

Annual Regional Conference of Judges on Environmental Security in Eastern Africa

Summary of presentations



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Annual Regional Conference of Judges on Environmental Security in Eastern Africa

Summary of presentations

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List of acronyms

| | | | |
|---------|--|--------|---|
| AHLEPCC | African High Level Panel on Climate Change | ITLOS | International Tribunal on the Law of the Sea |
| AMCEN | African Ministerial Conference on the Environment | KP-WG | Kyoto Protocol Working Group |
| AUC | African Union Commission | LCA-WG | Long term Cooperation Agreement Working Group |
| BAP | Bali Action Plan | MOU | Memorandum of Understanding |
| CAHOSCC | Conference of African Heads of State on Climate Change | SUA | Suppression of Unlawful Acts |
| COP | Conference of Parties | UNCLOS | United Nations Convention on the Law of the Sea |
| EAC | East African Community | UNECA | United Nations Economic Commission for Africa |
| EACJ | East African Court of Justice | UNEP | United Nations Environment Programme |
| EAPCCO | East African Police Chiefs Cooperation Organisation | UNFCC | United Nations Framework Convention on Climate Change |
| ICC | International Criminal Court | | |
| ILEG | Institute for Law and Environmental Governance | | |

Background

The Institute for Security Studies (ISS), the Eastern Africa Police Chiefs Cooperation Organisation (EAPCCO) and the government of Seychelles hosted the largest ever gathering of judges to deliberate on environmental security in Eastern Africa. The forum brought together 35 judges, including the chief justices of Burundi and Seychelles, the president of the East African Court of Appeal, 15 judges from the Court of Appeal and 18 judges of the High Court from Uganda, Kenya, Tanzania, Sudan, Ethiopia, Burundi, Rwanda and Seychelles.

The purpose of the conference was to:

1. Increase awareness of the environmental security concerns in the region and their link to security and conflict
2. Provide an opportunity to share experiences on environmental security-related issues among the judicial officers
3. Address environmental security concerns in the region through enhanced collaboration between the judicial officers and other stakeholders
4. Share major findings of EAPCCO/ISS studies conducted in the region on the nature and extent of environmental crimes
5. Foster solidarity among regional judges with the aim of harmonising the implementation of policies and laws in the region

Conference Report

Day 1

Opening ceremony

Keynote address

Session 1: Environmental crimes in Eastern Africa

Session 2: Managing trans-boundary environmental crime

Opening ceremony

The official opening ceremony of the conference was chaired by the Honourable Justice Duncan Gaswaga of the Supreme Court of Seychelles, who welcomed all the participants on behalf of the judiciary. He thanked Dr Rose Mwebaza of the Institute for Security Studies in Nairobi, with whom they had worked very closely over the months in preparation for the conference. He noted that environmental deterioration through human activity was proceeding at an unprecedented rate, and unless this process was held in check the damage caused would be grave and irreversible, hurting not only the present generation but future generations as well, and not only the country in which it occurred but the region and the world in general. Therefore, all public institutions, the judiciary included, need to pool their resources against this universal peril. Judges, who carry individual and collective responsibility, stand at the forefront of this struggle, and as participants in this judicial conference must be lauded and credited for contributing to the maintenance and protection of the environment and human security. Judges must also remember that their actions or omissions, judgements and decisions will have an impact on the peace, security, environment, development and good governance of the people within this region. Whatever deliberations and resolutions they make today should ensure that history is able to judge them favourably. Judges should therefore not be satisfied until, as Martin Luther King said, justice rolls down like waters and righteousness like a mighty stream for the people they serve.

In his opening speech, the Chief Justice of Seychelles, the Right Honourable Justice Fredrick Egonda-Ntende, said that the government of Seychelles was delighted to be hosting such a high-level delegation of judges from East Africa. He observed that the judiciary, an independent arm of the state in any country, had a role to

play in promoting sustainable human development and, as such, there was a need to build synergies to address contemporary problems. He observed that judges were and remained key drivers of environmental safety and security, and in today's world, permeated with the threat of global warming, climate change and trans-boundary environmental degradation, it was only proper that they engaged in interactive events to hone the necessary skills, share experiences and engage in networking.

He commended three principles to the judges to guide their deliberations during the two-day conference:

- 1. Mutual cooperation:** He informed the judges that, given the trans-boundary nature of these issues, the need for mutual cooperation of all stakeholders across the region could not be overstated. He noted that the proponents of regional integration said that collective effort and speaking with one voice were key to ensuring that there was a common response to common problems. This rings true for the challenges presented by environmental insecurity
- 2. Intergenerational equity:** He noted the obligation of judicial officers to promote intergenerational equity and ensure that the earth inherited from previous generations was passed on in reasonable condition to future generations
- 3. Public trust doctrine:** The judiciary is an arm of the state, and the state is a trustee that has the duty of stewardship of the public's environmental assets. Judicial officers have to play their part in ensuring that environmental resources are held in trust by the state for the benefit and use of the general public

He concluded his opening speech by quoting Henry Ford, the American industrialist and the father of modern

Photo 1 Dr Wilson Kipkore giving his opening speech



Photo 2 Judges after the official opening of the conference



assembly lines, who stated, ‘Coming together is a beginning. Keeping together is progress. Working together is success.’ He wished the judges fruitful deliberations over the two days of the conference.

Prior to the official opening, the Head of the Environmental Security Programme, Dr Wilson Kipkore, expressed the profound gratitude of the ISS to the government of Seychelles, particularly the judiciary, which had gone above and beyond the call of duty to host the judges’ conference. He thanked the judges for taking time out of their courts to participate in the

important conference on environmental security in Eastern Africa.

In his opening remarks, the representative of the Head of the Regional Bureau for Interpol in Africa, Mr Goodluck Mongi, noted that environmental security was greatly threatened by the growing scourge of environmental crime in the region and stated that Interpol had a particular interest in working with the governments in the region to ensure that it was contained. He too thanked the ISS and the government of Seychelles for holding such an important and timely conference for the Eastern African region.

Keynote address

Following the opening of the conference, Dr Nightingale Rukuba Ngaiza, Senior Legal Counsel of the World Bank, gave an impressive keynote address. She noted that all over the world judiciaries were increasingly handling environmental and natural resource management cases in which they interpreted and enforced both international and national environmental legislation. In the courtrooms judges decide whether:

- A party has *locus standi* to bring public interest environment litigation
- Development projects will cause a significant impact on the environment
- Appropriate public consultations have been carried out in the environment assessments and the views of the consulted have been taken into account
- Areas selected for siting projects are in wetlands or other inappropriate areas

She further noted that judges were constantly called upon to make decisions that promoted economic development and safeguarded the integrity of natural resources and the environment.

Given this important role that judges play, their integrity cannot be overemphasised. She observed that the world's biggest environmental polluters were also the world's deepest pockets. They flaunt the law and dispose of hazardous materials in the neighbourhoods of unsuspecting citizens who do not have a voice to advocate their rights. They successfully lobby legislatures against passing laws that protect the environment in order to preserve their profit margins. They export pesticides not tested for safety or registered for use in their own countries to countries where corrupt leaders are ready and willing to receive them for a fee, despite the deleterious health

impacts on their citizens. The deep pockets have the resources to influence the preparation of erroneous environmental assessments to site projects and plants in areas where they have a negative impact on health. They have the resources to penetrate the judiciaries and influence judicial decision-making. Dr Nightingale Rukuba Ngaiza posed a challenge to the judges: 'When confronted with this challenge, what do you do?' She then quoted the Dean of Columbia Law School, which is her alma mater, who provided this guidance to the graduating class of 2008:

The 'high' road is the happy road. If you live by exacting ethical standards, you will inspire confidence in others and feel pride in yourself. At the same time, the one career-ending mistake you can make – the one way you can derail what otherwise will be a sterling career path – is an ethical lapse. All you have is your reputation, and you shouldn't trade it for anything. You can always get another job or another client, but you can't get another reputation. It's better to be proud of who you are than of what you own. Your conscience is your most important constituency. If a voice inside you is saying, 'No one will ever know', that's a clear sign not to do what you are considering. You should act as if everything you do will appear on the front page of *The New York Times*. If you wouldn't mind having your family read about it, then you are living the right way.

