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*Paper laid by Hon. Karekei
Mbiuki MP
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Env & Natural Resources
Tuesday 31/7/2018
Aph*

TWELFTH PARLIAMENT – SECOND SESSION

DEPARTMENTAL COMMITTEE ON ENVIRONMENT AND NATURAL
RESOURCES

REPORT OF THE DELEGATION TO THE WORKSHOP ON LEGAL READINESS
FOR CLIMATE FINANCE HELD AT KING'S COLLEGE LONDON, 9TH - 11TH
MARCH 2018

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ABBREVIATIONS

MDBs	-	Multilateral Development Banks (MDB)
NDC	-	Nationally Determined Contributions
SDGs	-	Sustainable Development Goals
TAP	-	Technical Assistance Program
UN	-	United Nations
UNFCCC	-	United Nations Framework Convention on Climate Change

1.0 PREFACE

This Report documents the experiences of a delegation to the Workshop on Legal Readiness for Climate Finance held at King's College London, 9th - 11th March 2018, London, United Kingdom.

1.1 Committee's Mandate

The Departmental Committee on Environment and Natural Resources is one of the fifteen (15) Departmental Committees of the National Assembly established under Standing Order 216 whose mandates, pursuant to the Standing Order 216 (5,) are as follows:

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
- c) To study and review all the legislation referred to it;
- d) To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
- (fa) To examine treaties, agreements and conventions;
- g) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- h) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- i) To examine any questions raised by Members on a matter within its mandate.

The subject matter of the Departmental Committee on Environment and Natural Resources are stated in the Second Schedule of the National Assembly Standing Orders No. 216 (f) as follows: climate change, environment management and conservation, forestry, water resource management, wildlife, mining and natural resources, pollution and waste management.

1.2 Oversight

In executing its mandate, the Committee oversees the following Government Ministries and Departments namely: -

- a) The Ministry of Environment and Forestry;
- b) The Ministry of Water and Sanitation;
- c) The State Department for Mining; and
- d) The State Department for Wildlife

1.3 Members of the Committee

The Committee comprises the following Members.

1. **The Hon. Japhet M. Kareke Mbiuki, MP – Chairperson**
2. **The Hon. Sophia Abdi Noor, MP – Vice-Chairperson**
3. The Hon. Ali Wario Guyo, M.P.
4. The Hon. Amin Deddy Mohamed Ali, M.P.
5. The Hon. Beatrice Cherono Kones, M.P.
6. The Hon. Benjamin Dalu Tayari, M.P.
7. The Hon. Benjamin Jomo Washiali, M.P.
8. The Hon. Charity Kathambi Chepkwony, M.P.
9. The Hon. Charles Ong'ondo Were, M.P.
10. The Hon. David Kangogo Bowen, M.P.
11. The Hon. Francis Chachu Ganya, M.P.
12. The Hon. Hassan Oda Hulufu, M.P.
13. The Hon. Hilary Kiplang'at Kosgei, M.P.
14. The Hon. Nasri Sahal Ibrahim, M.P.
15. The Hon. Peter Kimari Kihara, M.P.
16. The Hon. Paul Musyimi Nzengu, M.P.
17. The Hon. Rehema Hassan, M.P.
18. The Hon. Rozzah Buyu, M.P.
19. The Hon. Said Hiribae, M.P.

1.4 Secretariat

The Committee is serviced by the following Members of Staff:

- | | |
|----------------------|----------------------|
| 1. Ms. Esther Nginyo | Clerk Assistant III |
| 2. Mr. Dennis Mogare | Clerk Assistant III |
| 3. Mr. Salem Lorot | Legal Counsel II |
| 4. Ms. Winnie Kulei | Research Officer III |
| 5. Ms. Amran Mursal | Fiscal Analyst III |

1.5 Delegation

The delegation that participated in the workshop was comprised of.

