
**CONFERENCE ON CHALLENGES AND OPPORTUNITIES OF CLIMATE CHANGE FOR
LAW, POLICY AND DEVELOPMENT
NAIROBI, KENYA 11TH – 12TH FEBRUARY 2015**



The objective of this conference was to provide a platform for a discourse on selected themes that are closely related to major challenges and opportunities for law, policy and development in the light of climate change particularly from the African perspective.

The conference brought together international and national legal experts from Eastern Africa who exchanged their views and shared their experiences on climate change related issues mainly from the legal, policy and development perspectives.

The conference was graced by **Justice Dr. Emmanuel Ugirashebuja**, Judge President of



the East African Court of Justice who delivered the keynote remarks at the official opening as well as **Mr. Friedo Sielemann**, Deputy Head of Mission of the Federal Republic of Germany in Kenya.

The main topics of discussion included the adverse effects of climate change, environmental justice and the rule of law, climate change from the perspective of human rights, gender justice and energy security, human security, disaster prevention and migration, as well as sustainable development regionally and locally.

Justice Ugirashhebuja delivering his keynote remarks. On his right is Mr. Sielemann

THEME 1: CLIMATE CHANGE: INTERNATIONAL LAW AND GLOBAL GOVERNANCE – SELECTED ASPECTS

*Co-chaired by **Hon. Martha Karua**, former Minister of Justice and Water, Republic of Kenya; and **Dr. Luis Francheschi**, Dean, Strathmore Law School*

Dr. Arnold Kreilhuber, (Legal Officer UNEP) noted that environmental governance should be looked at holistically and observed that environmental crimes have long been considered 'soft crimes' and have thus not received appropriate recognition they deserve. He pointed out that in recent times there has been an evolution of environmental crimes manifesting in organized criminal groups for financial reasons. These include; smuggling and illegal logging and trading of timber, illegal wildlife trade, and irresponsible disposal of hazardous waste to mention but a few, and therefore environmental law can no longer be considered soft law if the aforementioned crimes are to be dealt with appropriately.

He noted that attainment of sustainable development can greatly be enhanced through the application of rule of law by creating transparency in environmental issues, promoting access to information, public participation, strengthening of already existing interests, mechanisms and institutions such as tribunals and courts for environmental adjudication,

law enforcement agencies, legislative organs among others.



He called for increased efforts of collaboration in applying rule of law to environmental law issues noting that the nexus between rule of law and human rights in environmental protection can be seen through the interlinking of rights where environmental rights are a pre-condition for the enjoyment of other rights such as the right to life and health.

(L-R) Hon. Martha Karua (seated) and Dr. Kreilhuber

However, these environmental rights must be elevated from a pre-condition and in itself be considered a right.

He observed that in the past three decades, the application of the rule of law in environmental protection has been increased through the following ways:

- Courts have used broad interpretation in public interest litigation e.g. Supreme Court in Bangladesh
- Inter-generational/ intra-generational equity for future generation e.g. Public Trust Doctrine in Philippines
- Responsibility and liability for industry players
- Creation of specialized courts for the environment e.g. in Kenya

On his part, **Prof. Oliver Ruppel**, (Director DROP) discussed the challenge in defining climate change law. He noted that until climate change is defined sufficiently, it will be difficult to deal with climate change and its effects.

He observed that Climate change issues are complex and involve a degree of uncertainty and this requires the engagement of the government especially as relates to the enforcement of the law.

He viewed the law as a major instrument in mitigating the effects of climate change but noted that the numerous legal and technical procedures such as establishing who has the *locus standi* in environmental related matters, were posing a great challenge to its effectiveness.

In a bid to address some of the problems associated to climate change, he recommended the following;

- Establish a pool of dedicated environmental lawyers and a combination of expertise.
- Enhance the interrelation of climate change law with all other disciplines.
- Increase public awareness and participation
- Compensation of countries and persons experiencing loss and damage as well as establishment of grievance mechanisms for affected persons
- Integration of human rights considerations
- Monitoring the safeguard systems
- Availing legal aid for people affected by environmental injustices
- Establishment of an international environmental court
- Synergy in the implementation of policies at national, regional and international levels.

