

Re-imagining the Role of Lawyers in Climate Justice

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Abstract

The United Nations 2030 Agenda for Sustainable Development envisages a world of universal respect for human rights and human dignity, the rule of law, justice, equality, and non-discrimination, among others. This is a world in which consumption and production patterns and use of all natural resources – from air to land, from rivers, lakes, and aquifers to oceans and seas – are sustainable, on the one hand, and one in which democracy, good governance and the rule of law, as well as an enabling environment at the national and international levels, are essential for sustainable development, including sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger, on the other hand. This calls for the concerted efforts of all players if all this is to be achieved. Lawyers are seen as agents of social engineering in society as well as justice, equity, and equality, and this paper argues that they have a huge role to play, not only in ensuring that their professional roles are in line with the sustainability agenda but also advising and defending their clients on the same. This paper revisits the role of lawyers both as active players in fighting climate change and also as agents of securing climate justice for those most affected by the adverse effects of climate change in society. The author argues that as agents of social engineering and the rule of law, lawyers must take up the challenge of climate change and ensure that the environmental law principle of polluter pays, among others, is entrenched in mitigation responses to ensure that climate justice is achieved for all.

1. Introduction

The United Nations 2030 Agenda for Sustainable Development envisages a world of universal respect for human rights and human dignity, the rule of law, justice, equality, and non-discrimination, among others.¹ This is a world in which consumption and production patterns and use of all natural resources – from air to land, from rivers, lakes, and aquifers to oceans and seas

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¹ United Nations, Preamble, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1.

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– are sustainable, on the one hand, and one in which democracy, good governance and the rule of law, as well as an enabling environment at the national and international levels, are essential for sustainable development, including sustained and inclusive economic growth, social development, environmental protection and the eradication of poverty and hunger, on the other hand. This calls for the concerted efforts of all players if all this is to be achieved. The Sustainable Development Goals (SDGs) is a set of 17 Sustainable Development Goals and 169 targets that seek to build on the Millennium Development Goals to realize the human rights of all and to achieve gender equality and the empowerment of all women and girls, and are integrated and indivisible and balance the three dimensions of sustainable development: the economic, social and environmental.²

Kenya's Climate Change Act 2016³ seeks to provide a regulatory framework for enhanced response to climate change; to provide for mechanisms and measures to achieve low carbon climate development, and for connected purposes. The Act defines "climate change" to mean a change in the climate system which is caused by significant changes in the concentration of greenhouse gases as a consequence of human activities and which is in addition to natural climate change that has been observed during a considerable period.⁴ Notably, the Act seeks to promote mainstreaming of climate change mitigation measures, which may be considered the use of law as a tool for promoting social change.⁵ This is in line with SDG 13 which requires countries to take urgent action to combat climate change and its impacts, acknowledging that the United Nations

² Ibid, Preamble.

³ Climate Change Act, No. 11 of 2016, Laws of Kenya.

⁴ Sec. 2, Climate Change Act, 2016.

⁵ See sections, 13, 18 & 19, Climate Change Act, 2016.

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Framework Convention on Climate Change is the primary international, intergovernmental forum for negotiating the global response to climate change.⁶

The Climate Change Act 2016 also empowers the courts to uphold rights relating to climate change and spells out the role of the court as follows: "A person may, under Article 70 of the Constitution, apply to the Environment and Land Court, alleging that a person has acted in a manner that has or is likely to adversely affect efforts towards mitigation and adaptation to the effects of climate change".⁷ In such applications, the court may make an order or give directions to: prevent, stop, or discontinue an act or omission that is harmful to the environment; compel a public officer to take measures to prevent or discontinue an act or omission that is harmful to the environment; or provide compensation to a victim of a violation relating to climate change duties.⁸ It is also worth mentioning that SDG 16 encourages countries to 'promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels'.

Lawyers are seen as agents of social engineering in society as well as justice, equity, and equality, and this paper argues that they have a huge role to play, not only in ensuring that their professional roles are in line with the sustainability agenda but also advising and defending their clients on the same. This paper revisits the role of lawyers both as active players in fighting climate change and also as agents of securing climate justice for those most affected by the adverse effects of climate change in society. The author argues that as agents of social engineering and the rule of law, lawyers must take up the challenge of climate change and ensure that the environmental law principle of polluter pays, among others, is entrenched in mitigation responses to ensure that

⁶ United Nations, Preamble, Transforming our world: the 2030 Agenda for Sustainable Development, SDG 13.

⁷ Section 23(1), Climate Change Act, 2016.

⁸ Section 23(2), Climate Change Act, 2016.

climate justice is achieved for all. There are a variety of ways in which climate change affects each subfield of the legal profession, and lawyers need to be aware of how this rapidly escalating climate catastrophe and the transition to net-zero energy are affecting their particular area of practice, as well as the business of law and the provision of legal services.⁹

2. Pillars of Climate Justice

The effects of climate change exacerbate the pre-existing vulnerabilities of communities that are already having a hard time making ends meet. It has a disproportionately negative impact on the nations that are still developing.¹⁰ Paying close attention to the environmental policy preferences of people living in nations with lower emissions and lower incomes is one strategy that may be used to advance climate justice.¹¹

The concept of climate justice draws attention to how climate change is an ethical problem, as well as how the causes and impacts of climate change are related to environmental and social justice.¹² When developing policies about climate change, it is necessary to take into consideration not only who is directly impacted by climate-related issues but also who is primarily responsible for causing these issues. Only then can climate justice be achieved.¹³

The effects of climate change, both directly and indirectly, may be seen in a wide variety of internationally secured human rights. States (as duty-bearers) have an affirmative responsibility to take effective actions to avoid and rectify these climatic consequences, and as a result, to mitigate

⁹ 'Lawyers in a Warming World | Peter A. Allard School of Law' <<https://allard.ubc.ca/about-us/news-and-announcements/2023/lawyers-warming-world>> accessed 17 July 2023.