1. **The Hon. Beatrice Cherono Kones, M.P. (Leader of Delegation)**
2. The Hon. Hassan Oda Hulufu, M.P.
3. The Hon. Said Hiribae, M.P.
4. Mr. Dennis Mogare Ogechi (Delegation Secretary)

1.6 Acknowledgement

The Delegation is thankful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its preparation to participate in the workshop and during the actual participation in the workshop. Equally, the King's College London is commended for its coordinative role that ensured effective participation of the delegation at the workshop.

It is, therefore, my pleasant duty and privilege, on behalf of the delegation and by extension the Departmental Committee on Environment and Natural Resources, to table its Report in the House on the Workshop on Legal Readiness for Climate Finance held at King's College London from 9th - 11th March 2018, London, United Kingdom, pursuant to Standing Order 199 (6).

Signed.......... Date 26/07/2018.....

(THE HON. BEATRICE CHERONO KONES, M.P.)

LEADER OF DELEGATION

2.0 BACKGROUND INFORMATION

2.1 Definition of Climate Finance

At present there are no internationally agreed definitions of ‘climate finance’, which has ramifications for tracking flows generally or measuring outcomes and impacts of financial mechanisms such as green bonds. Nonetheless, for the purposes of legal and regulatory analysis, climate finance can be defined broadly as capital that can be sourced and leveraged through international, domestic, public, and private channels, via government or market instruments, to address climate change mitigation and adaptation and the transition to a low-carbon economy

2.2 The hope and scope of Climate Finance Law

Climate Finance Law is an emerging field which the King’s/UN Environment partnership is helping to shape. In the narrowest sense, Climate Finance Law can relate to state obligations arising under the UNFCCC regime. The King’s/UN Environment partnership has taken a broader approach and defined Climate Finance Law as the matrix of laws and regulation, both domestic and international, that mobilise and leverage finance and investment for climate mitigation and adaptation. This broad definition is seen as most true to how law and regulation for climate finance is manifesting in practice and it embraces legal and financial plurality. Work of the partnership will continue to inform and refine definitional concepts in this space.

The ultimate aspiration of Climate Finance Law must be to help *mainstream green and sustainable finance* through comprehensive legal and regulatory change that has *transformational* potential. Key to fulfilling this aspiration of Climate Finance Law is legal pluralism. Law and regulation interact with institutionalised doctrines and practice and need to be considered in cultural context. So, in this space, law and regulation is considered across a range of domains and includes not only legislation and case-law but also financial and market regulation, soft law (such as industry codes), and contractual legal arrangements. All these dimensions come into play when engaging public and private climate finance; yet so rarely are they identified in this context.

2.3 Definition of ‘legal readiness’ for climate finance

A robust and transparent domestic legal system is key to attracting both public international funds and private sector finance. Yet, as noted by the Office of the General Counsel of the Asian Development Bank, the legal systems of many developing countries do not yet align well with the needs of public or private financiers. What is required is legal readiness for public-private climate finance. This includes:

- Laws and regulation “that have been carefully considered and enacted based on comprehensive assessment, analysis and consultations, [that] can enable access to climate finance and investments and realise NDC targets” and
- Building legal and institutional capacity through knowledge and technical expertise.

‘Legal readiness’ encourages not only increased flows of public-private climate finance, but also transparency, clarity, and accountability of multi-stakeholders by providing the architecture for regulating behaviours and activities. Importantly, legal and regulatory

frameworks can both 'call in' external (multilateral) climate-related funding and also 'put out' endogenous (in-country) investment opportunities. So an important corollary of building legal readiness and capacity for public-private climate finance is that it strengthens country ownership in financial processes. This in turn helps address any concerns that over-involvement by the private sector and/or financial institutions would devolve or contract out government engagement to undermine a country-driven approach.

