

FIFTH JUDICIAL TRAINING ON CLIMATE JUSTICE

Advancing Climate Justice: Looking At The Role Of The Judiciary



20
23

RAPPORTEUR'S
REPORT

Executive Summary

This training was the fifth judicial training on climate justice organized by Greenwatch and it precedes the need to equip judicial officers with comprehensive knowledge about the legal aspects of climate justice, including the rights of vulnerable communities affected by the effects of climate change in order to adjudicate climate related disputes brought before them. The training took place on the 18th and 19th of May, 2023 at Mestil Hotel Kampala under the theme: “Advancing Climate Justice: Looking at the role of judiciary”. The training comprised of five (5) sessions each covering a specific aspect of climate justice. The discussions in each session were lively with contributions from most of the participants.

The purpose of this report is to transcribe the highlights from the training



Fig 1

Group photo of the participants, the Greenwatch team and the JTI team

Objectives of the Training

01

Build capacity: The training aimed to equip participants with the knowledge and skills necessary to integrate climate justice principles into judicial decision-making processes. It provided training on strategies for assessing and addressing the unequal impacts of climate change, promoting resilience, and fostering just transitions to sustainable practices.

02

Enhance awareness: The training aimed at increasing the participants' understanding of the concept of climate change and climate justice, including its historical context, underlying principles, and relevance in contemporary society. By exploring the interconnections between climate change and social justice, it was intended that the participants would develop a holistic perspective on climate issues.

03

Identify inequities: We desired that the judicial officers examine the disproportionate impacts of climate change on vulnerable communities, marginalized groups, and future generations. The training highlighted the root causes of these inequities, such as poverty, gender inequality, and inadequate access to resources, and emphasized the importance of addressing them within climate action strategies.

04

Foster collaboration: The training facilitated dialogue and collaboration among diverse stakeholders, including the judiciary, lawyers, activists, community leaders, and academia. By fostering an inclusive and participatory environment, participants learnt how to build alliances, engage in cross-sector partnerships, and work towards collective solutions for climate justice.

Welcome Remarks

The Director of Greenwatch, Samantha Atukunda. K. Mwesigwa, welcomed the participants and thanked them for attending the fifth judicial training. In her welcome remarks she gave a brief introduction about Greenwatch; its origin, mission and the vision wherein she stressed the importance of Principle 10 of the Rio Declaration on Environment and Development as being the inspiration behind the establishment of the organization.

She highlighted the objectives of the judicial trainings which are;

- 01 To create awareness,
- 02 Build capacity of judicial officers on the subject of climate change and climate justice,
- 03 Foster collaboration among different stakeholders and promoting policy formulation.

She informed the participants that the overall desired outcome of such judicial trainings is to ensure that 100% of the judicial officers in Uganda can adjudicate with ease disputes involving the fundamentals of climate change and climate justice. She briefly highlighted the negative impacts of climate change on the environment, lives and livelihoods of different communities.

She concluded by informing the participants that Greenwatch had compiled a number of climate - change cases around the world contained in the resource book which can be a reference book for the judges. She concluded by extending her appreciation to the Judicial Training Institute (JTI) for its continued partnership with Greenwatch to train judicial officers on this important subject.



Fig 2

Greenwatch's Director and Legal counsel, Samantha Atukunda. K. Mwesigwa giving her welcome remarks

Opening Remarks

The training was opened by Hon. Justice Damalie. N. Lwanga, the Director of JTI. In her opening remarks, she thanked participants present at the training for sparing time to attend the training after which she introduced the theme of the training being; Advancing Climate Justice: Looking at the role of judiciary. She expressed her gratitude to Greenwatch for supporting the judiciary over a long period of time in training magistrates and judges on concepts of climate change. Hon. Justice Lwanga stressed the fact that climate justice is not only a concern for Uganda but a global issue that requires immediate intervention from relevant stakeholders, the judiciary inclusive. In addition, she thanked the media for reporting about this global issue thus creating awareness.