¹⁰ Sachan R, 'Role of Climate Justice in Strengthening Adaptive Capacities in Developing Countries' (2020), 823.

¹¹ Running K, 'Towards Climate Justice: How Do the Most Vulnerable Weigh Environment–Economy Trade-Offs?' (2015) 50 *Social science research* 217.

¹² Sultana F, 'Critical Climate Justice' (2022) 188 *The Geographical Journal* 118; 'Why Climate Change Is an Environmental Justice Issue' (*State of the Planet*, 22 September 2020) <<https://news.climate.columbia.edu/2020/09/22/climate-change-environmental-justice/>> accessed 18 July 2023.

¹³ Running K, 'Towards Climate Justice: How Do the Most Vulnerable Weigh Environment–Economy Trade-Offs?' (2015) 50 *Social science research* 217.

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climate change, and to guarantee that all human beings (as rights-holders) have the required ability to adapt to the climate crisis. This affirmative requirement was established by the United Nations Framework Convention on climatic Change (UNFCCC) in 1992.¹⁴

To achieve climate justice, climate action must be in line with the many human rights accords, commitments, standards, and principles that are already in place. Unfairly and in disproportionate amounts, the negative effects of climate change are borne by those who have made the smallest contribution to the problem. They have to be able to participate meaningfully in climate change mitigation efforts, they have to be the major beneficiaries of such efforts, and they have to have access to viable solutions.¹⁵ Therefore, one strategy to better include justice in talks is to expand our knowledge of how individuals who have high climate vulnerability but low climate responsibility see environmental preservation as other policy goals. The reasoning behind such a strategy is predicated on the notion of increased democratic involvement, which is one of the fundamental goals of the new economic movement that promotes a socially and ecologically sustainable economy.¹⁶

3. Re-imagining the Role of Lawyers in Achieving Climate Justice

Members of the legal profession and the legal profession as a whole must get behind the movement to protect our planet from the catastrophic effects of accelerating climate change.¹⁷ Accelerating

¹⁴ OHCHR U, 'Understanding Human Rights and Climate Change', *Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the parties to the United Nations Framework Convention on Climate Change* (2015).

¹⁵ Ibid.

¹⁶ Running K, 'Towards Climate Justice: How Do the Most Vulnerable Weigh Environment–Economy Trade-Offs?' (2015) 50 *Social science research* 217, 218.

¹⁷ 'The Role Lawyers Can Play in Addressing the Climate Crisis' (WTW) <<https://www.wtwco.com/en-gb/insights/2022/02/the-role-lawyers-can-play-in-addressing-the-climate-crisis>> accessed 18 July 2023; 'The Profession's Role in Addressing the Climate Crisis' <<http://www.nationalmagazine.ca/en-ca/articles/law/in-depth/2023/the-profession-s-role-in-addressing-the-climate-crisis>> accessed 18 July 2023.

the reduction of carbon emissions from all sources is the primary tactic that will be used in the campaign.¹⁸ The campaign must be conducted on all three levels: locally, nationally, and worldwide. The battle lines extend across several realms, including the political, economic, and cultural spheres, and lawyers have a lot to offer in each of these areas.¹⁹

3.1. Lawyers as Agents of Social Engineering/Change

The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and his capacity through reason for enlightened self-government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for the law is destroyed, and rational self-government is impossible. Lawyers, as guardians of the law, play a vital role in the preservation of society(Emphasis added).²⁰

Arguably, environmental goals cannot be realized just through environmental legislation or in protected areas; revolutionary change needs a fundamental, system-wide reorganization spanning technical, economic, and social elements, including perspectives, goals, and values.²¹

As already pointed out, lawyers have been considered agents of social engineering and change. The term "social change" is used to refer to a shift or a change that happens as a variation of the accepted way of life as a result of changes in geographical circumstances, material culture,

¹⁸ <https://www.facebook.com/unepl>, 'The Six-Sector Solution to the Climate Crisis' (*UN Environment*, 7 December 2020) <<https://www.unep.org/interactive/six-sector-solution-climate-change/>> accessed 18 July 2023; 'Measures to Reduce Greenhouse Gas Emissions | Climate Change | Government.NL' <<https://www.government.nl/topics/climate-change/national-measures>> accessed 18 July 2023; 'Net Zero Coalition | United Nations' <<https://www.un.org/en/climatechange/net-zero-coalition>> accessed 18 July 2023; 'Climate Change Mitigation: Reducing Emissions' <<https://www.eea.europa.eu/en/topics/in-depth/climate-change-mitigation-reducing-emissions>> accessed 18 July 2023.

¹⁹ Journal ABA, '7 Ways Lawyers Can Join the Fight to Curb Climate Change' (*ABA Journal*) <<https://www.abajournal.com/voice/article/7-ways-lawyers-can-join-the-fight-to-curb-climate-change>> accessed 18 July 2023.

