

# EVOLUTION OF CLIMATE CHANGE LEGISLATION

**BY: PATRICK BYAKAGABA (PhD)**  
**Department of Environmental Management**  
**Makerere University**  
**Email: [patrick.byakagaba@mak.ac.ug](mailto:patrick.byakagaba@mak.ac.ug)**

# Expected learning outcomes

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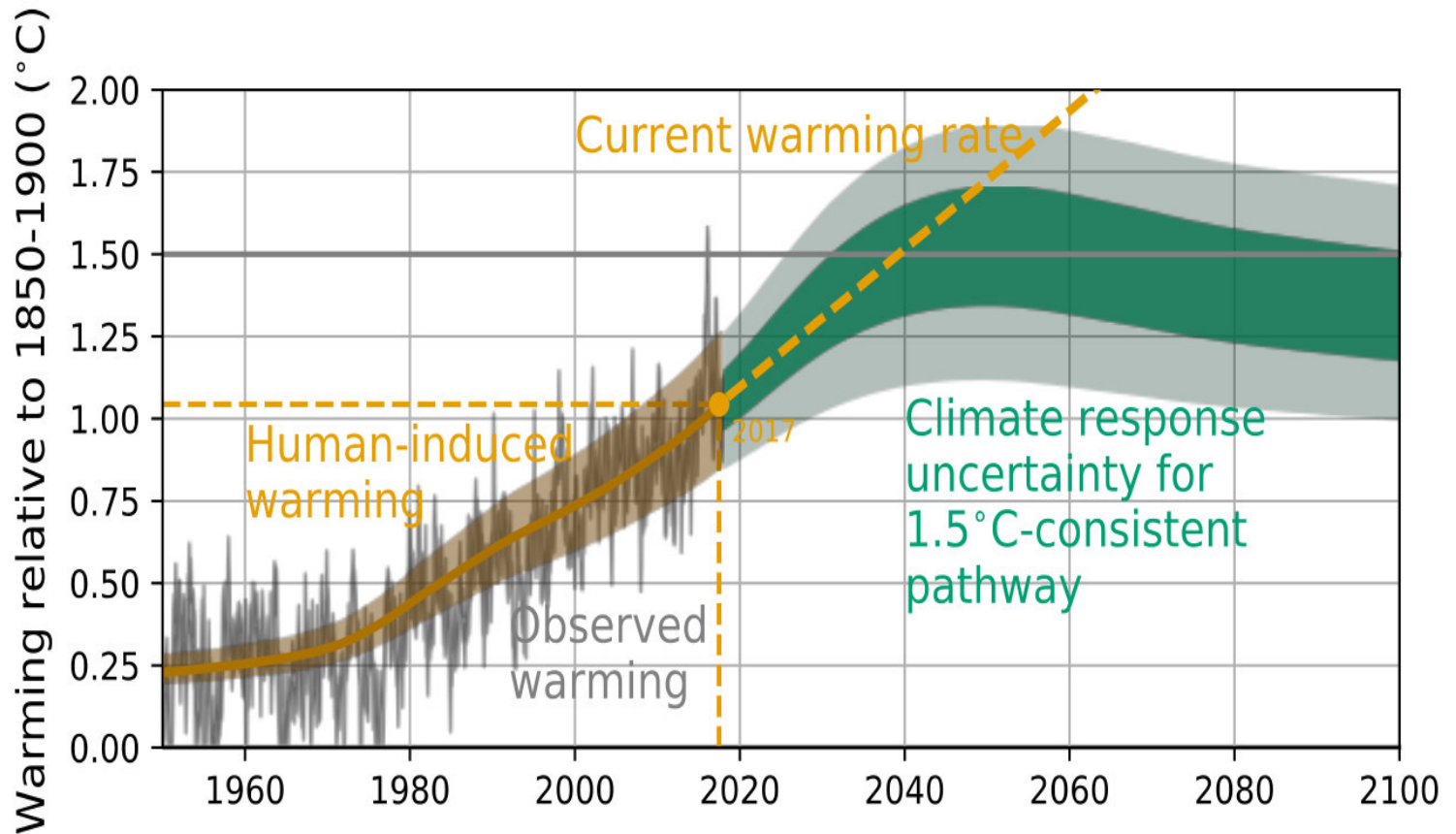
- Climate change science
- Historicization of global climate change legal framework
- Principles of national climate legislation
- Rationale for climate change legislation
- Forms of national climate change legislation
- Common aspects in national climate change legislation

# Introduction

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- Climate change is arguably the most significant current global environmental challenge
- GHGs that trap re-emitted heat are accumulating in the troposphere (the earth's lower atmosphere) due to human activities at unprecedented rates
- This is causing warming of the earth surface thus resulting into climate change

# Introduction



Source: IPCC Special Report on Global Warming of 1.5°C, Chapter 1 – Technical Annex 1.A, Fig. 12

# Impacts of Climate Change

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- Climate change affects health and well-being of the human population (heat waves, thermal stress, floods etc.)
- Affects agriculture because most crops are sensitive to changes in temperature and rainfall
- In Uganda, the costs of inaction are estimated at between US\$273 - 437 billion by 2050

