



HEINRICH BÖLL STIFTUNG
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REPORT ON THE PROCEEDINGS OF THE JUDICIAL TRAINING ON CLIMATE JUSTICE IN UGANDA

6th NOVEMBER 2019

IMPERIAL ROYALE HOTEL

ORGANISED BY:

GREENWATCH

In partnership with

The Judicial Training Institute

With support from the Henirich Boll Stiftung Nairobi

1.0: Introduction:

Greenwatch is an environmental rights advocacy Non-Governmental Organisation among whose objectives is to promote public awareness of the need to protect the environment, to focus on issues and problems that relate to the protection of our environment and to engage in formulation of policies that promote rational management of natural resources and sound environmental practices as well as the promotion of the right to a clean and healthy environment.

One of the ways we implement our objectives is through trainings of judicial officers. It is in this light that we organized this judicial training on climate justice for judges and Registrars of the High Court and Magistrates courts.

This training was carried out in partnership with the Judicial Training Institute (JTI). JTI is a semi-autonomous institution of the Uganda Judiciary established by **Office Instruction No. 2 of 2017** issued by the Hon. Chief Justice of the Republic of Uganda. **Office Instruction No. 2 of 2017** gives the JTI a semblance of a legal status under the Constitution as the office instruction was issued under the administrative functions of the Chief Justice provided for under article 133. The mandate of the JTI is to provide training for Judiciary staff both judicial and non-judicial. On request, the JTI provides training for stakeholders within the Justice Law and Order Sector spectrum.

1.1: Commencement of the training

The training commenced with the Deputy Registrar Training at the JTI welcoming the participants to the training and thanking them for responding to the invitation to attend. He thereafter invited the Chief Magistrate of Nabweru Magistrates Court to lead the gathering in prayer which function she ably executed. The prayer was then followed by self-introductions by all those in attendance.



His Worship Angualia Moses, the Deputy Registrar Training at the Judicial Training Institute (JTI) welcoming participants to the training

In his brief remarks, the Deputy Registrar observed that environmental justice is one area of the law that has been given little attention and yet it determines the nature of humanity. He noted that issues of climate change if not properly handled have far reaching effects on humanity. For the judiciary, the Deputy Registrar observed that proposals have been made to establish a special court to deal with environmental related matters. For now, any matters of an environmental nature have been filed in the High Court which has unlimited jurisdiction to deal with all matters. The Deputy Registrar further observed that a number of cases of an environmental nature have been filed in the High Court Civil Division under Public interest litigation, as article 50 of the Constitution allows the Institution of such actions with others that require constitutional interpretation filed in the Constitutional Court. His worship Angualia observed that the few cases so far decided by these courts impose an overriding duty on government to ensure that the environment is protected.

On her part, Samantha Atukunda K. Mwesigwa the Director and Legal Counsel Greenwatch gave a brief overview of the mandate of Greenwatch in ensuring environmental protection in Uganda. She noted that Greenwatch has overtime trained

judicial officers in the area of environmental justice. She further informed the gathering that Greenwatch has instituted a number of suits both in the High Court and Constitutional Court of an environmental nature seeking declaratory orders that impose an obligation on the state to ensure environmental protection and as such, a wide range of jurisprudence on environmental justice has been developed by the Ugandan courts. She thanked the JTI for mobilizing the participants and hoped that the intended objectives of the training would be achieved.

1.2: Key Note Address

Hon. Lady Justice Damalie N. Lwanga, the Executive Director (ED) of the JTI made the key note address in which she thanked Greenwatch, with the support of Heinrich Boll Stiftung Nairobi for choosing to appraise judicial officers on the subject of climate justice. She observed that the training was timely and that the subject of climate justice should be of interest to every citizen, as it is an issue of global concern. She thanked the media for its role in reporting and highlighting issues relating to climate change and the environment generally, which awakens the government to respond to environmental concerns that pose a danger to humanity.

Justice Lwanga further observed that climate change is a serious subject of discussion currently, as individuals and organizations are highlighting the need to combat hazardous environmental activities to minimize adverse effects and the training therefore presents an opportunity for judges to learn, understand and appreciate issues related to environmental change and climate justice generally.



Hon. Lady Justice Damalie Lwanga, the Executive Director of the Judicial Training Institute (JTI) making a key note address at the training

In her opinion, the overall objective of the workshop was to create knowledge about climate change within the judiciary as a tool to enhance judicial activism and where necessary to influence government policies intended to protect the citizen's rights from violation by any entity. She noted that Uganda is a developing country susceptible to the effects of climate change and this threatens the country's agricultural sector, shared natural resources more especially water and the ecosystems. She thus implored the government to ensure sustainable development that should improve the livelihood and welfare of the citizens.