She guaranteed the participants that the training was a great opportunity for them to learn and understand issues concerning climate change. She emphasized the need for massive sensitization of the public about climate change. She concluded by thanking the facilitators and officially declared the training open.



Fig 3

JTI's Director, Hon. Justice Damalie. N. Lwanga giving her opening remarks at the Fifth Judicial Training

18th

Day One
 May

First Session;

Principles and Norms of International Environmental Legislation: A Pathway to Climate Justice presented by Dr. Patrick Byakagaba:

Dr. Patrick Byakagaba, a senior lecturer at Makerere University School of Forestry discussed the principles and norms of international environmental legislation as a pathway to climate justice. In his presentation, he gave a detailed description of the different environmental principles that play a role in environmental legislation such as the polluter pays principle, the precautionary principle, public trust doctrine, the principle of preventative action among others. When presenting on public trust doctrine, he said that the principle promotes the value that certain resources are preserved for public use, and that the State is required to maintain them for the reasonable use of the public. He continued to explain that such resources should not be alienated to a few members of the public.

He continued to explain that such resources should not be alienated to a few members of the public. He also discussed ways of reducing carbon emissions and stressed the fact that in cases of environmental violations, compensations are made by whoever is responsible for violating the environment for instance in the case of pollution.

He briefly examined the different ways of mitigating climate change including enhancing eco-systems that will eventually help in the absorption of carbon in the atmosphere.

He stated that;

If we are to achieve climatic justice, it is essential to take actions and decisions that protect carbon sinks such as forests.

He concluded by internalizing the full social cost of climate change and explained that in economics, internalizing means acknowledging the total cost of your actions. For instance, if an individual decides to convert a forest to grow maize in most scenarios we only look at the individuals that are going to be directly affected by that decision, but in his view, the entire society should be considered and not only a few individuals that have been affected by that action.

If we internalize the social cost, that will help us improve on our efficiency and ultimately ensuring that the community will participate in the decision-making process rather than getting sidelined by the developers, government or policy makers.

After his presentation, the moderator opened the discussion up to the audience for a plenary session. Most of the participants were concerned about compliance in the face of the existing laws and the rate of environmental degradation cropping up in Uganda giving examples of sand mining in areas like Katonga, deforestation in Mabiira forest, Zoka forest, destruction of wet lands which all negatively impacting the climate.

In particular, Hon. Lady Justice Margaret Mutonyi, inquired about the role of agencies in implementing the existing laws while Hon. Justice Douglas Singiza inquired about the linkage between environmental justice, land use and planning in Uganda. Dr. Byakagaba's full presentation can be accessed via the link below:

<https://www.greenwatch.or.ug/technical-presentations/principles-and-norms-envtal-legislation-patrick-byakagaba-phd-5th-judicial>



Fig 4

Hon. Lady Justice Margaret Mutonyi, Judge criminal division, Kampala.

In response, Dr. Byakagaba informed the participants that while complying with the existing laws in Uganda is currently a challenge, he called for persistent follow-up on the implementation from civil society and responsible bodies as well as holding those responsible for protecting and conserving the environment accountable for violations and non-enforcement of the existing laws. On the question of environmental degradation, he called for exploration of carbon trading as a solution highlighting that carbon trading is an approach that can be utilized to mitigate climate change in the country by encouraging companies or individuals to compensate for their greenhouse gas emissions by purchasing carbon credits from entities that remove or reduce greenhouse gas emissions.

He noted that even though carbon trading might not be the only solution for emission reduction, it's a step in the right direction especially for developing countries like Uganda. He finalized by encouraging further litigation and judgements on climate related matters as they tend to call for action within the different government agencies.

