



REPORT OF THE ENVIRONMENT AND LAND COURT TENTH ANNIVERSARY

ELC@10
CONFERENCE

*Celebrating ten years of Environment and Land
Justice in Kenya: Reflecting on the ELC Journey
and future prospects*



LIST OF ABBREVIATIONS

AGRA	Alliance for a Green Revolution Alliance in Africa
CBK	Central Bank of Kenya
COP 27	27 th Conference of Parties
COVID 19	Novel Corona Virus
CSOs	Civil Society Organizations
CUCs	Court Users Committees
DCI	Directorate of Criminal Investigations
ECTs	Environment Courts and Tribunals
ELC	Environment and Land Court
ELC@10	Tenth Anniversary Conference of the Environment and Land Court
ELRC	Employment and Labour Relations Court
FAO	UN Food and Agriculture Organization
FIDA	Federation of Women Lawyers
FLLoCA	Financing Locally Led Climate Action Programme
IDLO	International Development Law Organization
LSK	Law Society of Kenya
LRF	Legal Resources Foundation
NCCJR	National Committee on Criminal Justice Reform
NEMA	National Environmental Management Authority
NLC	National Land Commission
NSE	Nairobi Stock Exchange
ODPP	Office of the Director of Public Prosecutions
OHCHR	Office of the High Commissioner for Human Rights
RCMRD	Regional Centre for Mapping of Resources for Development
SDG	Sustainable Development Goals
SGBV	Sexual and Gender Based Violence
STAJ	Social Transformation through Access to Justice
UNODC	United Nations Office on Drugs and Crime
UN	United Nations
UNEP	United Nations Development Organization
WRA	Water Resources Authority
WWF	World Wildlife Fund

EXECUTIVE SUMMARY

This report captures the deliberations from the tenth anniversary celebration of the Environment and Land Court (ELC). Dubbed ‘**ELC@10**’, the Conference brought together various stakeholders, who included: judges of the court, the Judiciary leadership, the national and county governments, different state agencies, academia, civil society, United Nations agencies, development partners, among others, to mark 10 years since establishment of the ELC in 2011.

The theme of the Conference was “**ELC@10: Looking back and moving forward on environment and land justice in Kenya**” and the sub-theme of the Conference was “**celebrating ten years of environment and land justice in Kenya: Reflecting on the ELC journey and future prospects**”. The ELC started operations with an initial fifteen judges who were appointed on 1 October 2012. The number has grown over time and currently, the ELC has a total of 51 judges who are in 37 court stations spread across 37 counties in the country.

ELC@10 had four main objectives. **First**, and with the understanding that the ELC is key to safeguarding of environmental and land rights, the ELC and stakeholders set out to deliberate on how to consolidate the role of the Court and enhance its effectiveness. **Secondly**, the ELC and stakeholders reflected on the remedial role that the ELC and courts generally can play in preserving the environment and promoting sustainable use of land and development. **Thirdly**, ELC@10 was to facilitate in the development of innovative ways of enhancing access to justice on environmental and land matters. **Lastly**, the Conference was to provide a channel for collaboration and networking of stakeholders in the environment and land sector, nationally, in the region, and globally.

There were wide-ranging discussions across several themes, sub-themes and objectives that were covered in the Conference programme, as well as the discussions that took place. This section provides a summary of the issues and points of actions from the ELC@10 across seven areas that emerged from the Conference proceedings:

- Enhancing inclusiveness in environmental and land justice
- Deepening partnerships and stakeholder engagement, including public involvement in the work of the ELC
- Capacity building of the ELC in order to enhance the performance of its functions
- The uptake of technology to enhance the delivery of justice in environment and land matters
- Legislative, policy, and institutional reforms necessary to enhance the effectiveness of the ELC and the administration of environmental and land justice generally
- Gender responsiveness in land and environment governance and access to justice
- Integration of Alternative Dispute Resolution and Alternative Justice Systems in ELC matters

Enhancing inclusiveness in environmental and land justice

The National government, County governments, ELC and development partners committed to progressively eliminate the obstacles and barriers that hinder equal access to justice and the full and equal enjoyment of environmental and land rights. This included access to justice for vulnerable persons, groups and communities. There was also a recognition and commitment to avail resources for expansion of court services in order enhance access.

Deepening partnerships and stakeholder engagement, including public involvement in the work of the ELC

There was a unanimous endorsement of the need to expand and deepen collaboration and partnerships between the ELC and stakeholders, both as a way of enhancing access to justice and the overall effectiveness and capacity of the ELC. The ELC and stakeholders present at the Conference, thus, resolved to work closely with other courts and judicial bodies, where necessary, to enhance effectiveness of the ELC. A necessary component of this is the court's nascent public outreach and engagement programme.

Capacity building of the ELC in order to enhance the performance of its functions

The emerging areas of environmental rights and governance require continuous development of capacity development in the ELC, including mobilization of resources for growing capacity. The ELC and stakeholders specifically singled out capacity development in the areas of climate justice, climate governance, and related processes, which will be carried out by the Judiciary and partners.

The uptake of technology to enhance the delivery of justice in environment and land matters

There was consensus among the delegates and participants about the critical role that technology can play in enhancing access to justice in land and environmental matters. There is a need to eliminate barriers to the uptake of technology in the environment and land sector, and specifically address the underlying factors that prevent access to technology by vulnerable persons and groups. The uptake of technology requires resources and capacity in order to realize the intended objectives.

Legislative, policy, and institutional reforms necessary to enhance the effectiveness of the ELC and the administration of environmental and land justice generally

It emerged during the deliberations that there are many gaps in the laws, policies, and regulations applicable to the ELC that require review in order to enhance effectiveness. The relevant agencies and institutions, including Parliament, committed to oversee the revision or development of laws necessary to assist in the realization of the ELC's mandate.

Gender responsiveness in land and environment governance and access to justice



Deliberations during the conference touched on the barriers and obstacles that hinder the full and effective enjoyment of environment and land rights by women and girls. The ELC and stakeholders committed to regularly review and report on progress in addressing the barriers and obstacles to gender justice in the environment and land sector. These measures also include capacity development and training of judges of the ELC on the gender-related aspects of adjudication of environment and land matters and institutional gender mainstreaming at the ELC.

Integration of Alternative Dispute Resolution and Alternative Justice Systems in ELC matters

The integration of Alternative Justice Systems and different forms of Alternative Dispute Resolution processes in the ELC can contribute to enhance of access to justice, mainly because of the benefits of ADR and AJS as compared with judicial adjudication. This requires investment, in terms of capacity and resources, in order to have a practical realization of ADR and AJS in environment and land matters.

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1. Introduction

1.1 Background to the Conference

This report captures the deliberations from the tenth anniversary celebration of the Environment and Land Court (ELC); the anniversary, dubbed ‘**ELC@10**’, brought together various stakeholders, who included: judges of the court, the leadership of the Judiciary and the entire Judiciary community, the national and county governments, different state agencies, academia, civil society, United Nations agencies, development partners, among others, to mark 10 years since establishment of the ELC in 2011.

The ELC Court was established with a mandate to hear disputes related to the environment and land and to bridge the justice gap in environmental and land matters. The ELC started operations with an initial fifteen judges who were appointed on 1 October 2012. The number has grown over time and currently, the ELC has a total of 51 judges who are in 37 court stations spread across 37 counties in the country.

During the constitutional review process that led to the promulgation of the Constitution of Kenya 2010, there were calls from Kenyans to ensure that the new constitutional dispensation prioritizes the resolution of land conflicts and the protection and securing of community and individual land rights, issues that have persisted from the colonial era to the present times. These calls led to the establishment of the Environment and Land Court (ELC) as a court of equal status to the High Court.

More importantly, the Constitution of Kenya recognises and provides for the right to a clean and healthy environment (under Article 42) and goes further to elaborate the principles that underpin the use of natural resources and sustainable environmental governance under article 69. In this regard, it is significant to note that the right to a clean and healthy environment was recently (in July 2022) recognised by the United Nations General Assembly (UNGA) as a universal human right and joined the community of other rights that are recognised and protected by the international human rights regime. This is in addition to other human rights instruments that Kenya is party to. Indeed, Article 2(5) of the Constitution provides that general rules of international law shall form part of the law of Kenya, and Article 2 (6) further provides that “any treaty or convention ratified by Kenya shall form part of the law of Kenya...”

In the above regard, the ELC plays an important role in realising the UN’s 2030 agenda for Sustainable Development Goals (SDGs), and in particular, SDG 16 whose objective is “to provide access to justice for all and build effective, accountable and sustainable institutions at all levels” and SDGs 11, 13, and 15 that deal with sustainable cities and communities, climate action, life below water and life on land.

It is in the above context that ELC@10 was held at Pwani University in Kilifi County from 28th November to 2 December 2022. The ELC@10 provided an opportunity to reflect on the journey travelled by the ELC and the achievements and milestones of the ELC over the last ten years. More critically, ELC@10 was an opportunity to consolidate the lessons learnt from the last ten years and also to plan for the next decade for the court’s work.

The theme of the Conference was **“ELC@10: Looking back and moving forward on environment and land justice in Kenya”** and the sub-theme of the Conference was **“celebrating ten years of environment and land justice in Kenya: Reflecting on the ELC journey and future prospects”**.

1.2 Objectives of the Conference

ELC@10 had four main objectives. First, the ELC and stakeholders aimed at discussing and identifying ways to consolidate the role of the Court and enhance its effectiveness in its core and defined areas of jurisdiction. Specifically, the Conference aimed at identifying ways to safeguard the environment and thereby contribute to achievement of Sustainable Development Goals (SDGs) and climate change at national, regional, continental, and international levels.

Secondly, the ELC and stakeholders recognise the challenges that human factors have caused in environmental and land justice. Specifically, the destruction of habitats and the environment as a result of developmental processes that do not consider the principles of sustainable use of the environment, land, and natural resources. Accordingly, and in recognition of the remedial role that courts generally can play in preserving the environment, ELC@10 aimed at discussing the role the ELC has played in fostering sustainable development and safeguarding the environment.

Thirdly, the adjudication of environment and land rights, as well as the realisation of these rights is dependent on several factors, key among them, the general rule of law, good governance, and democracy. ELC@10 aimed at adopting high level recommendations, from a variety of discussions among stakeholders, aimed at enhancing access to justice in its holistic and meaningful sense.

Finally, there is an increasing recognition of the need for networking and collaboration beyond the court, if the ELC is to effectively achieve its mandate. This includes collaboration between different stakeholders such as governments, civil society, development partners, academia, and most importantly, members of the public and communities where practical issues regarding the environment and land play out.

1.3 Pre-conference activities

In the lead up to the Conference, the ELC undertook a number of initiatives that involved public engagements and initiatives aimed raising awareness of the work of the ELC as well as promoting the mandate of the ELC. In this regard, the ELC held open days in all stations of the courts, which were aimed at having interactions with members of the public who had an opportunity, away from the formal environment of the court room, to understand the role of the court and appreciate the contribution of the ELC to access to justice.

The ELC also participated in the planting of trees across the country. The campaign to plant trees targets to have 1 million trees planted and the 100,000 trees were planted by the time of the ELC@10 Conference. This initiative not only contributed directly to

the increment of tree cover and the reforestation agenda of the country but also served to demystify the role of ELC Judges (who led the tree-planting initiative in their respective stations). The tree-planting initiative assisted in creating a link between the work of the court and the day-to-day life of Kenyans and thus assisted in giving a practical meaning to the work of the ELC.

Not everyone could travel to Kilifi to attend the ELC@10 and the pre-conference activities provided a chance to those who could not make it to take part in marking ten years of the ELC.

1.4 The structure and approach to deliberations at the Conference

As earlier noted, the Conference had a rich mix of participants who participated actively in the Conference sessions, with the aim of holistic reflections and discussions on the impact of the ELC over the last ten years. The Conference sessions were designed in a manner that could enable broad participation of all the stakeholders represented at ELC@10.