She went on to say that the lessons imparted to the graduating law students applied to all people in their careers, including judges. She said that it was important for the judges to be technically equipped with environmental knowledge and to have integrity if they were to meet the environmental challenges that confronted Africa in the 21st century. In identifying these challenges, Dr Nightingale Rukuba Ngaiza drew on the World Bank's

Environmental Strategy for Africa and informed the participants that these challenges included the following conditions in sub-Saharan Africa:

- The highest population growth in the world
- Widespread poverty and an HIV/Aids crisis that mainly affects the most productive section of the population and leaves vast numbers of orphans
- An estimated 35 million trans-boundary migrants, many of whom are refugees from conditions and conflicts triggered by scarcity and decline of natural resources, particularly land and water
- Rapid and unplanned urbanisation, notably in fragile coastal areas, which, in turn, creates new environmentally related problems
- Extreme climate variations, which already present a serious threat in much of the region in the form of frequent droughts and floods, while global climate change could increase both the frequency and the severity of these events
- Natural systems in the region losing their capacity to deliver the products on which livelihoods and development depend

She informed the participants that the World Bank recognised natural resources such as soil, water, forests and fish as providing the basis for livelihoods and economic growth at both local and national levels.

Photo 3 Dr Nightingale Rukuba Ngaiza (right), Senior Legal Counsel of the World Bank, at the opening ceremony



She said that many of the natural ecosystems that provided these critical human services also contained some of the world’s richest and most unique biodiversity assets, as well as storing vast amounts of carbon within their biomass and soils.

She concluded by noting that the negative environmental impact of poorly managed economic growth, such as water pollution, soil erosion, the burning of forests and rangelands, and the overexploitation of resources, directly undermined peoples’ health and their ability to earn a livelihood, while also threatening these global environmental assets.

Session 1

Environmental crimes in Eastern Africa

ENVIRONMENTAL CRIMES IN EASTERN AFRICA

Dr Wilson Kipkore, the Head of the Environmental Security Programme at the ISS, Nairobi, started the first session by presenting the findings of the Environmental Crime Project of ISS on the nature and extent of environmental crime in Eastern Africa. He informed the participants that the findings of the ISS studies showed that there was widespread environmental crime in the region. He noted that environmental crime was closely linked with other crimes – drug trafficking, weapons trading, smuggling, fraud and money laundering. He further informed the participants that the major areas of crime identified during the studies included:

- i. The forestry sector
- ii. The wildlife sector
- iii. The water sector
- iv. The fisheries sector
- v. Hazardous wastes
- vi. Crimes due to non-compliance

He told the participants that the greatest challenges identified in addressing the various environmental crimes included the lack of:

- Policy harmonisation in fighting environmental crimes
- Community participation in fighting environmental crimes
- A clear environmental communication strategy on applicable legislations and regulations – only an elite are aware of legislation and regulation
- Harmonisation in the management of shared trans-boundary ecosystems such as parks and waters

Furthermore:

- In some cases plaintiffs had been required to demonstrate how they had suffered concrete injury in order to be granted standing (*locus standi*)
- While there are several key institutions that address various crimes, there are no national institutions to fight environmental crime per se
- To be effective, such institutions would require a mandate, legal backing, intelligence systems to detect crime, and personnel to apprehend perpetrators
- There is a need to have adequate deterrent penalties for environmental crimes

He stated there was a need to:

- Mainstream environmental crimes in policy and legislation
- Build the capacity of police, environmental agencies, customs and immigration officials
- Enhance and build cross-border linkages
- Invest in equipment and technology to fight environmental crimes
- Create public awareness and promote public participation
- Provide incentives – especially to curtail pollution-related crimes

TRANS-BOUNDARY MANAGEMENT OF ENVIRONMENTAL CRIME

Mr Goodluck Mongi, from Africa's regional bureau for Interpol, made a presentation that focused on the

trans-boundary management of environmental crime. He informed the participants that environmental crime was growing as a form of international organised crime, and that it was evident that criminal groups as well as individuals perpetrating these offences engaged in other types of crime like drug trafficking, money laundering, and so on. He stated that it also included poaching and trade in wild fauna and flora.

ROLE OF THE COURTS IN COMBATING ENVIRONMENTAL CRIME

In his presentation on the role of the courts in combating environmental crime, Justice J W Onyango-Otieno of the Court of Appeal, Kenya, informed the participants that at the Global Judges Symposium held in Johannesburg, South Africa, from 18–20 August 2002, the members of the global judiciary present adopted the Johannesburg principles on the role of law and sustainable development and expressed in the preamble to the principles a

conviction that the Judiciary, well informed of the rapidly expanding boundaries of environmental law and aware of its role and responsibilities in promoting the implementation, development and enforcement of laws, regulations and international agreements relating to sustainable development, plays a critical role to the enhancement of the public interest in a healthy and secure environment ...

He noted that these principles recognised that, just as Prospero in William Shakespeare's play *The Tempest* was able to use the spirits to command the wind and the waves of the sea, judges were similarly endowed with legal tools and techniques for enforcing, through the rule of law in environmental law governance, the necessary discipline in socio-economic growth initiatives that were conducive to sustainable development. He said:

Without the rule of law and compliance to promote social stability and legal certainty, firms are less willing to make the investment and assume the risk that form the basis of market economy development. Furthermore, lack of compliance with the rule of law encourages corruption, with further devastating consequences on the confidence of economic actors. This lack of investment, in turn, can slow economic growth and deprive governments of resources needed in education, social safety nets and sound environmental management, all of which are critical for sustainable development.

He identified the role of the judiciary in combating environmental crime as follows:

Guarding the constitution and the law

This basically focuses on the courts as the keepers of the law. He noted that courts had to ensure that the law was obeyed at all times. The judiciary must therefore be in a position to issue edicts that are necessary for the successful implementation of the law. In practice, the courts will and should strike down any activity that is or has been or is sought to be implemented in contravention of the law, including the constitution.

Judicial lawmaking

As courts decide cases they create an important by-product, that is, they develop rules for future cases. The doctrines of *stare decisis* and precedent are core to judicial activity. The effect of *stare decisis* is twofold. First, it confirms the importance that must be attached to courts. Second, it could have a negative impact (on environmental management) if the first case was 'wrongly' decided. The converse must then also be true.

As regards precedent, it is well known that a large part of the law of England (which is also now part of the law of most Eastern African countries) consists of rulings from court judgements. Some statutes, though they originally introduced a new rule or principle into the law, have also been the subject of so much judicial interpretation that they derive nearly all their real significance from the sense given them by the courts.

By their determining and elucidating contested issues, the judges of the highest courts will give direction to the lower courts as to the principles applicable to environmental law and how to deal with them. For instance, the highest courts in our jurisdictions will be asked, if they have not already been asked, to decide whether or not the right to a clean and healthy environment is a fundamental constitutional right.

