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10 January 2024

What does the AfCFTA Agreement provide for in respect of climate change?

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Effective policies are urgently needed in Africa to deal with climate-induced disasters. This will require high levels of political commitment, regional and domestic strategies, collective action, and vast resources. How will the AfCFTA contribute to these efforts?

The General Objectives of the AfCFTA Agreement are to create a single market for goods and services and, amongst other things, to "promote and attain sustainable and inclusive socio-economic development".[1] Sustainable development is elsewhere explained as "development which meets the needs of the present without compromising the ability of future generations to meet their own needs".[2]

Climate change is probably the most critical challenge to achieving **sustainable development**. It threatens the livelihood of millions of people. Changes in the earth's climate are driven by human activities, particularly fossil fuel burning, which increases heat-trapping greenhouse gas levels in the atmosphere, raising the earth's average surface temperature. Solutions will require far-reaching domestic reforms, structural changes in national economies and effective regional cooperation. The need to deal with climate change comes at a time when African nations struggle with many challenges, such as trade facilitation and infrastructural difficulties, high debt levels, and development-related problems. Many of them are Least-Developed Countries (LDCs), while several are land-locked or island states.

The AfCFTA State Parties have accepted obligations in multilateral and African Union (AU) legal instruments dealing with sustainable development and climate change. In 2015, the United Nations (UN) adopted the Sustainable Development Goals (SDGs); an initiative to reduce poverty and hunger and prevent the long-term consequences of climate change.

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[1] Art 3 AfCFTA founding Agreement.

[2] Monash Sustainable Development Institute, *What Is Sustainable Development?* https://www.monash.edu/msdi/about/sustainable-development/what-is-it

The UN's SDGs are incorporated in the goals of AU's Agenda 2063. The AU also adopted the *Climate Change and Resilient Development Strategy and Action Plan 2022 – 2023*.[3] The overall objective is to build "the resilience of African communities, ecosystems and economies, and supporting regional adaptation". It emphasises equitable access to sustainable development and the eradication of poverty, while recognising the specific needs and special circumstances of African countries. Regional cooperation is emphasised.

This Strategy aims to develop resource-efficient industry and make key sectors such as agriculture and food systems, water resources, energy, infrastructure and transport more climate-resilient. It also highlights the need to build on local and indigenous knowledge, and to create safety nets so that no one is left behind in the green transition.

The AfCFTA Investment Protocol[4] contains provisions on climate change and explains how investment can contribute to sustainable development. However, the impact of FDI on development is not straight forward. It depends on the type and quality of FDI, the sector, the host country's laws, policies, institutions, and its capacity to respond. African nations should ideally focus on renewable energy, E-commerce and logistics, sustainable tourism, and more broadly, circular economy development.[5]

The AfCFTA Investment Protocol draws linkages between sustainable development and climate change but says that the individual State Parties have an "inherent right… to regulate in their territories and to introduce measures in order to achieve their national public policy objectives".[6]

Chapter 4 of the AfCFTA Investment Protocol deals with *Sustainable Development-Related Issues*. Article 24 says each State Party:

> has the right to regulate, including to take measures to ensure that investment in its territory is consistent with the goals and principles of sustainable development, and with other national environmental, health, climate action, social and economic policy objectives and essential security interests.

[3] African Union Climate Change and Resilient Development Strategy and Action Plan (2022 – 2032)
[4] A draft Protocol on Investment was written up in January 2023. https://www.tralac.org/documents/resources/cfta/5176-afcfta-protocol-on-investment-draft-january-2023/file.html
[5] World Economic Forum, 2021. *Why foreign direct investment is key to Africa's sustainable recovery* https://www.weforum.org/agenda/2021/08/foreign-direct-investment-key-africa-sustainable-recovery/
[6] Preamble, AfCFTA Investment Protocol.

The State Parties shall ensure environmental, labour, and consumer protection, taking into account domestic policies, international best standards and relevant international agreements, and shall continue to improve their standards, domestic laws and regulations.[7] Each State Party has the right to determine its public health policies and laws, and to establish its own levels of domestic public health protection.

Article 26 of the Investment Protocol says each State Party shall:

> promote and facilitate investments that support actions to mitigate greenhouse gas emissions…; promote and facilitate investments that support initiatives conducive to the financing of regional climate mitigation and adaptation programmes; promote and facilitate investment of relevance for a fair and just transition in sectors such as renewable energy, low-carbon technologies, promote, facilitate and encourage new investment regimes, such as low or zero carbon Special Economic Zones; encourage investments that mitigate climate change impacts on exhaustible natural resources such as fresh water and biological diversity; and cooperate with the other State Parties on investment-related aspects of climate change policies and measures.

Certain aspects of these provisions need to be emphasised:

- Implementation is essentially about the promotion of new measures and the efforts of the different State Parties.

- The principle of Common but Differentiated Responsibilities is invoked. All states have a common duty to take climate related action but will vary according to their national circumstances.

- Regional climate mitigation and adaptation programmes will be of specific importance. Regional watercourses are obvious examples of why regional initiatives, and the relevant legal instruments of the RECs should be prioritised when fighting climate change.

- The linkages to industrial development are recognised. Low or zero carbon Special Economic Zones (SEZs) are mentioned as a new device to be used. It should however be noted that SEZs have already become a major focus point during the AfCFTA negotiations on industrial

[7] Art 25 AfCFTA Protocol on Investment.

development. Additional rules on SEZs' will be developed and a SEZ Registry be kept by the AfCFTA Secretariat.

Unlocking the potential of FDI for Africa's economic development will require far-reaching policy reforms. Attracting, facilitating, and managing FDI for Africa's economic development also comes with a huge governance challenge. When he participated in a panel discussion with several Heads of States at the World Economic Forum on Africa in Cape Town in September 2019, President Cyril Ramaphosa of South Africa acknowledged that for African countries to be on the rise and attract investment, they need to address governance issues, root out corruption and improve the ease of doing business.[8]

tralac gratefully acknowledges the support of its Development Partners

[8] SAnews.gov.za, 2019. *What Africa needs to do to attract foreign direct investment* https://www.sanews.gov.za/south-africa/what-africa-needs-do-attract-foreign-direct-investment