First, a total of seven high-level panels were organised during the three-day Conference around various themes and topics on the court's work and engagements. The composition of the panels reflected the representation of institutions and agencies that attended ELC@10. These included: the ELC (judges and registrars), Parliament, development partners, national government ministries, independent commissions and offices, county government departments, civil society organisations, the Law Society of Kenya, the academia, among other stakeholders. The issues dealt with at each panel session reflected crucial components of the court's work and deliberations were targeted at understanding the role and impact of the court, as well as the future of the court in the specific aspects deliberated in the sessions.

Secondly, during each day of the Conference, parallel breakout sessions were held where sub-themes and topics (broken from the main themes of the day) were held and discussed. Each of the breakout session had the representation and participation of a judge from the ELC to make contributions of the court and to be part of deliberations on improving the work and impact of the court.

The deliberations from the high-level plenaries and breakout sessions were expected to discuss and generate an agenda for the court for the period ahead. The deliberations with the wide range of stakeholders would also facilitate the much-needed collaboration and cooperation with the court in the performance of its functions. The ELC is not only committed to its adjudicatory role in environment and land matters, but is also committed, as institution, to a greening agenda, and this conference provided a means to forge commitments for establishing the first green court in Kenya and the region.

1.5 Arrangement of the report

The proceedings of the ELC@10 are presented in five sections of this report. This introduction section provides the background and preparation for the conference as well as the objectives of the conference, the themes, and structure and approach to deliberations. Sections 2 to 4 cover deliberations of the first, second, and third days of the conference, while section 5 of the report captures the policy recommendations from the conference.

2. Conference proceedings (29th November 2022)

The first day of the Conference commenced with the welcoming session, a key note speech by Justice Antonio Herman Benjamin of the National High Court of Brazil and Chair of the Global Judicial Institute on the Environment, the official opening ceremony (presided over by Hon. Wycliff Musalia Mudavadi, Prime Cabinet Secretary, (representing HE Hon. William Samoei Ruto, the President of the republic of Kenya).

Two high-level panel discussions and three breakout sessions were scheduled for the first day of the Conference. However, the high-level panel planned for the morning session did not take place. The rest of the sessions were carried out as scheduled.

2.1 Welcome session

The welcome ceremony started with a welcome to all the delegates that were assembled at the Pwani University Grounds for the ELC@10 Conference. **Ms Ling Fung, a representative of the Office of the High Commissioner for Human Rights (OHCHR)** commenced her remarks by noting that the United Nations General Assembly (UNGA) has recognised the right to a clean and healthy environment as one of the universal rights and further noted that it is intertwined with the enjoyment of other rights. She further noted that Kenya has provided for under Article 42 of the constitution of Kenya, 2010.

The ELC is a key institution in terms of the upholding land rights and environmental rights, including the right to a clean and healthy environment. Ms Fung also emphasised the fact that access to environmental and land rights unlocks access to and enjoyment of other fundamental rights and freedoms as the enjoyment of other rights and freedoms is predicated on the recognition and respect of environment and land rights. She also noted that jurisprudence from courts is increasingly referring to and invoking international human rights instruments in the adjudication of disputes that come before the courts.

Access to land and natural resources and the enjoyment of land rights is critical to the achievement of Sustainable Development Goals. However, she also noted that increasing pressure on land and the environment as a result of human activities, climate change and other factors, and this negatively impacts on the enjoyment of rights. Therefore, the courts play an important role by providing means of enforcement of environmental rights whenever such rights come under attack. In

order to achieve this, there is need for timely and effective intervention in order to preserve and protect rights

Key among the priorities of the ELC is to strengthen partnerships with other actors in the land governance sector, such as the land rights defenders, development partners, and civil society actors in order to enhance the impact of the court's work and for ownership of the court's role.

Courts also need to look at ways of enhancing their capacity to effectively deal with emerging issues in land and climate governance, by finding its legitimate place and enhancing access to justice in the emerging and complex environment.

The President of the Law Society of Kenya, Mr. Eric Theuri, noted that ELC@10 was a vital occasion to reflect on the journey travelled, the challenges, as well as the successes of the Court. More importantly, such a comprehensive assessment and reflection should assist in the preparation for the next decade of the ELC. In this regard, it is critical to draw lessons (both negative and positive) in order to plan for the future.

The LSK President challenged the court and the stakeholders present to bear in mind the need for greater public confidence in the court, which, in turn, is dependent on how efficiently the ELC resolves disputes brought by Kenyans. The LSK President noted that the ELC has done well over the last ten years. However, there are some challenges that still linger and these include: unfortunate incidents where evictions have disrupted livelihoods, and also cases where court orders are misused by unscrupulous parties to facilitate fraud and stealing of land. Such challenges can be addressed with the digitization agenda in both the courts and the land registries where plans for automation are in full gear.

Beyond the traditional disputes around land, the LSK President indicated that the ELC has seen new matters filed on issues such as the environment, land use, and planning. Following the resolution of the UN recognising the right to a clean and health environment, we may see litigation in the ELC based on this right, and aimed at challenging activities that affect the enjoyment of this right. Climate change is emerging as one of the challenges to enjoyment of land and environmental rights and courts will start handing these matters. In this regard, the LSK is already engaged and is organising a forum on law and climate justice in February 2023. Other areas of litigation that may come before the ELC include technical areas such as generic, biological processes, issues of conservation versus development, and bio-piracy and other environmental crimes. Furthermore, the effect of climate change are felt across the globe and the effects include: food insecurity, floods and disruption of livelihoods, drought. There will be a need to address some of these challenges through proper access to justice mechanisms.

The representative of the Danish embassy, representing Ambassador Ole Thonke, noted that the Embassy of Denmark has great interest in the work of the ELC and closely follows and supports the court in its work, through the International Development Law Organisation (IDLO). He further noted that Kenya has shown

commitment to the caring of the environment and this is through rules such as the banning of plastic bags. Kenya's keenness to preserve the environment is also noted through the work of icons such as the late Prof. Wangari Maathai and projects such as the Karura Forest. Kenya also hosts the UNEP and other UN bodies and this demonstrates its commitment to upholding standards in environmental protection. The Constitution of Kenya 2010 recognizes environment and land rights and this provides a normative basis for the enforcement of rights. The establishment of the ELC is a major accomplishment towards the enforcement and realisation of environmental and land rights

The Danish Embassy supports many initiatives aimed at ensuring the safeguarding of environmental and land rights, which include, supporting climate mitigation and adaptation measures, and access to justice and human rights with most of the Embassy's support directed through programmes of the IDLO. The Embassy is also particularly interested in rights of indigenous peoples and the right to prior, free, and informed consent on matters of land and development. The representative was also happy to note that discussions about gender, the environment, and land rights are part of the conference discussions as this is an area that requires attention of stakeholders in the environment and land sector.

He also noted that Kenya has experienced the worst drought in years and this has increased vulnerabilities and the Embassy is providing support to county governments on climate governance in order to assist in responding to climate change. The Danish Embassy in Nairobi is a leader in greening its institutional operations. The staff at the Embassy use electric motorbikes and cars. The Embassy has also done away with the use of plastic bottles at the embassy, and a recycling station has been established at the premises of the Embassy. The representative challenged the ELC to take up the greening challenge by establishing the first green court.

Hosea Kili, the Group Managing Director of CPF Financial Services, noted that the introduction of a court dedicated to environment and land issues was a timely idea, in view of the justice needs of Kenyans. He noted that the ELC should engage with matters brought before the court and develop progressive jurisprudence that responds to the legitimate needs that Kenyans had in mind when establishing the court. the expansion of access to court through Public Interest Litigation (PIL) is an important complementary development that can assist the court in its engagement and growth in environment and land issues.

Where the justice system is broken, the most vulnerable feel the effects of such a system. the ELC was established to bridge the gap in access to environmental and land justice and it is expected that the it shall serve justice to the vulnerable. In order to achieve this, the Law Society of Kenya and other stakeholders in the justice sector must think of a legal aid scheme that can assist indigent persons to access the ELC. This is the only way that the ELC can reach the poor and vulnerable who cannot afford costs.

The just concluded 27th Conference of Parties in Egypt, dubbed "COP 27" ended with a commitment by governments to respect environmental rights. The MD suggested

that stakeholders should think of an amendment to the Constitution that will create an office of “protector of the environment” that is specifically mandated to the promotion and enforcement of environment rights and to oversee the realisation of environmental rights. The MD expressed willingness to work with the Judiciary in its core areas of focus such as pension advisory services, automation and digitization of systems and records, as well as greening projects, such as connecting rooftops to solar energy; the CPF has reduced reliance on national grid by around 30 percent as a result of its green projects.

Ms. Carla Elisa Luis Mucavi, the FAO representative to Kenya, noted that she was delighted to partner with the ELC and this is because the ELC role is at the heart of the institutional objectives of FAO whose ultimate goal is to defeat hunger and ensure availability of food that is of sufficient quantity, quality and is accessible. This is anchored in FAO’S strategic framework, which is further mirrored in the UN Cooperation Framework with the UN in supporting the achievement of Vision 2030. Importance and criticality of SDG 16 to the discussions at the conference

Ms Mucavi noted that with the establishment of the ELC, the National Land Commission (NLC), and National Environmental Management Authority (NEMA) among other bodies, Kenya has made remarkable progress with regard to institutions meant to realise land and environmental rights. Specifically, the ELC leads in ensuring access to justice and rule of law are at the centre of all land and environmental governance processes.

The FAO together with the Ministry of Lands, Public Works, Housing and Urban Development, the NLC, and county governments, are leading the process of land governance reforms in Kenya. Supported by the EU, there had been reforms aimed at improvement of land security, and equitable access. For instance, through effective and efficient land governance through the digitization of records.

Ms. Mucavi emphasised the importance of capacity development for the ELC, which is critical if the ELC is to fulfil its role. Where the ELC and other environmental and land governance institutions perform their roles effectively, they can create an enabling environment for economic progress and employment, thus unlocking the developmental potential of land. This can also address issues such as food security. Through the ELC, and other land governance institutions, the rights to the environment and land can be realised in a manner that makes practical and meaningful effect in the lives of the people.

In his remarks, **Justice Byram Ongaya, the Presiding Judge of the Employment and Labour Relations Court (ELRC)** noted that establishment of the ELC was a milestone for expeditious delivery of justice in an area of priority for Kenyans. Land, labour and capital are key factors for production and progress and the governance processes behind these factors (including access to justice) are key to progress in the society. Environmental and land factors affect livelihoods including availability of employment. Solid management of land as a factor production leads to job and employment creation

The Novel Corona Virus (COVID 19) showed how environmental factors can disrupt livelihoods as demonstrated by massive losses in production, loss of employment, and other issues. Therefore, decisions of the ELC on environmental and land matters are at the centre of our very existence. Sustainable use of resources has an impact on our very existence. In this regard, the ELC has a core role in ensuring that the principle of Sustainable Development, which is one of the national values and principles of governance is realised.

Furthermore, workplace concerns include a clean and healthy environment and the ELRC is concerned as well with the enforcement of such rights. There are synergies between the two specialised courts (ELRC and the ELC) that can be explored, under the Judiciary's vision of Social Transformation through Access to Justice (STAJ). Justice Ongaya assured the ELC and other stakeholders of support of the ELRC in realisation of the objectives of the ELC.

Justice Oscar Angote, the Presiding Judge of the Environment and Land Court (ELC) gave a brief history of the Court. The ELC started its work in 2012 with just 15 Judges but has grown over the ten years to 53 currently. There are ELC courts in 36 counties, Narok has two ELC courts and total is 37 court stations. The PJ noted that all the judges of the court were present at the Conference and eager to engage with other delegates and to participate in discussions under the various themes of the Conference.

