



GREENWATCH



Workshop
training
report
2020

**SECOND ANNUAL JUDICIAL TRAINING ON
CLIMATE JUSTICE IN UGANDA**

GREENWATCH



REPORT

ON

THE PROCEEDINGS OF THE SECOND ANNUAL JUDICIAL TRAINING ON CLIMATE JUSTICE IN UGANDA

Theme: Climate Justice; Ensuring a more sustainable and equitable society.

Dates: Thursday 10th and Friday 11th September 2020.

Venue: Judicial Training Institute, Nakawa



Acronyms

JTI	Judicial Training Institute
IPCC	Inter-Governmental Panel on Climate Change
NDC	Nationally Determined Contributions
UNFCCC	United Nations Framework Convention on Climate Change
GHG	Greenhouse gas

Executive Summary

Climate change impacts can be seen and felt everywhere, but its effects are greater in some parts of the world than others, and some groups of people are more vulnerable to these impacts such as drought, flooding, landslides, and disease outbreak than others and this is particularly true for Uganda. Uganda is among the countries that has contributed least to climate change yet it is one of the most hit by these impacts as experienced in the last two decades. Uganda has low capacity to ameliorate the consequences of climate change.

National climate policy should therefore focus on mitigating further climate change and on helping especially the poorest and most vulnerable groups to adapt to the consequences.

On 10th – 11th September 2020, Greenwatch in conjunction with the [Judicial Training Institute](#) with support from True Cost Initiative through the Environmental Law Alliance Worldwide (ELAW) organized the second judicial training on climate justice in Uganda. Among the objectives of the training was to introduce the Judges, Registrars and Magistrates to the concept of climate justice, to enable them to develop and implement effective approaches to adjudicate climate change disputes at the national level, adoption of improved implementation of climate change frameworks, increased awareness, knowledge and understanding of Uganda's climate change obligations under the Paris Agreement.

Among the objectives of Greenwatch include;

- Publish and publicize environmental laws and principles with emphasis on enforcement of the citizen's constitutional right to a clean and healthy environment.
- Ensure environmental law principles are incorporated in all Government and Local Government policies and legislation.
- Ensure all public officials and policy makers have sufficient knowledge of environmental law and principles and apply them when they make their day to day decisions.
- To ensure that all judicial and law enforcement officers have sufficient training in environmental law.

This report presents the proceedings of a two-day programme of presentations, and interactive dialogue.

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1) DAY ONE

a) Opening Session

His Worship Angualia Moses Gabriel moderator, welcomed the Honorable Chief Justice Alfonse Owiny-Dollo, Executive Director Judicial Training Institute Honorable Justice Damalie N Lwanga, The Director Greenwatch Samantha Atukunda K. Mwesigwa and participants to the training comprising of supreme court judges, constitutional court judges, high court judges, the registrars, magistrates and chief magistrates.

Justice Damalie N Lwanga the Executive Director JTI said that the “subject of climate change is very important and it should be a subject of interest to all Ugandans because it’s a matter of global concern”. She highlighted the need to prevent these adverse effects which are already being experienced globally. Uganda being a developing country is highly susceptible to the adverse impacts of climate change which threaten the country’s agricultural sector, the shared natural resources especially water and ecosystems

The government must therefore ensure sustainable development that will improve livelihoods and security especially among the underprivileged. Climate justice is relatively a new concept in Uganda. In particular, the field of litigation and adjudication of these cases is still at a premature phase. It therefore becomes relevant to engage and build the capacity of all stakeholders who contribute to access of justice and environmental law enforcement.



Hon. Lady Justice Damalie N Lwanga- the executive director judicial training institute giving her opening remarks

Objectives of the workshop

- Giving judicial officers the opportunity to learn, understand and appreciate issues relating to climate change and climate justice because the judiciary plays a big role in influencing policies that will develop coping strategies and adjustments to climate change
- Promote awareness of the international law policies and climate change initiatives among the judicial officers. This will enable courts to positively adjudicate climate change matters and also provide tools for continued learning and reference.
- Enforcing compliance with the national laws and harmonizing the existing laws with the international rules, standards and practice. Judicial officers need to know the provisions in the various environmental laws that address climate change in order for them to ably apply them. It is important to develop and implement effective approaches for adjudicating climate change issues at the national level.

Opening Remarks:

Chief Justice Alfonse Owiny-Dollo opened his remarks by laying down his vision and policy by acknowledging that access to justice and peace entirety is going to build the whole mark of his administration. *“For the five years that I will head the judiciary, access to justice which wholesomely will be my signature trade mark identity. I acknowledge that the theme of the training is ‘Climate Justice Ensuring a More Sustainable and Equitable Society’ is in line with our mandate to resolve disputes”.*

Judicial officers serve a wider spectrum of our society to resolve disputes by applying and interpreting the laws of the land. The people have trust in the courts and they expect timely, meaningful and fair judicial decisions. Knowledge of these substantive matters is the drive way through which you will be able to serve society better. A well trained workforce is certainly a contributory factor to any nation’s stability and economic transformation.

The chief justice argued that the training is going to give necessary expertise to the Judicial Officers to handle complex climate related cases that are bound to be brought courts. The importance of judicial training arises from the need to cope with the changing trends world over. Training must be encouraged to equip judicial officers with the most current developments happening around the world not only in judicial matters but other disciplines as well.

His personal experience comes with childhood memories of what characterized the rainy season with mist every morning which is no longer the case because all the swamps and wetlands have been encroached. There is currently increased decline in ecological diversity world over due to several unregulated human activities. Engagement of stake holders in the protection of the environment is vital in fostering interventions including judicial work. It is our responsibility as an arm of government concerned with ensuring the rule of law to promote protect and fulfill the rights of the people we serve.

Ensuring intergenerational equity and preserving resources in trust of is the responsibility of all. The court too has a responsibility towards the realization of the sustainable development under SDG number 16 and that’s the need for training and skilling of officers of the law.

He urged the present generation to keep this land which belongs to our grandchildren and hand it over to them quoting a Ghanaian proverb. It means we must protect so that when the true owners come in the future they find it the way it should be. The Chief Justice looked forward to further trainings in these critical areas. *“We look forward to similar engagements in the near future in our quest to sensitize and train our judicial officers on climate change and justice”*.



Hon Justice Alfonse Owiny-Dollo the Chief Justice of the Republic of Uganda officially opening the Training at the Judicial training institute

Justice Linda Tumusime pledged that *“we shall perform our duties and gain as much skill as we can in these two days for the betterment of justice in this country”*. She commended the JTI for being progressive for training and expanding the scope of their knowledge to enable them deliver justice to the vulnerable people of the republic of Uganda.

Samantha Atukunda Mwesigwa the director and legal Counsel at Greenwatch Uganda was proud to say that this year Greenwatch celebrated 25 years of environmental conservation advocacy. She appreciated the long good standing relationship of 17 years Greenwatch and Judicial Training Institute have had and the first judicial training that Greenwatch ever held on environmental law and protection was in 2003.

“My role this morning is to welcome you to this judicial training and I take this opportunity to welcome you once again. Green watch started in 1995 and the reason why the organization begun was to enforce the right to a clean and healthy environment. At the time the 1995 constitution had just been promulgated and there was article 39 and the founders of the organisation felt it best to establish an organisation that would help to enforce this right and that is one of the reasons why we exist”.

b) IPCC and its role, Climate Change Science, Impacts and Response

Dr. Lwasa Shuaib, Associate Professor at Makerere University presented on the background of Inter-Governmental Panel on Climate Change (IPCC), he noted that IPCC was created in 1988 by the UN General Assembly and endorsed by action of the United Nations Environment Program under the World Metrological Organisation which jointly established IPCC and today IPCC has gone through cycles of assessment with various special reports and technical reports with multiple bureaus.

He said that IPCC Report should be neutral with respect to policy and is expected to be done objectively with scientific, technical and socio-economic factors relevant to the application of particular policies but not policy prescriptions and they don't tell member states what they should be doing in respect to climate change but provide various options which can be adopted and /or adapted by the different member states

He noted that the Intergovernmental Platform on Biodiversity and Ecosystems services (IPBES) has indicated that there is no local system unit on the planet that doesn't have a footprint of human activities. The oceans have been impacted much more seriously lately by looking at the different beaches and because of that, there is a systematic observed change in surface temperature over time. Between 1901 and 2018 as data indicates an increase that averages between 1.2°C to 1.5°C according to the most recent assessment. In the same way, precipitation has also changed. A lot of areas are receiving much more rainfall whereas other areas globally are receiving much less rainfall. The examples that have been going on in the last eight months that you can reflect on are the fires in California and Australia.

