
African Journal of Climate Law and Justice (AJCLJ) 2024

AO Jegede 'Editorial' (2024) 1
African Journal of Climate Law and Justice v-viii
<https://doi.org/10.29053/ajclj.v1i1.0001>

Editorial

This is the maiden edition of the *African Journal of Climate Law and Justice* (AJCLJ). Before we proceed to the specificities of this edition, it is necessary to briefly highlight the gap the new journal is conceived and initiated to address. Africa experiences negative consequences of climate change, even though the continent contributes little to its cause. In general terms, established vulnerable sectors to the impact of climate change in Africa, actual and projected, are recognised as water resources, food security, natural resource management and biodiversity, human health, settlements, infrastructure and desertification. The response of law to climate change and its consequences in these sectors is increasingly emerging through the formulation of international, regional and national legal frameworks and resultant case law and jurisprudence. States in Africa are not left behind in this wave, which has produced domestic climate-related law on adaptation and mitigation at the national level. At the regional level, under the African Union (AU), climate policy and law are equally emerging amidst the regional architecture of accountability for state obligations and commitments. As this continues to take shape, the long-term debate on the differing responsibilities and accountability between the north and south for climate wrongs remains relevant and has present and future relevance in Africa. This is not surprising, considering that for its developmental drive, the continent remains largely dependent on fossils, although there are growing interests in renewable energy alternatives.

Balancing development aspirations with urgent climate actions raises concerns around mitigation and adaptation, the latter including climate losses and damages, and the just transition of economies that may either hinder or aid the realisation of climate objectives in Africa. At the core of these concerns are issues of fairness and equity that are of significance to law and justice as the continent struggles between the tension to develop economically and fulfil climate ambitions. As is the case elsewhere, an actual and potential offshoot of this trend in Africa is litigation relating to climate change, which is evident in a number of

African states. Emerging litigation features human rights approaches as part of a potpourri of approaches in public and private law for remedying climate wrongs. The foregoing overlapping themes are consistently stimulating research and analysis on climate law and justice, yet a journal that is devoted to the response and application of climate law and its justice for vulnerable communities in Africa is rare. The *AJCLJ* aims to contribute towards strengthening African scholarship and voices on climate change law and justice.

This maiden edition focuses on ‘Loss and damage in Africa: Legal and policy aspects’. The term ‘loss and damage’ (L&D) is coined to refer to the political debate on losses and damages linked to climate change that has been ongoing for quite some time. Developing countries have always contended that developed countries have a historical responsibility for climate change given the fact that they have produced the lion’s share of emissions and, consequently, called for compensation from developed countries to help address climate losses and damages that have already occurred, and to limit their future occurrence. At the 27th Conference of the Parties to the *United Nations Framework Convention on Climate Change* (UNFCCC), held in Sharm El Sheikh in 2022, a momentous decision was made to establish a dedicated fund to assist developing countries in responding to L&D. Also, forming part of the decision is the establishment of a ‘transitional committee’ to make recommendations on how to operationalise the funding arrangement. However, the elements of the new funding mechanism, including potential funding sources and the scope of its application, which should inform the work of the committee, are yet to be comprehensively clarified. Generally, gaps remain in relation to the operation of the L&D fund, the knowledge about the interface of L&D with the realities of vulnerable populations and appropriate legal and/or policy responses in Africa.

Articles in this maiden edition cover a wide range of issues of significance to the L&D debate. The commonalities in the contributions are that they all underscore the reality of losses and damages associated with climate change and the solution deficit in Africa. However, the articles do much more in that they also highlight possible considerations that should inform the L&D debate and the design and operationalisation of its related interventions in Africa.

The first three articles engage with the L&D fund. In the first article, Chikuruwo and Rautenbach boldly engage with the implementation of the L&D fund in Africa and underscore the importance of legal pluralism and customary international law in implementing the Sharm El Sheikh Funding Mechanism. In the authors’ firm view, the integration of diverse legal systems is essential for a comprehensive and culturally-sensitive response to the losses and damages associated with the climate crisis in vulnerable regions of Africa.

In the second article, Ruppel and Murray acknowledge that while there has been a deluge of academic research that has greatly improved the general understanding of L&D, few writings address national responses thereto. In particular, there is

a deficit of scholarship on how national policy makers understand the concept, and what progress has been made to develop and implement L&D policies. With a focus on South Africa, their contribution critically examines the relationship between national climate change legislation and policies relevant to L&D. The authors recommend that to effectively benefit from the L&D fund, measures must be put in place to enhance and strengthen government budget tracking, reporting and verification systems.

In the third article, Adejowo interrogates the question of what role the L&D fund can play in addressing climate-induced losses and damages and advancing gender equality and climate justice for women in African local communities. The article demonstrates the current state of L&D, the potential of the L&D fund, and the importance of a gender-responsive approach for achieving equitable climate resilience and ensuring climate justice in Africa.

The fourth article is conceptual. Kabaseke, Odaghara and Ashukem assess the intersectionality between vulnerability and the impact resulting from losses and damages related to climate change and human rights law in Africa. While acknowledging the inadequacy of climate change law in providing solutions, the article proposes a human rights-based approach to mitigate the losses and damages linked to climate change.

The subsequent three articles engage with the interfaces of climate losses and damages with migration in Africa. Akot emphasises the limited analysis on the interface of climate losses and damages with mobility and vulnerability. Besides demonstrating the interfaces, the author advocates the need for an integrated policy approach to address mobility induced by climate losses and damages in Africa. This approach calls for embedding cross-cutting policy issues across compartmentalised, fragmented and siloed policy systems already existing in the discourse around climate change.

Reflecting on the Omo-Turkana case study, the contribution of Porfido and Scissa deploys an interdisciplinary analysis, based on international human rights law and green criminology, to argue that some populations may be forced to leave their countries due to environmental concerns linked to severe human rights violations. While labelling such populations as environmental migrants fleeing natural hazards and disasters may be helpful, they cannot be effectively protected without first constructing the consequences of their migration as human rights violations.

Mohee and Gebeyehu assess the extent to which climate and disaster displacement is presently addressed as a form of loss and damage in law and policy. Their proposed suggestions for better integration include enhanced data collection and reporting on the economic and non-economic costs and impacts of climate and disaster displacement, and the adoption of a human rights-based approach to remedy displacement as a form of climate loss and damage.

This maiden edition also includes a review as a last contribution. Iwuamadi undertakes a brief review of a 2020 guest editorial on L&D debate in the journal *Climate Policy*. Building on the editorial, the review argues that many countries of the Global South, including Africa, are yet to harness the benefits of climate finance to address the effects of climate losses and damages, because of minimal efforts made towards reducing the risks and harms associated with climate change. To address this gap, the review underscores the need for consistent civic engagement and knowledge sharing on domestic policies and global instruments related to the L&D debate.

The editors wish to greatly thank the following independent reviewers who graciously assisted in the blind peer review process to ensure the quality of this maiden edition: Michael Addaney; Muiyiwa Adigun; Dennis Agelebe; Krishnee Appadoo; Olaoluwatofunmi Bamgbose; Bonolo Dinokopila; Uzuazo Etemire; Michael Gyan; Charlene Kreuser; Brian Mantlana; Ngcimezile Mbanu-Mweso; Melanie Murcott; Davina Murden; Satang Nabaneh; Temitope Obisanya; Collins Odote; Chairman Okoloise; Desmond Oriakhogba; Oliver Ruppel; Itumeleng Shale; and Natalia Urzola.