The PJ noted that the ELC has made decisions on almost every aspect of land and environmental justice, ranging from climate change, land rights administration, rights of women, historical land injustices. He also noted that it was fitting that the ELC@10 was held in Kilifi where there are urgent land justice issues that require highlighting and attention. Specific issues dealt with by the ELC include; titling of land ownership, mining and minerals, compulsory acquisition, and the whole gamut of issues in environmental and land justice.

The ELC has promoted the realisation of sustainable development and this has, by extension, facilitated the realisation of Sustainable Development Goals (SDGs). The court has embraced the philosophy and approach to environmental governance that this is a shared heritage and should be used sustainably and for shared prosperity. There is a deliberate effort by the ELC to ensure that outcomes of decisions of the court promote SD, accountability, accessibility, sustainability, and ends of justice. The PJ observed that ELC@10 had brought together a wide range of stakeholders drawn from governments at the national and county levels, development partners, academia, civil society, private sector, among other player, and this very factor would facilitate holistic discussions on the role of the court in the environment and land sectors.

The PJ noted that while the ELC started with a high caseload, there has been progressive reduction of case backlog and pending cases in the Court. When the court commenced work in 2021, the total number of cases were 20, 500 cases in 2013/14 of which 95 percent were land matters. In 2016/ 17, there were pending cases of 27, 242 and in 2019/ 2020 the pending cases were reduced to 13, 000. The pending cases are

expected to reduce further. The progressive reduction of cases is as a result of hiring of more judges for the court and over the years, which has had the effect of making the caseload more manageable. In order to better manage its operations, the ELC has developed a strategic plan to guide its operations from 2023 to 2027. The PJ thanked the FAO who supported the Court in the development of its Strategic Plan.

While the ELC has made considerable progress in the pursuit of its mandate, the PJ also noted that the ELC has faced a number of challenges. The main challenges included: the ELC Act that requires updating in order to enhance the ELC's institutional and operational framework, the lack of capacity and facilities, and inadequate human resources to enable the court to operate optimally. The PJ also noted that while the ELC has had engagements with the public and other stakeholders, a lot more could be done to ensure public and stakeholder engagements. The PJ also emphasised the need for research support to the court and the building of a body of knowledge relevant to the ELC's work.

The ELC has prepared a casebook that tracks the jurisprudential growth of the court, promotion of SD, women's rights and various other cases and jurisprudence from the ELC. The ELC has also developed an End-to-End Guide on the court's process as a guide to users of the Court. The Court has also developed a booklet also provides the profiles of the ELC Judges. As a build-up to ELC@10, the court has engaged in a number of activities, which included, open sessions with the public and the planting of over 100, 000 trees in the different court stations across the country; the target is to plant one million trees.

The PJ reiterated that the ELC@10 Conference brings together state and non-state actors to discuss judicial strategies for the ELC to deliver justice and the theme of the conference, "looking back while looking forward" succinctly captures the objective of the Conference. In this regard, the PJ noted that there were eminent speakers were invited to give remarks and participate in sessions and panels on the general themes of the Conference. Conference speakers included eminent judges, scholars, representatives of various institutions and bodies engaged in environmental governance, the national and county governments and various public agencies. The discussion topics for the Conference range from digitalization, climate change, urban governance, environmental justice in criminal law, among other issues.

The PJ thanked all the delegates and participants present for heeding the call to celebrate ten years of the Court's work and to assist in reflections and planning for the future. The PJ also thanked the partners who supported the Conference and made ELC@10 a reality, and the host county government for partnering in hosting the conference and also for the county government's commitment to land governance.

2.2 Keynote speech (Justice Antonio Herman Benjamin)

National High Court of Brazil and Chair of the Global Judicial Institute on the Environment

The key note speech for the first day of the Conference was delivered by Justice Antonio Herman Benjamin of the National High Court of Brazil and Chair of the Global Judicial Institute on the Environment. The keynote speech touched on the fundamentals of property rights in access to environmental and land justice, the emerging legal principles in practice of EL justice from courts, judicial education in Environment and Land issues, and a brief note on the specialisation of courts.

Justice Benjamin started by noting the Kenyan Court is aptly named the ‘Environment and Land Court’ unlike other similar courts that are simply referred to as Environmental Court; ELC aptly captures the broad function that the court plays in environmental and land matters. Justice Benjamin emphasised that one cannot effectively protect the environment without engaging property rights at the centre. Typically, judges of the Environmental Courts and Tribunals, NGOs in the sector, and other organisations discuss a broad range of issues on the environment and land. However, the realisation of these rights can have meaningful traction where property rights are seen as the beginning point, followed by an interrogation of their intersection with issues of climate change, environmental factors, and property rights.

In the past courts and previous legal regimes have dealt with property rights as if they did not concern environmental rights and this has had the consequence of weakening the enforcement of environmental rights. Protection of environmental rights does not occur in a vacuum. In the adjudication of environmental matters, one is dealing with new institutions and rules and these need to come together to coherently ensure access to justice. Justice Benjamin emphasised that the consideration of property rights as being at the centre of environmental rights is a recognition of the ecological function of property rights.

The Constitution of Kenya 2010 incorporate broad principles that recognise the ecological function of property rights. Article 60 makes a reference to use and management that is ecologically sustainable development and these salient provisions that are progressive in land and environmental management. The regime of property rights is the basis of all the other rights and duties that flow from environmental and land regimes.

Justice Benjamin reiterated the principles of environmental justice and the need to actively invoke them in adjudication of environmental and land matters. This includes new and emerging principles, such as the principle of *in dubio pro natura*, which emphasises that when in doubt over the interpretation or deciding on opposing issues environmental matters, take the side that is in favour of protection and sustenance of the environment.

The keynote speaker also emphasised the need for environmental and land judges to engage in judicial education and to verse themselves with the emerging trends and that judicial academies should take initiative and spearhead the process of acquiring knowledge. Judges need not only be in the courtroom but also in the classroom. The learned Judge also reiterated the need to reflect on the diversity of Kenyan culture and

how the same can be reflected in judicial decision-making of the ELC on environmental and land matters.

2.3 Official opening

The official opening session started with remarks from the host governor, **HE Gideon Munga'ro, the Governor of Kilifi County**. The Governor acknowledged the role of the ELC in addressing land issues especially with the historical land injustices in the coast region. He requested the courts to find areas of partnerships with the private sector as well as the establishment of courts in the coast region and beyond to further enhance access to justice

The Governor also emphasised the need to embrace Alternative Dispute Resolution and Alternative Justice Systems in the administration of justice, especially on land matters. The Governor affirmed the commitment by Kilifi county government towards ensuring the right to a clean and healthy environment.

Hon. Justice Smokin Wanjala, the Director of the Kenya Judiciary Academy, welcomed the delegates to the Conference and observed that it was an important opportunity to reflect on the role of the Court. He noted that the establishment of this court is a statement in the struggle for independence by Kenyans. Colonial rule caused massive loss of land and land rights, brought confusion in the land tenure system, and environmental degradation. All these caused a permanent state of disruption. The court represents the continued struggle for justice for the poor, the marginalised and the vulnerable on access to land.

In her remarks, **Chief Justice Martha Koome** echoed the need to develop indigenous jurisprudence that addresses the prevailing context and advances environment and land rights within the Kenyan context. The Chief Justice reiterated that the Judiciary is committed to the expansion of the coverage of courts, including the ELC. The Judiciary's blueprint, Sustaining Social Transformation through Access to Justice (STAJ) targets at establishing courts in all the sub-counties in the country in order to ensure speedy dispensation of justice. In the coast region, the Judiciary is aware of historical land injustices and is keen to address the same through adjudication and other means of dispute resolution and access to justice.

The Chief Justice lauded the ELC for the achievements and milestones over the last ten years. The Chief Justice also noted that she has received positive feedback from the public engagements by judges and the ELC such as the tree planting initiative. These engagements have helped demystify the court and the judges to members of the public, and it has created awareness of the connection between the role of the court and the environment.

The Conference is a reminder to keep tabs on the core role of the court and how that role is appreciated by society. We need to reflect and interrogate on whether the ELC has lived up to the expectation of Kenyans. In order to understand this, delegates need to reflect in what ways the ELC has deepened access to justice and how this needs to

be enhanced. To borrow a leaf from a statement from the Child Justice Week (how are our children doing today?), the Chief Justice challenged judges and stakeholders to always ask the question: “How is our land and environment doing today?”

Sustainable use of land, including the issue of ownership and sub-division, is a relevant and live issue in Kenya where land is scarce. The ELC also plays an important role in defining and protecting land tenure systems, whenever issues come for adjudication. The level of attention to issues of sustainable development cannot escape the attention of the court and the stakeholders gathered at the Conference. The theme of land and justice has the specific issue of historical dispossession tied closely to it and the ELC must make decisions that advance social transformation by responding to the legitimate calls for restorative justice in land and environmental matters.

The Chief Justice noted that the ELC has indeed lived up to expectations of Kenyans, and the next frontier for the court is to now chart a way forward in terms of transformative environmental constitutionalism. This can only be achieved where the judges and the court strike a legitimate social justice, environmental rights. Court annexed mediation important component of enhancing effectiveness. Transformation requires change in property regimes; use, management, and transfer of land- courts must find a legitimate balance.

The Judiciary, under the auspices of the Kenya Judiciary Academy, is in the process of crafting programmes as a matter of extreme urgency, to assist in the training of judges in the ELC on emerging issues of climate justice and other changing areas of environmental and land adjudication.

Hon. Musalia Mudavadi, the Prime Cabinet Secretary, delivered remarks on behalf of **HE William Ruto, the President of the Republic of Kenya**. The President congratulated the ELC and the Judiciary on this important milestone in the journey of the ELC. He stated that the Constitution of Kenya and the ELC and its mandate are intentional tools of decolonization. Recalling that at one time in Kenya’s laws and institutions were united to benefit a colonial minority. By contrast, today, the law and institutions serve a broader and legitimate purpose.

The expanded access to justice by the constitution, allowing even public interest litigation, and the express call for substantive justice over technicalities, all place the court in a position to serve the ends of justice as envisaged in the constitution. Equally significant is the fact that the ELC is emerging as a proponent for climate governance and justice. The gesture of planting 100,000 trees by the court in 36 counties is a fully appropriate gesture that aligns with the court’s agenda.

The legacy of colonialism in land matters is that it created tensions between different regimes of land governance, including the indigenous land tenure systems. These tensions must be resolved in order for the society to move forward. The same approach extends to knowledge in environmental management. The President encouraged the delegates and stakeholders present to explore the relationship between modern science and indigenous knowledge in the management of the environment for community ownership and overall effectiveness

The Constitution seeks to maintain a balance between sustainable development, equity, resource sharing and development. Across Africa, land has exclusive access by powerful groups to the exclusion of the majority, a situation of severe coloniality, even after independence. In turn, this situation is a driver of inequality and poverty in our society. The ELC must, therefore, be at the centre of developing jurisprudence that seeks to transform our society into the ideal position where land and land-based resources are used equitably and for the prosperity of all.

The government has taken a keen interest in environmental matters and is at the forefront both at the regional and international platforms in defining and shaping the agenda of environmental justice. The disruption occasioned by climate change, as manifested through unreliable rain patterns, flooding, famine show that Kenya needs to step up its climate governance agenda. The government has taken steps to put in place, frameworks (laws and policies), institutions and structures, and has mobilised resources in order to assist in climate interventions aimed at adaptation and mitigation.

The role technology in achieving the desired transformation in environmental and land governance cannot be over-emphasised. The use of technology in greening justice, the digitization of land management and administration are all steps in the right direction with regard to sustainable growth. The President reiterated the commitment of the national government to support the court in realization of its purpose, especially resources to expand the coverage of the ELC to all the counties as per the Judiciary plans.