²⁰ ABA Model Code of Professional Responsibility, Preamble and Preliminary Statement (1981) in Thomas D. Morgan & Ronald D. Rotunda, 1998 Selected Standards On Professional Responsibility (1998) (as quoted in Loewy KL, 'Lawyering for Social Change' (2000) 27 *Fordham Urban Law Journal* 1869).

²¹ Sarkki, S., Pihlajamäki, M., Rasmus, S. and Eronen, J.T., "'Rights for Life" Scenario to Reach Biodiversity Targets and Social Equity for Indigenous Peoples and Local Communities' (2023) 280 *Biological Conservation* 109958.

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demographic composition, ideology, and ideas or discoveries in society.²² Social change may also be seen as a variation of the acceptable way of life. The societal changes that take place will inevitably have repercussions for the other social institutions and will usher in a new era of living in a society that is transitioning from a more traditional to a more contemporary one.²³

Changes in social values, social norms, behavioural patterns, social organization, changes in the structure of social institutions, changes in society, changes in power and authority, and changes in social interaction have all been linked to social engineering.²⁴

The overarching goal of environmental law is to remedy environmental issues, particularly those that are the result of human activity.²⁵ More specifically, environmental law seeks to combat pollution, resource depletion, and environmental degradation to build a world that is aesthetically pleasing, hospitable, and conducive to human well-being.²⁶ It is necessary to take into consideration other factors that will determine the creation of a good environment to combat the increasingly severe environmental damage. These factors include education, legal awareness, technology, and adequate funding to finance projects that prevent pollution and environmental

²² Matnuh H, "Law as a tool of social engineering." In *1st International Conference on Social Sciences Education- "Multicultural Transformation in Education, Social Sciences and Wetland Environment"*(ICSSE 2017), pp. 118-120. Atlantis Press, 2017. <<https://www.atlantis-press.com/proceedings/icsse-17/25889472>> accessed 10 July 2023, p. 118; see also Utama AS, 'Law and Social Dynamics of Society' (2021) 3 *International Journal of Law and Public Policy (IJLAPP)* 107, p.108.

²³ *Ibid*, p. 118.

²⁴ Matnuh H, "Law as a tool of social engineering." In *1st International Conference on Social Sciences Education- "Multicultural Transformation in Education, Social Sciences and Wetland Environment"*(ICSSE 2017), p. 118.

²⁵ 'Environmental Rule of Law' (UNEP - UN Environment Programme, 5 October 2017) <<http://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-0>> accessed 18 July 2023; 'Framework Principles on Human Rights and the Environment (2018)' (OHCHR) <<https://www.ohchr.org/en/special-procedures/sr-environment/framework-principles-human-rights-and-environment-2018>> accessed 18 July 2023; 'International Environmental Law' <https://www.americanbar.org/groups/public_education/publications/insights-on-law-and-society/volume-19/insights-vol--19---issue-1/international-environmental-law/> accessed 18 July 2023; Schachter O, 'The Emergence of International Environmental Law' (1991) 44 *Journal of International Affairs* 457

²⁶ Maruf A, 'Legal Aspects of Environment in Indonesia: An Efforts to Prevent Environmental Damage and Pollution' (2021) 1 *Journal of Human Rights, Culture and Legal System*.

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damage, as well as efforts to improve quality.²⁷ All members of the community, not only the government, are responsible for contributing to successful environmental law enforcement efforts.²⁸

The American Bar Association (ABA) passed a resolution in respect of climate change in 2020, which was followed by the International Bar Association (IBA), the ABA's worldwide equivalent, passing a "Statement on the Climate Crisis." The statement from the International Bar Association "urges lawyers, acting in accordance with their professional conduct rules and the rule of law, to consider... taking a climate-conscious approach to problems encountered in daily legal practices." This includes operating "on a *pro bono*, volunteer, or reduced fee basis, for those negatively affected by the climate crisis," as well as "advising clients of the potential risks, liability, and reputational damage arising from activity that negatively contributes to the climate crisis."²⁹

In addition to this, the IBA statement "urges lawyers, as influential figures and thought leaders within society, to live responsibly in the face of the climate crisis" by reducing "their environmental footprint" in "every- day actions" and by "supporting positive changes in the workplace, including the adoption of more sustainable practices, such as greater reliance on electronic file storage facilities and digital technologies, more energy efficient offices, and more climate-friendly practices."³⁰

²⁷ Kaminker C and Stewart F, 'The Role of Institutional Investors in Financing Clean Energy'; US EPA O, 'What Is Environmental Education?' (13 December 2012) <<https://www.epa.gov/education/what-environmental-education>> accessed 18 July 2023; 'DSD :: Resources - Publications - Core Publications' <https://www.un.org/esa/dsd/agenda21/res_agenda21_36.shtml> accessed 18 July 2023.

²⁸ Ibid, p. 20.

²⁹ Dernbach JC, Russell IS and Bogoshian M, 'Advocating for the Future', *The Environmental Forum*, March/April (2021).

³⁰ Ibid.