Second Session;

Challenges and opportunities in climate change litigation in Kenya

presented by Ms. Emily Kinama: Ms. Emily Kinama, a lawyer with Katiba Institute Kenya discussed the challenges and opportunities in climate change litigation in Kenya. She started by introducing the organization that she works for and the initiatives it is involved in; including public interest litigation, research, community development, and building capacity for instance working with the government to carry out trainings for judicial officers and all the relevant stakeholders. She stressed that if the issues of climate change are not handled well in the respective countries, the impacts can and will be felt in the neighboring countries. She pointed out the available options for Kenya nationals and organizations seeking redress in environment and climate change disputes as the National Environment Tribunal and the Environment and Land court. She indicated that while the National Environment Tribunal doesn't interpret constitutional questions, the Environment and Land court does interpret these questions making it the best option for environment and climate related disputes. She went on to inform the participants that the Land and Environment court in Kenya is a specialized court. She highlighted a couple of climate litigation cases such as; Republic v National Assembly & 5 others Exparte Greenbelt Movement & 2 others [2018] KLR and Save Lamu v National Environment Management Authority and Another NET Appeal No 196 of 2016 which involved strategies such as court site visits, multiple witnesses to support the claimants in convincing the courts about the gravity of the likely impacts of climate change.

After the presentation, the moderator opened the plenary for discussion. One of the participants inquired about the location of the Environment and Land court and whether the court is able to handle disputes all over Kenya. In response to this question, Ms. Kinama informed the participants that the Environment and Land court is in different parts of Kenya. She clarified that specialized courts such as the above-mentioned are located at every high court in Kenya which enables claimants to bring disputes in different parts of Kenya in order to facilitate justice. She concluded by stating that the judiciary in Kenya is subject to performance review where judicial officers are reviewed by the public based on their performance. This has in turn produced more effective judicial officers, reduced case backlog and ensured timely delivery of justice.



Fig 5

Ms. Emily Kinama, making her presentation at the training..

Third Session;

Intersecting Climate Change and Gender Inequality from a Feminist Perspective presented by Dr. Eria Serwajja:

Dr. Eria Serwajja discussed the link between climate justice and gender. The key takeaway from this discussion was the need to empower women and women groups to aid in mitigating climate change such as educating them about climate change and climate related issues, encouraging them to get involved in climate mitigation measures such as planting climate resilient tree seedlings and crops that can survive in extreme weather conditions. He discussed the effects of climate change such as migrations resulting into transboundary migrations as a result of damaged resources such as forests that are income sources of the people around and the judiciary should be well equipped to handle such cases most of which affect women and girls. He provided solutions that the courts of Uganda can explore such as courts being open to refugees filing climate related cases. He concluded by urging the justice department to address some cases that have resulted from climate change mainly affecting women. Dr. Serwajja's full presentation can be accessed via the link below:

<https://www.greenwatch.or.ug/technical-presentations/climate-change-gender-and-justice-eria-serwajja-phd-5th-judicial-training>



Fig 6

Dr. Eria Serwajja, making his presentation at the training.

19th
Day Two
May

First Session;

Building the resilience of Uganda's society to impacts of climate change presented by Dr. Michael S. Mbogga, Makerere University:

Dr. Michael S. Mbogga, zeroed in on building the resilience of Uganda's society to impacts of climate change. His discussion revolved around the general impacts of climate change including floods and landslides in areas like Budada that heavily impact the communities living there forcing them to migrate from their homes, food insecurity in Karamoja, the rise in water levels in many parts near water bodies in Uganda. He discussed the response actions that the Government of Uganda has carried out in order to address climate change including the National Development Plan III, the National Climate Change Plan of Action, the 2015 National Climate Change Policy and the National Climate Change Act, the Nationally Determined Contributions in terms of adaptation and mitigation, establishment of the climate finance unit under the Ministry of Finance.

With regards to private sector interventions, he spoke about the green climate fund, a body working with United Nations Development Program to support vulnerable communities to restore their ecosystems.

He further highlighted some of the risks associated with climate change such as water and food insecurity, instability, migration, and health.

He concluded his presentation by emphasizing the need to understand the risks associated with climate change especially if the government and its citizens do not take appropriate steps to adapt to climate change and reduce vulnerability.

After the presentation, the moderator opened the discussion up to the audience for a Q and A session.

