



“The City, Climate Change and Vulnerability : Leveraging Law for Climate Resilience”

29th&30th

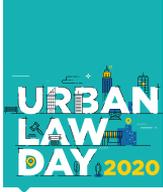
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CLES | KAS | UN-Habitat

2020 Urban Law Day

Virtual Colloquium

REPORT



The City, Climate Change and Vulnerability : Leveraging Law for Climate Resilience

Climate change has been described, by the UN Secretary General, as “the defining issue of our time” and a “direct existential threat” - for a good reason. Undeniably, climate change presents unprecedented challenges in both complexity and magnitude. For urban areas, the situation is ever so acute due to the concentration of people, economic activities, assets and social and cultural institutions in cities. Considering that 55 per cent of the world’s population lives in urban areas and with projections of a rise peaked at 68 per cent by 2050, billions of people will be exposed to existential threats of climate change. The population which stand to be affected more includes – but is not limited to – millions of informal settlers, whole populations in coastal areas, delta regions and small island developing States. A substantial number of those in arid and semi-arid areas are also prone to the adverse impact of climate change. This situation is particularly acute in cities in the Global South. Globally, cities are already suffering from extreme weather events ranging from: flooding, subsidence, storms, heat waves, water scarcity, droughts and sea-level rise among other climate change effects. Ironically, while urban areas stand to face the brunt of the negative impacts of climate change, cities are largely responsible for the phenomenon.

Cities account for between 60 and 80 per cent of energy consumption and generate as much as 70 per cent of human-induced greenhouse gas emissions.

It is in recognition of the magnitude and urgency of the challenge that UN-Habitat joined the South African Research Chair in Cities, Law and Environmental Sustainability (CLES) and the Konrad-Adenauer-Stiftung (KAS) to organize the 2020 Urban Law Day Virtual Colloquium under the theme of **The City, Climate Change and Vulnerability: Leveraging Law for Climate Resilience**. The Colloquium sought to discuss the nexus between urban law, local governance and climate change action. It brought together lawyers, academics, local government practitioners, researchers and natural scientists to critically deliberate the strengths and weaknesses of the strategies and legal interventions that cities from different parts of the world are employing to become more climate change-ready including addressing community vulnerability as well as exploring City-level adaptation mechanisms.

KEYNOTE ADDRESSES



Ms Maria Socorro Manguiat

(United Nations Environmental Programme (UNEP), Head: National Environmental Law Unit)

Ms Manguiat highlighted the role of law in climate change mitigation and adaptation by providing a framework to achieve objectives of the Paris Agreement and other global initiatives such as the Sustainable Development Goals (SDGs). She explained and underscored how SGD13 - which calls for integration of climate change in policy formulation and planning – offers an entry point for enhanced city involvement in climate change action, including through the establishment of supportive legal frameworks. Using the principle of subsidiarity, she outlined how local governments can apply and adapt local standards related to clean and renewable energy, GHG emission reduction targets, climate-friendly procurement policies and budgetary measures related to climate change. She outlined how and in what ways a comprehensive urban law

can also create time-sensitive climate change plans and policies, secure funding and promote coordination at all levels of government. Another important point from Ms Manguiat's presentation was the significance and role of urban law in creating Nature-Based Solutions (NBS) such as mandating the creation of green spaces to cool cities, reduce air pollution, and stimulate climate friendly growth through 'greening' of COVID-19 Recovery Packages. Ms Manguiat particularly highlighted the potential for countries to leverage on cities in pursuit of realising or attaining the Paris Agreement goals. The case of Mexico's NDC, highlighted in the presentation, which incorporated adaptation criteria for infrastructure projects and provision of services to dense urban areas is quite telling.