He said that floods in Pakistan and Sudan which the media is ironically attributing to current rainfall experience but if you remember the dry period of June/July, in this region the whole of January we received rain and this is the catchment for the Nile so the waters travelling over or through the Nile are only reaching Sudan around this time causing floods, knocking down all the water levies in Sudan just as an example to show that there is disproportionate distribution of rainfall just like temperature and the influence of all this in the planetary system comes from our activities and the activities are the ones that lead not only into carbon dioxide emissions but also manned CO₂ emissions like methane and Hydrofluorocarbons (HFCs) that are happening globally leading to radiations which are forcing temperatures to about 1.5 degrees.

Under physical science basis, the report was published last year, the objective was mainly to try and identify pathways for mitigating climate change and limiting the global warming to 1.5° C or 2°C and in the report there are five pathways of limiting that but none of those pathways would actually allow the limiting the warming to 1.5 degrees without an authorship.

In other words, whether we do indication now or adapt the warming will surpass 1.5 degrees by as the models indicate by 2080 to 3000 and that means that we have to do more about mitigation and some of the key industries that were identified to reduce the warming, include urban infrastructure, industry, energy and land change and the risk of 1.5°C varied for different regions, countries and communities.

He noted that the Arctic and Antarctic are warming faster. In the past three months, the Arctic experienced the highest ever recorded temperatures in summer of over 40⁰C but we are also seeing the sea level rise and much more aggressive and powerful cyclones and typhoons, the most recent being the one that hit South Western Japan all the way to Korea now. Other sectors like tourism, agriculture, fishing, urban systems and infrastructure have been also at high risk and the climate extremes are becoming common.

In terms of Africa and Uganda, he pointed out the literature and science which shows that we are actually experiencing heat waves but because they are not named, they have not been part of the climate system that we know, we don't have much response about heat waves.

The risks are many and it is important to reflect on laws in respect to what is likely to happen in different places on agriculture, food, security, urban systems and infrastructure but also high exposure of highly vulnerable communities and we need to act very fast as part of the response to limit the warming.

As the lead author on chapter six on synthesis and integration, they came to a conclusion that land is where we live and it is under growing human pressure but land is part of the solution yet cannot do it all. So we need to combine efforts not only on land but also energy and industry and even institutional systems to make them much greener in terms of procurement, activities, proofing, adaptation that is used to build resilience to communities.

He emphasized that land is critical for many things such as food, water, health and wellbeing but the climate change is adding to this pressure and the situation is actually becoming worse which means we have to change the way we grow food, the way we produce it.

We have to work on deforestation had to be reduced that and we also have to work on the drivers of climate change in a coordinated manner so that there is simultaneous involvement of land, food security and nutrition to reduce hunger and poverty in order to leave no one behind and these actions are urgent now and every institution has a role to play in accelerating adaptation but also mitigation actions in order to limit the warming and also reduce the vulnerabilities of different communities and the impact of climate.

There is a study that was done on the most recent floods in the Teso region, Eastern Uganda as well as Karamoja region in 2007 and 2011 and the impact on different socio-economic systems like education, infrastructure, agriculture and knowing that Teso region is a food basket for certain types of crops and Karamoja is also the basket for meat and milk products. Almost 60% of the meat in this country comes from that region and as such the impact of climate change is serious and therefore actions need to be accelerated with participation of communities and utilizing the local and indigenous knowledge, so they did a lot of work in Karamoja and we realized that actually Karamoja's ecosystem is affected by climate change.

He urged government, the communities and other interested parties that they need to re-invoke the traditional system of managing resources and grazing to allow temporary migration for grazing because basically what the Karamojong do is that they follow their water whether that water is

blue or green somewhere in Lango or Acholi or Teso or Bugisu and it is also true for the Pokot and Turkana and is also true for people from South Sudan.



Professor Shuaib Lwasa making his presentation to participants on Zoom call

In his concluding remarks he emphasized the urgency to take action on climate change and there is no doubt given this training and this presentation the importance of institutional transformation including the Judiciary, the financing, the parliament and decision making systems, administration at all levels also need to embrace and understand the climate risk in different locations of the country and be able to include and mainstream activities that will make the society resilient.

He gave an example, of the risk in the Elgon mountains currently it is very much driven by the geology and human land use change but also catalysed by climate change because when you have excessive precipitation in that region which falls on land that is cultivated and is almost devoid of vegetation and therefore the hydrology of the soil is changed, that translates into cracks and then eventually when the tipping point is reached with the precipitation then you have landslides.

Plenary on climate change, its impacts and possible responses

Participants were invited to ask questions and make comments.

Justice Henrietta Walayo noted the landslides in Mount Elgon area, she asked what has been done to mitigate those effects of climate change and land use?



Hon Lady Justice Henrietta Wolayo from execution and bailiffs’ division of the high court inquiring about the Elgon landslides

Senior Resident Judge Fort Portal Hon. Lady Justice Jane Alividza remarked that she happened to have stayed in Kasese for about ten years and interacted with the population in Kasese, and also suffered the consequences of river Nyamwamba. As the population grows, people have to look for where to live and how to survive in all sorts of ways including invasion of the Queen Elizabeth national park. The natives think that they are more important than the animals, they don’t even think about the crops and all the green aspect of it.



Hon Lady Justice Jane Alividza inquiring from Professor, “How are you helping us and our government to manage the population against damaging the environment while at the same time taking into account that they have to survive?”

His Worship Angualia Moses Gabriel said; “Recently we experienced a surge in the level of Lake Victoria. It went so high and the country recorded the highest ever level that the lake had attained. The government came up through the ministry of water and environment and said that this level is due to encroachment along the rivers that serve the lake and yet we could visibly see that rainfall was excessive and there was no way the floods could not end up in Lake Victoria. In your view, was that a good and correct explanation for the rise in the level?”

Dr. Lwasa Shuaib cautioned the participants not to attribute those events and disasters to only climate change. There are other drivers and those drivers when they come together lead to some of these disasters so each of these questions is about that except the one on population. About the surge in Lake Victoria didn't think that that was a comprehensive answer and response from the authorities on what is leading to the Lake Victoria level increase.

It is an event which is part of a much longer cycle of a period of almost thirty years. Therefore, what we are seeing in terms of the surge of Lake Victoria levels is not only explained by encroachment and the clearest data is the most recent rains from September, October, and December.

He noted that government institution has not taken advantage of the scientists, they have not taken advantage of institutions like Makerere so that they have collaborative arrangements which are long term so that they are not adhoc to answer some of these questions that you can hardly say yes or no. It is a very complex question and I don't think it is the right question, so encroachment is not the only driver for the rise of levels of Lake Victoria.

His expertise is urban spatial planning and sustainability and he has been talking to different government officials, different entities and advising them that there is need to re-strategize and rethink of cities to take up what excessive labour in rural areas. If you go back to Kasese or any other places like Kabuyanda in Isingiro, you will find a lot of youth in trading centres that could be used highly in terms of labour, is only utilized up to maybe 15% or even 20% and that excessive labour needs to take advantage of jobs that are not necessarily primary based jobs in agriculture and that requires rethinking and planning cities and creating opportunities in cities.

Unfortunately, the existing institutional arrangements do not allow that and it is a bit frustrating on their part when they advise and it is not listened to.

The quickest and most reliable means through which some of those disasters in the Elgon region can be addressed include reforestation and afforestation with species of trees and other shrubs that actually would improve the soil hydrology, if that is done, some of those areas can still support high a population density. He noted technologies like those in Kabale region in terms of terraces, if they could be adopted in that region, some of the people in Elgon can still be supported instead of being moved out of the region but still reduce the risk of the landslide and soil creeps that are very chronic in that particular region.

Hon Lady Justice Esther Nambayo, Judge of the High court when it comes to the heat waves, what are you the experts doing to help Ugandans know that we are now experiencing heat waves and how do we guard against the effects of heat waves? Because I remember some time back I

think it was reported that an American who died in northern Uganda due to a heat wave, so how can you guide the nation and how can we be prepared to guard against the effects of heat waves?



Hon lady Justice Esther Nambayo asking about the heat waves

Hon Justice Emmanuel Baguma, Judge of High court. What is your view about the basic response to balance the interests of people to have a clean environment vis-à-vis the government policy of industrialization which in most cases affects people's clean environment?

Hon Lady Justice Jane Alividza, Senior Resident Judge of Fort Portal. I am interested in knowing the impact of IPCC on the global dynamics of climate change. How are the interests of the least developed countries protected in relation to developed countries? Maybe I missed something but this is I think an international panel made up of different governments. How are those dynamics handled? Do you have any impact?

His worship Daniel Bwambale, Don't we risk being seen as pursuing an elite agenda as against the interests of the broader masses in relation to climate change, because when you go to Elgon or Kasese for that matter, the question is always we need to survive and you people are coming in four wheel vehicles to tell us that trees or the animals are important.

How do we change that narrative that climate change even on a global scale in the developed world is a liberal agenda as against the needs of the broader majority who have real and very present existential threats?