Bringing down the hammer hard

The best tool for achieving environmental compliance is effective and consistent enforcement of the civil and criminal law. Indeed, an important means of deterring those who violate environmental laws knowingly is a strong enforcement presence. The courts are the only legally empowered institutions that may impose fines and jail sentences. While imposing the sentences, the judiciary must ensure that the hammer is brought down hard enough on violators. Otherwise, violators may very well take the punishment, especially low fines, merely as the cost of doing business, which they can easily internalise and eventually pass on to the consumer.

Expanding the boundaries

Evidence from Kenya indicates that a lot of the enforcement of environmental law takes place at the lower levels of the judiciary – before magistrates of different ranks. Almost every day, people are charged with driving motor vehicles that emit polluting fumes or are variously described as being unroadworthy. Although on the face of it such a charge may seem to be a minor traffic infraction, it is a serious environmental offence. One need only to consider the amount of lead emitted by these faulty vehicles and what science says about the effect of lead on children, both unborn and young!

You must have heard of the Mau forest in Kenya. Imagine felling trees in forests and water catchment areas without control, thereby destroying the same. Imagine discarding polythene bags and containers anywhere, including in our residential areas. Imagine discharging raw sewage into our water, or the uncontrolled poaching and trade in game. Parliament has enacted laws and local authorities have by-laws to deal with these transgressions in Kenya. The suspects, if arrested, are taken to the magistrate's court, which, on conviction, punishes them. The punishment may in some cases look insignificant, but it is our duty as courts to interpret the law. Parliament could be asked to enhance the punishment through further enactments.

Session 2

Managing trans-boundary environmental crime

EAST AFRICAN PROTOCOL ON THE ENVIRONMENT

The first presentation in this session was made by Mr Maurice Odhiambo Mak’Ollo, Director of the Institute for Law and Environmental Governance (ILEG). It focused on the East African Protocol on the Environment as a framework for combating natural resources conflicts and environmental crime in Eastern Africa. In his presentation, Mr Mak’Ollo informed the judges that the Protocol on the Environment and Natural Resources Management was one of the protocols adopted pursuant to Article 151 of the Treaty for the Establishment of the East African Community and consisted of five chapters containing 50 articles.

He said that the Protocol had wide application under Article 3, which describes it as of general application, applicable to all activities, matters and areas of management of the environment and natural resources. The Protocol is a restatement of the principles of environmental management as provided for under Article 4 and it bridges gaps in policy at the country level. It deals with the present as well as the future, including issues related to biosafety or biotechnology and climate change.

Mr Mak’Ollo stated that the usefulness of the Protocol lay in the fact that it targeted drivers of conflict and crime through the harmonisation of policies, laws and strategies, the creation of awareness, the promotion of development programmes, projects and activities that take into account poverty eradication, and the promotion of studies for better environmental management. He further informed the participants that the Protocol contained specific provisions related to improving governance, as well as specific clauses on public participation, access to justice and information, involvement of civil society

Photo 4 Mr Mak’Ollo making his presentation



organisations, local communities and the private sector, and emphasised the need for legislative measures to deal with environmental crime and other environmental governance issues.

He informed the participants that, under Article 40, the Protocol provided for dispute resolution and expanded the jurisdiction of the East African Court of Justice to settle disputes of an environmental nature.

REGIONAL COURTS AS A MECHANISM FOR ADDRESSING TRANS-BOUNDARY ENVIRONMENTAL CRIMES

Following Mr Mak’Ollo’s presentation, the Honourable Mr Justice Harold Reginald Nsekela, President of the East African Court of Justice (EACJ), gave a presentation on the viability of a regional court as a mechanism for addressing trans-boundary environmental crimes. Justice Nsekela noted that environmental law was definitely one of the branches of law that was developing very fast owing to the current global focus on the need to protect the environment. He stated that there were hundreds of

international conventions and treaties on environmental protection. However, he noted that these international conventions contained few, if any, provisions for criminal activity.¹ Even the regional treaties aimed at fostering regional integration do not provide for criminal liability for the infringement of the provisions regarding the environment. In the case of the East African Community (EAC), for example, the treaty establishing the Community contains a whole chapter on the environment.² However, it does not state that the violation of any of the provisions on the environment will be considered criminal in nature, nor does it confer any criminal jurisdiction on the East African Court of Justice, the principal judicial body of the Community.

Without regional courts being given jurisdiction to address environmental criminal offences, it becomes difficult to talk about their viability to address trans-boundary environmental crimes. This does not mean, however, that the regional courts do not have a potential to address trans-boundary environmental crimes.

Justice Nsekela hastened to inform the participants that even without criminal jurisdiction, regional courts,

and especially the East African Court of Justice, could contribute towards the fight against trans-boundary criminal offences by directing the states to take appropriate measures in this regard. The European Communities' Court of Justice which, like the EACJ, does not have criminal jurisdiction, played an important role in the development of the Directive of the European Parliament and of the Council on the protection of the environment through criminal law. According to the [European] Court's findings in its judgement of 13 September 2005, although neither criminal law nor the rules of criminal procedure fall within the Community's competence, nothing prevents

the Community legislature, when the application of effective, proportionate and dissuasive criminal penalties by the competent national authorities is an essential measure for combating serious environmental offences, from taking measures which relate to the criminal law of the Member States which it considers necessary in order to ensure that the rules which it lays down on environmental protection are fully effective.³

Conference Report

Day 2

Session 3: Climate change

Session 4: Maritime security and piracy

Session 5: Population, migration and the environment

Closing ceremony

Session 3

Climate change

AFRICA'S COMMON POSITION

Day 2 commenced with presentations focusing on climate change in Africa. In his presentation on Africa's common position and its basis, Dr Strike Mkandla, UNEP's representative to the AU, the UN Commission for Africa (UNECA) and Ethiopia, informed the participants that this time around Africa had been more prepared for the 15th Conference of Parties (COP) to the UNFCCC at which a major agreement was to be reached on the future of the planet, especially in relation to the reduction of the emission of greenhouse gases. He went on to tell the participants that Africa had acted on several levels in preparation for the climate change negotiations. These included:

- The pivotal role played by the African Ministerial Conference on Environment (AMCEN)
- The support given to the African negotiators (chaired by Algeria) as a strategic move to ensure adequate preparation
- The historic decision (Decision 2: Climate change) of the 12th session of AMCEN, Johannesburg 2008
- The African common position on global climate change negotiations
- The comprehensive framework of African climate change programmes
- The creation of an African high level expert panel on climate change (AHLEPCC)
- The compilation of an indicative list of climate change decisions
- The decisions and declarations of the AU summits of January 2007 and 2009, endorsing AMCEN outcomes
- The January 2009 Summit's endorsement of the roadmap to Copenhagen proposed by AMCEN

- The January 2009 Summit's approved holding of the 3rd special session of AMCEN, devoted to climate change (May 2009, Nairobi)
- The outcome of the AMCEN special session feeding into the July 2009 Summit in Sirte, Libya, and its being the basis for a continental negotiating position in Copenhagen at the 15th Conference of Parties meeting for the United Nations Framework Convention on Climate Change on the post-2012 Kyoto Protocol regime
- The Africa Union's Summit's adoption of the text of the Nairobi Declaration, which built on the Algiers platform of 2008
- The Sirte Summit setting up the Conference of African Heads of State on Climate Change (CAHOSCC), chaired by P M Meles Zenawi of Ethiopia, with the African Ministerial Conference on Environment (AMCEN) represented by South Africa, Algeria, Libya, Mauritius, Mozambique, Kenya, Uganda, Republic of Congo, Nigeria, Ethiopia, plus the African Union Commission (AUC) chairperson

He informed the participants that the negotiating text developed from the informal negotiations of the Kyoto Protocol Working Group (KP-WG) and the Long Term Agreement Ad-hoc Working Group (LCA-AWG), and that the African position corresponded to the pillars of the Bali Action Plan (BAP) regarding:

- Mitigation
- Adaptation
- Technology transfer
- Financing

Where mitigation is concerned, Africa has emphasised the principle of common but differentiated responsibilities

for any measures that will be undertaken. With regard to adaptation, Africa has called for technology development and transfer to deal with the challenges of adapting to climate change, and in terms of financing, Africa has called for financing of up to US\$67 billion or more per annum for adaptation alone.

