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JUDICIAL TRAINING ON CLIMATE JUSTICE IN UGANDA

**The role of the judiciary in adjudicating the impacts of climate change in
a natural resource based economy**

TRAINING FOR JUDICIAL OFFICERS,

VENEUE: IMPERIAL ROYALE

DATE: 6 NOVEMBER, 2019.

TIME: 8am – 5pm

**THE LEGAL IMPLICATIONS OF CLIMATE CHANGE IN UGANDA.
A JUDICIAL PERSPECTIVE**

BY

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I have been requested to deliver a paper on a subject in respect of which I am least qualified to write about. I envisage that, the organizers of this training simply required me to present my subjective view on the subject.

I must from the onset commend Greenwatch Uganda, Heinrich Boll Stiftung Nairobi, Kenya and Judicial Training Institute for their foresight in bringing this subject before their Lordships for discussion at this point in time.

The scientific, social and economic issues relating to climate change have already been ably set out by earlier presenters. They are the experts and I need not say more. I will therefore restrict myself to the legal aspects of climate change as I understand them.

Uptodate, as far as human knowledge has been able to tell, the Earth, this blue planet is our solar system, in the milky way is the only place the whole of the known universe that supports life. The only reason as far as we know, life exists as we know it only on Earth is that the environment is suitable. The Earth has been described as one living organism of which each tiny part is essential for the continued existence of life on this planet. In this regard, therefore our unique environment is key, not only to the existence of mankind, but all the other species. We would not want to be the generation that destroyed the life on earth.

We now know that the concentration of carbon dioxide in our atmosphere as of 2018 is the highest it has been in 3 million years. This is very frightening considering that man evolved from apes 4 million years ago! 2016 was the warmest year in recorded history. We also know 11 percent of all global green house gas emissions caused by human activity are caused by deforestation. One million hectares of forests are lost each year.

Just two days ago India's capital New Delhi was shut down due to pollution. A public health emergency was declared, schools, offices and airports were

closed. The pollution is from industries, motor vehicles, construction sites, industries, burning of solid waste, burning of farmlands and forests.

Our own capital Kampala's is no better, it's Air Quarry is six times worse than Global Standards, [www.kcca.go.ug/news]. Pollution arises from unpaved roads, motor vehicles, lorries and trucks, open air burning of waste, industries among others. Uganda is at risk of losing all this forest cover in the next 40 years if deforestation is not checked. The problems go on and on.

But the good news is that there are solutions both local and global, as already articulated by the previous presenters. Control of human behaviour and activities through legislation and education is one of the many solutions available.

As a judiciary it is important that we urgently become part of the solution. We are in a unique position, in that we have power to enforce regulations, to minimize pollution, to halt deforestation, to reduce industrial pollution and to change mindsets.

This is so because climate change is in my view by and large a result of uncontrolled human behaviour. Greed, selfishness, consumerism, and other unchecked evils of capitalism. The above compounded with underdevelopment in which extreme poverty prevails side by side with extreme abundance and waste.

The Courts of law have a duty to balance interests of the industrialists with those of the consumers. They have a duty to adjudicate upon disputes between the poor seeking more arable land and the conservationists seeking to protect forests and wetlands. Courts may through positive action stop the depletion of natural resources in our lakes, forests, wetlands, rivers and other protected areas. Courts also have to constantly adjudicate positively on all issues arising from population pressure and urbanization.

Courts in Uganda have done so in that past and are encouraged to do even more now and in the future.

In *Advocates Coalition for Development and Environment versus Attorney General and NEMA, High Court Miscellaneous Application No.1 of 2004*, Opio-Aweri J (as he then was) declared null and void a forest permit issued over Butamira Forest to Kakira Sugar Works Ltd for the purpose of cutting down the forest and growing sugarcane. He upheld the doctrine of public trust and found that it applies in our jurisprudence.

In *Greenwactch vs Uganda Wildlife Authority and Attorney General, Miscellaneous Application No.92 of 2004*, Justice Tinyinondi granted staging to a NGO seeing to keep chimpanzees in their natural habitat.

In *Nyakana vs Attorney General and Others* the Supreme Court confirmed the decision of the Constitutional Court, in which it dismissed the petitioner's claim to build in a wetland in Kampala.

In *Environment Action Network vs Attorney General & NEMA, High Court Miscellaneous Application No. 39 of 2001*, Ntabgoba PJ upheld the right of the citizen of Uganda to live in a clean and health environment including freedom to tobacco smoke free environment.

Climate change brings with it new legal challenges. Increasingly around the globe lawyers and civil society organizations are bringing to Court climate change actions intended to expand jurisdictions of Court as a tool to protect the environment and reducing greenhouse gas emissions. Most of the actions are against polluting industries. Climate change litigation is a tool that has capacity to influence government policy and legislation. It also has the potential to influence corporate behaviour towards self regulation and voluntary compliance. Without judicial intervention laws are likely to remain only on statute books. Vigorously enforced is key in addressing climate change. Public interest litigation is a key tool in the enforcement of existing and future legislation.

Judicial intervention is likely to influence positive change in institutional and legal framework. For example judicial intervention may help accelerate the enactment of climate change legislation in Uganda. Such law already exists in Kenya. Courts have a duty to enforce compliance by punishing offenders.

These cases also help expose Judges and other judicial officers to climate change science and related arguments on either side. Well reasoned

Judgments advancing the cause of environment and reduction of greenhouse gases will make offending companies think twice as non-compliance will increase the risk of punitive damages and fines and influence their decision making. See: *Greenwatch vs Hima Cement*. Climate change decisions would also be able to influence public and corporate accountability and compliance.

Climate change has brought with it new challenges before Courts of law. Some of these questions relate to ownership of land effected by extreme weather such as drought and floods that remain unhalted for a long time. The population may have been resettled at the expenses of government resulting into land disputes between displaced persons and the lost communities.

The question may also arise as to the ownership of land that, was previously a wetland but has since dried for several years in view of the current law. The reverse would also present a similar legal challenge. What happens to land that has become water lodged following flooding and has now physically become a wetland? Does the one lose ownership of that land on that account? Nema has plotted and gazzetted wetlands all over the Country as of today. Courts may have to decide what to do if the boundaries of today's wetlands change due to changing weather patterns.

There are also issues relating to access to water resources in pastoral areas neighbouring protected area such as Lake Mburo and Queen Elizabeth

National Parks. Before the law is changed, can courts permit communities to enter protected areas in search of water and pasture during extreme dry periods or the reverse. Who is liable for loss of lives of children and even adults drowning in the middle of the City of Kampala after a sudden heavy down pour?

Is government liable when failing to implement its obligations in international agreements when, citizens properties are destroyed by floods, landslides and wild fires? How far can we stretch the effects of climate in Judicial making process, in view its effects that include famine, diseases and natural resources conflicts.

My Lords those questions are likely to come before you sooner, than later. We must therefore prepare to address them. We must endeavor to equip ourselves with current global, regional, local and trends in climate change science and litigation. We must think and work ahead.

We owe it to ourselves and citizen of this world. We owe to those from who we inherited this beautiful place. We owe it to our children and their children. To those yet unborn. The time to act my Lords, your Worships, ladies and gentleman is now for tomorrow maybe too late. Let us not consider our individual contribution to be too insufficient to make any meaningful impact. Every positive action counts and nothing is too small or insignificant. The ocean is but a collection of single drops. Be that one drop.

I thank you.