In relation to Uganda, you are almost preaching to the choir. These are justices of the Supreme Court, court of appeal etc. They will write their decisions but who implements? Is the executive in on it? The same people who give out wetlands are the ones the courts are asking not to give out the wetlands. How do we create that balance?



His worship Daniel Bwambale wondering whether the judiciary will not be seen as pursuing an elite's agenda

Dr. Lwasa Shuaib pointed out that solutions to heat waves are nature based solutions starting from household level so if you go back to northern Uganda for example Gulu and Kitgum, most of the households that we have there traditionally used to have trees around the cluster of the households and those trees were meant for shade but they also have another role they can play in terms of reducing the heat within that particular environment.

Technologies, nature based solutions, education, behavioural change, information distribution about heat waves are the things that can be done to enable communities and individuals to respond at that level but also catalysed by public programs from government institutions about heat waves and there are many things that can be done in that respect.

The best response to balance the interests of people versus government policy in view of industrialization again is that the discourse now is on climate change globally and regionally is characterized by low emissions development. You can industrialize but you reduce the emissions in the establishment of industries but also corporations of the industries and the long term use of the products on the life cycle assessment.

Solutions of industries that are green, industries that create green jobs, industries that would promote a clean economy that would balance industrialization and even the interests of the people.

He noted that it is a disservice to society pursuing the current trajectory of development of industrialization and fossil industry is to benefit the people when actually we are increasing their vulnerability and exposure to climate impacts and exposure to other disasters that will actually impact the future generation. He urged more heads that think independently and can strategize and plan for industrialization in this country and although we may not avoid the fossil fuels industry in Uganda for the next twenty years or so, but try to mix it with the green economy and industries to enable a transformational economic development because what we are seeing is that developing countries are actually providing a test bed for a different model for economic advancement

compared to the developed countries, his suggestion was for a think tank to help us to go through that.

He thinks IPCC has done a great through providing options and there are other agencies that pick those options and actualize them in the real world but they also use that knowledge to build capacities of governments.

About the risk of an elite agenda, he noted that it is no longer about they and we, it's about all of us, and so it is our responsibility for a global citizenry, national citizenry to work around these problems because it is not only the people in Elgon who are affected. In other words, it is not only the people that we tend to take as the local communities to help, but it is helping all of us and therefore if we change that narrative, then it is a service to the global citizenry, a service to the country and it is a service to society and that means that we would be able to communicate the risk to all of us instead of the risk to them because it is also a risk to us.

In respect of what government is doing in many respects it is still pursuing the old pathway for development and not embracing and taking into consideration the current and existential threat to society and the narrative within government and public policy needs to change with the advice from experts and a think tank to see how to strategize and mix the fossil industry as well as the green economy and green industries. That way the narrative would be for all of us instead of “it is we the elites and it is them who are vulnerable”.

Jeanne Rwakakoko, Judge of the High court of Jinja. Asked that are there high costs in finding remedies for climate change? What is the present impact of COVID19 having an effect on prioritizing climate change as a global agenda?



Hon Lady Justice Jeane Rwakakoko Resident Judge Jinja wondering how COVID 19 has impacted on the fight against climate change

Dr. Lwasa Shuaib: What COVID19 is doing and is going to do perhaps in the much longer term than we can think of right now is that it is likely to have two scenarios. One is that the priorities are most likely going to be in the direction of how to strengthen resilient health services systems

against pandemics but without necessarily considering climate change or even extinction and biodiversity laws.

The second scenario which could be a positive one is that COVID 19 could be a lesson that as we build resilient health systems to pandemics, then that resilience should also take into consideration the health risks in the country and that means that the investment in health services systems would not only focus on response systems for pandemics but rather a wide range of systems that could support all possibilities of health risks including climate induced heat waves, climate induced floods whether it is in cities or in other areas in rural environments where you have much more floods emanating from a catchment.

For example, in Pallisa and parts of Budaka even when it doesn't rain but as long as there is excessive precipitation in the Elgon, the waters come down and knock down the rice fields and other things, so the vulnerability of those communities is very much related to what happens in the upper catchment. The health response systems for that would have to take into consideration that kind of risk profile, so the costs are high.

He noted that Uganda is not taking advantage of the mobilisation of resources in different ways, climate financing from national level, he mentioned of a possibility to also create a climate fund without actually putting much stress and pressure on the people who are paying that is the public, but in the long term build a climate fund which could also attract additional funding from elsewhere so that there is a systematic response to building climate resilience in the country.

Financing is something that is a topic of discussion and is going to take a long time to strategize on how to increase financing and in order to go beyond just the limitation to transcend that challenge of it being too costly and nothing can be done. You can start with some things and then eventually build a system that would be able to respond for climate resilience.

c) The evolution of climate legislation



Dr. Patrick Byakagaba making his presentation on the evolution of climate change

Dr. Patrick Byakagaba a Professor School of Forestry and Geographical Sciences, Makerere University. He gave a historical background of climate legislation and what it entails. He noted that the debate on whether we have climate change or not is very old, it's not recent from the 50s, from the 60s, 70s and 80s this discussion was on. The scientists especially in Europe had started confirming that the temperatures we were experiencing were not the usual temperatures. And what were those indicators? They would go down to beneath the seas there's the sea level and sea bed and they would see things were changing compared to several years ago.

Key Highlights

- Climate change is arguably the most significant current global environmental challenge
- Global debates begun in the 1950 into the 70's and 80's
- There was increasing evidence from scientists that GHG concentration was increasing thus causing rise in global temperatures.
- October 1985 the Vienna Convention for the Protection of the Ozone Layer was signed
- 1986- The International Conference on the Assessment of the Role of CO₂ 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.
- The conference suggested that policy makers needed to address climate change

- It proposed that development of a framework convention ought to be considered
- 1987, World Commission on Env't and Development published "our common future"
- Climate change from CO₂ emission was among the 4 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 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

In 1988 is when this IPCC was formed and the rest of the world has been relying on what they have generated. In 1992 with enough evidence that greenhouse gas emissions were associated with the global warming and climate change. In 1982 at the Rio conference, Rio de Janeiro is a city in Brazil. There was a UN conference on environment and development. It is here that several conventions were signed and among the big ones that is useful to us is the UNFCCC UN Framework Convention on Climate Change.

UNFCCC

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

And this is how we ended up having the Kyoto protocol of the UNFCCC in the conference of third conference of parties. The Kyoto protocol was expected to address the limitation of lack of targets for developed countries in terms of how much they should reduce on the emissions. So in 1997 this protocol was signed in Japan and it set targets for those countries that were participating.

The Kyoto Protocol to the UNFCCC

- 1997, The Protocol established emissions targets for each of the participating developed countries relative to their 1990 emissions levels
- Committed to reduce their overall 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 emphasized mostly reduction of CO₂ from fossil-fuel combustion by Annex B countries.

He noted that when Uganda chose to be party to this Paris agreement, we committed ourselves that there are certain things or there are certain actions that we are going to put in place both in terms of mitigation and in terms of adaptation.

The rich countries and developed countries are expected to provide financial resources to assist us in addressing some of our commitments. It leads to domestic policy governance so no one comes to tell you which target you should have. So you have to agree on what you think is appropriate. The big one is that when you commit yourself there will be some international transparent system and global review.

It gives obligations to act so meaning it's legally binding the provisions are legally binding. And that's very useful for developing country because interest is brought on adaptation. But also it encourages private sector to invest in low carbon investment.

Domestic Legislation

UNFCCC the Kyoto protocol and the Paris agreement are the frame works that have informed countries to come up with domestic legislation on climate change. So these agreements embodied countries' responses to climate change. Countries started to think that one way of ensuring that these commitments

National Climate Legislation

- The UNFCCC, Kyoto protocol and Paris agreement strengthened response to climate change
- These 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 ameliorate climate change
- Human rights notion- based on the understanding the threat posed by climate change to “old rights” such as rights to life, health and subsistence.
- Others evoke the right to “adequate environment”
- Inter-intra generational equity notion- based on understanding of the need for “distributional justice” (climate is finite resource). This is because climate change can result into unjust distribution of harm it will cause
- Climate justice considerations have had influence on the content of international climate law and thus indirectly influencing domestic legislation

He noted that there are laws that require us to reduce on greenhouse emissions or maintaining carbon sinks. There has to be a provision that anyone who converts a wetland, a forest is increasing the risk to climate change and therefore is committing a crime. There are laws that focus on green growth which we have talked about earlier on.

The national context will usually determine what kind of law you would want to have or what kind of legislation or form of legislation you would wish to have. It helps to implement those international commitments and it helps us to develop they help us with institutional infrastructure that is relevant for climate action.