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It has also been pointed out, and properly so, that eventually, large reductions in greenhouse gas emissions and systematic adaptation to climate change are not likely to occur without new and changed laws.³¹ This is because new and modified laws are required for dramatic reductions in greenhouse gas emissions to occur. To campaign for, write, assist in implementing, and guide clients on the various laws that are necessary at the federal, state, and municipal levels, lawyers are required.³² Legal reforms are also required in private law and governance, such as certification, auditing, labeling, and reporting programmes. Supply chain contracts are another area of private law that has to be modified.³³ Legal counsel is sought out by clients in the business world and others for assistance with ensuring legal compliance, mitigating risk, and making other choices that substantially impact the carbon load in the atmosphere.³⁴ In addition to this, members of the bar have influential roles in the communities in which they live. Leadership is required from many different kinds of lawyers, including those who work in private practice and corporate practice, as well as those who work in non-profit organizations, academia, and the government.³⁵

The principles of professional responsibility that have been around for a long time imply that lawyers have a responsibility to communicate to their clients the dangers and possibilities that are associated with climate change.³⁶ After concluding that climate change-related hazards and possibilities do exist, lawyers have a responsibility to educate their clients about these risks and

³¹ Dernbach JC, Russell IS and Bogoshian M, 'Advocating for the Future', *The Environmental Forum*, March/April (2021).

³² Ibid.

³³ Ibid.

³⁴ Ibid.

³⁵ Ibid.

³⁶ Vaughan S, 'Existential Ethics: Thinking Hard About Lawyer Responsibility for Clients' Environmental Harms' [2023] Current Legal Problems cuad005; 'Basic Principles on the Role of Lawyers' (OHCHR) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>> accessed 18 July 2023.

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opportunities.³⁷ To provide clients with appropriate counsel that will help them resolve a legal problem or conflict, it is necessary to examine not only the legal problems at hand but also the financial, emotional and psychological, relational and social, environmental, and ethical ramifications that various courses of action will have.³⁸ Clients can have a better understanding of the outcomes, costs, and risks connected with the various courses of action that are available to them and thus make a more informed decision.³⁹ Daily, lawyers provide clients with counsel of this comprehensive nature in a variety of practice areas of the law. This standard procedure would, of course, benefit from the addition of climate change's repercussions as a factor in decision-making.⁴⁰

3.2. Lawyers as Champions of Respect for Rule of Law and Adoption of Human Rights Approaches to Governance for Climate Justice

Better governance begins with strict respect for the rule of law, as well as the norms and guardrails that serve to keep the gears of government, business, and our legal system turning smoothly.⁴¹ These standards include a dedication to the common good, mutual respect, a willingness to critically examine the viewpoints of others, respect for facts and science, civil dialogue, and respect for the scientific method.⁴² In both public and private conversations, attorneys need to aim toward

³⁷ Dernbach JC, Russell IS and Bogoshian M, 'Advocating for the Future', *The Environmental Forum*, March/April (2021).

³⁸ Preston BJ, 'Climate Conscious Lawyering' (2021) 95 Australian Law Journal 51.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Unit DS, 'What Is the Rule of Law' (*United Nations and the Rule of Law*) <<https://www.un.org/ruleoflaw/what-is-the-rule-of-law/>> accessed 19 July 2023; 'Rule of Law | UN Global Compact' <<https://unglobalcompact.org/what-is-gc/our-work/governance/rule-law>> accessed 19 July 2023; Pomeranz EF and Stedman RC, 'Measuring Good Governance: Piloting an Instrument for Evaluating Good Governance Principles' (2020) 22 *Journal of Environmental Policy & Planning* 428.

⁴² Dernbach JC, Russell IS and Bogoshian M, 'Advocating for the Future', *The Environmental Forum*, March/April (2021).

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better modeling of values like these, emphasizing plainly and explicitly how important it is to adhere to the rule of law and make decisions based on facts. They need to keep the dialogue respectful, find those who reject or undermine core standards, and even challenge them.⁴³

Applying a rights-based approach to policy and development, as called for by the Declaration on the Right to Development and agreed to in the UN Common Understanding on a Human Rights-Based Approach to Development Cooperation, is one way that human rights may be included in activities that are relevant to climate change. This can be done by recognizing that human rights are intertwined with climate change.⁴⁴

A rights-based approach analyzes duties, inequalities, and vulnerabilities, and it works to rectify discriminatory practices and unequal distributions of power. It does this through establishing plans, strategies, and programmes within the context of a framework of rights and duties that have been established by international law.⁴⁵

The following are some of the most important aspects of a strategy that is focused on human rights:

(a) In the process of formulating policies and programmes, the primary goal should be to fulfill human rights; (b) The rights-holders and their entitlements must be identified, as well as the corresponding duty-bearers and their obligations, to find ways for strengthening the capacities of rights-holders to make their claims and of duty-bearers to meet their obligations; and (c) Principles

⁴³ Ibid.

⁴⁴ OHCHR U, 'Understanding Human Rights and Climate Change', *Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the parties to the United Nations Framework Convention on Climate Change* (2015).

⁴⁵ OHCHR U, 'Understanding Human Rights and Climate Change', *Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the parties to the United Nations Framework Convention on Climate Change* (2015).

