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Legal Practitioners & Arbitrators

GLOBAL WARMING AND THE ENVIRONMENT – A CHALLENGE FOR LAWYERS IN AFRICA?



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ABOUT AYODELE AKINTUNDE & CO.

Legal Practitioners & Arbitrators

- A Nigerian full service Law Firm.
- We provide comprehensive Environmental Law representation of organizations and individuals involved in negotiation and litigation on Alternative Energy, Climate Change, Land Development and Environmental Issues.

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Introduction

- Global Warming is one of the greatest challenges of our time.
- The global consensus is that human activities, especially emission of excessive greenhouse gases (GHGs) into the atmosphere is responsible for the current observed global warming.
- Regrettably, Africa is the most vulnerable continent to the impacts of global warming despite being the least responsible for causing it.



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Introduction contd.

- After a preliminary overview of Climate Change, this paper examines:
 - i. The challenges of lawyers in Africa in areas such as Public interest, Government/Regulatory work, the Private sector and Academia;
 - ii. The “real” challenge facing Lawyers in Africa and:
 - iii. Concludes by recommending some ways to address the challenges.



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The Science of Climate Change

- **(IPCC) Fourth Assessment Report (AR4):** “Warming of the climate system is unequivocal, as is now evident from observations of increases in the global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level” and that:
- “... most of the observed increase in the global average temperature since the mid-20th century is very likely due to the observed increase in anthropogenic greenhouse gas concentrations.”
- Carbon dioxide has been identified as the most important anthropogenic GHG.



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Scientific Community Consensus of Climate Change Impact on the Environment

- Environment is defined as encompassing air, water, flora, fauna, and other natural and man-made features that constitute our surroundings.
- The consensus of the scientific community is that climate change has impacted on every aspect of the human environment.



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Impacts of Climate Change of the Environment

- Increase in the global average of ocean temperatures
- Increasing species range shifts
- Sea level rise
- Distribution of vector borne diseases
- Decrease in food production occasioned by drought
- Floods etc.



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Climate Change Vulnerability in Africa

- Africa is one of the most vulnerable continents to climate variability and change because of multiple stresses and low adaptive capacity.
- Data coverage on the impact of climate change remains limited in some regions.



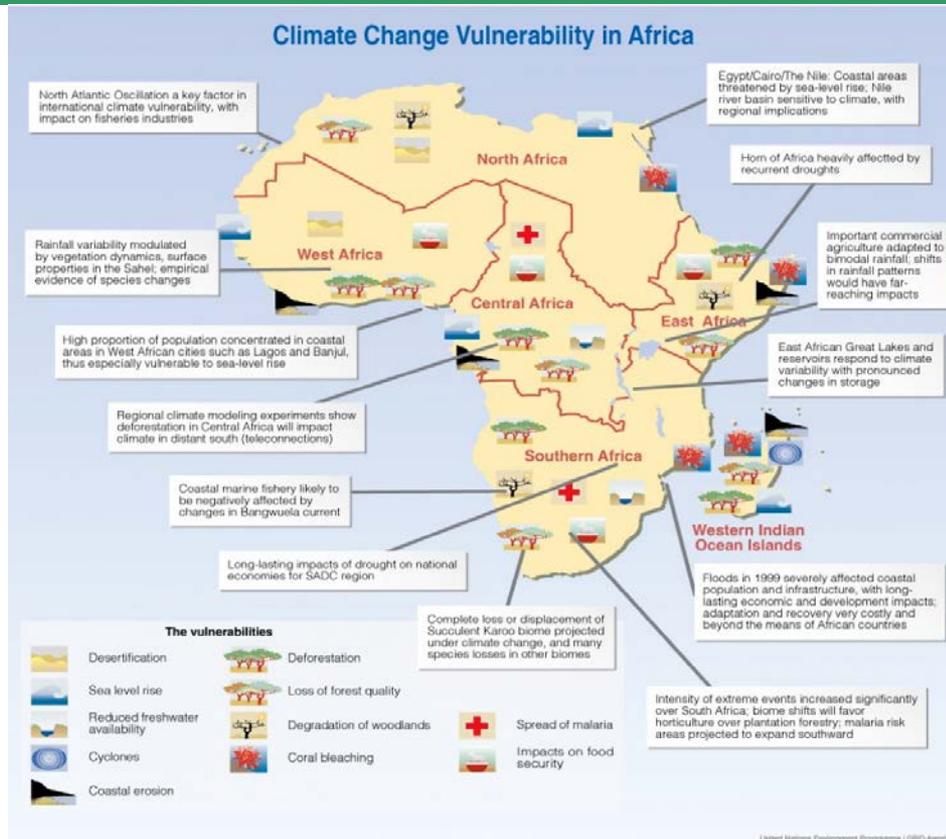
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Climate Change Vulnerability in Africa: An Overview



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Source: Ana Ballarín, 2002.