2.4 High Level Panel 2

Sub-Theme: digitization of land records in Kenya: A panacea for improved governance and sustainable development

Objective: To discuss the trends in the last ten years in relation to land management and governance designed to make the ELC court more efficient, open, transparent, accessible, affordable and accountable

Panellists: *Environment and Land Court, the Ministry of Lands, Public Works, Housing and Urban Development, Taita Taveta University, Institute of Surveyors of Kenya, AGRA-Kenya, Regional Centre for Mapping of Resources for Development (RCMRD), Landesa, and the Departmental Committee on Land and Housing (National Assembly)*

Deliberations and emerging issues

- The ELC Act requires amendment in order to effectively facilitate the performance of its functions. Specifically, the amendments should address the evolving demands for justice as well as to ensure that the court practice and

procedures are aligned. In this regard, the ELC will prioritize the preparations and proposals for amendment of the ELC Act in Parliament.

- The Ministry of Lands, Public Works, housing and Urban Development noted that it is in the process of implementing an online platform, “**Ardhi SASA platform**” which is Lands information management system that will address various challenges related to land issues once completed. The Ardhi Sasa is an electronic document management system form all land administration departments (responsible for preparation of leases).
- *Ardhi sasa* will assist in a better management of manual records at the Ministry, some of which are over 100 years old and most of them were prone to wear and tear, destruction and damage etc.
- The land records for Nairobi County have already been digitized and digitization of Murang’a County land records is ongoing. User registration for members of the public and the Ministry staff have been introduced to the system. The platform has helped prevent double titling and mapping out of public land.
- Once fully rolled out, *Ardhi sasa* will facilitate the integration of various public agencies in order to assist in the sharing of critical information. For instance, the registrar of persons can confirm identity of users upon registration to the platform, the registrar of companies can confirm registration of companies owning land, and the Kenya Revenue Authority can access the platform with a view of ascertaining payment of land rates. The ELC too will access the system in order to support the performance of its functions.
- Despite the distinct roles of surveyors and planners, *Ardhi sasa* will make work easier for the surveyors and planners since the information and land data in easily accessible for planning. The relocation and revision of boundaries to be geo-fixed/mapped on the platform will make it easier for dispute resolution in case there is a change in the boundaries.
- There is a need to ensure that rural areas are also mapped and digitized like the major urban centres in the countr. The mapping system should be updated since most of the maps are out of date. There is need to press for more resources that will be assist in the updating of maps.
- Teaching curriculum in institutions of higher learning should be revised to include issues of integrity and ethics. This will assist in forming citizens who are able to uphold ethics and integrity when they get into the job market. In this regard, Taita-Taveta University offers courses in mining and land exploitation, affirmed the importance of digitization and echoed the need to integrate values and integrity in the process. The values of citizenry and environmental conservation have been integrated into the university curriculum as common units, to ensure the university produces graduates of integrity and high work ethics into the job market.
- There is reduced land productivity of arable land due to subdivision. Digitization will assist in determining the optimal use of land for purposes of

enhancing productivity, including addressing the challenge of sub-division of land

- A lot of land needs to be rehabilitated to ensure they are productive and therefore boost food security in the security.
- While digitization is a timely tool that can improve efficiency and transparency, there is also a real risk that the same process may alienate those who are not able to access the internet and the online platforms. Therefore, there is a need to also ensure accessibility of online platforms to everyone, especially women and other marginalized groups.
- National legislative processes aim to achieve inclusivity, especially for the laws related to land administration and management. Specifically, laws such as the ELC Act of 2011 and the Urban Areas and Cities Act of 2012 passed by parliament in 2012 have provisions that seek to enhance inclusivity in land governance.

2.5 Break out session 1

Theme: Digitalization of land in Kenya, a panacea for land governance and sustainable development.

Objective: Examine the role of the courts in decision-making processes pertaining to environmental sustainability, justice, governance and law

Panellists: *Environment and Land Court; National Environmental Management Authority; Ministry of Lands and Physical Planning; Kenya Private Sector Alliance; National Land Commission; Kituo Cha Sheria*

Emerging issues from the deliberations

- The ELC involves parties and agencies such as the NLC in the authentication process of land ownership in concrete issues of dispute resolution. The NLC has, for instance, participated in mediation programmes and NLC have received over 20 parcels of land recovered and restored them to their original owners through this process
- In the course of its work, the ELC has enabled the implementation of the relevant policies and laws of NEMA on many issues that touch directly on the environment, such as, the enforcement of laws that ban the manufacturing and use of plastic bag, encroachment of riparian land for lakes, rivers and dams.
- As a result of judgments and pronouncements made by the ELC, NEMA and other agencies have review their administrative processes, regulations and standard operating procedures (SOPs) to ensure compliance with the law and court decisions
- That ELC has developed progressive jurisprudence on matters related to land and land use by pronouncements on issues that include: public interest vis-à-vis private interests where the court emphasized that the former overrides the

latter. The court has also stated that planning must be done before alienation, and the court has set harmonization of standards with regard to riparian land for lakes, rivers and dams

- The ELC Court needs to develop similar jurisprudence on environmental issues, whenever an opportunity arises for the court to consider such matters.

2.6 Breakout Session 2

Sub-theme: Advancing Greening Justice, Governance and Law for Environmental and Land Management Sustainability

Panellists: *Legal Resource Foundation Trust; Pan African Climate Justice Alliance (PACJA); Department of Urban Planning-Kilifi County Government; Ms. Risper Oteke, Coastal & Marine Resource Development (COMRED); ELC.*

Emerging issues from the deliberations

- Green justice is a holistic approach that incorporates the concepts of environmental protection, justice, preservation and sustainable development. Each of the perspectives constitutive of 'Green Justice' offer varying philosophical and practical positions that seek to redress the environmental harms associated with any corporate and state actions that threaten human and non-human survival.
- In order to enhance access to justice in environmental and land matters, the it is critical to enable communities to tap into the existing resources such as the platforms created to enable Counties leverage on blue economy and this should reach vulnerable sections of the society, such as, women and children.
- There is a need to ensure effectively community consultation on issues of access to justice and this includes training on land and environmental matters in order to deepen discussions with the public.
- In light of the recent Conference of Parties (COP 27) in Egypt, there is a need to operationalize climate change justice based on Paris agreement of 2015, which covers climate change mitigation, adaptation, and finance
- while there are corporate players who engage in actions that contribute to global warming and exploitation of environmental resources, there is need to hold these players to account
- The mechanisms for climate justice, such as the loss and damage fund, as a result of climate change-related disruptions need to make meaningful change to those affected.
- Courts need to reflect on how their decisions and jurisprudence can mitigate and address the damage suffered because of climate change, especially in the local contexts.
- Civil society organisations are working with communities on issues of climate change by sensitization of communities, civic education and involvement of

citizens in development of County Integrated Development Plans to ensure environment and climate change issues are integrated with the planning process in the Counties. Further, this will ensure that environment and Climate change issues are well budgeted for.

- The actions and activities of the CSOs in the communities are informed by the need to build the voices of climate action through active involvement of public and citizen led advocacy
- There is need for effective involvement of the Judiciary and the ELC in climate justice and the Judiciary Fund, established under article 173 of the Constitution, can be a basis for institutional financial and resource commitments to climate change justice
- In the justice sector, some of the alternative punishments may include tree planting and other activities that can enable offenders to contribute to environmental protection.
- County boundary disputes between communities in border areas and disputes over natural resources are a rising concern. Other related concerns include: human-wildlife conflict, environmental degradation due to human activity, inter-county migration and settlements, struggle for resources on land and in the sea and ensuing conflict between competing groups. All of these require some form of response.
- There are a number of projects aimed at achieving sustainable use of resources in the coastal region. This include '*Miji bora, bandari bora*' that enhance the capacity of coastal communities to utilize the available resources.
- There is a need to ensure that funds raised and allocated for climate change actually reach the local level and that they actually fund relevant local climate change actions.
- There is a need to ensure continued community sensitization on climate change issues and one such mechanism is through the establishment of environmental clinics to provide legal counsel on environmental and climate change justice and ensure timely resolutions of issues
- The County Government of Kilifi, and counties generally, are willing to work with women groups and other stakeholders such as World Wide Fund for Nature (WWF) to adopt alternative and affordable energy sources e.g, Charcoal briquette, biogas etc.
- Citizenry to be proactive in bringing environmental and climate justice cases to the attention of the courts
- In order to enhance access to justice holistically, focus of the ELC should expand from the current one on land matters and to include climate justice and environmental issues. Waiving of party costs and filing costs will encourage the filing of new matters in order to enable development of jurisprudence.
- In order to enhance capacity of the court, there is need for environmental experts and researchers to support the work of the court. This should also entail the continuous training of judges on environmental matters.

2.7 Breakout session 3

Sub-Theme: ELC and Public Participation in Decision- making and access to justice in Environment and Land Matters

Panellists: *ELC; Katiba Institute; Law Society of Kenya (Malindi); Standard Group Ltd; Centre for Governance, Justice and Environmental Action*

Deliberations and emerging issues

- Some of the challenges in access to justice on environmental and land issues include: cost of litigation, limited access to legal information, and the length of time that litigation process takes.
- Delay in the cases is sometimes occasioned by the low staffing levels at the ELC, especially the number of judges vis-à-vis the workload, non-compliance with the procedures of the court by the advocates, non-compliance by parties, and the recording of evidence in court that consumes time.
- There is a need to waive fees in matters that involve public interest in land matters and a legal framework to govern Public Interest in Litigation be put in place
- Court User Committees (CUCs) provide a vital channel for checking the pulse of the justice system and ensuring the seamless coordination of inter-agency issues in the administration of justice.
- There is a need to have the Attorney General Bill revised in order to facilitate the participation of the Attorney General in environment and land matters.
- Civic education and public engagement are critical in ensuring informed public engagement and feedback on environmental and land justice. This can be coupled with mechanisms such as legal aid on matters of land and environment.

3. Conference proceedings (30 November 2022)

3.1 Keynote speech Justice Brian Preston

Chief Judge of the ELC of New South Wales

The keynote speech was presented by Justice Brian Preston, Chief Judge of the ELC of New South Wales. The keynote speech focused on the role of Environmental Courts

and Tribunals (ECTs) in delivering justice, and looked at both the theory and practice. The purpose of the court is to deliver justice and the concept of justice can be seen from three approaches: distributive, procedural, and recognition justice.

Distributive justice generally refers to the distribution of environmental goods, substantial justice or the conferment of concrete benefits based on the upholding of substantive rights. Attainment of distributive rights, in turn, depends on many factors including: law, and how the environmental benefits and burdens are distributed. Where such a framework is not attained in the law, then the outcome would be distributing injustice, which is undesirable.

Procedural justice, on the other hand, refers to the ways in which decisions are made about distribution, who is involved, how are they involved, and their relationship with the decision or the outcome of the decision. Procedural justice is an element of justice; not just distributive but procedures towards those distributive outcomes. There are three further categories of procedural rights: access to environmental decision making, participation in the forum, and opportunity to challenge the decision

Recognition justice, the third category of the concept of justice, refers to the legitimization of the justice processes in the society and this is mainly through the facilitation of participation of the community in the justice process. Recognition justice facilitates expression and ensures realisation of distributive justice. Recognition is given, not just to the communities and individuals, but also to the environment itself.

Justice Preston also listed essential features that can enable Environmental Courts and Tribunals (ECTs) to deliver justice, and these include:

- Status and authority
- Independent and impartial
- Centralized jurisdiction
- Competent judges
- Multi-door approach to justice
- Enable access to technical expertise
- Deliver just, quick, cheap justice
- Environmental jurisprudence
- Underlying ethos and visions

ECTs are courts of law and require to exercise authority and jurisdiction in order to adjudicate over issues effectively. There is need for interest representation in the decision-making processes in the court in order to enhance legitimate outcomes and decision-making. There is also need to ensure access to information in order to enable public participation.

