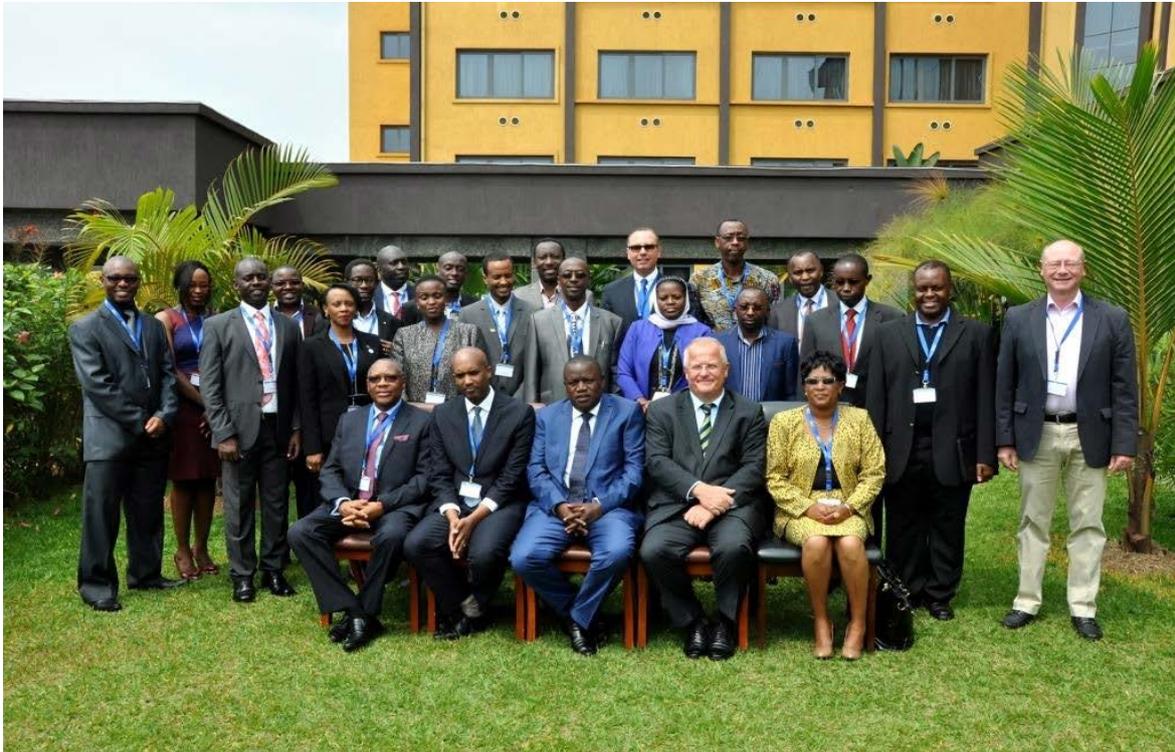


CONFERENCE REPORT



THE AGREEMENT OF THE UN CLIMATE CHANGE CONFERENCE (COP 21) IN PARIS: CHALLENGES AND OPPORTUNITIES FOR AFRICA

KIGALI / RWANDA / 10-11 FEBRUARY 2016

Compiled by Peter Wendoh and Anna Osure



INTRODUCTION

The Konrad Adenauer Stiftung (KAS) under the aegis of its Rule of Law Program for Sub-Saharan Africa in cooperation with The Development and Rule of Law Programme (DROP) of the University of Stellenbosch, South Africa, convened a conference in Kigali, Rwanda, from 10 to 11 February 2016, to reflect on the challenges and opportunities for Africa in the context of the Agreement of the United Nations (UN) Climate Change Conference, COP 21 (Paris Agreement).

The aim of the conference was to critically assess the challenges and opportunities arising from the Paris Agreement in an interdisciplinary manner and to evaluate how law, politics, finance and related mechanisms can further climate change justice and ensure protection mechanisms for the most vulnerable. Africa was identified as the most vulnerable continent with regard to the effects of climate change. The conference was jointly facilitated by the Director of KAS, Dr. Arne Wulff and the Director of DROP, Prof. Dr. Oliver C. Ruppel and moderated by Mr. Peter Wendoh, Project Advisor, KAS.