Prof Nestor Davidson

(Albert A. Walsh Chair in Real Estate, Land Use, and Property Law; Faculty Director, Urban Law Center, Fordham University, USA)

Prof. Davidson delivered an insightful presentation on **"Climate challenges and the US City"**. The presentation underscored the significance of multi-level coordination and cooperation across levels of government in combating the effects of climate change. He noted that in the US, there is currently Federal abnegation and uneven state responses to climate change. This in part owes to lack of agreement on the seriousness or magnitude of the climate challenge to the city and urban dwellers. Through his presentation he emphasised that such a

trend was the result of looking at the issue through political lens. In making his case, he posited that for cities, the situation is complicated by differing views on the extent to which they can act independently of state direction. This is exemplified by debates between proponents of "Dillon's Rule" (that holds that city authority is derived from legislation and thus calls for state oversight when there is deemed an over-step in mandate) versus those who favour the "Home Rule" (that maintains that cities have their own constitutional authority to act). Consequently, climate



change action in the US is characterized by lack of uniformity both at the national, state and city levels. As established, in Prof Davidson's presentation, several states are outperforming the Federal government in establishing climate change mitigation and adaptation measures. Despite these fragmented responses to climate change mitigation and adaptation,

Prof. Davidson was, however, optimistic that active involvement of cities has the advantage of strengthened climate action in contexts where national governments are retrogressing. He advised other cities to take a cue from the city of New York which prides itself of a green building code that focusses on clean and renewable energy and climate-friendly buildings.



Prof Robert Kibugi

(Professor of Law, University of Nairobi)

Prof Kibugi began by highlighting the adverse impacts of climate change in Africa including increased water scarcity in some parts, increased flooding in others, reduced agricultural production and sea level rise. These climate impacts coupled with projections of rapid urbanization in the continent mean that urban resilience will only get more difficult. In his presentation, he accentuated the challenges in scaling up urban resilience in the context of Africa, which is already suffering from limited financial resources, inadequate housing and basic services, poor environmental

conditions, political instability as well as the continuing fallout from the COVID-19 pandemic. To him, a confluence of all these wide-ranging factors undercut efforts geared towards urban resilience. Throughout his presentation, he was specifically concerned about the risk that climate change poses for the enjoyment of human rights in developing countries. In this regard, he urged governments across all levels to protect the rule of law, establish effective public institutions and utilize human-rights based approaches (HRBAs) in urban governance.

PANEL DISCUSSION

The second session of the Colloquium featured a panel discussion that sought to reflect on the question: **To what extent is climate change law and policy fit for the inner workings, political features and the on-the-ground service delivery struggles of the average city in the global North and global South, respectively?** The panel comprised of representatives from both developed and developing countries and included:

Prof. Dr. Sabine Schlacke (Executive Director: Institute for Environmental Law and Planning Law, University of Münster and Judge at the Constitutional Court, Bremen, Germany);

Ms Chumisa Thengwa (Director: Environmental Planning and Climate Protection Department, eThekweni Metropolitan Municipality, South Africa);

Mr Patrick Kunkel (Mayor of Eltville am Rhein, Germany & Winner of the German Sustainability Award for Municipalities);

Ms Anna Katharina Boelling (Designated District Commissioner, Minden-Luebbecke, Germany); and

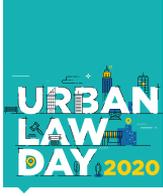
Ms Susan Knox-Mosdell (Local environmental law and governance specialist & PhD Candidate, North-West University, South Africa).

Dr Schlacke observed the deficit in long-term perspective and identification of transformative action fields in global studies on urbanization. She proposed the unique German idea of *Eigenart* which holds that the city's unique character including the physical and cultural urban environment should be in the hands of the city. and espouses values such the diversity of cities, well-being of all city dwellers, social cohesion, creativity and innovation.

According to Dr Schlacke, effective climate change action in cities requires three elements. The first is a normative compass which harmonizes the goals of the Paris Agreement and objectives of SDGs with the vision of the city. The second is the right to local self-determination which is essential to planning, territorial and financial management – all of which are important in climate change action. Multi-level governance with both horizontal and vertical coordination among and between levels of government as well as city networks was identified as the third element.

