

Global Warming and the Environment – A Challenge for Lawyers in Africa

By

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Background To Global Warming

- **“Global warming”** refers to the rise in average global temperature, and it is believed to result partly from a build-up of heat trapping greenhouse gases by human activities including burning of fossil fuels (coal and oil) and wood.
- **“Climate change”** on the other hand refers to changes in long-term average weather patterns, including changes in either the regional or global patterns of temperature, humidity, precipitation, wind among others.
- Global warming provides more energy to the processes that drive the wind patterns and ocean currents, key forces that determine the long-term average weather.

Background...

- There is a broad scientific consensus that:
 - (i) Greenhouse gases (particularly carbon dioxides methane and nitrous oxide) are accumulating in the Earth's atmosphere as a result of human activities causing surface air temperatures to rise;
 - (ii) Climate change will have dramatic, accelerating, and long lasting destabilizing consequences on a massive scale.
 - ❑ This is the climate change challenge and the basis of the global clarion call for urgent action (mitigation/adaptation).
- The debate is over how much and how fast global warming will increase as a result of human activity, not whether human activity contributes to global warming.
 - ❑ Here is the unavoidable degree of *"uncertainty"* attached to any detailed prediction of the *"ecotriggers"*.

Why Is Global Warming A Problem?

- The ecology of the planet consists of a complex web of interdependent physical and biological systems;
- Human lives literally depend directly and indirectly on these systems;
- When climate changes, the balance of these systems is disrupted;
- We therefore cannot be complacent... ***we must act now*** to avert crossing a threshold that may take it beyond our control.

Impacts Of Global Warming

- **Health Impacts**, can directly affect human health by increasing the rate of heat and cold-related illnesses and death, and increasing the intensity of extreme weather events;
- **Impacts on Agriculture**, variations in temperature can substantially reduce crop yields, and proliferate diseases and invasive species;
- **Impacts on Water Resources and Sea Level Rise**, global warming affects many aspects of global water cycle. Expected rise in sea level, will indirectly affect regional water supply by increasing the intrusion of saltwater into freshwater aquifers along the coasts;
- **Impacts on Severe Weather**, worldwide economic losses due to natural disaster appears to be doubling every ten years. It is strongly believed that global warming is helping to intensify the extreme weather patterns;
- **Ecological Impact**, rapid climate change, combined with other human-induced stresses, such as habitat destruction and environmental pollution is a major concern for biodiversity/needed genetic diversity.

Unequal Inheritance

- Despite producing the least warming –causing greenhouse gases, IPCC reports indicate that Africa will suffer the most (2007).

Selected Countries, 2004	GDP per Capita	Emissions per Capita
USA	36.4	20.1
Canada	31.5	18.3
Japan	26.3	9.9
Australia/New Zealand	28.5	17.7
Africa	2.4	1.0

Source: Energy Information Administration (2007)

- Basis of “**common but differentiated responsibility**” and respective capabilities.

Africa: Inescapable Self-Dissection

- Africa's geographical location is such that it is predominantly tropical, hot and dry (already high temperature, humidity and aridity is likely to worsen). Arid/semi-arid regions cover 13 million km² or 43% of the continent's land area where 40% of population live (UNEP, 1997);
- High dependence on sectors that are vulnerable to climate changes (forestry, agriculture, fisheries, tourism etc);
- Africa region is characterised by low development status and high aid dependence:
 - ❖ Limited institutional capacity;
 - ❖ Limited financial capacity;
 - ❖ Limited technological capacity;
 - ❖ Limited statistical data and local private sector participation.
- *Africa is not able to take advantage of the growing global market and profitable opportunities to address global warming. CDM strategy partly designed to provide non-Annex 1 countries new financing for sustainable development has not helped Africa because of inability to attract FDI;*
- UNEP projects that sales in the market for renewable energy will reach \$234 billion to \$625 billion worldwide within a few years, and as high as \$1.9 trillion by 2020.

The Reality For Lawyers In Africa

- Globally , within the professional services community, law firms (unlike architecture firms) are relative latecomers to the issue of environmental sustainability:
 - *Wendel Rosen* was first law firm to be certified in 2003 as a green business.
- As recent as 2006, Oregon Lawyers for a Sustainable Future came into being in response to mounting concerns over climate change.
- Lawyers in the developed countries and in few developing countries have risen up to the challenge in order to keep up with developments in their jurisdiction and with their clients.
- Lawyers in Africa are yet to make the connection!!!
- It is not sufficient to rely on global expertise which most times are lacking on significant national and often regional learning component.