PARTICIPANTS

The conference brought together a pool of distinguished participants from the East African region drawn from diverse sectors. Setting the tone, the conference was opened by the German Ambassador to Rwanda His Excellency Peter Fahrenholtz, followed by a key note address delivered by the Principal Secretary of the State Department of Environment of the Republic of Kenya, Mr. Charles Sunkuli.



(R) H.E. Amb. Fahrenholtz addressing the delegates



Mr. Sunkuli delivering his key note address

Other distinguished participants who delivered presentations and engaged in discussions included the President of the East African Court of Justice (EACJ), Justice Dr. Emmanuel Ugirashebutja; the African representative on the International Advisory Council on Environmental Justice, Justice Philip Waki; the Climate Change Ambassador for Tanzania, Rev. Prof. Dr. Aidan G. Msafiri; Hon. Judith Pareno, Member of Parliament of the East African Legislative Assembly; as well as representatives from the United Nations Environment Programme (UNEP), the East African Community (EAC) Secretariat, the Rwandan Ministry of Justice, Pan African Climate Justice Alliance (PACJA), the Rwanda Climate Change Network, technical experts, academia, legal practitioners, Civil Society,

regulatory bodies in the environmental sector and the German Chamber of Commerce.



L-R: Justice Philip Waki (IACEJ), Justice Dr. Emmanuel Ugirashebuja (EACJ) & Hon. Judith Pareno (EALA)

THEMES OF THE CONFERENCE

The priority areas discussed were as follows:

- The different sides of the Paris Agreement
- A review of the Paris Agreement under International law, from various perspectives, judicial, academic, legal practitioners and multidisciplinary.
- A review of the Challenges and Opportunities of the Paris Agreement at the international, regional and national level.
- A review of Technical Challenges and Opportunities of the Paris Agreement.

SUMMARY OF THE PRESENTATIONS

Professor Dr. Oliver C. Ruppel, Director of DROP unpackaged the Paris Agreement and explained different sides of the deal. He shared experiences on the negotiations and gave insights on where we stand, as well as what we could contemplate on the way forward.

In light of international law, the President of the EACJ Justice Dr. Emmanuel Ugirashebuja led discussions on the pertinent issues arising from the Paris Agreement from a judicial perspective, while Dr. Robert Omondi Owino, a lecturer at JKUAT-Kenya, led discussions from the academic and legal practitioners' perspective. Rev. Professor Dr. Aidan Msafiri,

Tanzania's Climate Change Ambassador addressed a multidisciplinary perspective and emphasized the importance of having an integrated approach.

At an international level, Mr. Robert Ondhowe, Legal Officer UNEP, discussed the role of UNEP and shared insights on the challenges and opportunities for Africa.

Honourable Judith Pareno, Member of Parliament, East African Legislative Assembly spoke about the elaborate steps the Legislative Assembly had undertaken to address the effects of climate change in the region, future initiatives to strengthen the regional legal framework as well as the Assembly's commitment to ensuring that member states adhere to the ideals of the Paris Agreement.

Mr. Brian Otiende, the Climate Change Coordinator at the EAC Secretariat explained the role of the regional body in monitoring progress of member states and providing assistance to develop and implement national commitments, noting that similar efforts will be applied with respect to the Paris Agreement.

The civil society perspective was presented by Mr. John Bideri, Co-Chair, Pan African Climate Justice Alliance and Chair, Rwanda Climate Change Network while Mr. Andreas Kaiser, Head of the Energy Desk, AHK, highlighted the technical challenges and opportunities of the Paris Agreement particularly from the energy sector perspective. He also shared experiences from Germany that could be considered within the African context.

From the presentations, it was clear that the effects of climate change pose a great a challenge to both rich and developed countries as well as poor countries worldwide.

Among the key issues discussed was Africa's preparedness in contexts such as constitutional and legal requirements, issues of gender, and an understanding of the synergy of the Paris Agreement and Sustainable Development Goals (SDGs). The role of the law within a legal framework on climate change, accountability, transparency, enabling people to have access to justice, together with the role of politics and financial planning are elements that were seen to be critical to sustainable development.

In general, the Paris Agreement was viewed as having accommodated the views of African negotiators, although there was some divergence in views with respect to Africa's contribution during COP 21, where AU was not represented which some participants attributed to the apparent lack of a common strategy, coordination and resources on the part of African negotiators.