INTERNATIONAL HUMAN RIGHTS FRAMEWORK AS A BASIS FOR RESPONDING TO THE IMPACTS OF CLIMATE CHANGE

Dr Rose Mwebaza of the Environmental Security Programme at the Institute for Security Studies in Nairobi made a presentation on the international human rights framework as a basis for responding to the impacts of climate change. She told the participants that her presentation was based on a chapter of a monograph the Programme was producing on environmental governance and climate change in Africa.

She began by saying that climate change posed a great threat to fundamental human rights in Africa. She stated that for a country already struggling to provide the basic human needs of its people such as the right to food, to health and to an adequate standard of living, the projected impact of climate change was bound to make an already existing problem even worse. The predictions that there would be longer and more frequent droughts, as well as increasing shortages of food and water, coupled with the emergence of newer diseases and the spread of newer and older diseases like malaria, Africa's human rights challenges, especially as they related to the right to food, the right to health and the right to water, as well as other rights, would be greatly affected by climate change.

She noted that the international human rights framework was a suitable framework for responding to these impacts, because, among other things, it provided for an accountability framework, a framework for public participation and a framework for monitoring the impact of climate change at a global, regional and national level.

Session 4

Maritime security and piracy

TROUBLED WATERS: THE INTERPLAY OF INTERNATIONAL LAW, PIRACY, POLITICS AND THE SECURITY OF MARITIME RESOURCES

This was a vibrant session. The presentations started with Dr Kindiki Kithure, Associate Dean, School of Law, University of Nairobi, who spoke on ‘Troubled waters: the interplay of international law, piracy, politics and the security of maritime resources’. Dr Kindiki Kithure’s presentation focused on the extraordinary growth in piracy on the coast of Somalia and how this had led to the emergence of a multi-pronged international response.

He observed that the international crime of piracy, like the slave trade, had been believed to have largely disappeared in modern times, or at least to have fallen to levels that would not demand international attention. But to the contrary, for the past few years piracy has become endemic off the coast of Somalia, which has had no government in effective control since 1991. In 2008 alone, piracy incidents in the Gulf of Aden doubled compared to the 2007 levels. However, the surge in sea robbery in 2009 is unprecedented, and perhaps the most significant occurrence of this crime in nearly 200 years.

He highlighted how the upsurge of piracy cases had prompted unprecedented naval cooperation. An expanding coalition has been patrolling the Gulf of Aden, with

Photo 5 Participants listening to the presentations



the navies of the United States, France and India playing leading roles. The coalition now includes the first-ever EU naval force and China's first-ever naval deployment outside the South China Sea. This flotilla of ships from about two-dozen countries is being coordinated by the United States. The patrols have successfully prevented or interrupted numerous instances of piracy, and naval forces from the coalition have often exchanged fire with the pirates. So far, however, the impact of the patrols has been more to ward off pirates, rather than to pursue and apprehend them, which is an inadequate strategy for deterring piracy motivated by enormous financial gains.

He then proceeded to highlight the role of the UN Security Council, which in 2008 alone passed five separate resolutions relating to piracy off Somalia – more resolutions than on any other issue that year.⁴ Each of these resolutions was passed pursuant to UN Charter Chapter VII powers, under which the Security Council may authorise the use of force to counter threats to international security. These resolutions have bolstered the confidence of the international armada by extending the authority of the navies beyond acts permitted by customary international law on piracy. Besides the Security Council's authorisation to use force, the international law in the United Nations Convention on the Law of the Sea (UNCLOS) confers on states *universal jurisdiction* to act against foreign piracy on the high seas. The definition of piracy is limited to acts occurring on the high seas, and authorisation of seizure of pirate ships applies only if they are used for piracy on the high seas.⁵

Dr Kindiki Kithure's presentation also touched on the important subject of international and national courts regarding piracy. He noted that, as a crime under international law, piracy was punishable by international courts and tribunals. However, none of the existing ad hoc international criminal tribunals and hybrid courts has jurisdiction over piracy. The International Criminal Court (ICC) too has its jurisdiction regarding 'crimes which are of the greatest interest to the international community as a whole', and these are stated to be genocide (Article 6 of the ICC Statute), crimes against humanity (Article 7) and war crimes (Article 8). The treaty more related to piracy, the UNCLOS, does create a specialised international judicial organ, the Hamburg-located International Tribunal on the Law of the Sea (ITLOS), but this tribunal's jurisdiction is limited to interstate maritime disputes and it has neither criminal nor individual jurisdiction.

Finally, he emphasised that unless piracy was curtailed immediately, it was poised to destroy international commerce to and from the area between the Suez Canal and down the east coast of Africa as far as the pirates were able to go. He observed that the latest run of pirate attacks had spawned unusual, but impressive and unprecedented

cooperation in counter-piracy and enforcement measures, and may resuscitate the Suppression of Unlawful Acts (SUA) as a normative supplement of the UNCLOS.

However, international cooperation notwithstanding, the burden of pirate prosecution has been placed on countries neighbouring Somalia, notably Kenya. He observed that using neighbouring countries such as Kenya as a prosecution dumping site for pirates was likely to aggravate the physical security of these countries, especially considering that Kenya and Tanzania had already been targets of devastating terrorist bombings for allegedly being too friendly with the United States. Using Kenya as a trial venue for piracy cases potentially puts the country at greater risk, considering that its border with Somalia is extremely porous and weakly manned, and that the sums involved as ransom are significant and some of it could be used to finance terrorism.

Also, with the Gulf of Aden and the adjacent waters now attaining the dubious distinction of being the most dangerous in the world, environmental crime in the form of illegal fishing and the appropriation of living resources, especially of the anadromous, catadromous and sedentary species and of the straddling stocks, will be exacerbated.

In the absence of an effective international strategy that incapacitates pirates, shippers are likely to turn to private security companies and other do-it-yourself solutions, a scenario that will greatly undermine the legitimacy of the already-battered international rule of law, particularly the law of the sea.

PIRACY IN INTERNATIONAL LAW: PROSECUTION IN NATIONAL COURTS

Mr M K Rao, Advisor (Legal Affairs), Ministry of Foreign Affairs, Seychelles, gave a presentation at this session titled 'Piracy in international law: prosecution in national courts'. Mr Rao noted that there was an international duty on all states to cooperate in dealing with the issue of piracy. He informed participants that piracy, as defined under international law, consisted of any of the following acts:

- i. Any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - a. On the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft
 - b. Against a ship, aircraft, persons or property in a place outside the jurisdiction of any state
- ii. Any act of voluntary participation in the operation of a ship or aircraft with knowledge of facts making it a pirate ship or aircraft

- iii. Any act of inciting or of intentionally facilitating an act described in subparagraph i) or ii)

Piracy is also:

- i. An illegal act of violence or depredation
- ii. Committed on high seas or a place beyond the jurisdiction of any country (such as Antarctica)
- iii. for private ends
- iv. by (people in) one private ship/vessel against another (two ships/vessels)

He informed participants that under international law every state could seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the state that carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith. However, where the seizure of a ship or aircraft on suspicion of piracy has been effected without adequate grounds, the state making the seizure shall be liable for any loss or damage caused by the seizure to the state whose nationality the ship or aircraft possesses.