The court is a forum for public discourse: and as such, it should facilitate the expression of values that underpin environmental laws, the institutional confidence in the process of the courts, and a competent assessment of the laws. The nature of the ECTs role sometimes is that they will exercise powers and perform functions that appear to cut across the three traditional arms of government.

There are different types of expertise to facilitate and enable the court. These include contributive expertise, which basically refers to skills to contribute to environmental law and legal institutions. The second type is interactional expertise, which refers to how the ECTs interact with other disciplines. Contributive expertise can be further

categorised into legal expertise, and technical expertise for expert members of the ECTs. Some systems, such as in India, they have ECTs as a multi-skilled body, apart from just legal skills and knowledge.

Another framework for evaluating effectiveness of ECTs, is by use of the concepts of function, doctrine, and process. Function refers to the substantive concept and meaning of environmental justice. Process refers to the adjudicatory process towards attaining environmental justice, and doctrine refers to the principles and philosophy that anchor decisions in environmental justice; in common law systems, for instance, precedents may assist. In other legal systems, decision making is different.

When exercising jurisdiction, process may be different, based on the issue at hand. Means and processes that ECTs use that result in a decision. There are a variety of processes – ADR, court process, case management and administration, etc. It is the choosing of what is appropriate; inherent nature of the process, characteristics of the dispute and disputants, based on understanding of the form and facts

All ECTs have an aim of pursuit of excellence and respond to the needs of the time. Development of environmental of law. Success of ECTs will lead to the delivery of justice.

3.2 High Level Panel 3

Sub-theme: Climate Financing for Delivery of Justice

Objective: Financing to support climate justice. President signed important documents for climate finance at the end of COP 27.

Panellists: *Ministry of Lands, Public Works, Housing and Urban Development, NLC, ELC, UNDP, Kenya Climate Change Working Group, Jomo Kenyatta University School of Law*

Deliberations and emerging issues

- The broader framework (legal and policy) are in place and, starting from the Climate Change Act, the Climate Change Council and the Green Climate Change Fund is also in place. There is a 5-year programme to account for the funds allocated to climate governance and 15 billion allocated to finance the entire process. This is evidence of commitment from the government to address climate change.
- The ELC is a central actor in climate justice but the court is yet to have formal contact with the institutions and structures. This has, however, been mainstreamed in the ELC's strategic plan, which will guide the court's operation for the next five years. The conversation with other stakeholders has begun and the SP is the blueprint to inform liaison with the Financing Locally Led Climate Action (FLOCCA) programme domiciled in the National Treasury. In this regard, the court will have a dedicated capacity building strategy for the ELC on climate governance
- Around the world, the climate related cases are growing before courts for adjudication, in USA it is over 1,200. In Kenya, the court received the Baringo

case, case on vehicle emissions against the Kenya Bureau of Standards. They entail complex scientific issues that require understanding, for the court to play its role effectively.

- The ELC has had many challenges. The Court started with very few judges (15 in number) and the following 4 years were difficult for the court due to gross inadequacy of judges. The ELC is currently at 53, and this challenge has largely been addressed. Financing and resourcing of the court activities has been a challenge too. Furthermore, lawyers who appear before court and the judges as well require capacity building and training, especially in technical and complex emerging areas of environmental justice.
- CSOs played an important role in the development of the climate change laws and policies; worked with parliament, treasury, ministry of environment, to come up with the Bill, which was then enacted into law. The media was initially behind, but is now active in reporting on climate change issues and creating consciousness
- There is a myriad of challenges, in the country and beyond, with regard to climate change. In Africa, 800 million people have no access to energy. It is critical to remember that more than 80 percent of climate act implementation is at the county level. Most counties have climate change policies or laws and have dedicated 2 percent of their funds to climate change.
- Linkages between the national and county governments on climate change issues require to be created and sustained, in concrete processes such as development planning; a component of climate change. In this regard, commitments from the COP 27 need to be translated into national and county plans.
- There are many legal issues that have arisen touching on climate justice. the term “**eco-cide**” is gaining currency in relation to the disruption that is happening as a result of climate change and that the court may soon be dealing with this term.
- The climate act has established an elaborate governance framework for purposes of effectuating processing aimed at adaptation and mitigation. We however need to look for means and ways that suit our economy; not too expensive or far removed from our context. Expensive and unsustainable choices may not be suitable for our social and economic context
- Common principles of environmental governance are very much part of the package; polluter pays principle, equity, inter-generational equity, etc.
- The funding framework under the National Treasury is still under development; currently working on budget codes to not only include but also differentiate mitigation, adaptation, and other cross-cutting issues in climate governance and financing
- Lots of capacity building for effective climate governance and financing are taking place in the concerned line ministries. There is need for a system of tracking what all players are doing in the field of climate governance and financing

- More than 80 percent of funds allocated to climate governance are not going into specific processes such as climate adaptation and mitigation. They are used for projects such as roads, building of dams and other typical “development projects” as opposed to the core purpose of climate mitigation or adaptation.
- The lead ministries that should be at the forefront of defining and leading the climate change agenda are usually the least funded.
- The cost of not investing in climate resilience may amount to 3-4 percent of the GDP. KES 62 Billion is needed for purposes of building resilience and there is a clear obligation for advanced countries to support and fight climate change.
- The Judiciary needs to anticipate the cases related to climate that may be filed before their courts and this can be gleaned from what courts are dealing with globally. The UNEP keeps track of the cases related to climate change that are filed globally. In 2017, UNEP reported 2, 884 cases and these increased to 39 countries.
- The Judiciary needs to focus on training, awareness, and sensitization and to integrate specific strategies into the strategic plan of the Judiciary and the ELC. There is a need to think in terms of human resources, capacity building, and institutional capacity.
- The thinking about climate change is taking root in different sectors. The Nairobi Stock Exchange (NSE) has developed guidelines on the inclusion of climate change issues for listed companies and the Central Bank of Kenya (CBK) has also incorporated climate change in the guidelines on financial risk assessment.
- Any engagements on climate finance and governance should commence with the end in mind. We should start by asking what we expect from the engagement and work towards the desired outcomes.
- In order to achieve climate justice, all institutions require adequate human resource with relevant skills. For instance, the NLC initially had 6 lawyers to assist in litigation but this number has grown to a team of 16.
- Some of the greening projects hold great promise in terms of economic development. The Turkana Wind power, for instance, is worth USD 625 million and will contribute to 17 percent of the national grid, and will create jobs for Kenyans.

3.3 High level panel 4

Sub-theme: Judiciary as a guarantor of the protective benefits of environment and land laws

Objective: To reaffirm the commitment of the Judiciary in protecting and safeguarding the rights to clean and healthy environment

Panellists: *FAO-Kenya, OHCHR-Kenya, ELC, Moi University School of law*

Deliberations and emerging issues

- Courses and the curriculum of schools of law are being reviewed and the new courses are incorporating environmental law as core content that is cross-cutting. The content is spread across several courses and in different years of learning
- The universities inspire value-based knowledge for the lawyers to understand that they have a duty to themselves, to the community and to the environment while ensuring that students and children at a very early age appreciate the importance of protecting the environment.
- Structured learning between the ELC and the schools of law will assist in preparing law students in matters of the environment and land, and especially in the emerging areas.
- That the courts should adopt the human rights-based approach in their judicial process by putting a human face or peoples right at the center to all their judicial judgements.
- The jurisprudence emerging from the ELC should reflect the principles and values in the Constitution, such as those under Article 10.
- Capacity building and training in the emerging issues is urgent for the ELC so that the court and the judges are up to date with the current global issues and commitments regarding the environment and their impact on justice.
- The ELC has initiated and maintained partnerships with various stakeholders and development partners, which has helped the court to enhance its work and impact. For example, the court's long-standing partnership with the FAO has assisted in enhancing Alternative Dispute Resolution systems (ADR) within the court (a pilot project in Kajiado that has seen 73 matters concluded) and FAO supported the court's Strategic Plan for the next five years.
- The judgments and orders of the ELC have had an impact on Kenyans. An example is the order to Nairobi County Government to move the (in)famous Dandora dumpsite and to clean all rivers affected in Nairobi.
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3.4 High level Panel 5

Sub-theme: Women land rights

Objective: To interrogate the experience of the court and stakeholders in securing land rights

Panellists: *ELC, Hakijamii, Kilifi Governor, Coast Land Sector Non-State Actors, Kenya Land Alliance*

Emerging issues from deliberations

- The Constitution of Kenya 2010 contains clear provisions that equality and non-discrimination, including national values and principles of governance and this is reflected in Land Act, the Matrimonial Property Act has provisions that

provide for non-discrimination and these are clear provisions that guide the ELC.

- There is a change from customs where women now have land ownership, as opposed to before where women were not allowed to own land in the African context, especially in the rural areas. In the matter of community land, women married to a particular also have rights to acquire the land from where they are married.
- While the Constitution of Kenya 2010, under Article 2, recognizes customary law but it is valid only if it is not repugnant to law and justice. Article 10 provides for equal rights for both men and women and this means that land policies should not be discriminatory to women and marginalized communities.
- Women in the community land tenure ownership system don't have primary ownership and control rights, but have access and use rights. This is because most the households in the parts of the country that practice community land tenure system consist of mostly men-dominated households. The ELC has tried to address this through sensitization of women on their land tenure rights and this is bearing fruit.
- Jurisprudence created by the court under section 28 of the Land Registration Act emphasizes the overriding interest in land by a spouse over matrimonial property in an instance where a title is not registered under the name of the wife. This protects the matrimonial property as the husband cannot sell the property without the consent of the wife.
- Chapter 5 of the Constitution chapter 5 and land laws recognize women land rights as well as the rights of the marginalized groups. Decisions from the land under the Trust Land Act, and especially in counties, recognize and incorporate women land rights.
- There should be a review of the law and practice to address situations where women divorce and lose rights to land, yet, the divorced woman is deemed to hold the land in trust for the children. In appropriate cases, the document of title should bear joint names of spouses. There is also a need to fast-track the issuance of title deeds to surviving female spouses in order to minimize chances of fraud to land.
- Women need to be included in the community land committee and this will provide a platform for them in ELC in case of disputes.
- Women in the community land tenure ownership system do not have primary ownership and control rights, but have access and use rights. This is because most the households in the parts of the country that practice community land tenure system consist of mostly men-dominated households
- Historical land injustices are very predominant in the coast region. The reasons for this include that women do not take initiative to start succession after death of their spouses. Women do not also understand the court processes and actions to take in case of land disputes. In case of evictions, women are not vocal or active in such. Most of the land management committees are male dominated. The challenge is further elevated where Muslim women stay in Eda for 4

months after the death of their husbands, and may later find the inherited land to have been grabbed

3.5 Breakout Session 1

Sub-theme: Climate Change, Urban planning and disaster risk management.

Objective: To strengthen resilience in the wake of climate change and related disasters.

Panelists: ELC, Kenya Institute of planners

Deliberations and emerging issues

- Decisions of the ELC over the last ten years have mostly been concentrated on land matters and very few have touched on the environment.
- Currently, the court is preparing itself through the Strategic Plan to put in place tools that will enable it address matters of environment and climate change justice when they come before the court
- The ELC@10 Conference is part of the preparation of the ELC and the anticipated training and capacity building that is coming in the near future
- The establishments of the ELC alone is a show of commitment by the Government to tackle issues of climate change.
- There has been concerted effort between the Ministry of planning and other government agencies, including the ELC, to ensure urban planning is carried out in accordance with laid down policies and laws.
- The Ministry has mainstreamed climate change and mitigation by involving the community in the planning process for them to know the importance of having forest lands, riparian land for lakes, rivers and dams as a way of climate change mitigation.
- Though planners have made provision in major cities in the country for green spaces, playground, schools and hospitals, the same have been misallocated to private developers.
- The ELC has a core mandate to ensure that land that is irregularly allocated is recovered and reverted to its original intended use.
- There is need for the ELC to undertake training in planning in order to understand and make informed decisions as they relate to matters of land planning, such as issues that involve change of use applications.

