

KEYNOTE ADDRESS BY MUTUSO DHLIWAYO¹

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Salutations

The Executive Director Greenwatch, Mrs.Samantha Atkunda , Members of the Uganda Law Society ,Greenwatch Board members and members of the Greenwatch team , ladies and gentlemen good morning. I am humbled to be with you today to speak about Climate Justice and Environmental Governnce issues , which I hear you have an interest in from a public interest interest litigation perspective. My name is Mutuso Dhliwayo . I am the Executive Director of the Zimbabwe Environmental Law Organisation (ZELO) formerly known as Zimbabwe Environmental Law Association (ZELA) which I co-founded about 25 years ago.

My keynote address will be structured in the following way:

1. The beginning – how it all started for me as a public interest environmental lawyer
2. Why is this work (public interest) so important and the major beneficiaries of our work
3. The role of environment and in environmental law in governance issues and the opportunitites.

THE BEGINNING

Growing up, I did not envisage my self as a public interest environmental lawyer. My interest was to become a COMMERCIAL LAWYER. I grew up in poverty and the major incentive for aspiring to become a commercial lawyer was that I would make lots of money. With that money, I was going to use it to pull myself , family , close relatives – out of poverty by providing them with all the resources that they want to meet their material needs in pursuit of HAPPINESS. I am sure we have all heard that Elon Musk has now become the first trillionaire. Imagine what one can do with all that money. Of course , I was not aspiring to be a trillionaire like Elon Musk, but to have enough to meet my needs and those of my folks and becoming a commercial lawyer was the preferred pathway.

However, this all changed during my third year at the University of Zimbabwe when I attended a public interest lecture on a career as Public Interest environmental lawyer that was given by Professor Owen Lynch , then with the Center for International Environmental Law (CIEL) a Washington DC based Think Tank and the head of the Land and Communities programme.

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Professor Owen Lynch had the passion to travel widely in Africa, South East Asia and Latin America to meet law students and encourage them to become public interest environmental lawyers . He visited in the company of Rugemeleza Nshala , the Executive Director of Lawyers Environmental Action Team (LEAT). When he asked , what we wanted to do after graduation, the majority of us indicated commercial law mainly because of the financial benefits. I guess most of the lawyers there were like me – coming from poor backgrounds.

He asked some very fundamental questions regarding the main violators of human rights or the failure to protect and respect human rights . Of course we answered enthusiastically , the state and the private sector. He then asked , so by representing the interest of the State the main violator of human rights and the private sector, who are well know for their failure to respect human rights especially community rights , how were we helping our poor folks? The lecture room fell silent as we were trying to grasp what this old white man was saying . He seized the opportunity and drove the point home – that by going into private practice – representing the interests of the private sector , we were not in any way helping our poor parents .In fact , we were actively contributing to the violations of their rights. We were bamboozled to put it lightly but that lecture began to stir some serious soul searching among some of us. For those that go to church or at least read the Bible , I am sure we all know Saul who later became Paul. He was on his way to Damascus to persecute Christians when he encountered Jesus, an experience that changed his life and he became the foremost defender of Christianity. But he had not always been like that.

While I am not Saul and later Paul , for me that was my Damascus moment where for the first time in my three years of studying law, I started to question what I wanted to become after graduation. One of the things that we asked Professor Owen Lynch was , so what can we do ? He encouraged us to form a public interest environmental law organization that will defend and advocate for the interests and rights of the poor, the weak and the marginalized whose water is being polluted and contaminated by developmental projects , without being consulted , without access to information , who are losing land without being fairly compensated and relocated [Involuntary Displacement and Resettlement], who are not benefitting from the extraction of resources in their localities , who only see costs but no benefits . That he said , is helping our poor folks. While we would not be able to become rich , that he said will be making a difference in the lives of the poor , weak and disadvantaged – which is the epitome of public interest work.

As a matter of fact he warned us that while we will not be poor , we will never be rich. That has remained very prophetic , at least to me , to this very day. Public interest work is about passion, commitment , sacrifices and dedication to the causes of the less privileged in our society – Quote the verse in Isiah on what advocacy is about . Our rewards is when we see the weak victorious , someone who was on the verge of losing their land managing to keep it, deriving benefits from the exploitation of natural resources found in their localities – wildlife , minerals , forests , water and fisheries.

I was one of the students that went to have a conversation with Professor Owen Lynch after the lecture and promised him that we were going to form a public interest environmental law organization. However, as soon as he left, we realized that we did not have the resources – time and money to form a public interest environmental law organization. But motivated by that talk, I decided to join an environmental organization as a public interest environmental lawyer upon graduation rather than going into private practice to become a commercial lawyer. Fortunately, the organization I joined also had an interest in the establishment of a public interest environmental law organization to support their organization's advocacy work. I then got in touch with my colleagues, some of whom had also attended the lecture by Professor Owen Lynch and founded the ZELA and now ZELO on the 30th of September 2000.