THE CHALLENGES OF PROSECUTING SUSPECTED PIRATES

Advocate Francis Kadima, one of Kenya's foremost defence attorneys for pirates captured and tried under Kenyan jurisdiction, presented a paper on the challenges of prosecuting suspected pirates. He began with a brief overview of the history of piracy, informing the participants that the origins of piracy could be traced to as early as 75 BC when Julius Caesar, emperor of the Roman Empire, was hijacked and held hostage by Sicilian pirates while on his way to Rhodes in the Aegean Sea, now named the Mediterranean Sea. The hijackers or pirates demanded a ransom and the Roman authorities paid double the demanded amount for the release of Caesar. Later, in an act of retaliation, he sent his soldiers to arrest the pirates. They were hanged in public.

In the Atlantic region, the original pirates were the corsairs and privateers who deviated from their normal operations to engage in pirate activities. They not only demanded ransom, but also the goods carried by the ship (i.e. ship robbery).

From the 11th to the 19th centuries, the operations of the Barbary corsairs or pirates spread to North Africa, to Tripoli (now Libya), Algeria, Tunisia and Morocco. They targeted ships in the Mediterranean Sea. During the

rule of the Ottoman Empire, pirates also attacked ships passing through the Red Sea (now known as the Gulf of Aden) and later in the 19th century those using the Suez Canal and sailing to Europe from the Far East. These pirates demanded taxes for the safe passage of crew and cargo, and used this as an excuse to rob the ships.

During this time, it is estimated that the Barbary corsairs or pirates captured between 800 000 to 1,25 million Europeans from Italy, Portugal, Spain, France, England, The Netherlands, Ireland, Iceland and North America. These captives were used or sold as slaves. In 1785 two ships, the *Maria* of Boston and the *Dauphia* of Philadelphia, were seized, their cargo sold and their crew enslaved and held for ransom. In 1803 a United States naval ship with 300 officers was sent to guard American merchant ships against attacks. However, this ship was itself hijacked and the pirates used the weapons on board to attack and rob other ships until the ship ran aground and the United States sent reinforcements.

These incidents of piracy started to spread to the Far East and began to interfere both economically and in terms of security with sea communications. The League of Nations was thus prompted to pass a resolution defining piracy as a commercial crime threatening marine life and the lives of seamen and passengers, as well as maritime security and the world economy. The League of Nations demanded that maritime nations put in place a proper legal framework to curb sea piracy. This caused the pirates to move from the Atlantic to the Indian Ocean, where they hid among the islands of Seychelles, Madagascar and Mauritius, among others, and used these as their bases for their piracy activities.

Later terrorist activities started to spread to the sea. In the early 1970s, the Palestinian Liberation Front hijacked an oil tanker in the sea near Bab-el-Mandeb and demanded that Israel not be supplied with crude oil. This incident prevented many ships from passing through the Suez Canal and trade in the Aden area was affected. The resultant international concern led to the United Nations Convention on the Law of the Sea. However, the drafters of the Convention encountered problems with defining piracy, identifying those responsible for arresting the pirates, stipulating the place of trial for piracy, and deciding on the applicable law, who would prosecute the pirates and what would follow a piracy trial and sentencing.

In his substantive presentation, Advocate Kadima informed the participants of the numerous challenges the prosecution of piracy cases posed. The foremost is the issue of framing the charges as the insufficient particulars of many of the pirates brought to court with little or no documentation makes prosecution extremely difficult. Another challenge is that of providing bond to people accused of piracy. Legally and under the laws of Kenya persons

accused of piracy are entitled to bond, but the Kenyan government is often reluctant to grant this bond. Further, Advocate Kadima stated that the investigations to facilitate the prosecution of pirates were often tainted because often the first people to access a ship intercepted for piracy were international coast guards, many of whom did not know the exacting legal standards required to contain and prepare evidence for the prosecution of piracy cases.

In addition, the technicality of the subject raises many challenges. Piracy is an offence committed at sea. The language of the sea, of the naval officers, and of the crew has technical meaning. Words such as 'port side' (left side of the ship), 'starboard side' (right of ship), 'fore peak' (star front), 'after peak' (far hind), ship communication, bridge-to-bridge communication, 'horseshoe formation' (circling the suspect pirate ship) and others, if not translated accurately convey a totally different meaning.

Visits to the locus in quo or scene of the crime, which is important in helping the prosecutors and judges to understand and clarify some of the issues in cases of piracy, are often denied by the government on grounds of security. While this is understandable, it often means that vital information may not be available for the full use of the prosecutors. The language barrier also poses a potential threat in the prosecution of pirates. Advocate Kadima cited an example of a Swedish witness with a prosecutor communicating to him in English through a Swedish interpreter, while at the same time a Somali interpreter communicated the same subject matter to the accused person. Each has to wait for the communication to be completed before replying in his own language, which,

in turn, has to be interpreted. This slows the trial process immensely and is open to error as the court (magistrate, prosecutor, defence counsel) and by extension the public in attendance are strangers to both Somali and Swedish. The only way to speed up the trials and avoid mistakes that could occasion a miscarriage of justice would be if the trials took place where both languages were understood ordinarily or if specialised tribunals were formed within the region with special facilities to address trial issues.

He informed participants that there was a general lack of confidence in the Kenyan court system where most of the piracy cases had been tried. The accused persons have repeatedly voiced their lack of confidence in the Kenyan judicial process on the basis that the memorandum of understanding (MOU) that the government of Kenya has signed with other states is meant to persecute them. This situation is made worse by the fact that the transitional government of Somalia is not part of the MOU. The prosecutor is therefore in a position of prosecuting a person who has no confidence in the process.

On the other hand, there is also the issue of the neutrality of Kenya given that Kenya fought the 'Shifta war' with Somalia (1967–1971) in the then Northern Frontier District.

Last but not least, Advocate Kadima also noted the challenge posed by the lack of facilities to prosecute piracy cases. He informed participants that magistrate's courts, which were the first courts of instance in which piracy cases were tried, often lacked basic services such as stenographers to correctly and accurately record the proceedings.

Session 5

Population, migration and the environment

This session consisted of two presentations. The first focused on population growth and the environment, and the second on international and national legal challenges of environment or climate change-induced migrations.