3.6 Breakout session 2

Sub-theme: Delivering environmental justice as a continuum of many actors

Objective: To reflect on the quasi-judicial role of environmental management duty bearers who are a pivotal bridge for the enforcement of ELC decisions

Panellists: Water Resources Authority (WRA), Kenya Forest Service (KFS), ELC

Deliberations and emerging issues

- The establishment of the ELC assisted in promoting the mandate of the KFS, which had a challenge in the preservation of forest reserves before the ELC came into operation. The decisions of the court and powers to make orders supported the KFS in its core mandate of preserving forested areas.
- There are also many instances where land gazetted as forest areas have been allocated to persons and the ELC can assist in the restoration of such areas to the custody of the KFS.
- Through involving the public in public participation, the KFS has managed to win cases and judgments in cases that are against them
- There is need for firm court decisions against illegal activities such as wood smuggling, timber logging and other activities destructive of forests
- Capacity building for judges and the rest of the courts on forest issues will assist to have more effective judicial responses
- During the 10 years that the ELC has been operational, various forests such as Karura have been recovered from private land grabbers, sand-dunes have also been recovered to the individual grabbers in Lamu County
- The ELC has had to determine issues of water catchment protection and has, on many occasions, ruled in favour of Water Resource Authority (WRA) to gazette water catchment areas in line with the mandate of conserving the water catchment area.
- In order to make more effective court decisions on the protection of water catchment areas, it is critical that the judge conducts a prior site visit before a court determination is reached.
- The Water Act section 23 empowers the WRC to declare certain catchment areas as protected areas. In conservation and gazettement of water catchment areas, this is usually mistaken as change of ownership without compensation. Sensitization for stakeholders and citizens is also very important to ensure understanding and appreciation of these aspects.
- Enforcement of court orders is the last part of litigation of the court process. The actors in enforcement include auctioneers/ private sector, state actors (police) and the court itself. Challenges in enforcement within the last 10 years include:
 - The prohibitive cost of enforcing court judgements, such as, private auctioneers are expensive to contract and work with in enforcement of rulings
 - The impracticability of some judgments/orders, either directly or indirectly, such as, the ban on plastics that was handed down to NEMA to implement. NEMA has no institutional capacity to ensure that the ban is enforced.

- There is, sometimes, actual resistance on the ground during enforcement of court judgments and reluctance by the police and other agencies to enforce orders of the court.
- Inadequate supporting legal framework to facilitate the implementation of court rulings, including complementarity between institutions. For instance, the police have not enforced the ban on plastic bags observing that it is the duty of NEMA.
- Inadequate budgetary allocations to cover compensations for land and the difference in budgetary cycles of the government vis-à-vis the time compensation orders are made. The budgeting process also, on some occasions, under-allocates or totally omits to allocate resources.
- In some cases, ELC carries out Post judgement Supervision for county governments to ensure adherence to court rulings in order to improve compliance levels by pushing the relevant bodies to act. This is done for various reasons including prevention of the re-occurrence of such cases. More resources need to be allocated for this activity

3.7 Breakout session 3

Sub-theme: The nexus between land, crime, and vulnerability

Objective: To examine the existing gaps in land and environmental governance structures that contribute to the increased crime

Panelists: *Court of Appeal, UNODC, FIDA, Directorate of Criminal Investigations, Conservation Alliance of Kenya, Kenya Community Support Centre, Directorate of Public Prosecutions*

Emerging issues from deliberations

- Land conflicts are emotive and closely interlinked with criminal justice, particularly for the most vulnerable groups in society. Specifically, whenever conflicts over land occur, vulnerable persons end up being attacked or assaulted in the process. These include: women, older members of society, persons with disabilities, children, youth, members of minority or marginalised communities, and members of particular ethnic, religious or cultural communities in society.
- Some of the land-related actions that may amount to criminal conduct include: forceful entry into land, possession of land or other property including houses without the consent or permission of person, obtaining title deeds by false pretense or using fake documents, forgery of title deeds and related documents, malicious damage to property or assault of a person.
- Whereas land conflicts are often linked to civil disputes, people tend to use the criminal justice system to settle civil disputes in a criminal manner. Land conflicts may lead to family disputes which may ultimately result in criminal

acts such as murder and displacement of families which further exposes vulnerable groups particularly women to SGBV among other risks.

- Land, being a key resource, is interconnected with the culture, beliefs, norms and customs of the patriarchal African society. Retrogressive beliefs, including the notion that women cannot become land owners, are some of the biggest impediments to ownership of land and property among vulnerable communities.
- Land related crimes that impact on vulnerable groups and communities include: disinheritance and dispossession of land that predisposes vulnerable groups to SGBV and threatens their lives and livelihoods, homelessness and increased number of informal settlements which exposes women and children to vulnerabilities, and victimization of women and vulnerable groups through the succession Act as issues of land ownership are perceived as a patriarchal affair
- Among the major causes of land-related crimes include:
 - Failure by Ministry of lands to adjudicate land and fast track issuance of title deeds, especially where land is not surveyed
 - Poor record keeping by the lands department and the survey department which is responsible for all surveying and mapping functions
 - Historical injustices especially in coastal regions where the prime land previously owned by colonialists was taken up by the influential, powerful and elite in society
 - Idle and undeveloped land that encourages people to attempt to acquire such land illegally
 - Corrupt officials, politicians, and land brokers that seek to take advantage of weaknesses and loopholes in the laws and policy frameworks
- In order to ensure accessible, affordable, timely, fair and quick justice the judiciary has adopted a number of approaches Judicial approaches. This includes the formation of a National Committee of Criminal Justice Reforms (NCCJR) chaired by High Court Judge Grace Ngenye to oversee the full implementation of the findings and recommendations of the Criminal Justice system in Kenya for all persons.
- Vulnerable groups and communities face a number of challenges in the process of accessing justice, and these include: high legal costs, societal disapproval of women-led households, and the complexity of court orders that sometimes require involvement of police in execution to avoid possible cases of SGBV and injury.
- There is a need for a more robust pursuit of public interest claims in environment and land justice. In this regard, the Office of the Attorney General should create and resource the unit of Environment and Land Justice to file claims on ELC on behalf of the Public.
- The mechanisms for the provision of legal aid under the National legal Aid Act should be activated, and resourced to meet its targets of funding legal aid and



public defenders' cases, and there should be a waiver of court filing fees for environmental matters

- That courts must come up with more robust jurisprudence and innovative decisions in order to effectively hold duty bearers to account for illegalities in land administration and where their decisions hurt the environment.
- The County Governments should develop Civic education Act as per their Mandate, resource it and provide Civic education to citizens on matters of environmental governance
- Capacity building on Environment and Land Justice should target not just the ELC judges but also other key stakeholders such Magistrates, Researchers, Lawyers and ELC rights Public defenders and duty bearers.

4. Conference proceedings (1 December 2022)

4.1 Key Keynote address by Justice Nambitha Dambuzza

(Judge of the Supreme Court of South Africa and Chairperson of the Africa Judicial Education Network on Environment Law (AJENEL))

The keynote speech was delivered by Justice Nambitha Dambuzza, Judge of the Supreme Court of South Africa and chairperson of the Africa Judicial Education Network on Environmental Law (AJENEL). AJENE is mandated with capacity building for land and environment judges with support coming from UNEP. It comprises partners and other judicial educational institutions from Africa. Justice Dambuzza noted that in the African region, challenges on environmental issues such as poverty, land degradation, air pollution, urbanization, climate change, among others, are cross-cutting. Environmental justice requires for a balance between use and conservation, because of the delicate nature of land and environmental issues.

An independent court and judiciary are vital in the execution of environmental law across the sector (national and international). In complex environmental cases, there needs some level of experience and expertise to handle. Considering that the buck stops with the judges, there is therefore need for them to have advanced foundational knowledge in order to interrogate complex environmental issues.

Writing and communication skills need also to be sharpened in order for the judges to be understood properly. The development of these skills requires resources. Equipping the judges with relevant knowledge will help identify environmental issues even when they are not identified as such. Collectively, platforms such as the ELC @10 Conference provide opportunities for peer learning and sharing of ideas and best practices.

The Judge emphasised that the responsibility of judging comes with a huge responsibility since the impact of rulings delivered have a long-term impact and unsettling results for the communities. Jobs and livelihoods are involved. Therefore, in order to craft fair and objective rulings, there is need to understand the impact these rulings have. This calls on judges to evaluate the impact of their decisions, especially in cases whose determination have a wide-ranging impact. The Judge reiterated the fact that it is only through sharing experiences on how different judges interpret the law that learning and development of jurisprudence can grow.

4.2 High Level Panel 6

Sub-theme: Building judicial capacity for Environment and Land Justice in Kenya

Objective: A critique of the capacity gaps in matters of environmental and land justice

Panellists: Court of Appeal, Kenya Judiciary Academy, UNEP, Institute of Land and Environmental Governance

Deliberations and emerging issues

- Alternative justice system is not just a tool for resolving land and environmental disputes but also a pedagogical tool for building capacity gaps in environment and land matters and generating and incubating new knowledge and capacities for environmental and land justice. AJS is a philosophical way of engaging the justice question of our time in the age of capitalism and climate justice.
- While ELC has made significant strides in enhancing access to justice, the Land distribution and ownership system as well as environmental and land regulation, management and governance systems were some of the challenges encountered in the administration of justice. Further, there were a lot of land disputes but very little environmental litigation despite massive environmental degradation and climate shocks in Kenya.
- A significant number of Kenyans don't have access to any justice mechanism for resolution of their land and environment disputes yet many more access justice through informal autonomous mechanisms. This poses a serious justice gap in both quality and quantity hence the need for application, expansion and mainstreaming of AJS in resolution of land disputes.
- AJS is the more optimal forum for resolving some disputes in part because it is:
 - Physically accessible justice- requires no extensive courts
 - Functionally accessible justice - doesn't use technical language
 - Affordable justice
 - Quick justice
 - Creative justice
 - Participatory justice
 - Socially constructive justice
 - Judiciary friendly justice
 - Culture friendly justice
- AJS offers a framework for expedition of human rights in everyday dispute resolution and importantly, dispute prevention. The AJS policy launched by Retired by Chief Justice Maraga contains the conceptual framework of how AJS can not only supplement the environmental and land quest at the ELC, but also change the conversations on access to environment and land justice
- An empowered justice seeker is one who is able to choose the system of justice that befits them and engage in justice conversations in that society.
- AJS is useful as a dispute resolution tool, a conflict prevention tool that reduces the backlog of the number of cases in court as well as those being filed, a tool for public participation in environmental and land matters which increases confidence in the judiciary, a tool for public engagement and political education, a tool for environmental restorative justice and a tool for distributive social justice.
- The UNEP continues to support the bench and the bar to build capacity of judges and legal practitioners on environmental adjudication and justice through trainings and workshops, in collaboration with partners such as the

global judicial institute on environment and the Africa judicial education network on environmental law among others.

- In future, UNEP plans to keep on supporting the ELC through robust capacity building programmes especially on SDGs and how to implement them in the dispensation of environmental justice.
- Judicial education is a part of the requirement for all judges. It is the core responsibility of every member of the judiciary. Judges need to be trained and updated on AJS as it is the silver bullet in addressing the issue of backlog of cases and decongesting the system. It is also important to ensure that the minimal constitutional requirements are followed during resolution of cases through AJS. I
- In a wide majority of cases biggest, AJS is a superior way of determining cases that are better resolved through AJS mechanisms e.g the AJS mechanism court annex in Kajiado that has aided the resolution of many land disputes. Additionally, AJS has palliative qualities that allow for preventive justice.