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and standards derived from international human rights law, particularly the Universal Declaration of Human Rights, must be adhered to.⁴⁶

Any strategy that seeks to adapt to or mitigate the effects of climate change, such as the promotion of alternative energy sources, forest conservation or tree-planting projects, resettlement schemes, and others, should incorporate an approach that is centred on human rights.⁴⁷ Participation from affected individuals and communities, without regard to any form of bias, is required during the planning and execution of these projects. They are entitled to due process and should be able to seek recourse if their rights are violated.⁴⁸

3.3. Adopting the Concept of Sustainable Development as a Way of Practice

The Sustainable Development Goals (SDGs) provide the foundation that is essential to improve living standards throughout the world and to avoid the potentially catastrophic impacts of climate change brought on by human activities.⁴⁹ SDG 13 on "Climate Action" urges the incorporation of actions for reducing the consequences of climate change into frameworks for economic development.⁵⁰

Adopting the concept of Sustainable Development would assist lawyers in thinking more comprehensively and plainly about the many legal options available to choose the most appropriate

⁴⁶ OHCHR U, 'Understanding Human Rights and Climate Change', *Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the parties to the United Nations Framework Convention on Climate Change* (2015).

⁴⁷ Olawuyi D, 'The Human Rights Based Approach to Climate Change Mitigation: Legal Framework for Addressing Human Rights Questions in Mitigation Projects' (PhD Thesis, University of Oxford 2013); Mahadew R, 'A Human-Rights-Based Approach to Climate Change' [2021] *Revue juridique de l'Océan Indien* 155.

⁴⁸ OHCHR U, 'Understanding Human Rights and Climate Change', *Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the parties to the United Nations Framework Convention on Climate Change* (2015).

⁴⁹ 'THE 17 GOALS | Sustainable Development' <<https://sdgs.un.org/goals>> accessed 20 July 2023; Economic UN D of and Affairs S, *The Sustainable Development Goals: Report 2022* (UN 2022); 'Climate Change - United Nations Sustainable Development' <<https://www.un.org/sustainabledevelopment/climate-change/>> accessed 20 July 2023.

⁵⁰ United Nations, Preamble, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1.

course of action.⁵¹ Sustainable Development is a lens or framework that may be used to handle practically any problem, including climate change. Lawyers can utilize this to their advantage. The lens offers a comprehension of the many risks and advantages, both individual and accumulated, that is inherent in a course of action that a client suggests.⁵² This technique delves deeper to assist customers to avoid expenses and realize gains, as opposed to approaches that confine the study to surface-level economic issues and obvious legal hazards.⁵³ Among these advantages are the opportunity to enhance people's quality of life and to fight the environmental problem.⁵⁴

3.4. Need for Continuous Professional Development and Retraining in Climate Change Matters

To facilitate the transactions, resource development initiatives, and renewable energy projects that are essential in the transition to net zero, lawyers will play a major role as drafters of the necessary legal documents.⁵⁵ They will be the ones to preserve human rights, engage with Indigenous rights-holders, and represent people seeking responsibility for greenwashing or fighting against such accusations.⁵⁶ They will also be the ones to engage with Indigenous rights-holders.⁵⁷ It will be more important for lawyers to have a solid understanding of greenhouse gas (GHG) emissions and climate mitigation, and this will need ongoing education and retraining for them to be able to assist

⁵¹ Dernbach JC, Russell IS and Bogoshian M, 'Advocating for the Future', *The Environmental Forum*, March/April (2021).

⁵² Ibid.

⁵³ Ibid.

⁵⁴ Ibid.

⁵⁵ 'Lawyers in a Warming World | Peter A. Allard School of Law' <<https://allard.ubc.ca/about-us/news-and-announcements/2023/lawyers-warming-world>> accessed 17 July 2023.

⁵⁶ 'Lawyers in a Warming World | Peter A. Allard School of Law' <<https://allard.ubc.ca/about-us/news-and-announcements/2023/lawyers-warming-world>> accessed 17 July 2023.

⁵⁷ 'How Indigenous Peoples in Africa Are Impacted by Climate Change - IWGIA - International Work Group for Indigenous Affairs' <<https://www.iwgia.org/en/news/4959-how-indigenous-peoples-in-africa-are-impacted-by-climate-change.html>> accessed 20 July 2023

their clients in comprehending the evolving legal and regulatory requirements and learning how to adapt.⁵⁸

If lawyers do not evaluate and tell their clients about the dangers and opportunities associated with climate change, there is a possibility that they may break the duty that they owe to their clients in certain circumstances.⁵⁹

3.5. Role of Law the Society of Kenya in Shaping a Climate Change-Conscious Lawyer

There has been an effort to lessen the effect that international arbitrations have on the environment called the Campaign for Greener Arbitrations.⁶⁰ To radically reduce the carbon footprint of the arbitration community, international arbitrator Lucy Greenwood established the campaign in 2019.⁶¹ A Steering Committee was formed by the Campaign for Greener Arbitrations in 2020 and is made up of individuals with an interest in the development of international arbitration, including practitioners, institutions, and legal service providers.⁶² The creation of a Framework and a set of Protocols to encourage better environmental behaviour through several action items was one of the Steering Committee's main goals. The Protocols provide useful advice for putting the Guiding Principles' principles into practice.⁶³

According to the Campaign's research, practitioners can significantly reduce these carbon emissions by concentrating on just three areas: (i) adopting clean forms of energy, (ii); reducing

⁵⁸ 'Lawyers in a Warming World | Peter A. Allard School of Law' <<https://allard.ubc.ca/about-us/news-and-announcements/2023/lawyers-warming-world>> accessed 17 July 2023.

⁵⁹ Ibid.