There are sectors within the NDC that we expect to be giving us information on emissions. Those sectors that we thought are well known for emissions we still have difficulties in getting that information. When we have a law that requires them to provide this information it becomes very useful. And that helps us to come up with interventions that will reduce climate risk and thus improve on adaption. It should provide targets for easy implementation or adaptation.

He noted that the role of none state actors should be well defined government cannot do all the work of climate change litigation and mitigation.

d) Uganda's commitment under the Paris Agreement and the Nationally Determined Contribution



Mr. Bob Natifu Acting Commissioner climate change department in the Ministry of Water and Environment discussing the Uganda's commitment to the Paris agreement.

Mr. Bob Natifu Acting Commissioner climate change department in the Ministry of Water and Environment, his main focus was the discussion on the justice crimes that come through with the policies and strategies that Uganda is carrying out.

He emphasized more on the Paris agreement because that is what all countries are emphasizing which goes along with the NDCs (Nationally Determined Contributions). The purpose of this convention is to contribute to stabilization of greenhouse gases in the atmosphere. At a level that doesn't allow dangerous anthropogenic interference with the climate system.

He talked about first principle in that climate convention is that parties should protect the climate system for the benefit of the present and future generations of human kind. On the basis of equity and in accordance with the common but depreciated responsibilities. Commitments based on what we've agreed to as a country but also the things that we must do to fulfill our reporting obligations by providing periodic updates of greenhouse gas profiles. The greenhouse gas profiles that are submitted to the UNFCCC.

He commended it as the most successful thing in Kyoto protocol because it introduced binding targets. Apart from introducing the binding targets on the developing nations they were supposed to give support to developing countries like Uganda to also try to reduce emissions. He noted that means that perhaps there are no strict instructions or rules that countries are being forced to follow.

Paris agreement provides the general framework for action and it reinforces the UNFCCC and that is why it is important to have all of them at the same time.

He noted that the emissions as a developing nation right now compared to the global total it's about 0.001% that's almost negligible. If there is anything to do with helping countries to adopt then there should be issues of climate financing to provide climate finance. And there should be issues like providing technology that we require because the response on capturing emissions is two ways.

You either take the nature based solution side or you use technology where you capture what they call carbon capture anthology and that technology we do not have

There is an opportunity every after five years, the NDCs were supposed to take effect from 2015 to 2020. Right now what they are doing is to update this and make sure that we submit ahead of the court which was supposed to have taken place this year. The first NDC was submitted in 2015 and that is we are supposed to update our NDC by 2020 or submit or communicate new ones by 2020. Our timeline is between 2015 and 2030 so that's why you see they need various options of what different countries must submit and communicate updated NDCs.

What different countries must communicate and give new information of what kind of effort that they have to address climate change impacts. The tricky part on here is that you have to go through a technical analysis of the national inventory that you submitted and that cuts through time of global stock take. A global stock take is when they look through all the information that the country has provided and

Whether you walked the talk of the commitments that you've set yourselves to achieve as a country but also what challenges that you're faced with. Additionally, you also have to report on things like the amount of finance that you have received if any. But the ultimate goal is by 2050 is that we reach late zero emissions and climate resilience. And this is where planning for climate change becomes complicated.

Uganda is not under any strict obligations to do the things that we are supposed to do. And that's why I say in the NDC that we submitted we say we can only implement those actions if we have 70% of resources available and for us we shall provide 30%.

The climate change policy speaks to requiring about 3.9 billion dollars for the next 15 years. That in simple arithmetic's sums to about 250/245 million dollars every year. Those are colossus sums of money because climate change adaptation and response is just an additional layer of the official development or official programs that you're undertaking as a nation. So mobilizing climate finance taking due advantage of the financing windows that exist internationally is one of the things that the country must do.

He concluded by noting that it is not easy to access climate finance because you can take about three to five years before any proposal or project that you develop gets financing. In order to mobilize financing to address private impact is through climate change outreach, implementation and research.

Plenary Discussion on evolution of climate legislation and Uganda’s commitment under the Paris Agreement and the Nationally Determined Contribution

Hon Lady Justice Linda Lillian Tumusiime noted the issue of carbon trading. She asked whether the climate policy really works? In her opinion, the convention did not come down to the people affected directly by climate change either positively or negative.

Looking at afforestation as one of the mitigation efforts that are being made, it leads to reduction in access to land for planting food for survival. How is the government coming in to motivate them to actually keep these forests by giving them the share of these carbon credits? How do carbon credits work?

On the issue green development, her view was looking at it affecting the labor market due to technological developments which include creating robots that operate with less emissions hence having an impact on the labor market. How do we balance these mitigating factors with sustaining the populations in our developing countries and at the same time sustaining our climate?



Hon Lady Justice Linda Lillian Tumusiime of industrial court making her submissions

Hon Lady Justice Patricia Basaza Wasswa listened to all the three presenters and got the sense that there was a bit of frustration. Dr. Lwasa used the term, “They don’t listen to us.” Professor Byakagaba used the term, “We have good laws but implementation.” And then Dr. Natifu said there are complications I think that also was an expression of some frustrations.

And as citizens generally we get a bit of frustration also. We see River Nyamwamba breaking its banks all the time and the same story continues. Musa Ecweru the Disaster preparedness minister goes running there and I don’t know what happens but it breaks its banks again. And over the 10 years or so it keeps going on. Bududa same thing landslide today people die after five years more landslides and so on. We hear of this Lweza sand mining it’s getting worse.

The other day the executive director of NEMA was under attack some people were saying resign and so on. So my question now is here, how do you rate Uganda's commitment talk of NDCs to this whole subject of reducing climate change? It's my question.

Hon Lady Justice Hellen Abulu Obura's concern was about this concept of emission trading. Where you give to a player who is polluting, releasing greenhouse gas emission and has a responsibility to reduce it an option to just sit back and wait to buy the excess that other people are making the effort to reduce. She thought this would undermine the whole strategy of reducing greenhouse gas emission.

Secondly, the liberty that states have been given in coming up with their annual inventory on greenhouse gas emission. And then also coming up with the nationally determined contribution which Mr. Bob Natifu said there is no strict obligation to perform. I'm just generally looking at all these interventions and I'm seeing that they were set to fail from the beginning because of the kind of laxity with which people are allowed to handle this very serious matter. I'm also looking at the Copenhagen accord also which set a target for reducing global warming up to below 2°C or keep it at 1.5°C.

And I'm wondering whether an assessment was ever done to find out how countries have performed in terms of getting to that limit by 2015 as it was under that accord. You have said there is a new baby now the Paris agreement but also the same issue of enforcement and compliance is still a challenge.

For as long as we are not able to enforce we can make so many laws but you can be sure that you will not achieve much. And there are obvious things that we see all around us. An example is when you are driving on the road and people are busy drinking maybe 1.5litre bottle of water and they are not shameful to just lower down the windscreen and drop it on the high way because they know that nobody is there to really enforce the law that is there.

She has a belief that enforcement would go a long way if there was enough sensitization. To make people realize that this very environment which you are destroying is meant to sustain you and sustain your children and sustain your children's children. But sometimes when like in the villages people go and begin to chase people from wetland without informing them why they are doing that.

After one week when the team goes back people are back doing the very thing because they have not understood why they are being stopped from destroying the wetland. Then there was this issue one of the strategies that Mr. Natifu mentioned was renewable electricity generation that it would increase. And my view is that even if it is increased if it is not matched with affordability, it will not also achieve much.

And also that goes along with the wider uptake of energy saving cooking stoves. I think the issue of affordability should also be addressed so that we are able to achieve the target that we set for ourselves. Thank you so much.



Hon Lady Justice Hellen Abulu Obura of court of appeal raising her concerns to the presenters

Dr. Patrick Byakagaba agreed that emission trading is very controversial. But when you have a situation where you want to build consensus. The whole idea of emission trading started from the principle of the polluter pay principle which was agreed upon in the Rio Declaration in 1992.

So the framers of all these conventions were we have the polluter paying through to emission trading. The understanding is that there are situations where we have to break the egg in order to make an omelet. So the idea is if we are in a situation where we cannot stop emissions then let that person who is emitting pay for offsetting the emissions that you have released.

There are permits that Ministry of Water and Environment uses to charge those that release effluents although the effluents are usually treated. They treat the waste water before they release them into wetlands for natural ways of reducing pollutants. So the ideal situation would be there should be no pollution at all but that might be very difficult to achieve. And that links me to the question on who gains on carbon trading.

There are two streams of carbon markets, that is voluntary markets and regulated markets or compliance markets. He gave an example for the voluntary markets for instance the judiciary here in Uganda. The judiciary can decide that they are going to offset that 10 million tones by investing in a carbon sink and a carbon sink can be a forest.

Then there is the regulated market or the compliance which is based on the Kyoto protocol where you follow the international standards of determining the certified emission reductions and have a designated entity that is responsible for promoting that kind of arrangement.