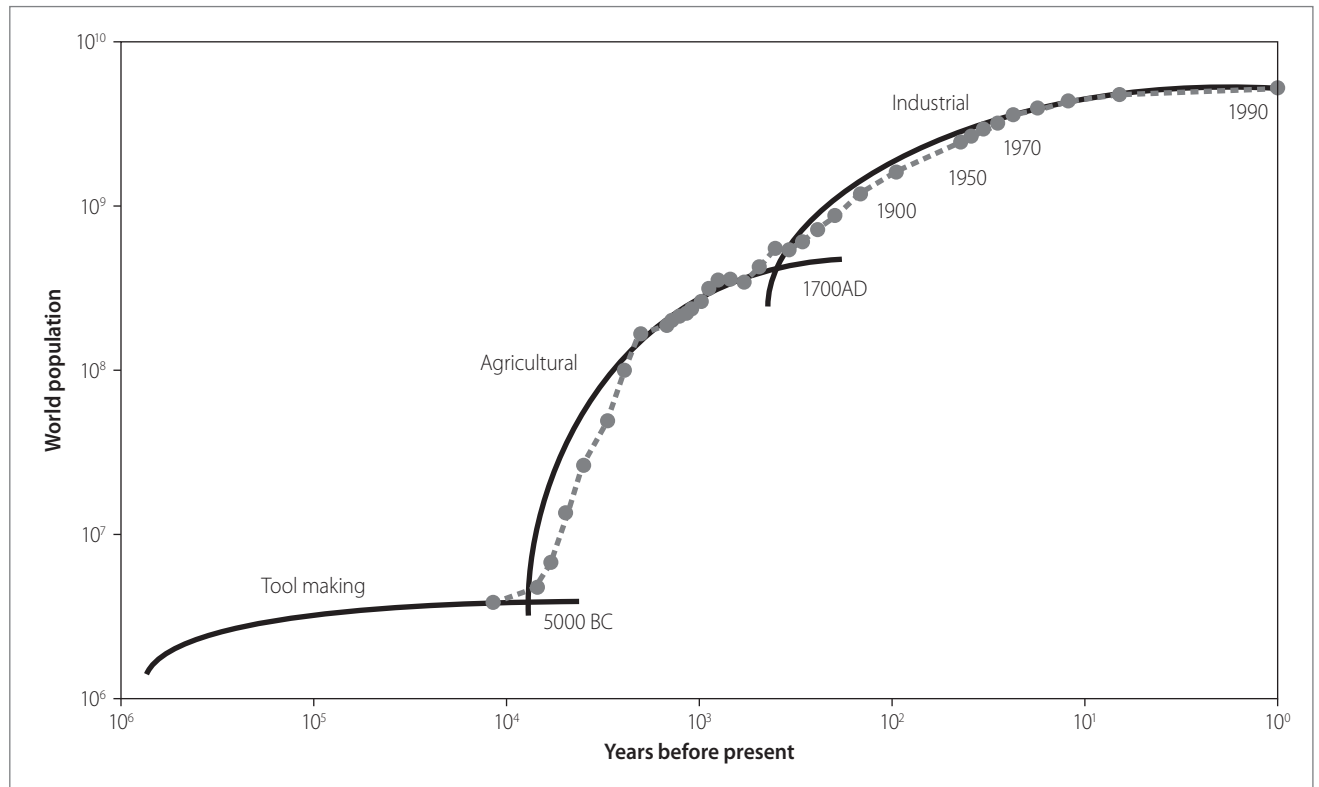
POPULATION GROWTH AND THE ENVIRONMENT

For the first presentation, Mr Nicodemus Kisengese of the Aeras Foundation in Cape Town, South Africa, spoke

of the global impact of human population growth on the environment. He informed participants that there had been an exponential growth in global population over the three technological eras, as depicted in the Figure 1.

He also informed the participants that the exponential growth in the human population could basically be attributed to increased fertility rates, decreased mortality rates and longevity. In addition, the Industrial Revolution had brought with it growth in cities and infrastructure, including services such as water, energy and transportation,

Figure 1 Three technological eras



Source N Kisengese

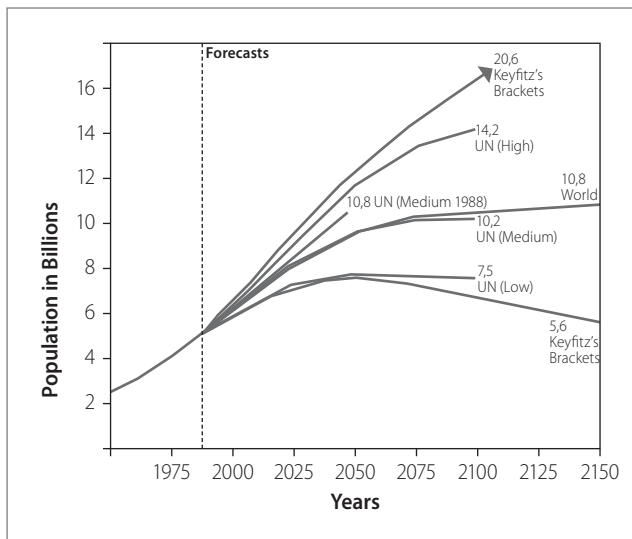
Photo 6 Mr Kisengese delivering his presentation



all of which made life more comfortable and thus led to enhanced population growth. Furthermore, increased productivity and services such as access to good nutrition, water and sanitation could be used to explain the growth in population since the Industrial Revolution. The domestication of animals and industrialisation of agriculture also meant that more people could be fed, thus contributing to global population growth. Advances in medicine, including that for HIV/Aids, allow people to live longer and have played an important role in enhancing global population growth.

He provided information on predictions of future population growth, which basically indicated that, even with modest predictions and declines in fertility and growth in developed countries, there was bound to be a growth in global populations as indicated in Figure 2.

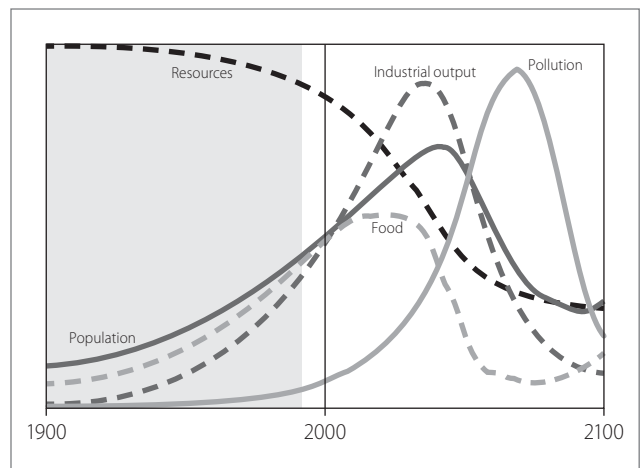
Figure 2 Population predictions



Source N Kisengese

Further, there is a real danger that the population growth may overshoot and outpace the available resources as shown in Figure 3.

Figure 3 Population may overshoot



Source N Kisengese

Given the projection that the population may overshoot and outpace resource availability, it is clear that the global commons are in danger. Mr Kisengese proposed some approaches that could be followed in order to deal with this challenge. He stated that technology could play an important role in dealing with the current global challenges posed by the exponential growth in population, because it provided detailed information and understanding of what was occurring through remote sensors, data processing, computers, models, predictions, communication and information. He also mentioned that alternate technologies could provide mitigating actions to eliminate the deleterious effects of human activity as well as provide alternatives for energy, transport and communication.

In addition, there will be a need to deal with the problem of massive migration and rising populations, which will include improved and more effective urban planning and urban environmental management.

Most importantly, Mr Kisengese noted that while population growth had slowed, the absolute number of people continued to increase by about 1 billion every 13 years. Slowing population growth would help improve living standards and would buy time to protect natural resources. It is therefore imperative for the world population to stabilise.

ENVIRONMENTAL OR ECOLOGICAL REFUGEES

Dr Edwin Abuya completed the day's proceedings by addressing the emerging but important issue of environmental

or ecological refugees. He asked whether policy-makers could protect environmental or ecological or even climate migrants. He explained that there were two recognised categories of displaced people: refugees and internally displaced people. He pointed out that neither of these two categories addressed the issue of environmental or ecological or climate migrants or refugees, and yet there were clear cases emerging of people who would soon become stateless because of climate change, for example the case of Tivalu, Kiribati and the Maldives. He therefore called for a more realistic and holistic approach to dealing with the problem of ecological or climate refugees, which was a growing phenomenon and could not continue to be ignored. He said there was a need to take a rights-based approach in this regard to ensure that the rights of the communities forced to migrate because of ecological or climate reasons were protected in both international and national law.

Closing ceremony

The conference was brought to a successful conclusion by the Seychelles Minister for Environment, the Honourable Joel Morgan. In his closing speech, the minister said that judges and legal persons were viewed by their fellow citizens as highly trained and intelligent members of the community who should be able to provide legal guidance on a wide range of matters. Should they fail to embark on a lifelong learning journey, they will clearly fail to provide quality service to the society they serve.