⁶⁰ alison.eyre@hsf.com, 'Inside Arbitration: Towards Greener Arbitrations Achieving Greater Environmental Sustainability in the Way We Conduct Arbitrations: An Update' (*Herbert Smith Freehills | Global law firm*, 25 February 2021) <<https://www.herbertsmithfreehills.com/latest-thinking/inside-arbitration-towards-greener-arbitrations-achieving-greater-environmental-0>> accessed 20 July 2023; 'The Green Pledge: No Talk, More Action' (*Kluwer Arbitration Blog*, 20 March 2020) <<https://arbitrationblog.kluwerarbitration.com/2020/03/20/the-green-pledge-no-talk-more-action/>> accessed 20 July 2023; 'HKIAC Signs Green Pledge & Supports Green Protocols' <<https://www.hkiac.org/news/hkiac-signs-green-pledge-supports-green-protocols>> accessed 20 July 2023; 'Putting the Campaign for Greener Arbitration Protocols into Practice' (*Pinsent Masons*, 20 July 2023) <<https://www.pinsentmasons.com/out-law/analysis/putting-the-campaign-for-greener-arbitration-protocols-into-practice>> accessed 20 July 2023.

⁶¹ 'Campaign for Greener Arbitrations' (*Campaign for Greener Arbitrations*, 19 March 2023) <<https://www.greenerarbitrations.com>> accessed 17 July 2023.

⁶² 'Green Protocols' (*Campaign for Greener Arbitrations*) <<https://www.greenerarbitrations.com/green-protocols>> accessed 17 July 2023.

⁶³ Ibid.

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long-haul travel, and (iii) reducing waste. For instance, by completely ceasing to use hard copy filings, practitioners could significantly reduce these carbon emissions. Everyone in the arbitration community has a stake in lowering the carbon footprint of our sector.⁶⁴

The "Green Protocols" is a series of guidelines created by the Campaign for Greener Arbitrations to nudge other stakeholders towards adopting more environmentally friendly behaviours and cutting back on carbon emissions.⁶⁵ This Framework offers recommendations for implementing the Green Protocols, which are the Green Protocol for Arbitral Proceedings, the Green Protocol for Law Firms, Chambers, and Legal Service Providers Working in Arbitration, the Green Protocol for Arbitrators, the Green Protocol for Arbitration Conferences, the Green Protocol for Arbitral Hearing Venues, and the Green Protocol for Arbitral Institutions.⁶⁶

The Green Protocols provide practical ways to implement the Campaign for Greener Arbitrations' Guiding Principles, which asks the arbitration community to commit to: Creating a workspace with a reduced environmental footprint, by looking for opportunities to reduce energy consumption and waste; Corresponding electronically, unless hard copy correspondence is expressly needed in the circumstances, while also being mindful that email has a carbon footprint; Encouraging the use of video-conferencing facilities as an alternative to travel (including for the purposes of conducting fact finding or interviews with witnesses); Avoiding printing, requesting the use of electronic rather than hard copies of documents and promoting the use of electronic bundles at hearings; Using, where possible, suppliers and service providers who are committed to reducing their environmental footprint (including for the purposes of arranging an arbitration hearing); Considering and/or suggesting, where appropriate, that witnesses or experts give evidence through video-conferencing facilities, rather than attend hearings in person; Avoiding unnecessary travel and using video-conferencing facilities as an alternative; and Considering and questioning the need to fly at all times and offsetting carbon emissions for any arbitration-related travel.⁶⁷

⁶⁴ Ibid.

⁶⁵ Ibid; 'The Campaign for Greener Arbitrations: Encouraging Sustainable Practices in International Arbitration | Jus Mundi Blog' (11 August 2021) <<https://blog.jusmundi.com/the-campaign-for-greener-arbitrations-encouraging-sustainable-practices-in-international-arbitration/>> accessed 20 July 2023.

⁶⁶ Ibid.

⁶⁷ Ibid.

Notably, this Framework and the Green Protocols are not binding and are not intended to displace applicable rules or derogate from the arbitration agreement, unless and to the extent the Parties so agree (either in the arbitration agreement or subsequently) or the Tribunal so orders. This Framework and the Green Protocols do not establish liability or a liability standard for legal or regulatory purposes.⁶⁸

Similarly, the Law Society of Kenya could borrow a leaf from these efforts and work with other stakeholders to develop similar guidelines for law firms and law practitioners to encourage them to reduce their carbon footprint. This would go a long way in not only cultivating positive behavioral change among the lawyers but also the clients who get to interact with these lawyers.

4. Conclusion

The debate in this paper looks at legal professionals from several perspectives, including those of professionals, citizens, family members, and members of various communities.⁶⁹ Lawyers have a responsibility to their clients and society as a whole, and one of those duties requires them to strive for improved governance. It is difficult to address climate disruption and sustainable development unless we have effective governance at the national, regional, and international levels as well as in the business sector. These are all necessary components.⁷⁰

It has been observed that although there is no silver bullet, there are a multitude of green buckshot which include relatively minor behavioural changes made by individuals, families, and communities; efforts made by towns, cities, and other administrative units; changes in business practices; litigation; and more significant actions taken at the policy and political levels.⁷¹

⁶⁸ Ibid.

⁶⁹ Dernbach JC, Russell IS and Bogoshian M, 'Advocating for the Future', *The Environmental Forum*, March/April (2021).

⁷⁰ Ibid.

⁷¹ Magraw D and Qin L, 'Fifty Shades of Green' (2019) 32 *Geo. Envtl. L. Rev.* 467.