Then the question on the limits that were set and the lack of enforcement sounded like they are giving up. He said that Uganda has fairly good laws where we can achieve some level of compliance.

In northern Uganda there is a tree called Yawe or shea butter tree, it only grows in that belt, it can live for about 200 years giving you the fruits because nuts you process into oil and the oil can keep you young. The products have a remarkable value in terms of medicine in terms of cosmetics and many other uses. To an extent that in the US shea butter products just 10% of shea butter into your petroleum products gives you five times the price. So if the product was at \$5 and you put in 10% of shea butter it will end up being sold at \$25. But it doesn't grow in America, it doesn't grow in other parts of the world.

For the judiciary, to determine a sentence they have to understand the loss that is incurred by the loss of that particular tree. Not just livelihood but also this tree would be a sequester of carbon. Because it's the only large tree that you find in that landscape the one that has a bigger crown. So it's possible to get something from existing laws if we can appreciate the value of the environment.

On the issue of having good laws but we are failing on enforcement. When we choose to legislate on climate we need to address those weaknesses those gaps that we have that fail us to achieve compliance and we know them. For instance, if we don't recognize the value of carbon sinks the judge is going to have difficulty in making a judgment that will ensure the compliance of securing these things. So that was the spirit of raising the issue of implementation.

You raised an issue of labor and loss of jobs. The framers of green development are aware that we are going to have this challenge. And that's why the International Labor Organization requires countries to come up with green strategies. The ILO International Labor Organization is very active in ensuring that we have these jobs for all categories of individuals.

He noted the colonial governments had planned, gazetted or designated areas for growing pine or eucalyptus for various purposes. Because they were aware that nearly each of us needs wood at some stage. So because we need wood to minimize pressure on our natural forests our colleagues in the Ministry of Water and environment decided that we need to grow the trees that we need to use. In order to reduce pressure from the natural forest because there is no way we can stop people from using wood. What we are lacking is the implementation of the land use plans that this area should be designated for food production, this area should be for tree growing.

The challenge in trying to domesticate these views that were agreed upon at the international level to their situation the need for an input of everyone to ensure that whatever we propose fits within our situation, addresses our condition and that's the beauty with the Paris agreement. That they left countries to make decisions that fit within their context

His Worship Daniel Bwabale: Is *Melia volkensii* on the uptake as a result?

Dr. Patrick Byakagaba: In forestry there is something we always start with, why are you growing trees? If it is just because you have money that is not enough. So *Melia spp* is being promoted because it looks like mahogany and people like mahogany. Now that we depleted most mahoganies on our private land we only have a few individuals on the natural forests that are protected. People are looking for alternatives that look like mahogany and *Melia spp.* is one of them. I'm sure they will use the vanish of mahogany to sell you melia as mahogany unfortunately.



Dr. Patrick Byakagaba responding to the reactions raised by participants

Mr. Bob Natifu stated that climate change is not just environmental. It is economics, finance, health, it is justice and that's what makes it very complicated. When it comes to emissions trading it becomes largely an economics issue that you allow Bob to emit and you don't allow Dr. Byakagaba to emit. It didn't meet its objective because now a person who has money will continue to emit. But does that serve the purpose of the convention of reducing emission, it doesn't. So it's a bit complicated.

He said we can have the rules and regulations on one part but you have to intensively build in this behavioral change concepts among the population.

On the issue of rating Uganda's commitment, it is highly rated because all the policies that we articulated here are about emission and reduction, the best policies to reduce emissions have been put in place. Carbon trades are distinguished between none markets which is a bit fairly easy that it leads to a bit of discomfort with individual life styles as it is now but and that's a decision for individuals to make.

2) DAY TWO

a) Climate Litigation as a Tool to Promote Climate Justice

Dr. Peter Mutesasira the dean Faculty of Law Uganda Christian University, presented an overview on climate litigation as a tool to promote climate justice and approaches that have been adopted by the global north and the global south. He explained that globally there is a legal framework on climate change which is the United Nations Framework Convention. That requires state to achieve stabilization of greenhouse gases and concentration in the atmosphere at a level that will prevent dangerous anthropogenic emissions.

And most recently countries negotiated the Paris agreement of 2015 where they acknowledged that climate change is actually a real threat. And in that agreement states undertook to put in places actual and realistic targets to combating climate change in a more ambitious manner. He pointed out with respect to climate justice climate change also has some aspects of justice to it. Climate change poses issues of justice for example those who pollute more are less affected by climate change because they command resources, they have better technology, they have better adaptation and mitigation methods. But countries like Uganda in the global south are unfairly or unjustly treated or affected by the effects of climate change.

The International Bar Association Taskforce on Climate Change in 2012 noted that climate justice ensures that communities, individuals and government have substantial legal and procedural rights relating to the enjoyment of a safe green and open sustainable environment. And the means to take or cause measures to be taken with their national legislation and judicial systems. So through climate litigation the judiciary is considered as an important ally in achieving climate justice.

He noted that the judiciary being an important ally in the fight to address climate change is premised on the fact that courts do not only enforce existing legislation, but also establish new laws by interpreting existing legislation to require additional climate considerations. For instance, in Uganda we have a new national environment act of 2019 but we don't have a legislation on climate change.

So climate litigation can also be by both public interest litigations but could also include civil and administrative procedures brought in pursuit of private interests which may not necessarily involve activist intent. A perusal of the data base of environmental cases in the global south for example taking a specific example of Uganda most of the cases are pursued in public interest by NGOs.

He gave a brief overview of the revolution and background of climate litigation. He gave the most prominent case in regard to climate litigation, Urgenda Foundation vs. State of the Netherlands. Where the Dutch court in Hague agreed with the petitioners that the Dutch government had a duty to take more action to combat climate change.

In South Africa were a case of Earthlife Africa Johannesburg vs Minister of Environmental Affairs and Others. The high court of South Africa in Gauteng provision agreed with the petitioners. By stating that when granting an environment authorization to the Thabametsi Power Project (Pty) Ltd, the director of the department of environment affairs did not properly consider the climate

impacts of the project. And this judgment highlighted the significance, place and principles of climate change impact assessments.



Dr. Peter Mutesasira training on climate litigation as a tool for promoting climate justice

Gbemre v. Shell Petroleum Development Company and Others. Where the court agreed with Gbemre by stating that sub national gas clearing in the Niger delta did not only amount to localized pollution. But also contributed to the supra natural problem of climate change. So this case of Shell elaborates that climate change is not only a domestic issue but an international issue. So when a country is engaging in projects that could potentially affect the climate and ecosystem. It should also take into account the impact of such a project and emissions on the global environment.

In the United States the most prominent case that gave rise to climate litigation is the case of *Massachusetts v. Environmental Protection Agency*. Which was a landmark decision that triggered and inspired further environmental litigation all over the world. And in this case the state of Massachusetts sued the EPA over failure to regulate greenhouse gas emissions from new vehicles as per the provisions of section 202 of the Clean Air act. And the Supreme Court ruled that the EPA had a duty to reduce emissions from new vehicles. Regardless of the fact that the greenhouse gas emissions from these new vehicles cause insignificant harm to the health of humans and the environment. And as a result of that court ruling the EPA on 7th May 2010 issued regulations establishing greenhouse gas standards for light duty vehicles.

He gave a highlight the fact that in the global south during climate litigation, climate change arguments are peripheral or the incidental issues when it comes to climate litigation cases. For example, someone could have the intention of addressing climate change through litigation in the global south but they opt to pursue the angle of Environment Impact Assessment. That a project is going on but an impact assessment was not carried out. So that project could be stopped by a

judicial officer on the basis that an EIP wasn't carried out. But the fact remains that maybe this was a coal project or it was an assembly plant which was going to emit dangerous gases. Someone files a case and the central argument is inter-generational equity. The environment is being violated and the present and future generations will not be able to survive. So it is important to know that in the global north climate change arguments are central in the cases.

The Paris Agreement of 2015 has also seen an increase in private related cases filed in the courts. Having a look at the Paris agreement some people even refer to it as legally binding because states undertook to make adjustments to their legislative and policy framework within their nations to address climate change in a more ambitious manner.

A climate change centered approach to climate litigation in the global north has also been attributed to the fact that a number of countries have a regulatory framework specifically tailored at addressing climate change. So as a country in the global north if you have a legislation or an act of parliament specifically addressing climate change. It also makes it easier for you to go to court and have a climate change centered litigation.

He noted that in Uganda where we have no legislation or act of parliament on climate change but we only have a policy. You may find it hard to sustain litigation in court and you are better off suing for climate litigation as a peripheral or incidental issue to the case. Most countries have climate change legislation or an elaborate legal regulatory framework on climate change. So it makes it easier for a litigant to go to court and ask court to compel the state to implement or comply in that legal framework.