4.3 Breakout Session 1

Sub-theme: Institutionalizing capacity building as a key tool to enhance the environment and land justice.

Panellists: *ELC, FLOCCA, Animal Network for Animal Welfare (ANAW), FAO, Environment Institute of Kenya, Kenya Land Alliance*

- There is general goodwill from development partners to assist the ELC in the development of capacity to enable the court to discharge its functions and enhance access to justice. The FAO has, for instance, supported in the formulation, launch and piloting of Alternative Justice systems in counties, and also intends to support the digitization and digitalization of ELC court processes to improve services. Integration of the system with other systems such as the lands management system
- The FAO and other partners are willing to support the judiciary in capacity building for judges on AJS and ADR and other participatory methodologies in partnership with the Kenya Judiciary Academy as well as conduct a capacity gaps assessment before the training.
- Judges have been trained on matters jurisprudence and environmental law, AJS etc. partnership with FAO and other partners.
- The Kenya Judiciary Academy noted that judges and magistrates are allowed to choose the topics that they wish to be trained on. Development partners and JSC support the training through the academy
- There is a need to educate the communities on their rights as well as disseminate the knowledge gained and developed to all other external stakeholders

- There needs to be an integrated approach to build the capacity of all actors in the environmental justice chain

4.4 Breakout session 2

Sub theme: Examining quality of justice including digital transformation of the environment and land justice system for the last ten years and going forward.

Objective: To evaluate the work done by the courts and tribunals with a view to improving the quality of public service delivered by the environment and land justice system in particular vis-a-vis the expectations of the practitioners and users.

Panellists: *National Land Commission, Kituo Cha Sheria, ELC, Law Society of Kenya*

Deliberations and emerging issues

- The ELC judges have to balance between court work and public expectation that the court will always be in session, and the need for specialized training that takes judges out of their chambers/ court.
- Judges' trainings are important as this keeps the judges updated. However, consultation among colleagues also happens, especially on matters and cases that are new and require such consultation.
- Climate justice focuses on addressing climate change issues, which is the urgent action which is required to address climate change, while environmental justice gives one the lens through which analysis and incorporation of social principles into sustainable use of our natural resources.
- The ELC's approach of working with agencies such as the NLC has assisted in verifying issues before court and facilitated the timely conclusion of disputes filed in the court.
- Agencies in the land and environmental sectors require legal powers to compel attendance of witnesses and production of documents and information as this will assist in complementing the work of the ELC when called upon.
- Although the strategic plan of the judiciary had embraced technology as one of the factors of improving the justice system, the status remained unchanged until the emergence of COVID gave the impetus to put technology into practice.
- The ELC is now staffed with judges who are experts in environment and land matters and this will enhance the work of the court.
- While technology has enabled speedy resolution of matters, it also has a disadvantage on the users. Some litigants are not well equipped and are unable to attend court virtually because they do not understand the language of the court and are not familiar with the language of the court.
- The Court should strive to adopt accessible language to litigants.

4.5 Breakout session 3

Sub-theme: Reflecting on 10 years of the ELC justice model, what gaps and opportunities exist for exploiting capacity building for the Judiciary to maximize expeditious disposal of cases?

Panellists: *ELC, Office of the Attorney General, Law Society of Kenya*

Deliberations and emerging issues

- There is a trend globally to establish specialized environments courts and tribunals. This influenced the coupling of the ELC with the mandate to address environmental issues.
- By its nature, environmental law is very dynamic and many judges did not take it at the law school and hence the need for continuous training of judges on emerging jurisprudence
- The ELC has come a long way in terms of laying down initial structures and systems to deliver services, but still has a long way to go to be fully accessible to the public that require their services.
- There is a need to come up with ways of managing stress and maintaining both physical and psychological health among the judges and judicial staff.
- When the court was established, all environmental and land disputes were transferred and this overwhelmed the few judges then and they realized they would not expedite this in the normal manner so they came up with a justice model unique to itself focused on procedural fairness and substantive justice.
- The ELC is conscious of the delays that were associated with adjudication of land disputes, economic and political psyche, historical land injustices, political intrigues in allocation of public land, land grepping menace, falsification and alterations of land records and the need to balance development with environmental protection
- In order to facilitate the performance of its mandate, the ELC undertook to do the following in its first years:
 - Adopt a practice and code of being sensitive and responsive to the litigants that appear before it.
 - Giving quality time to those who appear before the ELC; the judges listen attentively to the litigants and their advocates and communicate effectively to ensure common understanding of the issue in a case
 - Special attention is given to vulnerable categories of persons, such as, people with disabilities
 - The court discourages determination of cases on the basis of procedures and technicalities
 - The judges have employed productive and efficient ways of managing cases and court processes.
 - New matters are allocated to a judge for filing, hence judges are more responsible for the matters before them and this creates incentive for judges to conclude matters in their court.
 - All active cases in ELC have been allocated dates either for hearing or mention

- The ELC focuses on hearing and discourages application

4.6 High level Panel 7

Sub-theme 7: Resolution of disputes with respect to conventional management and sharing of national and cross-boundary resources.

Objective: To appraise the role of ELC and other actors in safeguarding national and cross boarder resources for sustainable development.

Panellists: *Intergovernmental Relations Technical Committee, ELC, Ministry of Interior and Coordination of National Government, Kajiado County Government, Lake Victoria Basin Development Authority*

- Some of the issues such as county border disputes can be dealt with through Alternative Dispute Resolution, other than litigation in court. For instance, the Meru-Isiolo human-wildlife disputes were solved through the ELC CUCs and did not get to the court level. A multi-sectoral approach (including the CUCs, land registrars, surveyors, etc.) is very important in resolving cross-border issues. CUCs should be robust and vibrant. Guided mediation is also very essential in cross-border disputes.
- The ELC should consider actively utilizing external expertise to invite experts into the court as amicus curiae, such as, geologists, environmental experts to assist the court in making the right decisions for example the case of coal mining in Kenya
- The Constitution calls for unity and togetherness in solving cross-border issues. The ELC and other state agencies will devise a way of working together to resolve disputes over borders and related ones such as conflicts over resources
- It is critical for the ELC to examine all sides of land disputes, and in particular, the complex nature of processes such as evictions from public land. This may include receiving representations from the police or other government agencies that will enforce such orders.
- The ELC court should be invited to regular site visits to where disputes affected areas in order to have a clear picture of how the things are on the ground as well as provide room for rightful dialogue
- The ELC should develop a mechanism to adopt decisions from community engagement as legal mechanisms that will allow the technical officers maintain law and order
- County governments, such as Kajiado County Government, initiated AJS in a move to resolve numerous boundary related disputes. Such an approach enables the court to deal with issues such as doctored evidence. 150 cases have been resolve through AJS with some cases taking less that 10 minutes to resolve.

4.7 Official closing of the Conference

The official closing of the ELC@10 Conference was presided over by the Deputy President, Hon. Rigathi Gachagua. The closing session begun with remarks by **Hon. Justice Angote, the Presiding Judge of the ELC**. He noted that participants and delegates were mainly drawn from users of the court and themes centred around access to justice, including automation of records, importance of public participation, climate financing, and climate justice. These are both topical and emerging areas that the ELC requires to engage with in order to perform its mandate effectively

It clearly emerged that the ELC required the stakeholders present, including the national and county governments, in order to deliver on its mandate. The interdependence of all rights, including environmental and land rights also emerged strongly during the Conference. The deliberations and emerging issues during the sessions of the Conference provide a basis for the ELC to reflect further on its Strategic Plan and other activities and approaches that can enable it to provide services to Kenyans and to ensure that its mandate is discharged effectively.

Deputy Chief Justice, Hon. Lady Justice Philomena Mwilu, in her remarks, noted the germaneness of the discussions that were held throughout the Conference and expressed optimism about the value added to the court's work as a result of the deliberations and implementation of recommendations from the Conference. In this regard, the DCJ asked that the proceedings of the Conference should be shared as much as possible for follow up and implementation by the concerned stakeholders. The Deputy Chief Justice thanked all the facilitators, including the visiting judges who took time to prepare and share their thoughts. The DCJ also thanked the students of Pwani University for their active participation and noted that they represent the future generations especially in matters of sustainability. The DCJ noted the we hold land and the environment for the current and future generations, and that there is a need to ensure sustainable use. Most importantly, the ELC@10 Conference was to celebrate achievements for the last ten years. She acknowledged that a lot has been achieved by the court. The DCJ thanked the ELC judges for their work and further challenged them to keep true to their oath of office, uphold integrity, and uphold professional standards in their work. The DCJ also thanked the Deputy President for honouring the invitation to attend the closing ceremony and noted that this demonstrated the executive's commitment to supporting the ELC and the Judiciary in general.

The Deputy President, Hon. Rigathi Gachagua, in his official address appreciated all the participating institutions and delegates drawn from the judges, CSOs, academia, development partners who have debated and discussed ideas at the conference. The Deputy President echoed the emerging issues and noted that the collective views from the Conference are a motif of what Kenyans expect from the ELC. The DP recalled that the just concluded Conference of Parties (COP 27) in was a passionate call to all humanity to commit to saving the environment. He urged the ELC and stakeholders to take note of the outcome of the summit. The global agenda on the environment, such as the SDGs remain relevant to our national engagements and we have to find ways of integrating these standards to our governance processes.



The issues that were discussed at the ELC@10 including digitization of governance, climate finance, adaptation and mitigation are important and we need to develop respective institutional capacities to engage in these emerging areas. The Deputy President concluded that sustainable environmental and land governance is only possible where there is a strong culture of adherence to the rule of law. The Deputy President concluded remarks by reiterating the national government's commitment towards support the ELC and the Judiciary.

5. Recommendations and points of action

The ELC@10 Conference brought together a range of stakeholders of the ELC to review and mark the achievements of the Court over the last ten years. The Conference also provided an apt opportunity to reflect on the role of the Court and the future of the Court. There were wide-ranging discussions across several themes, sub-themes and objectives that were covered in the Conference programme, as well as the discussions that took place. This section provides a summary of the issues and points of actions from the ELC@10 across seven areas that emerged from the Conference proceedings:

- Enhancing inclusiveness in environmental and land justice
- Deepening partnerships and stakeholder engagement, including public involvement in the work of the ELC
- Capacity building of the ELC in order to enhance the performance of its functions
- The uptake of technology to enhance the delivery of justice in environment and land matters
- Legislative, policy, and institutional reforms necessary to enhance the effectiveness of the ELC and the administration of environmental and land justice generally
- Gender responsiveness in land and environment governance and access to justice
- Integration of Alternative Dispute Resolution and Alternative Justice Systems in ELC matters

5.1 Enhancing inclusiveness

- The National government, County governments, ELC and development partners committed to progressively eliminate the obstacles and barriers that hinder equal access to justice and the full and equal enjoyment of environmental and land rights.
- The ELC and stakeholders to develop means and arrangements to facilitate access to environmental and land justice to the most vulnerable persons and groups/communities.
- The ELC and stakeholders to regularly review the steps taken in the environment and land sector to enhance inclusiveness in the access to justice.
- The ELC undertook to develop benchmarks and targets for the progressive expansion of the coverage of court services in order to enhance access to justice.
- The National government committed to the progressive allocation of more resources for the expansion of court infrastructure in order to enhance physical access to courts and realize the Judiciary's vision on access to justice.

5.2 Deepening partnerships and stakeholder

- The ELC and stakeholders that participated in the Conference committed to continue deepening partnerships and identifying linkages for purposes of enhancing access to environmental and land justice.
- The ELC to work closely with other courts and judicial bodies, where necessary, to enhance effectiveness of the ELC.
- The ELC, in collaboration with stakeholders, to maintain and expand its outreach and public engagement programmes.
- The ELC and stakeholders will develop a mechanism to regularly review the status of partnerships and the impact on the core roles of the ELC.