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In both their personal and professional lives, lawyers need to give careful consideration to the possibility of taking part in and lending their support to legal initiatives that aim to decrease emissions of greenhouse gases and increase resilience to the effects of climate change.⁷² Lawyers must ‘walk the talk’ if they are to have any meaningful influence in the societies that they live in.⁷³ Since the maintenance of a consistent climate is essential to the functioning of our society, legal professionals cannot ignore climate change. It has been observed that the scientific evidence is unequivocal and the fight now centres on our beliefs, practices, and systems of thought, where the level of success that humanity achieves in reducing greenhouse gas emissions in the present will determine the kind of legacy that is passed down to the next generations.⁷⁴ The role of lawyers must thus be revisited and re-imagined in a way that makes them advocates of Climate Justice so as to bring about real change.

References

‘Basic Principles on the Role of Lawyers’ (*OHCHR*) <<https://www.ohchr.org/en/instruments-mechanisms/instruments/basic-principles-role-lawyers>> accessed 18 July 2023.

‘Campaign for Greener Arbitrations’ (*Campaign for Greener Arbitrations*, 19 March 2023) <<https://www.greenerarbitrations.com>> accessed 17 July 2023.

‘Climate Change - United Nations Sustainable Development’ <<https://www.un.org/sustainabledevelopment/climate-change/>> accessed 20 July 2023.

⁷² Dernbach JC, Russell IS and Bogoshian M, ‘Advocating for the Future’, *The Environmental Forum*, March/April (2021).

⁷³ Moliterno JE, ‘The Lawyer as Catalyst of Social Change’ [2009] *Fordham Law Review*.

⁷⁴ ‘Lawyers in a Warming World | Peter A. Allard School of Law’ <<https://allard.ubc.ca/about-us/news-and-announcements/2023/lawyers-warming-world>> accessed 17 July 2023.

Re-imagining the Role of Lawyers in Climate Justice

‘Climate Change Mitigation: Reducing Emissions’ <<https://www.eea.europa.eu/en/topics/in-depth/climate-change-mitigation-reducing-emissions>> accessed 18 July 2023.

‘DSD :: Resources - Publications - Core Publications’

<https://www.un.org/esa/dsd/agenda21/res_agenda21_36.shtml> accessed 18 July 2023.

‘Environmental Rule of Law’ (*UNEP - UN Environment Programme*, 5 October 2017)

<<http://www.unep.org/explore-topics/environmental-rights-and-governance/what-we-do/promoting-environmental-rule-law-0>> accessed 18 July 2023.

‘Framework Principles on Human Rights and the Environment (2018)’ (*OHCHR*)

<<https://www.ohchr.org/en/special-procedures/sr-environment/framework-principles-human-rights-and-environment-2018>> accessed 18 July 2023.

‘Green Protocols’ (*Campaign for Greener Arbitrations*)

<<https://www.greenerarbitrations.com/green-protocols>> accessed 17 July 2023.

‘HKIAC Signs Green Pledge & Supports Green Protocols’ <<https://www.hkiac.org/news/hkiac-signs-green-pledge-supports-green-protocols>> accessed 20 July 2023.

‘How Indigenous Peoples in Africa Are Impacted by Climate Change - IWGIA - International Work Group for Indigenous Affairs’ <<https://www.iwgia.org/en/news/4959-how-indigenous-peoples-in-africa-are-impacted-by-climate-change.html>> accessed 20 July 2023

‘International Environmental Law’

<https://www.americanbar.org/groups/public_education/publications/insights-on-law-and-society/volume-19/insights-vol--19---issue-1/international-environmental-law/> accessed 18 July 2023.

Re-imagining the Role of Lawyers in Climate Justice

‘Lawyers in a Warming World | Peter A. Allard School of Law’ <<https://allard.ubc.ca/about-us/news-and-announcements/2023/lawyers-warming-world>> accessed 17 July 2023.

‘Measures to Reduce Greenhouse Gas Emissions | Climate Change | Government.NL’ <<https://www.government.nl/topics/climate-change/national-measures>> accessed 18 July 2023.

‘Net Zero Coalition | United Nations’ <<https://www.un.org/en/climatechange/net-zero-coalition>> accessed 18 July 2023.

‘Putting the Campaign for Greener Arbitration Protocols into Practice’ (*Pinsent Masons*, 20 July 2023) <<https://www.pinsentmasons.com/out-law/analysis/putting-the-campaign-for-greener-arbitration-protocols-into-practice>> accessed 20 July 2023.

‘Rule of Law | UN Global Compact’ <<https://unglobalcompact.org/what-is-gc/our-work/governance/rule-law>> accessed 19 July 2023.

‘THE 17 GOALS | Sustainable Development’ <<https://sdgs.un.org/goals>> accessed 20 July 2023; Economic and Social Affairs Department, *The Sustainable Development Goals: Report 2022* (UN 2022).

‘The Campaign for Greener Arbitrations: Encouraging Sustainable Practices in International Arbitration | Jus Mundi Blog’ (11 August 2021) <<https://blog.jusmundi.com/the-campaign-for-greener-arbitrations-encouraging-sustainable-practices-in-international-arbitration/>> accessed 20 July 2023.

‘The Green Pledge: No Talk, More Action’ (*Kluwer Arbitration Blog*, 20 March 2020) <<https://arbitrationblog.kluwerarbitration.com/2020/03/20/the-green-pledge-no-talk-more-action/>> accessed 20 July 2023.