There are some countries which have enacted climate change legislation but as a mere formality. The format is okay addressing climate change but when you look at the substance of legislation it does not do enough to address climate. So when a litigant comes to court you cannot actually base your argument on the fact that there is legislation on climate change but this legislation does not do much to address climate change. In such instances the court can compel the government to implement more ambitious policies especially if the law is perceived as inadequate to address climate change.

He pointed the only Ugandan case which is climate change centered and it was filed in 2012 parties were amended in 2015. *Mbabazi and Others v. The Attorney General and National Environmental Management Authority*. Many of the cases in Uganda are focused on issues such as public trust doctrine, precautionary principle, impact assessment, access to environmental information, public participation in environmental decision making, clean and healthy environment.

Climate change litigation which is incidental or peripheral in nature in the global south has been attributed to the fact that a number of countries in the global south have no legal regulatory frameworks specifically tailored at addressing climate change. Because chances are higher victory can be attained compared to someone who adopts the climate change centered approach to climate litigation in the global south.

Countries that are mostly affected by climate change, there are also governance issues because to some leaders climate change is not an issue. Courts also act as collaborators in the regulatory

process as they interpret and engage with strong government efforts to mitigate climate. Courts are also an independent nonpolitical forum where the public concerns and has their claims heard and determined.

So climate litigation at the international level faces barriers which are common for all international environmental disputes. Most of the environmental litigation is handed at a domestic level because there are no bodies at the international level that have jurisdiction to hear interstate jurisdiction on the environment. He noted the idea being mooted to establish the international court of the environment and have an offense of “ecocide”. European Court of Justice and the African Court of Human and People’s Rights have played an important role especially when it comes to environmental rights. To ensure that states comply with their international and regional obligations in regard to climate change and the right to health and a clean environment of citizens.

And I’m glad to note that the courts are now a bit liberal when it comes to environmental cases. Previously we had issues of costs and security for-- If I’m litigating for the good of the environment why would I have to face security for costs even if I’m taking on a multi-national company? And then maybe my suit is also seen as a waste of time probably it isn’t. But I’m glad that one now a more liberal approach is being adopted and that is not being used now to attain litigation.

And also the issue of subjecting environmental or climate litigation cases to the vagaries faced by other litigation meaning exposing climate cases to things like case backlog. Cases requiring urgency for instance a wetland being depleted, a case is filed in 2012 and up to 2020 it’s not being heard, it will be of no sense to hear that case in 2022.

He advocated for special training for the Judiciary. He compared the global north adoption of climate change centered approach for litigation whereas the global south adoption of a climate change incidental or peripheral to climate.

Before COVID there was a climate emergence which has also killed people through floods, drought, famine and malnutrition. He concluded by noting that climate change to be looked at in a broader perspective other than limiting it to science and being something alien.

Plenary on Climate Litigation as a Tool to Promote Climate Justice

Participants were invited to ask questions and make comments.

Hon Lady Justice Patricia Basaza Wasswa answered the question about lawyers who should back up arguments on climate change with scientific explanation on where to get a scientist to testify? She stated the option of using services of amicus curiae. She asked for a clear distinction between environmental justice and climate change justice generally.

Hon lady Justice Linda Lillian Tumusime, Judge of The Industrial Court noted that the global south actually has limited control in terms of finance. The argument of the polluter must pay in her opinion is a weak position because the polluter has power and money. She narrated how she failed to get a EIA due to the cost being higher than the cost of the project itself.

Hon Justice Emmanuel Baguma wanted clarification on regarding scientific evidence where NEMA issues EIA report on a project which will have an impact on the environment?

Hon lady Justice Henrietta Wolayo noted the issue of jurisdiction on climate change issues, “I want to believe that our courts have jurisdiction under the constitution. High court has unlimited jurisdiction so I believe that this can change within the jurisdiction of the high courts. I stand to be corrected by my colleagues. And then enforcement of these international treaties. I want to believe that because we have ratified this treaty therefore we have conceded willingness to enforce them and to comply with the jurisdiction therein. And this reasoning is founded in the Bangalore principles which I’m sure you have come across”.

Hon Lady Justice Hellen Abulu Obura: commented about climate change expert’s reluctance to come and testify in the courts. “If the few experts that we have in the country would be reluctant and yet they are the very people who know the serious impact of climate change. And they would be thinking more of self-preservation, self-survival as opposed to the public wish their kind of scientific evidence would contribute to then we have a problem.”

She was disappointed by this kind of scenario where we just lament and even those who are supposed to act cannot act.

Hon Lady Justice Jane Alividza acknowledged the idea of introducing climate change argument and include it in their decision making outcomes. It is the only way they can have a pathway for climate justice. The other ideology thinking was how to balance development and environmental protection? “*We are guilty that we focus so much on human rights and don’t think of the rights of the other creatures who are also sharing the same space with us*”.

She wondered how enforcement issues are put in place due to lack of enforcement. She advised Greenwatch to train environmental litigation lawyers because putting the ball only on the court and not having the competent lawyers to raise these arguments before courts puts too much pressure on the judicial officers.

Her Worship Jackeline Kagoya Asked whether there are reports being made after forests have been destroyed by investors and what happens later?

Her other concern was about avenues for people to be trained in the field of environmental justice especially lawyers.

She commented on issues regarding the many complaints that are raised against NEMA for issuing permits, how to go about them.

Apart from Kyoto protocol, are there other binding protocols?

Dr. Peter Mutesasira: Regarding scientific evidence, the scientists who are specifically tailored to address issues of climate change in this country are few. “So you will find such a person participated in a policy that is being challenged or participated in the approval of the ESIA if they are from NEMA in a project that is being challenged. If they are in academia you will find that they have a running consultancy with the government. So it creates a conflict as it was mentioned”. He noted that it is better if this evidence is simplified. Some of the scientists are also trained by these NGOs on how to simplify the scientific evidence to fit within the understanding of judicial officers.

Climate justice can be achieved through climate litigation and approaching the courts. He mentioned that climate change is a justice issue, those who participate least in climate change and its effects are those who are mostly adversely affected. The situation has to be remedied and this can be done through accessing courts.

One of the objectives of the new National Environment Act of 2019 is to address issues of climate change but it appears only a few times. He referred to other countries have gone ahead to enact legislation that is specifically tailored to address issues to do with climate change and also putting in place more realistic numerical targets for countries to comply with when they are addressing issues to do with climate change.

He urged participant not to rely on the National Environmental Act to address climate change because it has nothing to do or doesn't mention of climate change. It is better off taking the approach of the global south by using climate change as a peripheral or incidental.

He noted that human rights mainly apply within the context of the global south the arguments in relation to climate change are incidental or peripheral. The basis is on protection of human rights. A right to life, a clean and healthy environment.

He urged judicial officers to think about the political consequences of their decisions regarding judgment on approval of commencement of projects.

Economic development Vs environmental protection is under the principle of sustainable development, considering the fact that countries have to develop but not at the expense of the environment for the benefit of present and future generations.

Budget funding of NEMA is also another issue since over 80% of the budget is funded by donors. He wonders how licenses are issued? Since most environmental cases in this country NEMA is always a party not because it is a polluter but because it simply failed to do its job as stipulated by the law. For this case you not only sue the perpetuator of pollution but also sue NEMA as a party that has failed is obligation.

Environment Impact assessors are licensed by NEMA and are listed on their website. He wondered the impartiality of NEMA, for instance permits are rubber stamped without thorough investigations.

In Uganda the magistrates' court and high courts have jurisdiction depending on the subject matter to hear environmental cases and they could take two forms. Some could be by way of straight forward legal action; others could be by way of constitutional petitions which have to go to the constitutional court meaning some under article 50 others under 137.

He advocated for the training of scientists that can be relied upon for the purpose of the environment that is far better than having amicus curiae.

Looking at authorizations by NEMA, legally NEMA has the role of issuing authorizations and permits in relation to the environment. He referenced the USA authorizations and permits which are a judicial process. Before the EPA issues a permit, all parties involved appear before an administrative law judge who then decides to issue the permit or not to.

He urged training to be done for all those involved in handling the case that is prosecutors, judges and lawyers.

Kyoto protocol was more elaborate, more detailed and even imposing binding obligations on the parties. But it was basically meant to supplement and complement the climate change convention. And obviously has been overtaken by events so parties now had to negotiate the Paris agreement of 2015.

He concluded by stating that environmental law is very dynamic because of the new challenges and issues raising.

b) The relevance of climate litigation in holding governments accountable for the effects of climate change, a Kenyan perspective

Emily Kinama, Litigation and Research Counsel Katiba Institute highlighted that the Kenyan constitution is considered a transformative constitution, but the challenge is the implementation and following of that law. It recognizes the respect of the environment as our heritage sustain for the benefit of future generations which is intrinsically linked to sustainable development under article 10.