Source: Ministry of Water and Environment, 2015. **Economic Assessment of the Impacts of Climate Change in Uganda.**

# Tracing Global Climate Legal Framework

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- Global debates on Climate Change begun in the 1950's into the 70's and 80's
- There was growing evidence from scientists in that period that GHG concentration was increasing thus causing rise in global temp and changes to the climate
- October 1985 the Vienna Convention for the Protection of the Ozone Layer was signed
- The aim was to reduce production of Chlorofluorocarbons
- 1986- The International Conference on the Assessment of the Role of CO<sub>2</sub> and Other GHGs in Climate Variations and Associated Impacts in Villach, Austria under UNEP, the World Meteorological Organization (WMO) and the International Council of Scientific Unions (ICSU).
- The conference generated an influential scientific consensus on the greenhouse gas problem.

# Tracing Global Climate Legal Framework

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- The conference suggested that policy makers needed to address climate change due to the potential threat it caused
- It proposed that development of a framework convention ought to be considered to address climate change
- 1987, World Commission on Env't and Development published "our common future"
- Climate change from CO<sub>2</sub> emission was among the environmental risks stated in the report
- The report recommended for international agreements to reduce GHG's
- 1988, UNEP and World Meteorological Organization formed IPCC to provide regular objective and scientific analysis on climate change
- 1992, UNFCCC was adopted at the Earth Summit in Rio de Janeiro
- It provides the institutional framework for international climate policy and legislation

# UNFCCC

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The aim of the convention is to prevent “dangerous” human interference with the climate system (Article 2)

## Key outcomes of UNFCCC

- The Convention set an ultimate objective of “stabilization of GHGs concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system”
- It urges governments to reduce the sources of GHGs in order to reduce global warming
- Industrialized countries are expected to take the heaviest burden for mitigating climate change

N.B “Dangerous”- is still fuzzy but globally informed by ecological and social impacts of temperature rise due to GHGs



# UNFCCC

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- Industrialized nations agree to support climate-change activities in developing countries by providing financial support above and beyond any financial assistance they already provide to these countries
- Industrialized countries have to report regularly on their climate change policies and measures
- Industrialized countries must submit an annual inventory of their greenhouse gas emissions
- Developing countries report in more general terms on their actions both to address climate change and to adapt to its impacts (National Communication to the UNFCCC)

**N.B The weakness with this convention is that it is not specific as far as emission reduction targets are concerned for industrialized countries.**

- Parties agreed to adopt the Kyoto protocol to address it (COP3)

# The Kyoto Protocol to the UNFCCC

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- 1997, The Protocol established emissions targets for each of the participating developed countries relative to their 1990 emissions levels
- Committed to reduce their over all GHG emissions by at least an average of 5.2 % below aggregate 1990 emission levels (Annex B has the target for each) during the commitment period 2008-2012
- It was the first international agreement with mandatory limits on GHG emission
- It was the first legally binding international agreement on climate protection
- The protocol emphasizes mostly reduction of CO<sub>2</sub> from fossil-fuel combustion by Annex B countries.

# The Kyoto Protocol to the UNFCCC

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## **Strategies for Industrialised countries to attain their emission targets**

- Afforestation and reforestation
- Emission trading among developed countries
- Enhance emissions-absorbing sinks, such as forests in other developed countries
- Clean Development mechanism (Article 12-Annex B implements emission reduction project in developing countries)
- Countries can agree to meet their total commitment jointly by allocating a share to each member (bubble)
- The total reduction of all member nations can be met collectively through the trading of emissions rights (umbrella)

## The Key Architectural Elements of the Kyoto Protocol

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- Ambitious, short-term emission reduction targets
- Full responsibility (targets) only for industrialized countries
- Flexibility provided through market-based mechanisms, such as tradeable permit systems;

## Weaknesses in the Protocol and how they are addressed

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- Non-ratifying countries are not sanctioned
- Absence of effective instruments for promoting compliance and participation

To address the limitations, protocol incorporated the following:

- Emission-reduction targets that are modest in the short-term, but increase in stringency over time
- Mechanisms such as growth targets intended to increase developing country participation over time
- Market-based instruments

# UNFCCC COPs and Paris Agreement

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- 1997 -onwards several COPs of UNFCCC held in an attempt to agree on additional limits on emission and to extend the reduction requirements beyond 2012
- In 2009, The Copenhagen Accord (COP 15) was adopted- the goal was limiting warming to below 2°C, with a review by 2015 in relation to a lower warming limit of below 1.5°C increase above pre-industrial levels
- The other COPs led to the signing of the Paris Agreement of the UNFCCC in 2015
- It is the 1<sup>st</sup> global Accord on climate change that contains policy obligations for all countries
- The overarching climate goal of the Paris Agreement is to hold “the increase in the global average temperature to well below 2 °C(**RED LINE**) above preindustrial levels and to pursue efforts to limit the temperature increase to 1.5 °C (**DESIRABLE**) above pre-industrial levels” (Article 2)