However, in founding ZELA now ZELO, I also benefitted a lot from those that had started public interest work before me. As Samantha Atikunda, the Executive Director of Greenwatch put it puts it “***I stand at the bridge where I have had the privilege to ride on the wings of fearless environmental lawyers and activists who set the stage for us through their diligence and hardwork. We too are setting the stage for the ones who will come after***”.

There were already established public interest environmental law organisations. I have already pointed that Professor Owen Lynch was accompanied by someone from LEAT. We also benefitted a lot from the support we got from towering environmental lawyers from Uganda namely the late Kenneth Kakuru who is the founder of Greenwatch and Golder Tumishabe. ZELO has advocated for the inclusion of Environmental, Economic Social and Cultural Rights in the Environmental Management Act and the 2013 Constitution. We have contributed towards a number of other laws and policies including the Climate Change Management Bill, the Mines and Minerals Amendment Bill, the Wildlife Policy and litigated on several cases that have set precedent. The rights and many other issues we work are also provided for under Ugandan Constitution and other laws and policies. Today, Environmental Rights are now only recognised as Human Rights but a FUNDAMENTAL PILLAR OF JUSTICE, HUMAN RIGHTS AND SUSTAINABLE DEVELOPMENT. ALL RIGHTS THAT YOU MAY THINK OF ARE INTERLINKED AND INTERDEPENDENT ON THE ENVIRONMENT.

Opportunities for Public Interest Lawyering

With the triple PLANETARY CRISIS OF CLIMATE CHANGE, BIODIVERSITY AND NATURE LOSS AND POLLUTION, Public interest environmental work has rapidly evolved and continue to evolve in terms of opportunities. When we started, Environmental Rights were not recognised as human rights. BUT TODAY: 100% of African States have recognised the right to a healthy environment either their constitutions, national legislation, or regional instruments such as the African Charter on Human and People's Rights. Africa is the region with the highest

- 74 % (40 out of 54) recognize the right in their constitutions

- 65% (35 out of 54) recognises it in national legislation
- 50% (27 out of 54) the right in both their constitution and legislation
- 13%(7 out of 54) recognize the right only through a regional treaty

Africa is the region with the highest concentration of constitutional environmental rights in the world. However with these progressive legal developments , we meet at a time when Africa is experiencing unprecedented environmental and climate challenges.

Across our continent we are witnessing increasing floods, droughts, heat waves, biodiversity loss, pollution, deforestation, land degradation, displacement of communities, and growing competition over natural resources. Climate change is no longer a future threat, it is a lived reality. Climate change affects the realistiion and protection of all categories of human rights ie the right to life , food , health , shelter , development , sustainable development etc.

At the same time, Africa has become the envy of the nations because of its rich endowment of critical minerals . The world needs our lithium, cobalt, graphite, nickel, copper, rare earth minerals, forests, carbon sinks, and biodiversity assets. Yet a fundamental question remains:

Will this transition benefit African communities, or will it reproduce old patterns of extraction, inequality, and environmental injustice?

The environmental challenges confronting Africa today are more complex, interconnected, and global than ever before. For African lawyers, this presents a unique opportunity. We have the opportunity to shape a distinctly African climate justice jurisprudence one that reflects our realities, our development priorities, and our vulnerabilities.

I would like to highlight four critical issues that I believe represent significant oppportunituies for public interest environmental litigation in Africa.

First, the Recognition of the Right to a Clean, Healthy and Sustainable Environment . In July 2022, the United Nations General Assembly formally recognized access to a clean, healthy, and sustainable environment as a universal human right. his was not merely a symbolic declaration.It was a profound affirmation that environmental protection is no longer simply a policy choice or a technical matter. It is a matter of human rights. For public interest lawyers, this recognition opens an entirely new landscape of legal opportunities. Environmental degradation can now be challenged not only as an ecological concern but also as a violation of fundamental rights.When a river is polluted, we are not only dealing with water contamination. We are dealing with violations of the rights to health, life, food, dignity, and livelihoods.

The recognition of this right creates opportunities to challenge government inaction, compel enforcement of environmental laws, demand environmental restoration, and hold both public and private actors accountable for environmental harm.

Second, the Recognition and Protection of Environmental Human Rights Defenders.