SUMMARY OF THE DISCUSSIONS

- **Analysis of the Paris Agreement and International issues**

The positive and negative sides of the Paris Agreement were analysed by participants, with emphasis being placed on the benefits of having an all-encompassing agreement with global support. The fact that there are no binding obligations was viewed as a major compromise for countries, with some legal practitioners preferring a legally binding agreement with

provisions addressing non-compliance as opposed to the aspirational language of the Paris Agreement which was perceived as strong on moral elements which are difficult to enforce through judicial mechanisms.

Participants indicated the importance of seeking guidance from the judiciary, in light of the aspirational language of the Paris Agreement, noting that the legal definition of a treaty concurs with the Paris Agreement. In the foregoing, the importance of the rule of law was emphasised, notably, sound legislation as well policies that can be implemented and can enable citizens to demand for their rights before a court of law. The immediate challenge that was identified at individual countries level especially from the African perspective, is how to translate the Paris Agreement into law, bearing in mind that some states are monist while others are dualist.

In spite of the aspirational language of the Paris Agreement, there was optimism that judges at both regional and national level can give meaning to its provisions if a matter is brought before the courts, as long as legal practitioners present creative and innovative submissions. If for example certain conduct is in breach of a provision of the Paris Agreement, the judges can indeed make a finding of a breach of the objective and purpose of the Agreement.

Other weaknesses and discrepancies identified from the Paris Agreement include;

- The elimination of the compensation for loss and justice
- The shunning of obligatory and compulsory language as regards the financial component
- The lack of clarity on the part of the Agreement as to whether it is a treaty or package, and also its inadequacies on ethical and value based approach.

There was consensus that measures and mechanisms to address some of these shortcomings could be put in place through policy and further engagement by stakeholders, bearing in mind that issues of climate change require a long-term stable solution.

In the context of a multidisciplinary approach there were observations that it is of essence to look at what the Paris Agreement means for Sub-Saharan Africa legally, technologically, environmentally and politically, as well as its weaknesses, methodologically and technologically. The role of investors was singled out as critical to look into. The strength and methodological, legal, ethical and justice breakthrough of the Paris Agreement was also analysed.

It was suggested that a way forward was needed to navigate the numerous multidisciplinary processes and that Africa needs to own the process by ensuring that politicians, lawyers, policy makers, business leaders, the private market and NGOs bring climate change knowledge and awareness to the forefront. Thus, awareness should play a prominent role in cultivating knowledge and sensitivity to climate change issues at all levels.

- **Regional and National issues**

It was observed that East Africans are increasingly becoming aware that they can engage the East African Legislative Assembly (Legislative Assembly) on climate change issues and it can

pass the necessary laws which are superior to national laws. In the foregoing, there is an opportunity for East Africans to engage regional organs such as the Legislative Assembly on issues pertaining to progress being made post the Paris Agreement with a view to harmonising and aligning these efforts and laws at a regional level. In the event of failure of any member state to align its laws with the regional law, either a state or an individual can go before the EACJ to seek enforcement orders.

A key drawback in passing legislation before the Legislative Assembly is that each country must individually review and sign the law, which inevitably causes delays. There were concerns that the EAC seems to be playing catch up with some countries notably Kenya, having already drafted a Bill on Climate Change.

In addition to layers of decision making causing delays in implementation of laws at a regional level, it was also observed that most institutions are underfunded and under resourced. They need funding and capacity building to be effective.

While a more proactive approach by the African Union (AU) and EAC was seen to be of essence, it was observed that EAC had some limitations due to its nature of participation. EAC participates as an observer at negotiations involving states and backstops country delegations by monitoring, tracking and seeing how partner states are responsible for decisions.

However, it was noted that EAC is promoting Africa's renewable energy initiatives and the Paris Agreement, but emission reductions have not been a priority so far.

As a way forward, the EAC in its coordinating role will address climate change issues arising from the Paris Agreement in March 2016 when ministers are due to meet. In the interim, the EAC will first wait for countries to make their submissions.

At a national level, it was observed that some countries have already put in place strategies to address concerns raised by climate change, and shown commitment to ensure that they are prepared. Rwanda was singled out as leading in the region. Kenya has also brought in professionals to spearhead climate change programmes and recently agreed with donor agencies to spearhead green growth with the assistance of a focal point who was appointed to ensure climate change adaptation.