But in relation to climate change, development is very critical and crucial. Article 3 which places duties on every person in Kenya. Every person is bound to respect, uphold and defend the constitution which can be considered a negative obligation. Then article 21 puts up the clear obligations of the state to observe, respect, promote and fulfill the rights with the bill of rights.

Her argument is based on Art 2 (6) – treaties Kenya has ratified form part of Kenyan law therefore any treaty that Kenya has ratified form part of Kenyan law and it would be binding.

Art 22- Enforcement of BOR in court where right is denied, violated, infringed or threatened with violation - Locus standi (Art 22 (2)-BOR and 258- Const)

- i. A person acting on behalf of someone who cannot act in their own name ;
- ii. As a member of/ in the interest of a group/class of persons
- iii. In public interest
- iv. An association in the interest of one or more of its members

The environmental cases have been at the fore front of recognizing what locus standi is. She gave a story of Professor Wangari Maathai who was fighting for a famous park in Nairobi called Uhuru. The president had wanted to construct a major development on it. And she went to fight in court and said she comes in the public interest. But she was denied because there was no link between the interest of her fighting for that and what loss she should have suffered.

But later on even before the constitution was passed they expanded the scoop and anyone can come and at least bring a case if it's in the public interest. So environmental justice has really been at the front of this. There are appropriate remedies that can be given by a court when rights are violated, in this particular instance it covers injunctions, judicial review remedies and compensation, declaratory orders.

Article 42 of the constitution provides for the right to a clean and healthy environment. And it further provides that it includes the right to have the environment protected for the benefit of present as well as future generations. Through legislative and other measures which are provided further in article 69.

In this particular instance article 69 is crucial because these are the state obligations in respect to the environment. It provides for things in relation to biodiversity, public participation and constitution in relation to protection of the environment, intellectual property. Provision of knowledge systems that are considered when protecting natural resources and so on and so forth.

In addition to that we also have article 70 which is interesting because it is a second buffer of protection or enforcement of rights other than the article 22. In this particular provision it states that enforcement of environmental rights under article 42 can take place if it is likely that a right will be violated or threaten. You can apply to court for redress in addition to other legal remedies available.

And this shows an interest in aspect that even if there is a threat and that's where the precautionary principle comes in. A threat is enough for someone to go before the court and seek remedies.

What are the remedies? Preventing, stopping or discontinuing the act which is provided in the constitution. Compelling a public officer to ensure that measures are put in place to prevent or discontinue the act and provide compensation for the victim. This provision is very critical because it was later retaliated in the climate change act of 2016. And then finally this provision says that an applicant does not have to demonstrate a person incurred loss or suffered injury.

And this is where the interpretation of the constitution considers the history aspect where previously they remembered the Late Professor Mangari Maathai trying to fight and champion for or have locus standi but she was told there is no link of you having suffered a loss. And then when it comes to the climate change act in Kenya.

On the 27th of May 2016 was the commencement of the climate change act under 11 of 2016. And the aim of the act was to provide a regulatory framework for the enhancement of the response to climate change and provide mechanisms. And measures to achieve low carbon climate development and enhance connected purposes. The salient features define what climate change duties are. This builds statutory obligations binding on both private and public entities to incline climate change actions consistent with the national board of low carbon climate resilient development.

And this is also in line with article 232 F of the constitution that says the public is critical and should be consulted on making public policies. Though section 13 talks as well of public consultation when developing the national climate change action plan. Section 17 puts a role on NEMA on behalf of the national climate change council. To monitor compliance on different duties and obligations that are placed on different persons.

Emily gave a detailed briefing about the Save Lamu v. National Environment Management Authority and Another NET Appeal No. 196 of 2016. It highlights a lot around jurisdiction, the case went to the national environment tribunal and not the environment and land court.



Emily Kinama giving the relevance of climate litigation in holding governments accountable for the effects of climate change, a Kenyan perspective

Plenary on the relevance of climate litigation in holding governments accountable for the effects of climate change, a Kenyan perspective

Participants were invited to ask questions and make comments.

Hon Lady Justice Jane Alividza noticed that litigation is costly; you have to have a lot of money to take on big business. Her concern was how many of the local vulnerable communities can access climate justice?

What solutions had come up in Kenya and which could be used in Uganda?

Hon Lady Justice Henrietta Wolayo wanted to know how issues of climate change can be addressed since Uganda doesn't have climate change legislation and what can be put in place to address this?

Counsel Emily Kinama: In regards to litigation being costly, the constitution recognizes knowledge of what is my right. And if I feel like my right is violated what then can I do to ensure that my rights are upheld? Based on article 22 there were supposed to be rules that were formed to better realize the enforcement of rights. The chief justice came up with these rules in 2013 known as the Mutunga rules - you can go before any court and challenge the threat of violation of a right.

The Supreme Court has already determined that once a court sees that a matter has been brought in the public interest nature then the law orders to cost when it comes to public interest litigation matters, every party bears its own costs.

The second thing in terms of the solutions which can be used in Uganda targeted towards those who are filing the case than the judiciary. It would be how you accept cases from people of means that you see their case in their very essence touches critical aspects.

She emphasized the starting point is having Uganda entered any policies? Has it said these are the policies that we will take up as Uganda? Agreements for example the international agreements on UNFCCC? Is there any NDC by Uganda? The National Determinant Contributions or commitment at the UNFCCC.

Hon Justice Emmanuel Baguma wanted clarification on how to control some individuals who just bring any case for the sake of public interest? Because there is a Supreme Court decision where Supreme Court has said that no costs in public interest cases.

Counsel Emily Kinama clarified that when it comes to public interest litigation cases, the court has to analyze on a case by case basis. Is the essence of this case that is filed before the court a case that is touching on public interest litigation? And if it does then they state that each party bears its own costs.

And with such instances courts have discretion to look at the particular case and see where they should even issue primitive costs. Or if the case was justified because of that discretion still lies with the court. But in the constitutional division specifically where it's a public interest related matter the Mutunga rules which we have as well as article 22 usually relax the element of maybe filing fees if need be. And if you lose or win a case the judgment at the end is that this case is public interest in nature and therefore each party should bear its own costs.

c) Domestic Adjudicative Institutions and Sustainable Development in the African Context: Opportunities and Limitations for Climate Justice.

Dr. Onyeka Osuji, Director, Commercial Law PGT School of Law, University of Essex highlighted the realization that the Law of legal practitioners and the judiciary are an important component of development in African countries, so the law is essential and was the background for his presentation.

He emphasized the sustainable development goals which can be a good starting point and also the Paris Agreements of the United Nations Framework Convention on Climate Change 2015. They refer a lot to active collaboration of social actors, so every segment of society is expected to play an active role in addressing social challenges including promoting climate justice.

“If you look at the Johannesburg Principles on the Rule of Law and sustainable development of 2002 that talked about an Independent Judiciary and judicial process. Talking about implementation, development and enforcement. For me, if you look at those three expressions, it

is sort of an expansive view of the role of the judiciary. In the same document, they talk about national, regional and global levels as per the impact of the Judiciary”.

He said that the purpose of litigation is not only about the parties before the courts but can also be a method of pushing policy makers to develop, implement means that can address climate change. In that sense, if you see litigation as important, then the role of the judiciary is that important.

He looked at Institutions not just as formal governmental agencies or bodies but as forces in society that can regulate the behaviour of actors of society be it people or corporate entities, whether governmental or private agencies and for any sector or segment of society to play a role, that sector will have to understand that they are an institution and what kind of institutional role they can play, so my starting position is that the judiciary is an institution.

That is if you are talking about national government or regional government or local government for instance, for you to understand their responsibility, you have to really consider what the context they operate in and this also confirmed by the Paris Agreement and the Sustainable Development Goals of 2015.

In his view the judiciary falls squarely in all the three categories;

❑ [Categories of institutions](#) (Scott, (2001, 2008; MacCormick and Weinberger, 2013)

A. Regulatory (explicit formal laws, rules and regulations and their coercive enforcement)

B. Normative (consciously shared norms, values, beliefs and expectations for behaviour and social interaction)

C. Cognitive/Cultural (implicit, unconscious and symbolic interpretative frames)

In regards to constitutionalization, Recognising climate justice as a constitutional ideal via explicit human rights constitutional provisions (anthropocentrism): *Gbemre v Shell Petroleum Development Company Nigeria Limited* (2005) (High Court)

Stakeholder empowerment is an essential part of promoting climate justice knowing that the climate justice itself will not be able to protect itself.

Understanding when the victims of climate justice issues are weak, how do you protect them? For you to protect them, you have to be in a position to understand that these are victims and they are not just victims but they are vulnerable victims who are unable to protect themselves and providing room whenever possible for them to be protected by the orders.