Across Africa and around the world, environmental defenders are increasingly finding themselves on the frontlines of some of the most contentious struggles of our time. These are community leaders opposing harmful mining projects. They are journalists exposing environmental wrongdoing. They are lawyers representing marginalized communities. They are citizens demanding accountability and transparency. Yet many environmental defenders continue to face intimidation, harassment, persecution through lawfare, criminalization, and even violence. The growing international recognition of Environmental Human Rights Defenders presents a significant opportunity for public interest litigation. Lawyers now have an opportunity to use the courts to protect civic space, defend freedoms of expression and association, challenge unlawful restrictions on environmental activism, and ensure access to environmental information

Third, Climate Change and Human Rights. Climate change is perhaps the defining challenge of our generation. For many years, climate change was viewed primarily as a scientific or environmental issue. Today, courts around the world increasingly recognize it as a human rights issue. Climate change affects the right to life. It affects the right to food. It affects the right to water. It affects the right to health. It affects the rights of women, children, indigenous peoples, and future generations. Across the globe, governments, corporations and carbon majors are being challenged through litigation for failing to take adequate action to address climate change. Our continent contributes the least to global greenhouse gas emissions, yet bears a disproportionate burden of climate impacts. This reality creates a compelling basis for climate justice litigation. Africa has a unique opportunity to shape the next generation of climate jurisprudence.

In May 2025, the Pan African Lawyers Union filed for an advisory opinion to clarify states' positive obligations on climate change under the African Charter. We are talking about over 30 rights: the right to life, to health, to housing, to culture and crucially, Article 24, the right to a satisfactory environment. If that opinion comes down favourably, it will become a binding interpretive guide for all 54 African Union member states. That is transformative.

Public interest lawyers can pursue cases that challenge inadequate climate policies, demand implementation of climate commitments, protect vulnerable communities from climate-related harm, and ensure transparency and accountability in climate finance and carbon markets.

Fourth, Energy Governance and the Rise of Critical Minerals

The world is undergoing a profound energy transition. As countries seek to move away from fossil fuels towards renewable energy systems, demand for critical minerals such as lithium, cobalt, graphite, nickel, manganese, and rare earth elements has surged dramatically. Many of these minerals are found in abundance across Africa. This creates enormous economic opportunities. But it also creates significant governance challenges. Without strong governance, transparency, accountability, and community participation, resource wealth can become a source of conflict, environmental degradation, inequality, and human rights abuses where community don't accrue any benefits from the mineral resources in their communities. This is where public interest litigation becomes essential. Lawyers have an opportunity to shape how the energy transition unfolds. We can challenge unlawful mining activities. We can protect

communities from displacement. We can advocate for meaningful consultation and participation. We can promote benefit sharing and local development. We can ensure that the energy transition is not only green but also just. Communities should not bear the environmental and social costs of supplying minerals for global decarbonization while receiving little or no benefit in return. The courts can play a crucial role in ensuring that the transition to a low-carbon future is grounded in human rights, equity, and sustainability.

These four developments, the recognition of the right to a healthy environment, the protection of environmental defenders, the rise of climate justice and the governance of critical minerals present an extraordinary opportunity for African lawyers. The future of environmental litigation in Africa is about ensuring that development benefits communities rather than marginalizing them. Communities are at the core of public interest environmental litigation. Even those that are pursuing other careers including commercial law practice, these issues are indispensable to modern lawyering. Climate Change, Critical Minerals, Energy Minerals etc are issues that will encounter in their work.

Overview of environmental rights in Africa : Implementation efforts



Overview of Environmental Rights in Africa

Body	Case	Key Messages
African Commission on Human and Peoples Rights	SERAC & CESR v Nigeria	States must take reasonable measures to prevent pollution and ecological degradation, promote conservation and ensure sustainable use of natural resources. The right to a general satisfactory environment requires independent environmental monitoring, access to information and meaningful participation of affected communities
African Commission on Human and Peoples Rights	Endorois v Kenya	With regards to indigenous peoples and other communities, implementation requires special protection measures, which may include consultation, recognition of land rights and special protective measures to

		ensure indigenous people can meaningfully enjoy their environmental and cultural rights
Ecowas Court of Justice	SERAP v Nigeria (2009)	States must adopt and enforce legislative and administrative measures and must apply vigilance and diligence to maintain environmental quality and prevent harm and ensure corporate accountability .The right to a general satisfactory environment includes restoration, strong regulation and protection of health and livelihoods .
East African Court of Justice (EACJ)	African Network for Animal Welfare(ANAW v Tanzania)	Upheld precautionary principle . Development projects must not undermine environmental sustainability or treaty obligations .

Looking at the agenda , I have no doubt that it has been designed in a way that helps us to ventilate these issues that I have highlighted in this key note address and hopefully provide a DAMASCUS moment for you as well. I look forward to learning more about Uganda's Climate Justice and Environmental Governance Issues from you.

I THANK YOU.