Given that enabling legal and regulatory environments are so essential to climate finance and NDC implementation, the King's/UN Environment workshop was aimed at addressing the big question: *how can countries 'get' legal readiness?*

3.0 INTRODUCTION

3.1 The Legal Challenge

Climate change mitigation and adaptation will require increased flows of private capital and more effective leveraging of public capital especially to and within developing nations. What role does law and regulation play in enabling public-private climate finance? How can domestic law-makers and regulators support the implementation of the Sustainable Development Goals (SDGs) and the Paris Agreement?

To date, policy-makers and legal and financial practitioners have largely focused on project transactions and climate aid. While valuable, these initiatives lack the systemic approach necessary to generate finance at the scale required, to build project pipeline, and to ensure corollary benefits of enhancing economic and social development in a sustainable way. Truly systemic change will require a critical mass of national frameworks that integrate law and regulation which is ‘fit for purpose’ to de-risk, unlock, mobilise, leverage and mainstream public-private climate finance in-country.

This level of change presents a new challenge for many law-makers around the world. Yet there are some early-moving countries already undertaking legal and regulatory reforms to enable more climate-related investment more quickly and effectively. Learning from the experiences of early-movers first-hand can help other countries to initiate their own legal and regulatory reforms so we can build critical mass for a truly global transformation.

3.2 Workshop Purpose and Design

This report summarises the agenda and findings of the workshop *Climate Finance Law: Legal Readiness for Climate Finance* co-convened by King’s College London and UN Environment as part of an ongoing partnership to stimulate collaborations and mutual learning between public and private stakeholders in developing and developed countries to effect systemic, transformational change. The aim of our partnership is to provide a forum in which countries can assist each other to strengthen their national law and regulation to enable climate finance at scale for implementation of SDGs and Nationally Determined Contributions (NDC) under the Paris Agreement. The ultimate objective is to help build endogenous capacity for autonomy and empowerment.

The purpose of this workshop was to share knowledge about the legal dimensions of climate finance for the benefit of law and policy-makers. Running over three days it provided an opportunity for mutual knowledge-sharing with a focus on Global South-South exchange to help build in-country capacity for legal readiness for climate finance.

In order to tease out learnings about the legal dimensions of climate finance, the workshop was structured around two main components:

1. Scholarly research on the legal dimensions of climate finance and practical tools for analysing legal readiness for climate finance by law and policy makers. This entailed presentation on a Legal Analytical Framework for climate finance under development by King’s College London in partnership with UN Environment; and demonstration

of the Law and Climate Change Toolkit being developed by the Commonwealth Secretariat with UN Environment and UNFCCC.

2. The practical experiences of Mexico and Kenya as early-moving countries that have undertaken legal and regulatory initiatives to open up and enable increased public-private climate finance. Mexico and Kenya were selected as case-studies based on prior research by the King's/UN Environment partnership that showed their initiatives to be comprehensive, innovative, and informative for other countries seeking to reform their own frameworks.

This particular workshop was aimed primarily at the public sector. Delegates comprised 27 invited government and parliamentary officials from Kenya, Mexico and the UK, as well as participants from UN bodies, multilateral development banks, private consultancies, and academia.

4.0 THE WORKSHOP

4.1 The Workshop Agenda

The workshop was held from 9-11 March 2018 at King's College London. The delegates worked together over three sessions with the aims of:

- Identifying concrete actions to improve the enabling legal and regulatory environment for public-private climate finance, linkages with NDC implementation and financing plans, and Paris Agreement and SDG objectives;
- Sharing institutional learning and knowledge exchange between participants from different geographical locations,
- Creating and shaping a new global community of decision-makers in climate finance law

4.1.1 Day 1: Legal Readiness for Climate Finance

The workshop opened with a public event to greet workshop delegates and raise awareness among a broader public audience about the concept of 'Legal readiness for climate finance' and activity in this space. Participants were welcomed to King's College London by Professor Reza Razavi (Vice Principal for Research and Innovation) and Professor Tanya Aplin (Vice Dean for Research, Law). Dr Megan Bowman (Director, Climate Law & Governance Centre) explained the innovative work of the King's College London/UN Environment partnership and the workshop objectives for better understanding the legal dimensions of climate finance.