Judiciary plays a role on the issue of corporate responsibility which is very important because in a lot of cases, people would know that when we talk about practices that are harmful to the environment and the climate causing climate change then we normally see corporations or businesses and as pointed out by Lord Every in the UK House of Lords debate in 2006.

In most cases if you allow businesses to do what they want, then they will damage the environment, so the role of the judiciary is to understand that position if there is an issue about the corporation or businesses in a way that they have to be controlled by something and not leaving it for

individuals or communities to take action in countries like the UK or the US because as we have seen in the case of and Kilburn and Obadi which are listed on

The second role of the judiciary is the normative one and it involves two things; Internalization of values and transition of values. Internalization is about acknowledging that something is right which is important for a judge. A judge has to understand that climate justice is necessary before a judge can even promote it.

Cognitive/cultural role of the judiciary is about reshaping local practices. If faced with unconscious local practices, the court should be able to acknowledge those things and work towards changing those practices. If there are some local practices, customs or beliefs that can help promote climate justice, and the court can use them and say that “this is not alien to the courts”.

Judicial attitude as an obstacle to climate justice is summarised by Dr Osuji as what he considers the attitude of the judge can determine a lot of things which was pointed out by Judge Aiken

The US ‘Federal courts too often have been cautious and overly deferential in the arena of environmental law, and the world has suffered for it’ (Juliana v United States of America, 2016,)



Dr. Onyeka Osuji deliberating on the three roles of the courts in the aspect of climate justice

Another obstacle which is also part of the attitude is focused on compensation as the remedy when there are climate litigations. He talked of the example of the Nigerian case of Ajuwa v. Shell Petroleum (2011) where the high court was focused so much on compensation awarded which was the equivalent of 1.5 billion US dollars for oil commission. The award was reversed by the Court of Appeal, so the high court and Court of Appeal both focused on compensation and not about litigation stopping future oil pollution. The case is still pending at the high court.

Another limitation is the delay. When there are delays in adjudication of cases, then the case of climate change is defeated and the example is the same case of Ajuwa in Nigeria. Nine years after

the decision was made which took some years, the case is still pending. In other words, the oil companies can continue polluting over the years.

Some of those cases in terms of climate justice need swift action from the courts and if those actions are not taken, it is a message to polluters and others that they can continue and then they can escape the consequences.

Lack of concentration of wider institutional environment of the judiciary or court decisions. The two cases *Motto v Trafigura Ltd* (2011, EWCA) and *Agouman v Leigh Day* (2016, EWHC).

The point is the court should be aware of the wider institutional arrangement. The courts should be aware if someone is bringing action and the action is to promote certain causes which are not connected to climate justice or justice and they should prevent that from happening. Because the courts in Côte d'Ivoire didn't do that, the actual victims got absolutely nothing from the compensation.

The role of regional instruments such as African Charter and the International conventions in climate justice. Where those conventions and treaties exist, it is important for the court to realize that the classical international law approach of seeing treaties as regulating governments and governments are seen as thieves is not quite tenable because some of those treaties have really helped to protect individuals and communities.

If there is that understanding, then in interpreting provisions in national law, the court should be more open to looking at those treaties which are really meant to protect people and promote climate justice and use them for interpretation purposes.

d) Closing Session

In closing remarks, **Hon Dr. Justice Joseph Murangira** thanked the organizers of the workshop. He said that it has been well conducted participants have gained knowledge in climate change justice. He took pride with the way Judicial Training Institute is inculcating more knowledge to the judicial officers and also pledge to use the knowledge we have gained here in our judgements.

Appendix 1: List of participants

No.	NAME	STATION
1	Hon. Lady Justice Hellen Abulu Obura	Court of Appeal
2	Hon. Justice Nyanzi Yasin	Land Division
3	Hon. Lady Justice Jane Alividza	Sen. Resident Judge Fort portal
4	Hon. Dr. Justice Joseph Murangira	Family Division
5	Hon. Lady Justice Henrietta Wolayo	Executions and Bailiffs Division
6	Hon. Mr. Justice Micheal Elubu	Civil Division
7	Hon. Lady Justice Patricia Basaza Wasswa	Resident Judge Mukono
8	Hon. Lady Justice Linda Lillian Tumusiime	Industrial Court
9	Hon. Justice Emmanuel Baguma	Civil Division
10	Hon. Justice Oyuko Anthony Ojok	Criminal Division
11	Hon. Lady Justice Esta Nambayo	Civil Division
12	Hon. Lady Justice Jeane Rwakako	Resident Judge Jinja
13	Hw Tweyanze Lawrence	Registrar Supreme Court
14	Hw Ayebare Tumwebaze Thadius	Asst Registrar Court of Appeal
15	Hw Justine Atukwasa	Asst Registrar Land Division
16	Hw Ereemye James Jumire M	Chief Magistrate Mbale
17	Hw Kakooza Elias	Chief Magistrate Jinja
18	Hw Nakadama Esther	Chief Magistrate Wakiso
19	Hw Kagoya Jackline	Magistrate Grade I Nakawa
20	Lochomin Peter Fred	Magistrate Grade I
21	Naigaga Winfred	Magistrate Grade I

Appendix II: Judicial training manual, 2020

The training manual can be found on this link: [Judicial training manual on climate justice in Uganda, 2020](#)

Appendix III: Programme for the judicial training 2020.

**PROGRAMME FOR THE SECOND ANNUAL JUDICIAL TRAINING ON
CLIMATE JUSTICE IN UGANDA**

Thursday 10th and Friday 11th September 2020.

Theme: Climate Justice: Ensuring a more sustainable and equitable society.

TIME	ACTIVITY	PERSON RESPONSIBLE
	DAY ONE – 10th September 2020	
8.30 – 8.55 am	Registration of Participants	Greenwatch Team and Judicial Training Institute
9.00 – 9.10 am	Welcome Remarks	Justice Damalie N. Lwanga Executive Director Judicial Training Institute
9.10 - 9.30 am	Opening Remarks	Honourable Justice Alfonse Owiny-Dollo, The Honourable Chief Justice of Uganda
9.50 – 10.30 am	Presentation on climate change, its impacts and possible responses. The presenter will also discuss the role of the Intergovernmental Panel on Climate Change	Dr. Lwasa Shuaib Professor Department of Geography Makerere University
10.30 – 11.00 am	<i>Discussions and Plenary session</i>	His Worship Angualia Moses Gabriel Judicial Training Institute
11.00 – 11.45 am	GROUP PHOTO SESSION and TEA BREAK	Greenwatch Team
11.50 – 12.15 pm	The evolution of climate legislation	Dr. Patrick Byakagaba Professor School of Forestry & Geographical Sciences Makerere University
12.15 – 12.30 pm	<i>Discussions and Plenary session</i>	His Worship Angualia Moses Gabriel
12.30pm – 1.30 pm	LUNCH	Catering team / Greenwatch
1.30 – 2.00 pm	Presentation on Uganda’s commitment under the Paris Agreement and the Nationally Determined Contribution.	Mr. Bob Natifu Ag. Commissioner Climate Change Department (Ministry of Water and Environment)

2.00 – 2.15 pm	<i>Plenary session</i>	His Worship Angualia Moses Gabriel Judicial Training Institute
2.15 – 2.45 pm	Documentary / Video on Climate Justice	Greenwatch Team
2.45 – 3.00 pm	Re- cap: Highlights from the day	His Worship Angualia Moses Gabriel Judicial Training Institute
	DAY TWO – 11th September 2020	
8.30 – 8.55 am	Registration of Participants	Greenwatch Team
9.00 – 9.45 am	Climate litigation as a tool to promote climate justice: Drawing a distinction between climate litigation in the global north and the global south	Dr. Peter Mutesasira Dean Faculty of Law, Uganda Christian University
9.45 – 10.00 am	Discussion and Plenary session	His Worship Daniel Bwabale The Judicial Training Institute
10.00 – 10.30 am	TEA BREAK	
10.45 – 11.15 am	The relevance of climate litigation in holding governments accountable for the effects of climate change, a Kenyan perspective.	Emily Kinama Litigation and Research Counsel Katiba Institute, Kenya
11.15 – 11.30 pm	Discussion and Plenary session	His Worship Daniel Bwabale The Judicial Training Institute
11.45 – 12.15 pm	Domestic Adjudicative Institutions and Sustainable Development in the African Context: Opportunities and Limitations for Climate Justice.	Dr. Onyeka Osuji Director, Commercial Law PGT School of Law, University of Essex
12.15 – 12.30 pm	Discussion and Plenary session	His Worship Daniel Bwabale The Judicial Training Institute
12.45 – 1.00 pm	Closing remarks	Samantha Atukunda K. Mwesigwa Greenwatch
1.00 pm	Collection and or submissions of evaluation forms	Greenwatch Team
1.00 - 2.00 pm	LUNCH AND FAREWEL	