For the judiciary, Justice Lwanga observed that the judiciary can influence issues of environmental protection and this can be done through appropriately adjudicating technical climate change matters, enforce compliance with national laws, harmonize existing laws with international rules, standards and practices. To this end, a prospective initiative will promote awareness of international law; policies and climate initiatives among the judiciary and enable the judiciary adjudicate such matters and provide tools for continued learning and reference. That to have a lasting and appropriate environmental strategy, all stakeholders who contribute to access to justice and environmental enforcement should be engaged. Justice Lwanga further highlighted

factors that hinder awareness on environmental issues to include Social and cultural barriers driven by ignorance of the reality of environmental change and its impact on the livelihood of the people.

On the regulation of environmental issues, justice Lwanga noted that Uganda currently does not have a law that specifically addresses climate change though the same is captured in a number of statutes. That this therefore calls for judicial officers to know and understand the provisions enlisted in the various environmental laws that address climate change and adequately apply them in addressing environmental related matters once brought before them. The ED highlighted institutional barriers observing that government institutions are not systematically coordinated in the implementation of adaption measures within their developmental projects.

The ED was confident that the training would lay a foundation for climate jurisprudence through equipping judicial officers with knowledge on matters of climate change as relevant laws were to be discussed, jurisprudence shared, best practices and experiences from other jurisdictions shared which would consequently help in understanding the role of the courts in addressing climate change issues. To this far, the ED took a swipe at balancing the quest for national development and environmental protection highlighting the recent discovery of oil reserves in the Albertine region which she observed that, if not handled carefully, oil discovery may turn out to be a national disaster as several climate issues emanate from oil exploration.

The ED thanked Greenwatch for organizing the training and Heinrich Boll Stiftung for funding the training. She in a special way thanked all those who participated in the organization of the training and to the resource persons who took off time to facilitate at the training despite their busy schedule. She thereafter declared the training officially opened.



Participants take a group photo after the official opening of the training

2.0: Presentations

2.1: An overview on climate change, and its associated impacts on the Environment, Communities and the Economy; Re-thinking responsibility for climate change.

Facilitator: Mr. Bob Natifu

This presentation commenced with a highlight of the national and international legal regime, and policy framework on climate change. At the international level, the United Nations Framework Convention on Climate Change adopted in 1992 was highlighted as one of the major policy frameworks on climate justice, whose overall objective is to achieve stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system that allows ecosystems to adapt naturally to climate change and ensure that food production is not threatened to enable economic development to proceed in a sustainable manner. The Convention mandates State parties to protect the climate system for the benefit of present and future generations of humankind, on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities. The

Convention also obliges developed country Parties to take the lead in combating climate change and its adverse effects.



Participants giving their due attention to the facilitators during the presentations

Further discussed was the Kyoto Protocol, an international agreement of the United Nations which commits state parties to the Protocol in setting binding emission reduction targets. The presenter observed that the Kyoto Protocol was adopted in 1997 and covers the period 2008-2012 and 2012-2020. He observed that the Protocol is designed to assist countries in adapting to the adverse effects of climate change which subsequently facilitates the development and deployment of technologies that help minimize the impacts of climate change. Consequently, the Protocol is seen as an important instrument towards the reduction of global emissions and provides a guide for future international agreements on climate change.

The Paris Agreement 2015 (The Bali Action Plan) was similarly highlighted as one of the major International Policy Frameworks on climate change. The Action Plan is a comprehensive process intended to enable the fulfillment and sustainable implementation of the Convention on Climate Change, through long term cooperative action in order to reach an agreed outcome. It was observed during the discussions that the Bali convention is divided into five main categories that include shared vision, mitigation, adaptation, technology and financing. As what amounts to shared vision, it was clarified that shared vision refers to the long term vision for action on climate change; including a long term goal for reducing emissions. It was also noted that the agreement covers the period after 2020 and engages all countries.



In attendance were students from Makerere University School of Law listening attentively to Mr. Bob Natifu's presentation.

At the National level, the presenter observed that government has set targets in line with emission reductions in areas of renewable Electricity Generation, increasing forestry Cover from the current 9% to 14% and also increasing wetlands Coverage. Other government proposals include scaling up solar-pumped irrigation technologies and generation of at least additional 2,500 MW of electricity from renewable sources such as solar, geothermal, wind, mini hydro power and biogas by 2030.