THEME 2: IMPACTS OF CLIMATE CHANGE ON HUMAN RIGHTS

*Chaired by **Rev. Prof. Dr. Aidan Msafiri**, Stella Maris University, Tanzania*

Dr. Arne Wulff, (Director KAS) pointed out that climate change is a natural phenomenon with adverse implications on human rights especially the right to life, health, food, water, shelter, security, enjoyment of personal property among others. He observed that refugees as a result of effects of climate change are not identified or anticipated in the existing legal frameworks thereby cutting out the most vulnerable segment of the human population. Whereas other refugees can go back to their homes, climate change refugees

can never go back due to the long lasting impact of environmental calamities. He underscored that the most vulnerable members of the society such as women, children and indigenous people face the greatest risk.

He noted that statistics indicate that Africa contributes the least greenhouse gases (GHG) emissions yet it will be the most affected by climate change. Consequently Africa may have the most economic refugees hence the need for the continent to play an active role in addressing climate change-related issues. He underscored the need for a global consensus on globally enforceable rules on emissions in every State.

Prof. Patricia Kameri-Mbote (Dean, School of Law, University of Nairobi) raised the issue of merging climate change responses and gender equality, specifically the fact that climate change exacerbates the issue of gender inequality. This is a major phenomenon in less developed regions where there are gender differentiated roles. She emphasised that gender discrimination needs to be eliminated and the use of a rights-based approach should be promoted and prioritized. She called for the establishment and strengthening

of mechanisms for carrying out the impact of the environment on gender policies at all levels.



THEME 3: CLIMATE CHANGE, MIGRATION AND HUMAN SECURITY

*Chaired By **Dr. Caroline Njuki**, IGAD*

Prof. Oliver Ruppel observed that 95% of the deaths arising from natural disasters recorded between 1970 and 2008 were in the developing world with most of those affected already exposed and vulnerable. He attributed this to the lack of disaster preparedness and challenged all to look beyond the already existing risks as the intensity of disasters is constantly growing. He pointed out that Climate change poses a threat to international peace and security as it creates competition for the scarce resources. He noted the need to define migrants caused by climate change if their plight is to be adequately addressed.

Idriss Ahmed Hared, (UNDP Djibouti) discussed the disasters in the Horn of Africa particularly the legal aspects addressing cross-border displacements which has often led to conflicts. He noted that since the region is clustered as Arid and Semi-Arid Areas (ASALs) it is susceptible to hazards especially drought.

He reported that the estimated number of migrants from the Horn of Africa was 107,000 in 2012. However, he reported that things were looking up for the refugees through the IGAD migration policy framework, the development of long term National Adaptation Plans and the upcoming international agreement on climate change in Paris.

THEME 4: FROM REGIONAL TO LOCAL

*Chaired by **Justice Dr. Emmanuel Ugirashebuja**, Judge President EACJ*

Dr. Yemi Oke (University of Lagos) raised the issue of the failure to reach a global consensus on climate governance. He stated that there is no globally binding legal instrument and for countries that have legally established environmental instruments, they have failed to implement them due to financial constraints and/or technological factors. He lamented that the demise of the Kyoto Protocol is likely to contribute to the lack of global cooperation. Furthermore, the implementation of the UNFCCC has been hindered by the principle of territoriality and sovereignty and therefore the need for regional cooperation instead of global cooperation. This was particularly important for Africa because of her vulnerability to Climate Change.

He shared the experiences of the SADC and ECOWAS regions noting the problem of eco-terrorism that has been brought about by the Boko Haram attacks in West Africa (ECOWAS) as well as the increase in rural-urban migration in both regions.

Dr. Robert Kibugi (CASELAP, University of Nairobi) discussed the issue of mainstreaming Sustainable Development into National Climate Change Responses. He proposed some normative elements on sustainable developments such as the integration and balancing of different interests of the environment, society and economy. This balancing of interests is treated equally in some countries, for example, Canada. In Kenya, the Constitution has the anthropocentric approach which guarantees rights to all players.

