTERPRISES IN KENYA 3 (2011).

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