In introducing the keynote speakers, she applauded the incredible people and institutions working in this space around the world and highlighted the importance of 'joining the dots' for more impactful action. Keynote presentations were then given by Mr Perumal Arumugam (United Nations Framework Convention on Climate Change (UNFCCC) Secretariat) regarding the intergovernmental negotiations process on 'Article 6' international co-operative and market related mechanisms under the Kyoto Protocol and Paris agreement. Mr Steven Malby (Head of the Commonwealth Office of Civil and Criminal Justice Reform) presented on work he is leading to develop a Law & Climate Change Toolkit co-organised by the Commonwealth Secretariat, UNFCCC and UN Environment, as well as the Climate Finance Access Hub developed by the Commonwealth Secretariat.

The third and final keynote speaker was Ms Jenny McInnes (Head of the Partnerships and Capability team in the International Climate Finance Directorate, BEIS) on the UK Technical Assistance Program (TAP) and developing new ways to support the capacity of countries to scale up NDC implementation and deliver Paris commitments.

4.1.2 Day 2: In-Country Case Studies: Learning from Experiences

Day 2 focused on case experiences of Mexico and Kenya in creating and implementing legal and regulatory initiatives to open up and enable increased public-private climate finance. Discussions were led by Leonardo Beltrán of the Mexican Ministry of Energy, Juan Carlos Arrendondo Brun of SEMARNAT, Parliamentarians of the Kenyan National Assembly led by the Hon. Angwenyi Jimmy Nuru Ondieki and Hon. Beatrice Cherono Kones, Chris

Dodwell of Ricardo Energy and Environment, and independent consultant Emelia Holdaway. Discussions focused on the national contexts for energy and climate change, and the experiences, incentives, and challenges around regulatory initiatives and operationalisation to enable climate finance. Break-out sessions also ensured high interactivity between participants. Those sessions involved creating 'wishlists' for optimal enabling legal and regulatory environments; and a 'thought experiment' on jurisdictional replicability taking into account cultural, economic, social and legal contexts.

4.1.3 Day 3: Testing a New Legal Framework

Day 3 focused on the conceptual legal dimensions of climate finance and practical tools for analysing legal readiness for climate finance. The day began with a live demonstration of the Law and Climate Change Toolkit developed by the Commonwealth Secretariat with UN Environment and UNFCCC, which included discussion of a climate finance module for the toolkit. The remainder of the day focused on presentation of a Legal Analytical Framework developed by the King's/UN Environment partnership which analyses and typologises the range of laws and regulation for public-private climate finance. The Framework was applied to the case studies from Day 2, and subsequent break-out groups focused on its applicability and refinement for law and policymakers around the world. At the end of the session delegates were asked to revisit their wishlists to see whether and how the Legal Analytical Framework helped them identify concrete actions for an enabling legal and regulatory environment.

4.2 Case-Study Experiences

Mexico and Kenya are at different stages of development but both have strengths and face challenges regarding law and regulatory reform in this space. Rich discussions in the workshop focused on experiences of triggers for legal and regulatory change, barriers, challenges, strengths, local context, and replicability to other jurisdictions.

In summary:

- Mexico has adopted multi-sectoral legal and regulatory reforms involving amendments to the *1824 Constitution of Mexico* in addition to enacting the *Energy Transition Law 2015* and *General Law on Climate Change 2012*, all of which has enabled private investment and greater NDC ambitions under the Paris Agreement.
- Kenya has focused on enhancing blended finance involving a *Climate Change Act 2016* with supportive policy including a *National Policy on Climate Finance 2017*. It has created a National Climate Fund with regional devolvement to County Climate Change Funds pursuant to the *Constitution of Kenya 2010*, the *Public Finance Management Act 2012*, and regional regulations.