Making Connections

- What has been our contribution to comprehensive legislation required to mainstream mitigation and adaptation strategies in Africa?
- What contribution have we made to developing smart sustainability policies that will give the clear signal to manufacturers that efficiency matter?
 - ❖ Massive dumping of substandard renewable technologies is ongoing in Africa.
- How well do we understand the interface between international trade/foreign policies of other countries and climate change issues?:
 - ❖ The core of foreign policies of some countries is to sustain their appetite for resources such as timber, oil, natural gas and similar commodities;
 - ❖ Climate change issues intersect with international trade in a multitude of different ways;
 - ❖ Countries outside Africa have continued to use their own lawyers to work with Africa (under the guise of **aid and trade ties**) **to maintain exploitative presence** that will exacerbate the effects of climate change for Africa;
 - ❖ Inadequate or sub-optimal appreciation of the critical issues (vague and sentimental contributions) allow practitioners more prepared from outside Africa to lead and dominate.

Implications Of The Connections

- Understanding these connections have serious and significant implications for legal practice in several areas:
 - (i) Evaluating environmental standards for the pre-investment surveys;
 - (ii) Environmental due diligence;
 - (iii) Environmental impact assessment for construction or modification of infrastructure and facilities;
 - (iv) Environmental audits for compliance, waste minimization, energy efficiency and risk, liability management;
 - (v) Evaluation of import/export environmental trade of goods.

Variables Compounding The Challenge for Lawyers in Africa

- Political ideology of many African countries still emphasize aid and consumption in ways not compatible with environmental protection;
- Lack of and compartmentalization of knowledge:
 - ❖ Many lawyers in Africa see climate change issues as falling more within the purview of scientists, economists etc;
 - ❖ Lawyers in Africa must seek to understand the processes driving global warming and climate change/developing technologies and the inter-play of these in the real world as relate to patent etc. **(Not all that is good for country A will be appropriate for country B)**;
- Economic situation of many law firms in Africa is such that climate change and sustainability issues (**Going Green**) are the least of their problems;
 - ❖ One man practice with its many limitations is still prevalent.

Critical Role For Lawyers In Africa

- Lawyers in Africa directly, and particularly, through national and regional Bar Associations must urgently do the following:
 - (i) aggressively seek robust comparative knowledge of issues relating to climate change and global warming (including basic scientific and technological issues). National and regional Bar Associations can do a lot to deepen capacity in this respect;
 - (ii) formulate action plans through which individual lawyers, law offices and the organized bar can contribute to the control of climate change. Part of these can be incorporated in Law School curriculum;
 - (iii) engage in strategic partnerships with government to ensure effective amortization of benefits and opportunities of growing global market in renewable technologies through enactments of appropriate legislation;
 - (iv) engage with their national governments to review and harmonize trade/investment laws for compliance with environmental sustainability;
 - (v) work with regional, national and local governments to put in place and drive policies that will incentivize and encourage individuals and corporate bodies to embrace green growth culture;

Critical Role For Lawyers In Africa...

- (v) consistently and stridently push for environmental governance as a critical component of good governance. Measures taken by national governments to pursue economic development must be consistent with obligations and principles of environmental sustainability;
- (vi) work with national, state and local governments to review legal impediments to access to environmental justice and sustainability/climate change initiatives. This will impel potential tortfeasors to act right;
- (vii) work with government to spur green growth (deployment of renewables/clean technologies) and development of green infrastructure;
- (viii) develop capacity in best practices that can help clients prepare for future carbon regulation; and
- (ix) be a catalyst for change developments in the climate change arena.

What Benefits For Green Firms?

- What benefits for Lawyers and Law Firms who are able to overcome the challenges:
 - ❖ **Gain competitive advantage** - utilization of knowledge in preparation of processes/involvement in international transactions;
 - ❖ **Secure important partnerships** with government agencies and the private sector;
 - ❖ **Fulfill your professional services mission;**
 - ❖ **Be a part of the critical group** that will assist Africa to take advantage of the opportunities that the climate change engagement offers.

THANK YOU