Mayor Kunkel and **Ms Boelling** brought the perspective of climate change action in small towns within developed countries. The latter explained that small towns are just as involved in climate action as big cities. Their areas of action include enhancing the use of renewable energy, climate proofing of existing infrastructure, switching to more environmentally friendly modes of transportation and preservation of agricultural areas. Mayor Kunkel highlighted the importance of collective action in dealing with global challenges such as climate change. He insightfully noted that Covid-19 has revealed the fragility of interconnected systems in the sense that hazards in one part of the world pose a risk to the rest (other parts). This highlights the ever crucial need for global cooperation in addressing global challenges, including climate change.

Resource constraints continue to be a major hindrance to effective climate change action in developing countries. **Ms Knox-Mosdell** noted that even in relatively wealthy metros in South Africa, there are scant resources for climate-oriented innovation.



She further stressed that, in fact, the bulk of municipal work relates to crisis management, repairs and maintenance of infrastructure as well as dealing with service delivery demands from constituents. What was also crystal clear in the context of South African municipalities, as observed by Ms Knox-Mosdell's, is the gap between what municipalities should be planning and offering in terms of climate change and what underserved communities are demanding. This situation is compounded by the nature of electoral politics whereby leaders opt for quick political gains rather than climate change action which requires foresight and planning for posterity.

Another panellist, **Ms Thengwa** echoed similar sentiments with previous speakers regarding the impact of climate change on urban areas. She concurred on the notion that cities are increasingly

suffering from service delivery challenges as a result of a climate change and its effects. She also offered a prognosis that this trend was likely to continue. However, for her, the solution lied not necessarily in completely coming up with novel initiatives such as enactment of new legislation but in working with already existing elements.

For instance, the challenge of increased water scarcity as a result of climate change can be addressed by linking it to the constitutional mandate of cities to provide services. That is, because cities already have the mandate to provide services such as water, their role does not need to be re-defined in light of climate change. She maintained that, as an alternative, what is needed is a transformative approach coupled with forward-looking leadership and political goodwill from city authorities with support from higher levels of government.



TOOLS AND KNOWLEDGE MATERIALS ON CITIES, LAW AND CLIMATE CHANGE

In the third session of the Colloquium, Tools and knowledge materials aimed at strengthening climate change action in cities were presented. The first one was the **Law and Climate Change Toolkit** which is a collaborative initiative led by the United Nations Environment Programme (UNEP), the Secretariat of the United Nations Framework Convention on Climate Change (UNFCCC) and the Commonwealth Secretariat in conjunction with several other UN agencies and academic and research institutions.

The Toolkit is an innovative online tool designed to help countries establish legal frameworks necessary for effective domestic implementation of the Paris Agreement. It is intended to be used by government policy makers, officials involved in technical and legal drafting, international organizations and experts engaged in assisting countries to implement national climate change laws, as well as academia, think-tanks organisations and research institutions.

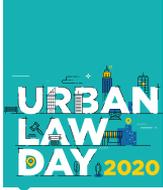
Mr Gianluca Crispi from UN-Habitat, showcased the Toolkit's key features which include functionalities to search existing climate change-related legislation as well as the ability for users to undertake an assessment of a selected country's legislation.

The results of the assessment lead to the identification of gaps and corresponding legal provisions that may address these gaps. He then explained the utility of the Toolkit, particularly the Urban Planning and Land Use Module (developed by UN-Habitat) to promote climate smart urban planning through appropriate laws.

Ms Nicolene Steyn, from CLES, introduced the KAS / CLES Online Depository on Climate Change Projects and Plans of South African Cities. The Depository is a joint initiative between the South African Research Chair in Cities, Law and Environmental Sustainability (CLES) and the Konrad Adenauer Foundation (KAS). Its aim is to provide information on how a selection of ten South African municipalities provide for climate action in their local laws and policies; local spatial and management plans; organisational structure of the municipality; and local projects, programmes and other initiatives and experiments.