He mentioned legal character of sustainable development as an essential element. This includes opinion juris & state practice, constitutional norms and the implementation through statutory obligations. In Kenya, sustainable development is seen to be binding through governance as stated in Article 10 of the Constitution on National Values.

He suggested that sustainable development can be implemented practically through national planning, budgeting on methods of climate change response, the implementation of the principle of subsidiarity and the role of the public through public participation and consultations.

Various tools were proposed in the mainstreaming of Sustainable Development into Climate change responses and they include:

- Disaster risk reduction through mitigation and in the dealing with the aftermath

- Sustainability assessment mechanisms such as Environment Impact Assessments and Auditing which helps in sustainable decision making
- Constitutional imperative of Sustainable Development as a tool of governance
- Mainstreaming of functions in the public sector e.g. public health workers and engineers

The African notion of sustainability was seen as valuable as it not only looks at the economics factor but also at suitable practices and norms e.g. the Future Generation Fund in Nigeria was a practical response for future generations.

THEME 6: CLIMATE CHANGE AND ENERGY SECURITY IN AFRICA

*Chaired by **Prof. Geoffrey Wahungu**, Director General, NEMA, Kenya*

Dr. Elizabeth Gachenga (Strathmore University) shared on the topic 'Climate-friendly energy generation in Africa: Energy security for future development. She pointed out the difficulties in carrying out objective comparison of energy utilization in Africa due to limitation of generalizations, the diversity of African countries and the difficulty in obtaining data. However, she noted that 50% of the world population without electricity is found in Africa and about 70-90% of African countries rely on biomass as a source of energy which is not a clean source of energy.

She singled out lack of political will and conviction manifesting in a lack of urgency and lack of emphasis on renewable energy as two of the major challenges in utilizing climate friendly energy sources in Africa. Other factors are, high initial capital outlay, market barriers such as low subsidies and imposition of taxes, weak legal and policy environment and lack of expertise.

She called for the need to draft laws and adopt policies that are suited for and address African needs, emphasising the need for a delicate balance towards attaining sustainable development. This should incorporate cost benefit analysis, consideration on energy costs and examination of the socio-cultural context.



Prof. Dr. Emmanuel Kasimbazi (Makerere University) shared on the topic "An institutional framework for carbon sequestration in Uganda". This is the process of capturing and long term storage of atmospheric carbon dioxide. The regulation of carbon sequestration in Uganda is regulated at three levels including government institutions such as the Ministry of Water and Environment; development partners such as the World Bank Bio-carbon Fund, Royal Danish Embassy, Worldwide Fund for Nature and UNEP; NGOs and communities. The NGOs in Uganda such as ECOTRUST are working with small land owners to introduce them to the carbon market which is enhancing public participation in the process and aiding their economic empowerment. However, there lack of consolidated legal framework to govern this venture with several instruments scattered all over.

Hon. Eddie Cross (MP Zimbabwe) shared on the topic “Energy Security from a Zimbabwean Perspective” and highlighted the enormous potential that Zimbabwe has due to the rich deposits of natural resources which unfortunately had not been fully exploited. He observed that this was the case in many other African countries and challenged African States and the people of Africa to rise up and maximize on the potential the continent possesses for the benefit of the current and future generations.

THEME 7: CLIMATE CHANGE DEVELOPMENTS – WAY FORWARD

Hon. Eddie Cross posited that Africa needs to take control of the environmental issues and challenged the leadership to change and take responsibility because Africa is not only the next biggest economic frontier but it is also the most vulnerable to the effects of climate change if nothing is done now.

Dr. Ismail Wais underscored that unity is the key factor in solving African problems. However, this was not going to be possible if there was consistent instability within these units (States) that make up Africa. He singled out strong regional economic development and equitable exploitation of natural resources as some of the ways to achieving the African dream.

Judge Ugirashebuja underscored the importance of courts both national and regional in addressing some of the climate change challenges. As such, efforts should be made to incorporate the rule of law in matters environment and States should develop adaptation strategies through legal policies that are just.

At the end of the conference it was clear that every person and sector in the society has a role to play in safeguarding the environment and mitigating the effects of climate change. The need for continued engagement and discourse on the subject matter especially focusing on solutions to the challenges that were identified was highly recommended by all.