He informed the judges and other participants that piracy had become a scourge that was threatening the very existence of several of the small island states in the Indian Ocean. Years ago, when this piracy had started in the Gulf of Aden and along the Somali coast, it had been perceived as insignificant and far away. However, pirates are now enhancing their capacity by increasing the number of boats and men at sea and thereby covering a geographical range from the Maldives to the Comoros. Now not a single day passes without the government of Seychelles' surveillance planes encountering them. He emphasised that he could not adequately stress how serious this threat was to the security of Seychelles, its main economic activities and the long-term development of the country. He said that Seychelles, with the support of the international community, had invested considerable resources in patrolling the seas around the country, but the greatest stumbling block remained the problem of bringing these criminals to justice.

Therefore, he called on the honourable judges and learned legal practitioners to provide the right answers to these legal questions. He said that solutions that would provide the necessary security and stop the pirates from

terrorising ordinary men and women trying to earn a decent living at sea were needed. He stated that for too long the international community had disappointed the victims of piracy because the existing maritime legal framework seemed to protect the criminals rather than their victims.

The minister also addressed the very important issues of environmental crime. He stated that the Seychelles government had always made one of its main priorities the protection and conservation of its huge wealth of species and ecosystems. While for many countries this may seem to be a luxury, Seychelles has for many years appreciated the importance of safeguarding its green gold because of its importance to the long-term sustainable development of the country. He said that Seychelles never failed to reiterate the fact that the environment formed the basis for the two main economic activities of the country: tourism and fisheries. He informed the participants that tourists who visited Seychelles were always bewitched by its beauty, greenery and cleanliness – qualities that were rare and difficult to find elsewhere today. He added that when a person littered in the roads, or polluted the beaches and rivers, he was destroying the Seychelles economy. Furthermore, when a person kills a turtle or a dolphin, or fells a palm and steals an immature coco de mer nut that could have provided an extraordinary experience to countless numbers of tourists and Seychellois alike, he is destroying the Seychelles economy and attacking the very livelihood of many Seychellois.

It was for this reason, he informed the honourable judges, that Seychelles did not pay lip service to environment crimes – these eroded the very basis of the existence of its people and put the future development of the country in peril.

In closing, he thanked all the honourable judges and learned legal practitioners for taking time off their busy schedules to come to Seychelles to participate in this very important conference.

He also thanked the Institute for Security Studies (ISS) and the Eastern Africa Police Chiefs Cooperation Organisation (EAPCCO) for funding and organising the workshop.

Conference Report

Day 3

Field visit to the world-famous Vallee de mai

Field visit to the world-famous Vallee de mai

The government of Seychelles through the Ministry of Environment organised a one-day tour for the judges to the world-famous heritage site of the Vallee de mai, home to the unique coco de mer. The coco de mer (*Lodoicea maldivica*), the sole member of the genus *Lodoicea*, is a palm endemic to the islands of Praslin and Curieuse in the Seychelles. It formerly also occurred on St Pierre, Chauve-Souris and Ile Ronde (Praslin) in the Seychelles group, but has become extinct on these islands.

The palm grows 25 to 34 metres tall. The leaves are fan shaped, 7 to 10 metres long and 4,5 metres wide with a 4 metre petiole. It is dioecious, with separate male and female plants. The male flowers are catkin like and up to a metre long. The mature fruit is 40 to 50 centimetres in diameter, weighs 15 to 30 kilograms and contains the largest seed in the plant kingdom. The fruit, which requires 6 to 7 years to mature and a further 2 years to germinate, is sometimes also referred to as the sea coconut, double coconut, coco fesse, or Seychelles nut.

Legend has it that the sailors who first saw the nut floating in the sea imagined that it resembled a woman's

Photo 7 Entrance to the Vallee de mai



Photo 8 Judges on the ferry to Vallee de mai



Photo 9 Justice Duncan Gaswaga of the Court of Appeal in Seychelles showing participants the famous coco de mer



Photo 10 Judges getting off the bus at the Vallee de mai



disembodied buttocks. This association is reflected in one of the plant's archaic botanical names, *Lodoicea callipyge* *Comm. ex J. St.-Hil.*, in which 'callipyge' comes from Greek words that mean 'beautiful rump'. Other botanical names used in the past include *Lodoicea sechellarum* *Labill* and *Lodoicea sonneratii* (*Giseke*) *Baill.*

Until the true source of the nut was discovered in 1768, many people believed that it grew on a mythical tree at the bottom of the sea. European nobles in the 16th century would often have the shells of these nuts cleaned and decorated with valuable jewels as collectables for their private galleries. The coco de mer is now a rare protected species.

Photo 11 Participants waiting to explore the Valee de mai



The name of the genus, *Lodoicea*, is derived from Lodoicus, the Latinised form of Louis, in honour of King Louis XV of France.

The species is grown as an ornamental tree in many areas in the tropics, and subsidiary populations have been established on Mahé and Silhouette islands in the Seychelles to help conserve it.

The judges were extremely pleased to visit this world-famous site, which many of them had never heard of before coming to Seychelles. They were particularly impressed by how much the government of Seychelles had invested in preserving the rare species.

List of participants

| Name | Designation |
|------------------------------|---|
| Alexandra Madeleine | State Counsel, Attorney General's Office, Seychelles |
| Amare Amogne | Judge of the Federal Supreme Court, Ethiopia |
| Amina Tumaye | Public Prosecutor, Attorney General's Office, Seychelles |
| Angel Barbe | Senior Public Prosecutor, Attorney General's Office, Seychelles |
| Bernardin Renaud | Judge of the Supreme Court, Seychelles |
| Bart M Katureebe | Judge of the Supreme Court, Uganda |
| Caunhye Ashraf | Judge of the Supreme Court, Mauritius |
| Danis Matakinen | Director General Department of Environment, Seychelles |
| David Ombisi | Programme Officer, UNEP |
| Divino Sabino | Attorney at Law and Secretary of Bar Association, Seychelles |
| Dr Haider Ahmed Daffalla | Judge of the Supreme Court and Head of Training Department, Sudan Judiciary, Republic of Sudan |
| Dr Kithure Kindiki | Associate Dean, School of Law, University of Nairobi, Kenya |
| Dr Nightingale Rukuba-Ngaiza | Senior Legal Counsel, World Bank |
| Dr Shelton Jolicoeur | Counsellor at Law and Notary Mahe, Seychelles |

| Name | Designation |
|------------------------------|--|
| Edwin Abuya | Lecturer, School of Law, University of Nairobi, Kenya |
| Eliamani G Mbise | Judge of the High Court, Judiciary of Tanzania |
| Elizabeth Musoke | Judge of the High Court, Judiciary of Uganda |
| Flavier Janbet | Director General, WEP Division, Department of Environment, Seychelles |
| Francis Kadima | Advocate of the High Court of Kenya, Kadima & Company Advocates, Mombasa, Kenya |
| Fredrick Egonda-Ntende | Chief Justice of the Supreme Court, Seychelles |
| Hima Nalini Matadeen | Judge of the Supreme Court, Mauritius |
| Hon Justice A Mboghli Msagha | Principal Judge, High Court of Kenya |
| Hon Justice Duncan Gaswaga | Judge of the Supreme Court, Seychelles |
| Hon Justice Harold R Nsekela | President, East African Court of Justice |
| Joel Morgan | Minister for Environment and Natural Resources, Seychelles |
| Juliana Legaire | Legal Officer, Department of Environment, Seychelles |
| Justice Mohammed Ibrahim | Judge of the High Court, Kenya, Mombasa |
| Kabalira Stanislas | Judge of the Supreme Court, Rwanda |
| Kamanzi Dalaus | Judge of the Supreme Court, Rwanda |
| Kieran Shah | Member of the Seychelles Bar, Seychelles |