5.3 Capacity building

- The ELC and stakeholders will identify and support areas of capacity development in the ELC, including mobilization of resources.
- The ELC and stakeholders chose a specific focus on building capacity in the area of climate justice, climate governance, and related processes.
- The ELC to work with the Kenya Judiciary Academy and the Judiciary leadership to develop tailor-made training programmes on climate justice for judges of the ELC.
- The ELC and partners will explore ways of building a repository and resource centres of knowledge and information, particularly in emerging areas of environmental and land rights adjudication

5.4 Uptake of technology

- The ELC and stakeholders committed to the progressive uptake of technology in environmental and land governance in order to enhance access to justice
- The ELC and stakeholders committed to eliminate barriers to the uptake of technology in the environment and land sector, and specifically address the underlying factors that prevent access to technology by vulnerable persons and groups.
- The National government and development partners commit to mobilize resources for capacity development and uptake of technology in the ELC.

5.5 Legislative, policy, and institutional reform

- The ELC and stakeholders commit to jointly identify gaps in the laws, policies, and regulations of the ELC and pursuing reform to enhance effectiveness of the court.
- The ELC commits to engage Parliament, the National Council on the Administration of Justice, the Kenya Law Reform, and the Office of the Attorney General on identified areas of legislative reform

5.6 Gender responsiveness

- The ELC and stakeholders commit to the progressive elimination of barriers and obstacles that hinder the full and effective enjoyment of environment and land rights by women and girls
- The ELC and stakeholders commit to regularly review and report on progress in addressing the barriers and obstacles to gender justice in the environment and land sector.
- The ELC commits to capacity development and training of judges of the ELC on the gender-related aspects of adjudication of environment and land matters
- The ELC and stakeholders commit to the development, adoption and integration of institutional-level gender mainstreaming in environmental and land governance and justice.

5.7 Alternative Dispute Resolution and Alternative Justice

- The ELC and stakeholders commit to the continued implementation of Alternative Justice Systems and different forms of Alternative Dispute Resolution processes in the ELC courts across the country
- The ELC and stakeholders commit to capacity development of the ELC and institutional support to enhance implementation of Alternative Justice Systems and Alternative Dispute Resolution.
- The national government commits to allocate resources to the ELC for implementation of Alternative Justice Systems and Alternative Dispute Resolution.

ANNEXES

Final Conference Communiqué

JOINT COMMUNIQUÉ OF THE ENVIRONMENT AND LAND COURT AND STAKEHOLDERS OF THE COURT AT THE END OF THIS TENTH ANNIVERSARY CONFERENCE

“ELC@10 CONFERENCE”

1st December 2022, Kilifi County, Kenya

WE, the Environment and Land Court of the Republic of Kenya (ELC), and the National Government, County governments, development partners, the academia, private sector representatives, civil society representatives and all delegates, herein collectively referred to as stakeholders of the ELC, participated in the tenth anniversary conference of the Court, **ELC@10**, held at Pwani University.

NOTING, that the people of Kenya collectively decided to establish the ELC with a singular mandate of enhancing access to and effectiveness of environmental and land justice to the people of Kenya.

MINDFUL of the challenges and injustices that Kenyan people faced, with regard to environment and land justice, which led to calls for and unanimous support for the establishment of a court dedicated to environmental and land justice.

SENSITIVE to the plight of the vulnerable categories of persons, who are usually the most affected whenever there is a disruption to their lives and livelihoods as a result of interruption to the enjoyment of their environmental and land rights.

COMMITTED to the pillars of the strategy and vision of the Judiciary of Social Transformation through Access to Justice (STAJ) and its transformation pillars.

AWARE that Article 60 of the Constitution of Kenya 2010 lays down clear principles of environmental and land management, which include: equity, efficiency, sustainability, and productivity.

FURTHER AWARE that Article 42 of the Constitution of Kenya 2010 provides for the equal right of every person to a clean and healthy environment, which includes principles of intra-generational equity and other obligations relating to the environment.

ACKNOWLEDGING that the United Nations General Assembly on 28th July 2022, during its Seventy Sixth Session, took the step of recognizing the human right to a clean, healthy, and sustainable environment as a universal right to every human being.

RECOGNIZING that effective protection and facilitation of environmental and land rights are connected to the enjoyment of other fundamental rights and freedoms, and that the full and effective realization of environmental and land rights can unlock a bundle of all other human rights.

APPRECIATING the efforts and progress that the ELC has made over the last ten years in terms of enhancing access to justice in environmental and land matters in Kenya, in particular the declining caseload at the ELC.

CONSCIOUS of the ever-changing landscape and emerging areas and issues related to the administration of environment and land rights, and the attendant need to develop, maintain, and sustain capacities necessary to ensure effective judicial and institutional responses to the dynamics of access to environment and land justice.

FURTHER CONSCIOUS that the deepening of partnerships and linkages between the ELC and stakeholders, starting with members of the public, is not just desirable, but critical to development of capacity for effectiveness, and to facilitate the realization of environmental and land justice in all its facets.

DESIROUS and keen to address the contextual, cultural, and structural factors and issues that lead to gender-based injustices and inequalities in access to and environmental justice.

DRAWING from the themes of reflections for the ELC@10 Conference, deliberations, the emerging solutions and action agenda, the Environment and Land Court and the partners have agreed on a common agenda and mutual commitment to strengthen and enhance access to environmental and land justice as follows:

Enhancing inclusiveness in environmental and land governance and justice

1. The National government, County governments, ELC and development partners commit to progressively eliminate the obstacles and barriers that hinder equal access to justice and the full and equal enjoyment of environmental and land rights.
2. The ELC and stakeholders will develop means and arrangements to facilitate access to environmental and land justice to the most vulnerable persons and groups/communities.
3. The ELC and stakeholders will regularly review the steps taken in the environment and land sector to enhance inclusiveness in the access to justice.
4. The ELC commits to the development of benchmarks and targets for the progressive expansion of the coverage of court services in order to enhance access to justice.
5. The National government commits to allocate resources for the expansion of court infrastructure in order to enhance physical access to courts and realize the Judiciary's vision on access to justice.

Action: National government, County governments, Parliament, ELC, and partners

Deepening partnerships and stakeholder engagement in environment and land justice

5. The ELC and stakeholders commit to continue deepening partnerships and identifying linkages for purposes of enhancing access to environmental and land justice.
6. The ELC will work closely with other courts and judicial bodies, where necessary, to enhance effectiveness of the ELC.
7. The ELC, in collaboration with stakeholders, commits to maintain and expand its outreach and public engagement programmes.
8. The ELC and stakeholders will develop a mechanism to regularly review the status of partnerships and the impact on the core roles of the ELC.

Action: Environment and Land Court, National Environmental Management Authority, National Land Commission, County governments, national government, Development partners

Building capacity for the effective administration of environmental and land justice

9. The ELC and stakeholders commit to identify and support areas of capacity development in the ELC, including mobilization of resources.
10. The ELC and stakeholders commit to a specific focus on climate justice, climate governance, and related processes.
11. The ELC will work with the Kenya Judiciary Academy and the Judiciary leadership to develop tailor-made training programmes on climate justice for judges of the ELC.
12. The ELC and partners will explore ways of building a repository and resource centre of knowledge and information, particularly in emerging areas of environmental and land rights adjudication

Action: Environment and Land Court, National Land Commission, Kenya Judiciary Academy, National government, Development partners

Uptake of technology to facilitate access to environmental and land justice

13. The ELC and stakeholders commit to the progressive uptake of technology in environmental and land governance in order to enhance access to justice
14. The ELC and stakeholders commit to the elimination of barriers to the uptake of technology in the environment and land sector, and specifically address the underlying factors that prevent access to technology by vulnerable persons and groups.
15. The National government and development partners commit to mobilize resources for capacity development and uptake of technology in the ELC.

Action: National government, Development partners, and Environment and Land Court.

Legislative, policy, and institutional reform for effectiveness

16. The ELC and stakeholders commit to jointly identify gaps in the laws, policies, and regulations of the ELC and pursuing reform to enhance effectiveness of the court.
17. The ELC commits to engage Parliament, the National Council on the Administration of Justice, the Kenya Law Reform, and the Office of the Attorney General on identified areas of legislative reform

Action: Parliament, the National Council on the Administration of Justice, the Kenya Law Reform, and Office of the Attorney General, Environment and Land Court, Council of Governors, and Development partners

Gender responsiveness in environmental and land governance and justice

18. The ELC and stakeholders commit to the progressive elimination of barriers and obstacles that hinder the full and effective enjoyment of environment and land rights by women and girls
19. The ELC and stakeholders commit to regularly review and report on progress in addressing the barriers and obstacles to gender justice in the environment and land sector.

20. The ELC commits to capacity development and training of judges of the ELC on the gender-related aspects of adjudication of environment and land matters
21. The ELC and stakeholders commit to the development, adoption and integration of institutional-level gender mainstreaming in environmental and land governance and justice.

Actors: National government, County governments, Environment and Land Court, National Gender and Equality Commission, National Council on Administration of Justice

Expansion of Alternative Dispute Resolution and Alternative Justice Systems in environment and land justice

22. The ELC and stakeholders commit to the continued implementation of Alternative Justice Systems and different forms of Alternative Dispute Resolution processes in the ELC courts across the country
23. The ELC and stakeholders commit to capacity development of the ELC and institutional support to enhance implementation of Alternative Justice Systems and Alternative Dispute Resolution.
24. The national government commits to allocate resources to the ELC for implementation of Alternative Justice Systems and Alternative Dispute Resolution.

Actors: National government, County governments, Environment and Land Court, National Gender and Equality Commission, National Council on Administration of Justice

SIGNED BY:

H.E. HON. RIGATHI GACHAGUA, EGH, MBS

DEPUTY PRESIDENT OF THE REPUBLIC OF KENYA

HON. JUSTICE OSCAR ANGOTE, MBS

PRESIDING JUDGE, ENVIRONMENT AND LAND COURT

LEGISLATURE

OTHER STATE AGENCIES

The National Land Commission

National Environmental Management Authority

DEVELOPMENT PARTNERS

The CPF Financial Services

United Nations Environmental Programme

Food and Agriculture Organization of the United Nations

The International Development Law Organization

European Union Delegation in Kenya

The World Bank



Conference Programme

List of participating organisations

1. ACT!
2. AGRA
3. African Wildlife Foundation
4. Centre for Governance Justice and Environmental Action
5. Coast Land Sector Non-State Actors
6. COMRED
7. Council of Governors
8. CPF Financial Services
9. Environment Institute of Kenya
10. Environmental Donor Working Group
11. FAO/European Union
12. FIDA-Kenya
13. Haki Jamii
14. HURIA
15. IDLO
16. Institute for Law and Environmental Governance
17. Intergovernmental Relations Technical Committee
18. Institute of Surveyors of Kenya
19. Judiciary of Kenya
20. Kajiado County CEC
21. Katiba Institute
22. Kenya Commercial Bank
23. Kenya Climate Change Working Group
24. Kenya Forest Service
25. Kenya Institute of Planners
26. Kenya Judiciary Academy
27. Kenya Land Alliance
28. Kenya National Commission of Human Rights
29. KEPSA
30. Kilifi County Government
31. Kituo cha Sheria
32. KNCHR
33. Kenya Ports Authority
34. LANDESA
35. Law Society of Kenya
36. Legal/Environmental Committee of the National Assembly
37. Ministry of Environment
38. Ministry of Lands, Public Works, Housing and Urban Development
39. National Land Commission
40. NCAJ
41. NEMA
42. OHCHR
43. Pwani University
44. Sheria Sacco
45. UNEP
46. University of Nairobi
47. Urban Planning Committee of the National Assembly
48. World Bank



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