At individual level, the presenter proposed that every person should make energy conservation and efficiency a priority by buying energy efficient products and products that reduce packaging hence reducing on waste, plant more trees and adopt water conservation methods.

On how to deal with the negative impacts of climate change, the presenter observed that there is need to mitigate on activities that impact on the environment and also devote more resources on activities intended to protect people from the adverse consequences of climate change.

Mr. Natifu wound up his presentation noting that climate change response is a collective responsibility that requires both technological innovation and human resource input which should include judicial officers.



Hon. Justice David Matovu, Judge of the High Court pauses a question during Mr. Natifu's presentation

2.2: Discussion of first presentation by Ms. Sarah Naigaga

Ms. Sarah Naigaga the Senior Legal Officer National Environment and Management Authority (NEMA), discussed Mr. Bob Natifu's presentation and in her discussion, she observed that questions regarding having a legal framework on climate change took center stage in 1992 though discussions on the subject had commenced much earlier. She noted that environmental degradation is as a result of human activity which calls for government to regulate such activities and the current disasters being experienced (landslides, floods, extreme hot conditions) are effects of environmental change. She therefore called for putting in place policies that should enhance sustainable environmental management. In her discussion, Ms. Naigaga made reference to the Rio Declaration on the Environment, which introduces the principle of sustainable environmental management. The Declaration implores states to exploit resources pursuant to existing national environmental and developmental policies, and take further responsibility in ensuring that human activity does not damage the environment within their states or those of other states beyond the limits of their national jurisdiction.



Hon. Justice Alexandria Nkonge consults training materials during the presentations

MS. Naigaga noted that the poor use of the environment affects the water, air, land, living organisms, important aspects for human sustenance. That as a result, Policies and laws should anchor themselves towards saving the resources available. She highlighted the role of the National Environmental Management Authority which she observed is mandated under section 69 of the NEMA Act to issue environment restoration orders to offenders intended to recover degraded eco-systems. She informed the participants that NEMA is working with other lead agencies in the environmental sector in ensuring that carbon emissions are reduced in the environment and also reduce activities that lead to deforestation, hence environmental degradation. She concluded her discussion by observing that Uganda is an enviable country due to its green environment.

The plenary discussion expounded on the activities that lead to environmental destruction which include; infrastructural development and unregulated use of the land through farming. The participants also observed that the government has showed its efforts in trying to protect the environment but such efforts have not born positive fruit due to conflict of interest by some government officials who themselves are the perpetrators of environmental degradation.



Hon. Lady Justice Henerrietta Woalyo, Judge of the High Court, Civil Division raises a question during the plenary session.

It was also observed through the plenary discussions that there is a general lack of coordination between the lead agencies mandated to deal with environmental protection namely NEMA, Ministry of Water and Environment and the National Forestry Authority. Participants thus observed that without coordinated efforts among the lead agencies, issues of environmental protection and restoration may be unachievable.

On the recent discovery of oil reserves in the Albertine region in Western Uganda, it was observed that there are no measures being put in place to mitigate the effects of oil exploration; which is likely to lead to disastrous environmental consequences for the country.

2.3: The legal Implications of Climate Change in Uganda: A judicial perspective for Climate Change

Facilitator: Hon. Justice Kenneth Kakuru

Justice Kakuru commenced his presentation by looking at the history of the existence of man and how the activities of man have affected the environment. He observed that the livelihood of man and all species on planet earth depend on a safe and healthy environment. According to Justice Kakuru, man should not be seen as the one destroying life on earth.



Hon. Justice Kenneth Kakuru makes a presentation on the implications of climate change in Uganda. A judicial perspective for climate change.

Justice Kakuru observed that the concentration of carbon dioxide in the atmosphere as of 2018 has been recorded highest in over 3 million years and this is frightening considering that man evolved from apes 4 million years ago. He gave more statistical data observing that 2016 was the warmest year ever recorded in history and that 11% of all global greenhouse gas emissions are caused by human activity with one million hectares of forests lost each year. He gave the example of New Delhi India's capital which was shut down due to pollution, with a public health emergency declared. He observed that environment pollution emanates from industries, motor vehicles, construction sites, industries, burning of solid waste, burning of farmlands and forests.

The presenter noted that to mitigate the negative consequences of environmental degradation, control of human behaviour and activities through legislation and education is paramount. He implored judicial officers to be part of the solution as they are in a unique position with the power to enforce regulations to minimize pollution, make orders to halt deforestation and this would consequently lead to a change of the mindset. He further observed that climate change is by and large a result of uncontrolled human behaviour, greed, selfishness, consumerism, and other unchecked evils of capitalism.