Re-imagining the Role of Lawyers in Climate Justice

‘The Profession’s Role in Addressing the Climate Crisis’ <<http://www.nationalmagazine.ca/en-ca/articles/law/in-depth/2023/the-profession-s-role-in-addressing-the-climate-crisis>> accessed 18 July 2023.

‘The Role Lawyers Can Play in Addressing the Climate Crisis’ (WTW) <<https://www.wtwco.com/en-gb/insights/2022/02/the-role-lawyers-can-play-in-addressing-the-climate-crisis>> accessed 18 July 2023.

ABA Model Code of Professional Responsibility, Preamble and Preliminary Statement (1981) in Thomas D. Morgan & Ronald D. Rotunda, 1998 Selected Standards On Professional Responsibility (1998) (as quoted in Loewy KL, ‘Lawyering for Social Change’ (2000) 27 Fordham Urban Law Journal 1869).

alison.eyre@hsf.com, ‘Inside Arbitration: Towards Greener Arbitrations Achieving Greater Environmental Sustainability in the Way We Conduct Arbitrations: An Update’ (*Herbert Smith Freehills | Global law firm*, 25 February 2021) <<https://www.herbertsmithfreehills.com/latest-thinking/inside-arbitration-towards-greener-arbitrations-achieving-greater-environmental-0>> accessed 20 July 2023.

Climate Change Act, No. 11 of 2016, Laws of Kenya.

Dernbach JC, Russell IS and Bogoshian M, ‘Advocating for the Future’, *The Environmental Forum*, March/April (2021).

Journal ABA, ‘7 Ways Lawyers Can Join the Fight to Curb Climate Change’ (*ABA Journal*) <<https://www.abajournal.com/voice/article/7-ways-lawyers-can-join-the-fight-to-curb-climate-change>> accessed 18 July 2023.

Re-imagining the Role of Lawyers in Climate Justice

Kaminker C and Stewart F, 'The Role of Institutional Investors in Financing Clean Energy'; US

EPA O, 'What Is Environmental Education?' (13 December 2012)

<<https://www.epa.gov/education/what-environmental-education>> accessed 18 July 2023.

Magraw D and Qin L, 'Fifty Shades of Green' (2019) 32 Geo. Envtl. L. Rev. 467.

Maruf A, 'Legal Aspects of Environment in Indonesia: An Efforts to Prevent Environmental Damage and Pollution' (2021) 1 Journal of Human Rights, Culture and Legal System.

Matnuh H, "Law as a tool of social engineering." In *1st International Conference on Social Sciences Education- " Multicultural Transformation in Education, Social Sciences and Wetland Environment"(ICSSE 2017)*, pp. 118-120. Atlantis Press, 2017. <<https://www.atlantispress.com/proceedings/icsse-17/25889472>> accessed 10 July 2023.

Moliterno JE, 'The Lawyer as Catalyst of Social Change' [2009] Fordham Law Review.

OHCHR U, 'Understanding Human Rights and Climate Change', *Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the parties to the United Nations Framework Convention on Climate Change* (2015).

OHCHR U, 'Understanding Human Rights and Climate Change', *Submission of the Office of the High Commissioner for Human Rights to the 21st Conference of the parties to the United Nations Framework Convention on Climate Change* (2015).

Olawuyi D, 'The Human Rights Based Approach to Climate Change Mitigation: Legal Framework for Addressing Human Rights Questions in Mitigation Projects' (PhD Thesis, University of Oxford 2013); Mahadew R, 'A Human-Rights-Based Approach to Climate Change' [2021] *Revue juridique de l'Océan Indien* 155.

Re-imagining the Role of Lawyers in Climate Justice

Pomeranz EF and Stedman RC, 'Measuring Good Governance: Piloting an Instrument for Evaluating Good Governance Principles' (2020) 22 *Journal of Environmental Policy & Planning* 428.

Preston BJ, 'Climate Conscious Lawyering' (2021) 95 *Australian Law Journal* 51.

Running K, 'Towards Climate Justice: How Do the Most Vulnerable Weigh Environment–Economy Trade-Offs?' (2015) 50 *Social science research* 217.

Sachan R, 'Role of Climate Justice in Strengthening Adaptive Capacities in Developing Countries' (2020), 823.

Sarkki, S., Pihlajamäki, M., Rasmus, S. and Eronen, J.T., "'Rights for Life" Scenario to Reach Biodiversity Targets and Social Equity for Indigenous Peoples and Local Communities' (2023) 280 *Biological Conservation* 109958.

Schachter O, 'The Emergence of International Environmental Law' (1991) 44 *Journal of International Affairs* 457.

Sultana F, 'Critical Climate Justice' (2022) 188 *The Geographical Journal* 118; 'Why Climate Change Is an Environmental Justice Issue' (*State of the Planet*, 22 September 2020) <<https://news.climate.columbia.edu/2020/09/22/climate-change-environmental-justice/>> accessed 18 July 2023.

Unit DS, 'What Is the Rule of Law' (*United Nations and the Rule of Law*) <<https://www.un.org/ruleoflaw/what-is-the-rule-of-law/>> accessed 19 July 2023.

United Nations, Preamble, Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1.

Re-imagining the Role of Lawyers in Climate Justice

Utama AS, 'Law and Social Dynamics of Society' (2021) 3 International Journal of Law and Public Policy (IJLAPP) 107.

Vaughan S, 'Existential Ethics: Thinking Hard About Lawyer Responsibility for Clients' Environmental Harms' [2023] Current Legal Problems cuad005.