| Name | Designation |
|---------------------------|---|
| M K Rao | Legal Advisor, Ministry of Foreign Affairs, Seychelles |
| Mary Ancilla Ntakaburimuo | President of the Supreme Court, Burundi |
| Maurice Odhiambo Makoloo | Director, Institute for Law and Environmental Governance, Kenya |
| Melchior Vidot | Master and Registrar, Judiciary, Seychelles |
| Melessa Aysheshim | Judge of the Federal High Court, Ethiopia |
| Mohamed Ahmend Al Ebaid | Judge of the General Court, Sudan Judiciary |
| Goodluck Mongi | Regional Specialised Officer, Interpol Regional Bureau, Nairobi |
| Mpagi-Bahigeine A | Justice of Appeal, Uganda Judiciary |
| Mukhtar Ibrahim Adam | Judge, Sudan Judiciary |
| Ndinda N Julien | Judge of the High Court, Supreme Court, Rwanda |
| Nicodemus Kisngese | Clinical Development Associate/ Epidemiology, AERAS Global TB Vaccine Foundation, Cape Town, South Africa |
| Rita Teelock | Master and Registrar, Supreme Court of Mauritius |
| Samantha Aglae | State Counsel, Attorney General's Office, Seychelles |
| Selassie Teshager G | Judge of the Supreme Court, Ethiopia |
| Semistocles Kaijage | Judge of the High Court, Judiciary of Tanzania |
| Steven Bwana | Judge of the Court of Appeal, Tanzania |
| Strike Mkandla | Representative to AU/UNECA of UNEP, Addis Ababa, Ethiopia |
| J. W. Onyango Otieno | Judge, Court of Appeal, Kenya |

| Name | Designation |
|-----------------------|---|
| Maureen Gabriel | Event Organiser, Seychelles |
| Jemina Lucas | Head of Secretariat, Seychelles |
| Laura Lalande | Assistant Head of Secretariat Supreme Court of Seychelles |
| Danielle Onezia | Secretariat, Supreme Court of Seychelles |
| Randy Boniface | Driver, Secretariat, Supreme Court of Seychelles |
| Gervais Moumou | Protocol Officer, Seychelles |
| Mr Joubert | Sub-Inspector Policy, Seychelles |
| Michael Bamboche | Seychelles |
| Dr Wilson Kipkore | Programme Head, Environmental Security Programme, ISS, Nairobi |
| Dr Donald Mwiturubani | Senior Researcher, Environmental Security Programme, ISS, Nairobi |
| Samira Yusuf | Programme Assistant, ISS, Nairobi |
| Deborah Akoth | Researcher, Environmental Security Programme, ISS, Nairobi |
| Philip Njuguna | Researcher, Environmental Security Programme, ISS, Nairobi |
| Dr. Rose Mwebaza | Senior Legal Advisor, Environmental Security Programme, ISS, Nairobi |
| Fidelia Imai | Programme Administrator, Environmental Security Programme, ISS, Nairobi |
| Kiio Kavila | Finance Officer, ISS, Nairobi |
| Jane Mutisya | Human Resources and Office Coordinator, ISS, Nairobi |

Conference programme

| DAY 1: 30 November | |
|--------------------|---|
| 08:00–09:00 | Registration of participants |
| 09:00–11:00 | <p>Opening of conference <i>Chair: Hon Justice Duncan Gaswaga, Court of Appeal, Seychelles</i></p> <p>Welcoming remarks <i>Representative of the government of Seychelles/ISS ESP Programme Head/Head</i></p> <p>Opening speech <i>Hon Justice Fredrick Egonda-Ntende, Chief Justice of Seychelles</i></p> <p>Keynote Address</p> <p>Overview of the environmental challenges facing Africa in the 21st century <i>Dr Nightingale Rukuba Ngaiza, Senior Legal Counsel, World Bank</i></p> <p>Presentation: Environmental governance and security in Africa <i>Mr David Ombisi, Regional Office for Africa, UNEP</i></p> <p>Discussions</p> |
| 11:00–11:30 | Tea break |
| 11:30–13:00 | <p>Session I: Environmental crimes</p> <p>The nature and extent of environmental crime in Eastern Africa <i>Dr Wilson Kipkore, Head, Environmental Security Programme, ISS</i></p> <p>Managing trans-boundary environmental crime <i>Mr Awad Dahia, Head Interpol Regional Bureau for Africa</i></p> <p>The role of the judiciary in combating environmental crime <i>Justice J W Onyango-Otieno, Court of Appeal, Kenya</i></p> <p>Discussions</p> |
| 13:00–14:00 | Lunch break |
| 14:00–16:30 | <p>Session II: Managing Trans-Boundary Environmental Crime</p> <p>The East African Protocol on the Environment as a framework for combating natural resources conflicts and environmental crime in Eastern Africa <i>Mr Maurice Odhiambo, Director, International Law Environmental Governance</i></p> <p>The East African Court of Justice as a mechanism for addressing trans-boundary environmental crimes <i>Hon Justice Harold Reginald Nsekela, President of the East African Court of Justice (EACJ)</i></p> <p>Discussions</p> |
| 16:30 | Tea break |

| DAY 2: 1 December | |
|-------------------|---|
| 9:00–10:30 | <p>Session III: Climate change</p> <p>The impact of climate change in Africa <i>Dr Strike Mkandla, UNEP representative to AU, UNECA and Ethiopia</i></p> <p>Responding to the impacts of climate change in Africa through the international human rights framework <i>Dr Rose Mwebaza, Senior Legal Advisor, ISS</i></p> <p>Discussions</p> |
| 10:30–11:00 | Tea break |
| 11:00–13:30 | <p>Session IV: Maritime security and piracy</p> <p>The law and politics of international maritime security: Piracy, conflicts and maritime resources <i>Dr Kindiki Kithure, Associate Dean, School of Law, University of Nairobi</i></p> <p>Piracy and international law: An analysis of the judicial cooperation and piracy adjudication in the region <i>Seychelles, High Court Judge</i></p> <p>The legal challenges of prosecuting suspected pirates in the region <i>Adv. Francis Kadima, defence lawyer</i></p> <p>Discussions</p> |
| 13:30–14:30 | Lunch |
| 14:30–16:30 | <p>Session V: Population, migration and the environment</p> <p>Population growth and the environment <i>Mr Nick Kisengese, AERAS Foundation, Cape Town</i></p> <p>International and national legal challenges of environment/climate change-induced migrations <i>Dr Edwin Obuya, School of Law, University of Nairobi</i></p> <p>Discussions</p> <p>Closing <i>Government of Seychelles/ISS</i></p> |
| 18:30 | Cocktails |

Notes

- 1 S Soyland and M Prabhu (eds), *Criminal law and its administration in international environmental conventions*. Summary of proceedings of a regional workshop at Apia, Samoa 22–26 June 1998, <http://www.unicri.it/wwk/publications/books/reports/r12.php> (accessed 28 October 2009).
- 2 Chapter 19, *Treaty establishing the East Africa Community*, East African Community, (EAC 1999).
- 3 *Commission of the European Communities v Council of the European Union*, C-176/03 pars 47 and 48.
- 4 United Nations Security Council, Resolution 1816, 2 June 2008; Resolution 1838, 7 October 2008; SC Resolution 1844 20 November 2008; SC Resolution 1846, 2 December, 2008; and Resolution 1851, 16 December 2008, Location: Publisher.
- 5 United Nations, *Convention on the Law of the Sea*, 1833 UNTS 3, Location: Publisher, 1982, See article 101(a) and article 105 respectively.



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