The Depository offers a useful tool to access current climate change measures by South African municipalities by allowing users to search by keywords, province, municipality, type of document, date of document, and topic.

The two online Tools were followed by a presentation of research findings from a "Cities and Climate Change Case Study Project" led by KAS and CLES. The project sought to find out the extent to which and the range of actions that cities in South Africa are undertaking in the sphere of climate change mitigation and adaptation. **Ms Melandri Steenkamp** from CLES who led the study, noted that South African cities are already suffering from the negative impacts of climate change most notably, rising sea levels, water scarcity and biodiversity depletion. She then highlighted the different mechanisms through which these cities are engaging in climate change action. These include mainstreaming of climate change in day to day functioning of municipalities such as through integrated development plans and spatial development frameworks; enactment of dedicated climate change instruments such as climate change plans; and preparation of climate change strategies. The study also revealed the way in which some municipalities are dealing with climate change through sectoral approaches.



KEY TAKEAWAYS



THE FIGHT AGAINST CLIMATE CHANGE WILL BE WON OR LOST IN CITIES

It was widely recognized by all the panellists that cities represent the main battleground for climate change action. Despite occupying only about 3 per cent of total land area, cities account for a disproportionate amount of global greenhouse gas emissions and energy consumption. At the same time, cities stand to be most severely affected by the impacts of climate change. Fortunately, city mandates already cover critical areas related to climate change including transportation, waste management, building and construction and provision of basic services such as water and energy. Their involvement in these activities means that cities are well positioned to steer growth towards less GHG concentrations and more resilient systems. In South Africa, Ms Steenkamp noted that municipalities are already undertaking significant climate change activities such as waste to energy

initiatives, participation in CDM projects (under the Kyoto Protocol), conducting vulnerability assessments and enacting green building by laws. In Germany, cities are at the forefront of 'planetary urbanization' with a focus on switching to less carbon intensive transportation, preservation of green areas, and enhancing the use of renewable energy. In the US, although the federal government has in recent times been retrogressing, major cities such as New York, Los Angeles, Chicago and Miami have taken up an increasingly prominent role in climate mitigation and adaptation. Despite these positive actions, however, there was agreement that cities could do much more to enhance their activities as highlighted by Ms Manguiat who observed that the Emissions Gap Report 2019 underscored the need for more innovation in local action.



THE LAW IS CENTRAL TO LONG-TERM SUCCESS OF CLIMATE CHANGE INITIATIVES ALTHOUGH REFORM IS NEEDED IN SOME CONTEXTS

The law performs a crucial role in supporting climate action in cities. Strong comprehensive laws can create legally binding obligations to set GHGs emission reduction targets and adaptation goals,

create oversight bodies and coordination mechanisms to bring together and clarify responsibilities across levels of government, and lay down obligations to mainstream climate change action

into national and sub-national plans. Legislative frameworks may also create specialized funds and budgets, facilitate monitoring and reporting obligations and integrate important democracy elements such as right to public participation, access to information and access to justice as laid out in Rio Principle 10. Ms Manguiat particularly noted that the law holds several advantages over 'soft mechanisms' including increased chance of enforceability through incentives and penalties as well as the power of the law to facilitate economic and social change.

Nonetheless, the law can at times, hinder effective climate change action. Focusing on the South African context, Ms Knox-Mosdell explained that although the right to basic

services is constitutionally entrenched in the Bill of Rights, the legal definition of 'basic services' limits the range of (climate related) services that municipalities could be compelled to provide. The law was also observed to create rigid and onerous processes that discourage the pursuit of green and environmentally friendly projects which often have long payback periods or require externalities to be taken into account. Moreover, Ms Manguiat highlighted the need for legal reform in the area of procurement to make it a requirement that procurement policies integrate green considerations and the currently under-utilised potential of the law to incentivise climate friendly urbanization such as through well-structured tax policies.