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Drought in Northern Africa



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Coastal Erosion along Lekki in Lagos, Nigeria



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Climate Change Vulnerability in Africa: Recent disasters in Nigeria

- On the 18th of August 2012, there was a massive surge of the Atlantic Ocean at the Kuramo Beach in Lagos, Nigeria killing 16 people and destroying properties worth millions of Naira.
- Last week, the banks of Rivers Niger and Benue overflowed causing floods which killed hundreds of people, displaced millions and destroyed properties worth billions of Naira, including over 5,000 farmlands and major highways such as the Lokoja-Abuja Express Road.



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Legal Framework

1. The United Nations Framework Convention on Climate Change (UNFCCC)

- the UNFCCC adopted as its overall objective the stabilization of GHG concentration in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.

2. Kyoto Protocol to the UNFCCC.

- The Kyoto Protocol was drafted to get industrialized nations to commit to limiting their GHG emissions by specific amounts during the commitment period of 2008 to 2012, with the overall aim of reducing their emissions be at least 5 per cent below 1990 levels. Under the Protocol, the UNFCCC divides countries into the following three categories based on their commitment to reduce emissions.
 - Annex I Parties or Countries
 - Annex II Parties or Countries
 - Non-Annex I Parties or Countries



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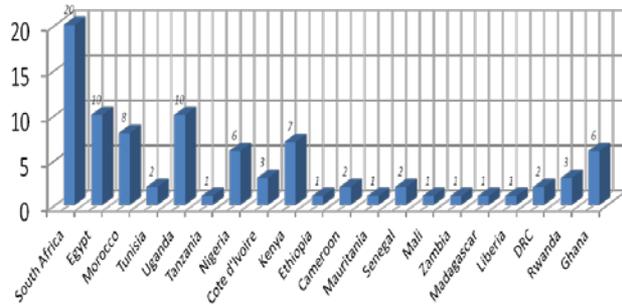
Legal Framework contd.

3. The Kyoto Protocol adopted three flexible mechanisms.

- Clean Development Mechanism

- JI (Joint Implementation)
- ET (Emissions Trading)

Registered CDM Projects in Africa



Unfortunately, negotiation for a new regime that will replace the Kyoto Protocol by the end of 2012, which started in 2005 has not been successful because of the hard stance taken by the United States, China and India.



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Mitigation and Adaptation to Climate Change

- All state parties should employ appropriate measures to mitigate and adapt to climate change with a view to minimising the adverse effects of climate change on the economy, public health and the quality of the environment.
- Incidentally, mitigation and adaptation measures have socio-economic, cultural and political implications in all African countries. Adaptation and Mitigation measures can detrimentally impact on human rights and exacerbate already existing social inequity.
- Resolving the inherent conflict in the measures or facilitating the implementation of mitigation and adaptation measures requires the services of lawyers in Public interest, Government/regulatory work, the Private sector and Academia.
- IPCC 2007 Fourth Assessment: *“Litigation is likely to be used increasingly as countries and citizens become dissatisfied with the pace of international and national decision-making on climate change... there is a decided interest in pursuing the legal route as the means to pushing for action on climate change.”*



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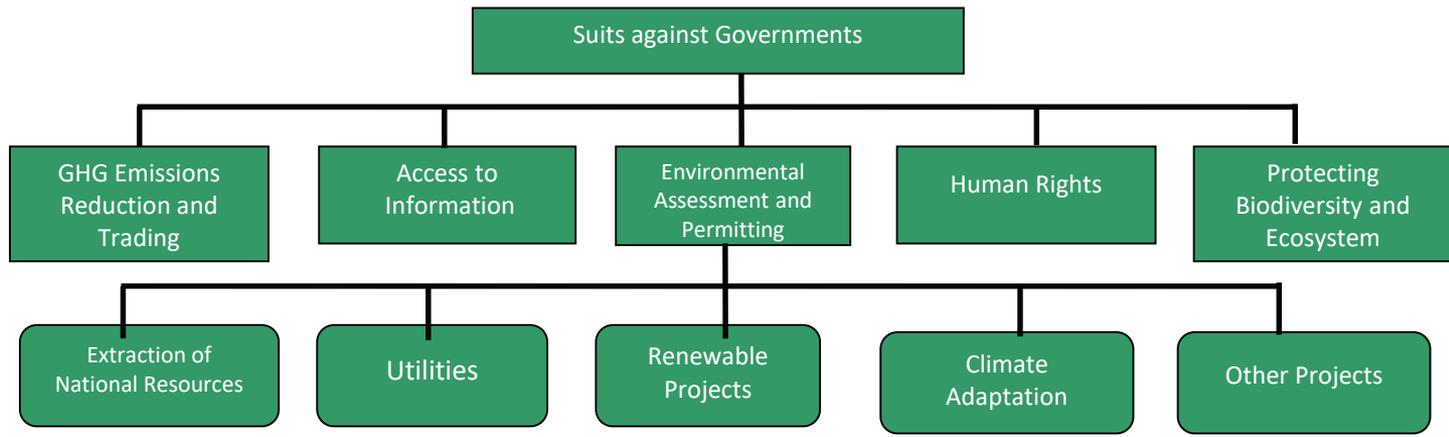