A cross-section of participants take a light moment during Justice Kakuru's presentation.

Consequently, Courts of law have a duty to balance interests of the industrialists with those of the consumers. In effect, courts have a duty to adjudicate disputes between the poor seeking more arable land and the conservationists seeking to protect forests and wetlands. Through the adjudication process, courts can stop the depletion of natural resources in areas such as lakes, forests, wetlands, rivers and other protected areas. Justice kakuru however, observed that the courts in Uganda have not sat back but delivered decisions that aim at protecting the environment. He highlighted the case of **Advocates Coalition for Development and Environment versus Attorney General and NEMA, High Court Miscellaneous Application No.1 of 2004**, where the court 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. 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 **Environment Action Network vs. Attorney General & NEMA, High Court Miscellaneous Application No. 39 of 2001**, court upheld the right of citizens of Uganda to live in a clean and healthy environment including freedom to a tobacco smoke free environment.



Hon. Justice Richard Wabwire pauses a question during justice Kakuru's presentation

All the above cases indicate that the courts have been pro-active in issuing orders that are geared towards the protection of the environment. The presenter further noted that climate change litigation is a tool that has capacity to influence government policy and legislation, as it has the potential to influence corporate behaviour towards self-regulation and voluntary compliance. Without judicial intervention, laws are likely to remain only in statute books, and that vigorous enforcement of the law is key in addressing climate change.

Justice Kakuru further observed that judicial intervention is key in influencing positive change in institutional and legal framework and this will help accelerate the enactment of climate change legislation in Uganda. He implored judicial officers to always determine whether the government should be held liable in failing to implement its obligations in international agreements owing to disastrous environmental

consequences. He concluded his presentation observing that the courts owe the citizens a duty in passing decisions that are intended to protect the environment.

2.4: Discussion of Justice Kakuru's paper by Hon. Justice Lydia Mugambe

In discussing Justice Kakuru's paper, Justice Lydia Mugambe noted that climate change issues are everyday things but people have chosen either to ignore or close their minds on some of the concerns in regard to environmental degradation. She observed that every individual in society has a role to play in protecting and restoring the environment that has been degraded. "It is important for every judicial officer to understand the relevant law applicable in the circumstances of the facts of the case presented before them and environmental law is no exception", observed Justice Mugambe. It is therefore necessary that judicial officers look out for, not only the domestic law but regional and international law on environmental matters.



Hon. Lady Justice Lydia Mugambe discusses Hon. Justice Kakuru's paper

The discussant however observed that to achieve the benefits of environmental protection, the state has the obligation to take the lead in environmental protection matters and to have this achievable, every individual should be pro-active in terms of environmental protection and keep the relevant government agencies in check, question the visible bad things and be alive to the prevailing environmental issues.

To the courts, the discussant noted that they should give remedies which are meaningful and those that address issues at hand. For the regulators, she implored them to pay attention to detail, get out of their comfort zones and question some of the bad things

done. She emphasized the need to train more judicial officers on environment issues and keep them embraced on the legal regime relating to the environment and climate change generally. She further implored judicial officers to be pro-active and have a change of mind set and avoid politicizing issues. She highlighted the role of public interest litigation in addressing environmental justice as this would in her opinion, bring to the fore the right of the public and the individual.



Justice Kenneth Kakuru listens attentively to Justice Lydia Mugambe as she discusses his paper

In concluding her presentation, Justice Mugambe called upon judicial officers to always think outside the box when dealing with matters of climate change and broaden their perspective on the legal regime concerning the environment.

2.5: Climate Change: Its Legal, Social and Economic impact on the citizens of Uganda; Understanding the challenges and finding solutions.

Panelists:

- **Ms. Susan Nanduddu**
- **Mr. Bakiika Robert**

- **Mr. Frank Tumusiime**
- **Mr. Bernard Namanya**

This presentation took the form of a panel discussion consisting of Ms. Susan Nanduddu from African Centre for Trade and Development, Mr. Bakiika Robert the Deputy Executive Director Environment Management for livelihood and Mr. Frank Tumusiime, Executive Director Advocates for Natural Resources and Development and Bernard Namanya an advocate with BNB Advocates.



Panelists taking the participants through the theme, “Climate change-its legal, social and economic impact on the citizens of Uganda. Understanding the challenges and finding solutions”.

