



LYSON LAW GROUP
Advocates & Legal Consultants

THE ROLE OF LAWYERS

IN TACKLING **GLOBAL WARMING AND CLIMATE CHANGE:**
A TANZANIAN PERSPECTIVE

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1.0. KEY TERMS USED IN THIS ARTICLE

Alternative Dispute Resolution (ADR):

means other modes of dispute resolution apart from litigation. The term has been explained to include arbitration, mediation, negotiation, conciliation and adjudication.

Technological and industrial activity has led to increasing degradation of the environment both locally and internationally. Disputes about whether a dam should be built or not, corporate responsibility for an oil spill, who bears the burden for incursion into a riparian land, or environmentally concerned groups fighting for their habitats all these disputes need quick resolution before nature takes its course unlike the long durations taken in courts pursuing matters.

Alternative Dispute Resolution (ADR) is increasingly used to resolve environmental disputes. ADR can save the parties time and resources, and can be conducted entirely online. Parties can select a mediator or arbitrator with expertise on the subject matter. ADR is favoured chiefly because it acts as a neutral umpire and the best part of this untraditional way of resolving disputes is that the parties can choose the arbitrator who is an expert in their field. However, ADR also does have its limitations and certain objectives can only be attained through litigation and this should be the only basis for litigation of disputes with environmental concerns in courts of law.

Fair and just Compensation:

refers to Compensation for any losses of and/or damage to personal, real, or other property or goods, including rights or interests in property. Compensation can take many forms, including cash and/or in kind, providing they are adequate and fair. For example, cash may replace land and common property resources. Where land has been taken, those evicted should be compensated with land commensurate in quality, size, and value, or better. Compulsory purchase Official order for acquisition or expropriation of private property for public use or benefit upon payment of fair and just compensation.

Development-induced displacement:

These include evictions often planned or conducted under the banner of serving the “public good”, such as those linked to development, infrastructure projects, and land-acquisition measures associated with urban renewal, slum upgrades or city beautification, and other land-use programmes, including those supported by international development assistance.

Land Expropriation:

This refers to the exercise of sovereignty to take ownership of land from a private owner.

Forced eviction:

The permanent or temporary removal against the will of individuals, families or communities from the homes and the land they occupy, without the provision of, and access to, appropriate forms of legal or other protections.

Internally-displaced persons (IDPs):

are “Persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence, in particular as a result of or to avoid the effects of armed conflict, situations of generalized violence, violations of human rights or natural or human-made disasters, and who have not crossed an internationally recognized State border”.

Land access:

Opportunities for temporary or permanent use and occupation of land for purposes of shelter, productive activity, or the enjoyment of recreation and rest. Land access is obtained by direct occupation, exchange (purchase or rental), through membership of family and kin groups, or by allocation by government, other landowners or management authorities.

Land acquisition:

The stage in the development process at which land required to implement a plan or project is obtained by public or private agencies .

Land grabbing:

A process of taking possession and control of interests over land e.g. ownership, use rights, access rights on purchase, lease or concession for a set period and for specific purposes. Other terms associated with land grabbing include large-scale land acquisition and trans (national) land transactions. Land rights Socially or legally recognized entitlements to access, use, and control areas of land and related natural resources.

Land tenure:

The way (including a period) land is held or owned by individuals and groups, or the set of relationships legally or customarily defined amongst people concerning land.

Relocation:

The physical transfer of individuals or groups from their usual home (place of origin) to another location (place of relocation). Relocation may be voluntary, as with the migration of people from places of origin in the search for better economic opportunities in other places e.g. rural-urban migration, or involuntary as happens with the forced displacement of people due to natural disasters or violent conflict. Relocations may be temporary or permanent.

Resettlement:

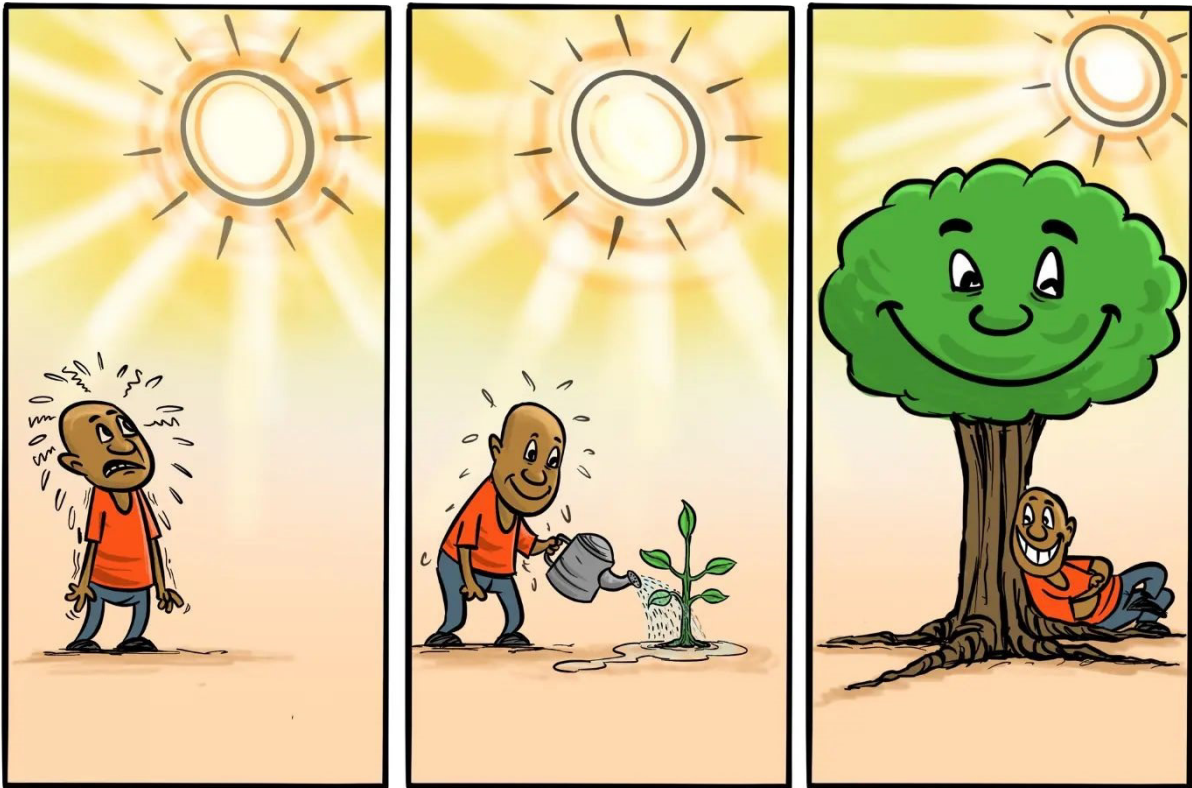
The provision of shelter, basic services and infrastructure, livelihood opportunities and security of tenure to displaced households in the place of relocation or, on return, in their places of origin.

Security of tenure:

Three main ways of defining tenure security:

1. The degree of confidence that land users will not be arbitrarily deprived of the rights they enjoy over land and the economic benefits that flow from it;
2. The certainty that an individual's rights to land will be recognized by others and protected in cases of specific challenges; or, more specifically,
3. The right of all individuals and groups to effective government protection against forced evictions Land tenure systems are sets of formal or informal institutions that determine access to, and control over, land and natural resources.

2.0. INTRODUCTION



Climate change is now affecting every country on every continent. It is disrupting national economies and affecting lives, costing people, communities, and countries dearly today and even more tomorrow.

Professionals must effectively carry out their roles in combating climate change and global warming, in this regard the legal profession is challenged to rise to the occasion and offer professional support in climate change mitigation actions.

Green growth energy transitions and climate finance is an area of legal practice that is under close scrutiny of our firm and with the right partnerships we hope to mainstream environmental conservation and green proposals around the emerging green revolution discourse.

Investment in green minerals and employee safety is priority area where our firm prioritizes and aims to help investors work in environments that are safe both to the individual investors and staff as a whole. Where populations are evicted, we will ensure that the compensation is fair and just.

Concessional financing negotiation is yet another aspect of climate change that will need lawyers with the necessary knowledge in drafting the documents and Lyson Law Group remains very alert to this which we will do for our clients and partners.

3.0. THE ROLE OF LAWYERS IN COMBATING CLIMATE CHANGE



3.1. Drafting Agreements:

Lawyers come in handy in drafting climate-related agreements. **Climate Change Agreements** were first established in the early 2000s after introducing the Climate Change Levy in some countries including the U.K, lawyers proved key in coming up with legal instruments that made implementation seamless. Their purpose is to encourage greater uptake of energy efficiency measures among companies in energy-intensive industries and to relieve competitive distortion brought about by an additional tax on local industries. They set energy reduction targets for businesses which can result in a significant discount on the Climate Change Levy and related environment-friendly legislation.

Lawyers also draft **Emission Reduction Purchase Agreements (ERPA)** which are also called **carbon trading agreements** for parties involved in the trade. An Emissions Reduction Purchase Agreement (ERPA) is a legal contract between entities that buy and sell carbon credits . A carbon credit is a permit or certificate that allows the holder to emit carbon dioxide (CO₂) or other greenhouse gases (GHG) into the atmosphere. These agreements must conform to the law and respect the integrity of the land tenure system in the country.

Lawyers play big role ensuring interpretation, execution, mitigation of risks, resolution, and liabilities are balanced between the players or consumers in a just manner.

3.2. Compensation and Replacement Packages:

In the context of urban development-induced displacement and wanton land grabbing are very common, this Article posits that the delicate matter of practices related mainly to evictions, with some references to acquisition and appropriation. One or more of these practices have been employed in the past, with or without adequate consultation and compensation, the difficulties in disentangling the concepts of eviction, acquisition, and expropriation, and contextualizing their relationship are recognized and will very obviously need legal engagement because they

touch on rights and fundamental freedoms especially where the internally displaced persons are indigent or have minimal economic means.