THE HUMAN RIGHTS PRINCIPLES OF INCLUSIVITY AND PUBLIC PARTICIPATION SHOULD GO HAND IN HAND WITH CITY-LEVEL CLIMATE CHANGE RESPONSE

The nature of climate change and the interaction between hazards, exposure and vulnerability mean that different groups may be affected to different extents by climate risks depending on various factors such as age, gender, economic status, health status, geographical location etc. For instance, infants and elderly people are more sensitive to particular hazards such as heat stress. The same is true for people with particular diseases, injuries, or disabilities as they are also more sensitive to climate impacts than ones with no ailments. In the same vein, ; informal

settlers may be more vulnerable to climate-related displacement than people with secure tenure; and women may be more affected by reduced precipitation or inhibited agricultural productivity. These factors mean that climate change action needs to put human rights at the centre, particularly through the principles of inclusivity and public participation. Indeed, inclusivity and participation are not simply good administrative practices: they have several tangible benefits. They result in more robust and legitimate outcomes by allowing multiple viewpoints and experiences including



the integration of alternative forms of knowledge into the processes and by getting support and buy-in needed for successful implementation. For instance, Dr Kibugi explained that due to

inadequate public participation, projects aimed at promoting the resilience among residents of informal settlers in Kenya have not been effective.



CLIMATE FINANCE IS KEY TO CLIMATE CHANGE ACTION IN CITIES

The measures that cities need to undertake to reduce their GHG emissions and better protect their residents from climate change impacts require financial resources. These range from switching to less carbon intensive energy sources, reconfiguring urban planning systems to make them less reliant on vehicle transportation, climate proofing existing infrastructure and building new ones to enhance resilience. Adequate financial resources are required to accomplish these measures. According to Dr Dr Schlacke, an integrated climate concept requires financing from the national level while Ms Manguiat proposed nature

based solutions as relatively cheaper adaptation options. For developing states in particular - where much needed climate finance is inadequate - Ms Thengwa offered an insightful point in that climate-related activities should not have to compete for resources with other priorities such as poverty eradication, job creation and provision of basic services. Instead, climate action should be integrated within the service delivery mandate of cities making it possible to simultaneously achieve both socio-economic gains and climate change resilience.



MULTI-LEVEL GOVERNANCE IS A FUNDAMENTAL TENET OF EFFECTIVE CLIMATE CHANGE ACTION

Coherence and coordination of measures between national and sub-national governments is necessary for effective climate actions in urban contexts. The structural and institutional setting in which different levels of government distribute roles and responsibilities, coordinate and cooperate on climate action must be

strong if local climate action is to result in any meaningful outcome. Multi-level governance also requires horizontal coordination characterized by institutions at both the national and sub-national levels working collaboratively within and amongst themselves.

In the case of the US, Prof. Davidson highlighted some of the challenges – such as loss of funding – that arise when the federal government and the states do not cooperate or where different cities within states have differing and

conflicting approaches to addressing climate change. For Germany, federalism was also identified to be a hindrance to cooperative action due to discrepancies in environmental standards and minimal communication among federal states.



IMPACT OF COVID-19 ON CLIMATE CHANGE IS MIXED

As Covid-19 continues to present serious challenges on lives, livelihoods, healthcare systems and economies throughout the world, attendees of the Colloquium reflected on its potential effects on climate change action in cities. On a more immediate note, the slow-down in economic activities and limitations on travel both within and among countries have resulted in lower GHGs emissions and less air pollution. However, concern

was expressed on whether these gains should come at such a huge expense – loss of lives, unemployment, recessions etc. Nonetheless, the pandemic has offered a window of opportunity to consider the necessity of most of our unsustainable activities and to think about how little we can collectively survive on, for example, questions on whether all the travelling is necessary or if there is a need to spend so much on transport.