# UNFCCC COPs

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- Pre-industrial period is a time when fossil-fuel burning had yet to change the climate
- The IPCC uses the reference period 1850–1900 to represent pre-industrial temperature.
- This is the earliest period with near-global observations and is the reference period used as an approximation of preindustrial temperatures

# Paris Agreement

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- Each party is supposed to prepare, communicate and maintain **successive** NDC's every 5 years with text that guarantees progression over time
- Developed country parties are expected to provide financial resources to assist developing countries
- It leaves domestic policy to governments
- Provides for national policies to be subjected to international transparency system and global review
- Governments are expected to ensure successive policy plans (NDC's) are progressively stronger

**N.B NDCs are efforts by each country to reduce their emissions and adapt to the impacts of climate change**



# Key strengths of the Paris agreement

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- Principled obligation to act (legally binding provisions)
- Regularity and progression of National policy development
- International transparency and accountability
- Created political parity between adaptation and mitigation
- Contains legal provisions on mitigation, adaptation policies, international climate finance, and cooperative mechanisms such as technology transfer
- Encourages private sector to invest in low carbon investment

# National Climate Legislation

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- The UNFCCC, Kyoto protocol and Paris agreement have strengthened response to climate change
- They have led to a strong movement for national climate legislation to enable implementation of international commitments
- Climate legislation is informed and justified by notions of environmental ethics, human rights and inter-intra generational equity
- **Environmental ethics notion-** based on the understanding that human beings have personal moral obligation to reduce GHG emissions because personal reductions can make a contribution, if there is an obligation to address climate change

# National Climate Legislation

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- **Human rights notion-** based on the understanding the threat posed by climate change to “old rights” such as rights to life, health and subsistence (CC threatens subsistence rights like access to water, food, clean air)
- Others invoke the right to “adequate environment” as a human right
- **Inter-intra generational equity notion-** based on understanding of the need for “distributional justice”(climate is finite resource)
- Climate change can result into unjust distribution of harm within and between generations

# Rationale for CC legislation

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- Improves accountability of actions in relation to climate change
- Builds momentum for international commitments on climate change
- Enables implementation of international commitments such as the Paris Agreement
- Facilitates developing institutional infrastructure relevant for climate action

# Significance of National CC legislation

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- Legislation offers a means to adapt law deliberately to changing circumstances and for negotiating the range of issues and disagreement inherent in climate change
- Establishes authoritative and visible state sponsored commitments
- Provides enforcement and compliance mechanisms
- Provides predictable regulatory environment on climate change related matters
- Closes the gap between policy ambition and policy delivery

# Forms of CC legislation

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- Acts of Parliament
- Executive orders
- Decrees
- Strategies
- Development plans

NB. The National context and aspirations determine the form of legislation

# Common Aspects of CC legislation

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- Institutional arrangements
- Energy (Supply and Demand)
- Adaptation Climate risk
- Trade in carbon
- Landuse
- Research and Development

# Common Aspects of CC legislation

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- Reducing greenhouse gas emissions
- Maintenance of carbon sinks
- Green growth
- Climate resilience (focus of most developing countries)
- Mitigation and adaptation
- Transportation



# What constitutes a good CC law?

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- It should have provisions to ensure that the country has adequate information on emissions from all sectors and climate risk to inform adaptation
- It should provide targets on either mitigation or adaptation or both
- Coordination mechanisms across different levels of governance should be defined
- Roles of non-state actors should be defined
- Should provide for soft and hard instruments to facilitate compliance
- Enable climate justice (polluter pays, distributional equity in the burden of climate change, access to basic needs under CC)

# Further reading

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- Dimitrov, R., Hovi, J., Sprinz, D. F., Sælen, H., & Underdal, A. (2019). Institutional and environmental effectiveness: Will the Paris Agreement work?. *Wiley Interdisciplinary Reviews: Climate Change*, 10(4), e583.
- Calliari, E., D'Aprile, A., & Davide, M. (2016). Paris Agreement: Strengths and Weaknesses behind a Diplomatic Success. *Review of Environment, Energy and Economics (RE3)*.
- Dimitrov, R. S. (2016). The Paris agreement on climate change: Behind closed doors. *Global Environmental Politics*, 16(3), 1-11.
- Green, F. (2017). The normative foundations of climate legislation. In *Trends in Climate Change Legislation*. Edward Elgar Publishing
- Avi-Yonah, R. S., & Uhlmann, D. M. (2009). Combating global climate change: Why a carbon tax is a better response to global warming than cap and trade. *Stan. Env'tl. LJ*, 28, 3
- Rogelj, J., Den Elzen, M., Höhne, N., Fransen, T., Fekete, H., Winkler, H., ... & Meinshausen, M. (2016). Paris Agreement climate proposals need a boost to keep warming well below 2 C. *Nature*, 534(7609), 631-639.
- Alves, M. W. F. M., & Mariano, E. B. (2018). Climate justice and human development: A systematic literature review. *Journal of Cleaner Production*, 202, 360-375.
- Hare, W., Stockwell, C., Flachsland, C., & Oberthür, S. (2010). The architecture of the global climate regime: a top-down perspective. *Climate policy*, 10(6), 600-614.