- **Civil Society at the international, regional and national level**

The role of civil society in raising awareness was addressed at the international, regional and national level by participants. Civil Society was identified as an ideal player in promoting awareness at the grassroots level. However for this to bear fruit, it was noted that civil society requires the support and cooperation of other stakeholders. This calls for strengthened coordination, communication and collaboration with the state, academia, the private sector and other stakeholders with partnerships being set up to create a framework for awareness programmes to be put in place.

Such a structured and all-inclusive manner of engagement would create an environment that encourages everyone to feel that they are part of the solution and to ensure that the

importance of climate change and the Paris Agreement is recognised by all stakeholders from the bottom of the pyramid to the top. As concerns the level of engagement of civil society prior to the Paris Agreement, it was noted that communication strategies were perhaps not effective and may have contributed to the appearance of exclusion at the grassroots level.

To underscore the importance that KAS attaches to this subject, participants were informed KAS' Climate Change Program for Africa based in Cameroon which in collaboration with other stakeholders will contribute to social awareness and economic development in matters Climate Change and environmental protection in general.

- **Technical Challenges and Opportunities of the Paris Agreement**

It was noted that Africa has a better chance of leading the way insofar as production and utilisation of renewable energy is concerned. Therefore, making renewable energy a priority in Africa was discussed, with focus on renewable energy sources such as solar, geothermal, biogas, wind energy production among others seen as the solution to the huge deficit of energy on the continent and the key to the continent's developmental agenda. In this case, and from African perspective in particular, participants were in agreement that climate change is not solely a negative problem or a cost, but is also a commercial opportunity for the continent.

In order to maximise on this potential, Africa was challenged to borrow a leaf from working models in other jurisdictions such as Germany where the private sector is actively involved and asked for more stringent laws in matters concerning climate change. Here, the private sector saw economic opportunities in climate change and adopted a proactive approach. In order to secure Africa's future, the need for more controls to stop fake products from finding their way into African countries was also highlighted.

RECOMMENDATIONS

At the end of the deliberations, participants sought to identify key areas that Africa as a continent and individual States should focus on in line with the ideals and objectives of the Paris Agreement.

Participants were in agreement that African countries need to *inter alia*,

- enhance awareness of climate change issues among all stakeholders and at all levels of society, including early involvement and teaching of the young children how to treat the environment;
- pass necessary legislation at the regional and national level;
- sign and ratify the Paris Agreement;
- improve on negotiation skills to ensure that Africa's concerns are well articulated, are made known and are addressed at international fora; and
- speak with one voice on climate change issues.

As a way forward the following recommendations were agreed upon:

1. African States to implement and support efforts to prioritise the use of renewable energy.
2. African countries should raise awareness on the Paris Agreement and effects of climate change in general through the media, civic education and incorporation in the school curricula. For effectiveness, all stakeholders at all levels including State actors, civil society, private sector, academia and the general public must be involved and must each play an active role in contributing towards the attainment of the targets set in the Paris Agreement.
3. Political leadership and the private sector should champion climate change issues in each region.
4. States and regional bodies to take necessary steps in enacting appropriate legislation in line with the Paris Agreement, in addition to putting in place all the necessary operationalization mechanisms.
5. African Union platforms that exist for climate change issues to be more proactive and to cultivate the right environment to enable African countries to speak with one voice on climate change issues.
6. Regional bodies to marshal member states to sign and ratify the Paris Agreement.
7. All African states to mainstream and include climate change issues in their policies, programmes and developmental plans.
8. Due to the multidisciplinary nature of climate change issues, African states should endeavour to build the capacity of all key players in the various disciplines on the effects of climate change, the provisions of the Paris Agreement and effective ways of mitigating and establishing adaptive mechanisms.
9. African States to ensure that SDGs compliment Paris Agreement decisions and any subsequent decisions.

CONCLUSION

The conference provided a platform for a broad range of participants from a variety of disciplines to analyse, critically assess and review the challenges and opportunities for Africa in the context of the Paris Agreement. The participants made recommendations that will be shared with African countries to inform on the way forward, and implement the Paris Agreement which is viewed as a milestone with regard to global efforts to combat the effects of climate change.