On her part, Ms. Nanduddu observed that when dealing with environmental related matters, the plight of the vulnerable people in as far as climate change is concerned, should be of paramount consideration with priority given to women as Uganda is dependent on agriculture and women take the lead in the agricultural sector. She observed that the change in weather patterns caused by human activities on the environment has adverse effects on women as their livelihood (agriculture) depends largely on natural weather. This according to Ms. Nanduddu, results into poor harvests which compels the woman to turn into a beggar. To Ms. Nanduddu, climate change is a significant reality and has exacerbated poverty and this has impacted on the stability of some families. She also observed that deforestation has led to gas emissions into the atmosphere which in 30 years to come will have adverse effects on the environment unless mitigating measures are put in place.

Mr. Robert Bakiika commenced his discussion with an observation that the term climate change is quite often reduced into environmental change and yet climate change is not all about environmental legislation, as it goes as far as energy and agricultural policies. To Mr. Bakiika, the change in weather patterns has had significant consequences on the environment and the change in weather is mostly caused by human activity. He further observed that adverse weather patterns have an adverse effect on crop production which in turn affects the livelihood of individuals as hunger escalates. Not only does climate change affect the agricultural sector but other sectors such as health, transport, ICT, etc.

Mr. Bakiika observed that the current legal regime in Uganda does not wholly cater for environmental and climate change. He implored policy makers to move fast and enact the relevant law and policies in this regard and such legislation enacted should be one that enhances public trust towards environment protection.

Mr. Frank Tumusiime commenced his discussion by highlighting the role of court in climate change related matters. He paused a question as to how the court can apportion blame as to who pollutes the environment so that appropriate remedies are passed in as far as polluter pays principle is concerned. He highlighted some of the causes of climate change to include deforestation, poor farming methods and infrastructural development activities.

Mr. Tumusiime reminded judicial officers that when adjudicating environmental related matters, attention should be given to issues of climate change which are well elucidated in NEMA Act and that on the reading of the decisions so far passed by the courts, courts have set principles that are intended to protect the environment. He however, observed that the basic principles in environmental law adjudication such as market share liability, climate change; enterprise liability and utility arguments of income have not been well addressed.

Mr. Tumusiime pointed out that for Uganda's case, the rate of deforestation is so bad and that if the same is not countered, by 2040, there will be no forest cover. He proposed a rather wider perspective of resolving land disputes that should look at reducing negative impacts on the environment and that this critical role has to be played by courts. He highlighted the Nyakana case (supra) which he observed has good principles on environmental protection to which he credited the courts.

2.6: Emerging Trends in Climate Justice: A legal Practitioners' Perspective

Facilitator: Mr. Benard Namanya

This presentation commenced with the highlight of the International Legal regime in regard to climate. Mr. Namanya outlined such legal framework to include the United Nations Framework Convention on Climate Change, the Paris Agreement 2015 (The Bali Action Plan) and the Kyoto Protocol which he noted had been ratified by Uganda though not yet domesticated. He observed that the failure to domestic the above International Instruments has paused an implementation gap of the legal regime on climate change in Uganda.

As to what a judicial officer should do to bring about the much desired environmental protection, Mr. Namanya proposed that courts should deliver decisions which impose an obligation on government to enact the relevant law and policies geared towards environmental protection.

On how matters find their way to the courts, the presenter observed that governments tend to carry out infrastructural projects without considering the impact of such activities on the environment. He thus observed that in the long run, such activities cause negative climatic issues which affect the well-being of the population. He proposed the way forward on minimizing the effects of climate change:

- Government should take the lead in sensitizing the population on the negative effects of environmental degradation which in the long run cause climate change.
- Train more professionals on climate change management
- Establish specialized courts to deal with environmental issues
- Establish a data base for climate change cases
- Establish a study center for climate change

3.0: Conclusion:

The participants observed that the training was timely and relevant as it enhanced their capacity in adjudicating cases of an environmental nature. Overall, it was noted that climate justice is one area that has not been given sufficient attention and the survival of humanity largely depends on a clean and healthy environment. It was thus proposed that resources allowing trainings of a similar nature should be spread to all caliber of judicial officers in the future.



Participants holding a brief discussion at the close of the workshop

4.0: Recommendations

- Government should move fast and enact laws on climate change and any laws in existence dealing with environmental justice that are outdated should be repealed.
- The lead government agencies such as NEMA, National Forestry Authority and Uganda Wild Life Authority should take the necessary measures that minimize environmental degradation.
- The judiciary should compile a compendium of laws on the environmental legal regime and avail them to all judicial officers.
- Trainings of a similar nature should be extended to all judicial officers
- The judiciary should establish specialized courts to deal with environmental related cases.
- In oil exploration areas, government should use such technology that minimizes environmental degradation.