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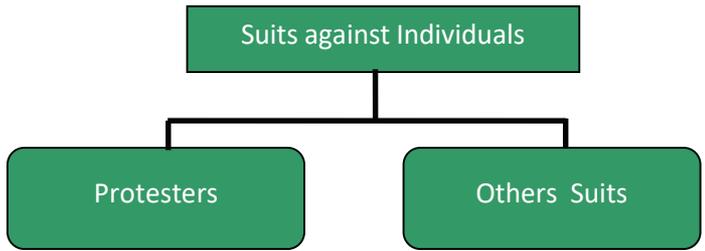
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Areas of Climate Change Litigation



Suits against Corporations



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Climate Change and Challenges for Lawyers in Africa

- Because climate change is a new and developing area in Africa, lawyers in Africa are faced with numerous challenges.
- The challenges of lawyers in Africa as far as climate change is concerned depends on the capacity which they are engaged in climate change discourse and actions.
- Some challenges are common to all Climate Change lawyers while some challenges are unique to each climate change lawyer depending on his/her capacity and jurisdiction.



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Common Challenges to Lawyers in Africa

- Uncertainty and complexity in the science of climate change.
- Lack of technology and adequate knowledge.
- Conflicting and overlapping mandates of government institutions.
- Constitutional limitations.
- Fragmentation of Environmental Laws and regulations.
- Weak Judicial Systems, Corruption and Enforcement (*Gbemre v. Shell Petroleum Development Company of Nigeria et al.*)



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The Challenges of Lawyers in Public Interest and Climate Change Litigation

- ✓ **Pre-action notice**
 - *ITC Plc. v. NAFDAC*
- ✓ **Limitation periods**
- ✓ **Locus standi**
 - *Abraham Adesanya v. President of Federal Republic of Nigeria.*
 - *Lord Diplock in INLAND REVENUE COMMISSIONERS V. FEDERATION OF SELF EMPLOYED AND SMALL BUSINESS LIMITED (1981) 2 WLR 723 at 740*
- ✓ **Public Nuisance and Climate Change Litigation and Causation – *Lessons from the Kivalina and A.E.P v. Connecticut cases***
- ✓ **Delays/prolonged litigation, Costs, Attitude of Judges to Environmental harm**
- ✓ **Damages: Magnitude and Distribution**



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Challenges of Lawyers in Government/Regulatory Work

- National Self Interests.
- Conflicts between State economic interest and citizens/environmental rights.
- Lack requisite training and capacity.
- Postings based on routine and not expertise.
- Loyalty to employers.



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Challenges of Lawyers in the Corporate Sector

- Profit Maximization.
- Loyalty to Employer.
- Lack of Corporate institutional climate policies and strategies.



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Challenges for Lawyers in the Private Sector

- Access to Information in the hands of government.
- Navigating the maze of International, National, State and Municipal legislations and regulations on the Environment, the CDM and Climate Change.
- The future of the Kyoto Protocol and the uncertainties in carbon trade.



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Lawyers in Africa – The “Real” Challenge

- Africa is most vulnerable to the impacts of Climate Change and the broader long-term consequences have the potential to alter Africa for future generations.
- We are simply not doing enough especially as Africa has the least adaptive capacity.
- Lawyers in Africa must be more passionate about the environment and play their part in whatever capacity they find themselves.

Al Gore: *“When the mountain glaciers are gone and there’s climatic chaos, the next generation of ours will be asking “What were you thinking? Didn’t you have any lawyers?”*

Al Gore: further said that addressing environmental concerns in the course of legal advice would be **“inconvenient and complicated”** but it is something that nonetheless must be done.

**LET’S PLAY OUR PART and
MAKE A DIFFERENCE FOR FUTURE GENERATIONS!**



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Conclusions/Recommendations

- Climate change and the responses places a higher calling on Lawyers in Africa to do more.
- Constitutional Reforms (South African Constitution)
- Public interest litigation (Expand to Environmental rights)
- Take the climate Change fight into the halls of government and board rooms of big companies which can produce worthwhile negotiated settlements.
- Education and Awareness
- Legal Aid



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Conclusions/Recommendations Contd.

- Advocate better integration of overlapping and conflicting functions of government agencies.
- Capacity Building.
- One stop permits for Renewable energy
- Active judiciary (Emulate Judiciary in Philippines and India)
- Improve Compliance and Enforcement.



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