One of participants expressed their appreciation to the government for its efforts in addressing climate change and asked what else can be done? In response, Dr. Mbogga said that there is a great need to create awareness in relation to climate change and incorporation climate proofing in every development project. Dr. Mbogga’s full presentation can be accessed via the link below:

<https://www.greenwatch.or.ug/technical-presentations/building-resilience-ugandas-society-climate-change-impacts-michael-s-mbogga>



Fig 7

Dr. Michael S. Mbogga making his presentation at the training.

Panel Session;

The topic for the panel session was *“Fostering climate adaptation and resilience: The role of key stakeholders.”* The panel was comprised of, Ms. Margret Mwebesa, the Commissioner Climate Change Department under the Ministry of Water and Environment, Wolimbwa Anthony of Climate Action Network, Samantha Atukunda Greenwatch and Dr. Peter Mutesasira, Dean law faculty Uganda Christian University. The moderator Mr. Robert Bakiika opened up the session by asking the panelists to introduce themselves and the organizations they were representing.

Ms. Margret Mwebesa kicked off the discussion by explaining the role of the Climate Change Department. She said that the core function of the department is to protect the climate and promote climate justice. She spoke about the different climate change treaties and agreements that Uganda has ratified and their role in implementing and benefits in the requirements of these treaties through domestication of the laws such as the Paris Agreement, the United Nations Framework Convention on Climate Change. Ms. Margret Mwebesa stated that the Climate Change Department monitors and coordinates all stakeholders in the country in the field of climate change and collaborates with other sectors for climate updates to ensure that the different sectors are planning and implementing climate change actions which contribute to global implementation. She highlighted the most critical sectors to climate change and how they closely monitor these sectors.

The next question was posed to Mr. Wolimbwa on the role of civil society in addressing climate change. He started by introducing the Climate Action Network and breaking down some of its roles. He stated that as a network of climate change civil organizations, it undertakes to supplement government's efforts to combat climate change, through resource mobilization from international funding, empowering marginalized groups which are mostly affected by climate change to become more resilient. In addition, he asserted that Climate Action Network as well promotes climate justice through supporting climate change mitigation projects such as carbon trade, helps to access technology including intellectual property right from the local community and remove the obstacles brought by the law, to protect the rights of the voiceless people and formulation of fair laws.

The next question was directed to Samantha Atukunda on the challenges faced by civil society in litigating for climate justice in Uganda.

She stated that there are various factors that affect the success of litigation in Uganda; the first is obtaining evidence to support the claim. The other challenge is the constant adjournments or delays in the court process.

She gave an example of a case that was filed by Greenwatch in 2012 and is still pending before the court. This has jeopardized the civil society's efforts in their quest for climate justice. She suggested the establishment of a specialized court in Uganda as is the case in Kenya that deals primarily on environment and climate cases. Samantha Atukunda added that the protection of the environment is a collective effort not only for civil society organizations but everyone.

The next question was directed to Dr. Peter Mutesasira on how climate change claims can be categorized in Uganda's legal context.

Dr. Mutesasira started by highlighting the preamble of the current issues around climate change effects in the world. He stressed the fact that because climate change is fully scientific, other professions such as lawyers and judicial officers find it difficult to appreciate the concept. He noted that climate related claims can be tortious claims whereby failure to address them constitutes a breach of duty from those mandated to enforce the existing laws and protect. He, however, thanked the judiciary for taking up the initiative to address climate change issues. In addition, he noted that the judiciary has a role to play especially when climate related cases are filed before their courts. He said that most of the impacts happen as a result taking no action to protect natural resources.



Fig 8

(Left-right) Panel session comprised of Mr. Robert Bakiika, Ms. Margaret Mwebesa, Wolimbwa Anthony, Samantha Atukunda K. Mwesigwa and Dr. Peter Mutesasiira

Summary of Closing remarks

The training was officially closed by Greenwatch's director Samantha Atukunda Kakuru Mwesigwa. She thanked the participants for attending the training, the JTI team for their continued support, the facilitators for preparing resource materials and training the participants and the Greenwatch team for organizing a successful two-day training. She concluded by informing the participants about the Greenwatch website which has an abundance of information on environment and climate change for further reading and research purposes.