3.3. Climate Compliance:

Lawyers will be crucial in enacting and enforcing the legal framework for a green transition and general access to land: One important way lawyers can help is by providing competent advice to clients while taking into consideration how the latter can achieve their objectives in a way that mitigates the effects of climate change. This includes the identification of any potential risks that may arise from their clients' operations that negatively contribute to the climate crisis.

Another crucial task is helping clients understand their obligations and navigate the new wave of environmental compliance requirements – from emissions standards and sustainable business practices to accurate and transparent climate-related disclosures. This is particularly relevant when considering that in recent years the government has set legally binding targets and compliance requirements that will affect most if not all businesses.

3.4. Alternative Dispute Resolution and Litigation by Court:

Lawyers resolve environmental disputes through ADR which for the most part has proved to be pragmatic in settling such disputes fast and cheaply especially where the competing interests in nature require promptness in action. Lawyers also carry out a whole range of Climate litigation and typically engage in one of five types of legal claims: Constitutional law that are focused on breaches of constitutional rights by the state, administrative law challenging the merits of administrative decision-making, private law that aims at challenging corporations or other organizations for negligence, nuisance, etc.

Climate litigation represents a frontier solution to change the dynamics of the fight against climate change. The Global Climate Litigation Report: 2023 Status Review shows that people are increasingly turning to the courts to combat the climate crisis. As of December 2022, there were 2,180 climate-related cases filed in 65 jurisdictions, including international and regional courts, tribunals, quasi-judicial bodies, or other adjudicatory bodies, such as Special Procedures at the United Nations and arbitration tribunals.

Demolitions in Indonesia's capital, Jakarta, to clear land for a flood canal, the relocation necessary to complete the Mumbai Urban Transport Project in India and the urban regeneration and expansion in Shanghai, China, and Phnom Penh, Cambodia, and the demolitions accompanied by evictions of populations along Morogoro road in Dar es Salaam all exemplify how urban development in the name of the "public interest" or "greater common good" often affects the most vulnerable people disproportionately.

4.0. PARTNERS IN THE GLOBAL WAR AGAINST CLIMATE CHANGE AND ITS COMPLEXITIES

4.1. Multilateral Development Banks:

Multilateral development Banks (MDBs) and development financial institutions (DFIs) should accelerate their alignment with the Joint MDB Paris Alignment Framework and commit to implementing the Bridgetown Initiative by leveraging their convening power to de-risk investments for green growth in Africa. This can be done through grants, concessional finance, and credit and risk guarantees that support capacity development and innovation to increase private sector confidence in African markets. This will require MDBs and DFIs to transform into institutions that are more risk-agnostic to increase investments in priority sectors.

4.2. Special Drawing Rights (SDR) window:

Actual combating of global warming will need an international reserve in the model of an SDR which is an international reserve asset that will supplement other sources dedicated to fighting climate change and the adverse effects of global warming. The IMF currently runs her own SDR and the most recent allocation was to address the long-term global need for reserves, and help countries cope with the impacts of the Covid-19 pandemic. The value of SDR is based on the basket of five currencies being the US dollar, euros, Chinese renminbi, Japanese Yen and the British Sterling Pound.

4.3. Complexity of the Climate Change Crisis:

The world is facing complex and overlapping crises that demand careful consideration of the synergies between economic growth, social development, and environmental protection. Climate change and recent global events and risks, such as the COVID-19 pandemic and rising food and energy prices, have amplified the multiple risks the world faces.

Imagine a litigation lawyer working for a large law firm. Their client is a fossil-fuel company currently being sued by an NGO in relation to the client's current and historic greenhouse gas emissions. The client has instructed their lawyer to do 'everything possible to put barriers in the way of the litigation: obstruction, confusion, costs and standing challenges and so on.

The government has tweeted that the NGO's litigators are "activist lawyers" seeking to undermine the legal operations of the fossil fuel company.

As lawyer we help pursue justice for parties and also balance that out by ensuring that our planet is sustainably used and that nobody or no set of vulnerable people such as women, informal workers, indigenous communities or such other groups are left out of the solution to climate crisis problem.

5.0. CONCLUSION

We believe that each of us at individual and corporate levels has a role to play in protecting both the environment and its people and this is the moment to do the right thing. We must without blinking or wasting any time seize this opportunity and maximize it to save our planet for future generations.

Governments in developed countries should honor their Paris Agreement commitments to mobilize \$100 billion of climate finance annually for developing countries which has been echoed at the Nairobi summit. They should also commit to a higher post-2025 climate finance target that is sufficient to meet needs in developing countries and target flows toward climate action and green growth.

The priority of the role of lawyers cannot be understated with regards to combating the negative effects of climate change and energy transition preparedness as has been elaborated above.

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