Ongoing challenges shared by workshop participants fell into three main categories:

- Implementation and operationalisation of new law and policy, including issues of: capacity gaps in knowledge and expertise; timeliness of implementing regulation; political will; coherent governance structures; sufficient domestic budgetary allocations for climate actions.
- Engaging the private sector, including issues of: competing business cases for investment in different sectors; balancing adaptation vs. mitigation priorities and

- opportunities; appreciating that 'business' is not homogenous and that Small-Medium Enterprises (SMEs) dominate domestic private sectors.
- Common terminology and language, especially between government, business and civil society; which stakeholders are motivated or deterred by the words 'sustainability' or 'energy security' vs. 'climate change'; harmonising definitions of key terms such as 'clean energy' and 'climate finance'.

4.2.1 Mexico

The legal and regulatory regime for climate finance in Mexico has unfolded across three main legal domains involving a general Climate Change Act, Constitutional change, and an Energy Transition Law. These reform measures and national targets are reflected in its NDC implementation plan.

The first step was triggered by the hosting of COP16 in Cancún in 2010, after which the *General Law on Climate Change 2012* was enacted on 10 October 2012. The Law puts a strong emphasis on adaptation measures to reduce ecosystem and social vulnerability, and includes a national mitigation strategy to be implemented gradually by strengthening domestic capacities and commencing mitigation activities in the most cost-effective sectors such as energy and transport. Supporting the Law and detailing its implementation is a policy rubric, being the National Climate Change Policy, the Special Programme on the Use of Renewable Energy, and the Special Programme on Climate Change.

The Law establishes the basis for integrated legal and regulatory frameworks, the creation of key institutions, and financing measures. Importantly, it establishes:

- Mandatory targets of national GHG emissions reduction by 30% by 2020 below baseline, subject to availability of low-cost financial resources and technology transfer, and by 50% by 2050 below 2000 emissions (art 2).
- A national Climate Trust Fund to channel public, private, national and international financial resources to support implementation of climate actions. Adaptation actions have priority in the use of the fund's resources (art 80).

Moreover, it dovetails with other legislation such as:

- A carbon tax via a 2012 amendment to the *Special Tax Law on Production and Services 1980* that covers the sale and import of fossil fuels and is capped at 3% of the sales price of the fuel. Companies are allowed to pay this tax with credits generated by local CDM projects.
- Highly-structured tax incentives in the *Income Tax Law 2013* for investors in environmentally friendly technologies (art 34).

As a second step, the Mexican Constitution was amended to integrate sustainability as a core principle (art 25) and to allow private participation under contract or permit in most areas of the oil, gas and electricity sectors, which ended monopoly by state-owned power utilities (art 27).

These reforms paved the way for the *Energy Transition Law 2015* which established the National Electricity and Clean Energies Institute to coordinate and technically support all government agencies and private corporations. The reforms implemented a regulatory overhaul (9 new laws and 12 amendments to existing laws) to restructure existing agencies,

update regulation and revise taxation in order to create an open and competitive energy market. It adopts a two-pillared approach to increasing energy efficiency and clean energy with a target of 35% electricity generation from clean energy sources by 2024, including wind, solar, geothermal, waste, biomass and nuclear (providing they do not exceed specified carbon dioxide emission thresholds) (art 1). Moreover, the *Energy Transition Law* and accompanying *2017 Regulations* systematise the clean energy certificate scheme (first introduced and regulated under the *Electricity Industry Law 2014*) and facilitate compliance with emissions reduction goals of the *General Law for Climate Change*.

In workshop discussions, several key attributes of this case were teased out, including how and why:

- The government deliberately examined legal experiences in other countries around the world (both market and emerging economies) and considered local context requirements to inform its approach to enabling private investment in the energy sector.
- During the reform process the government consulted widely with Parliamentarians, NGOs, and the private sector. This has helped to create buy-in by stakeholders, and is reflected in the *General Law on Climate Change* which incorporates a participatory approach for adaptation and mitigation actions “by promoting public participation, listening, and responding to the public and private sectors, and society in general” (art 8.IV).
- High integration of legal and regulatory initiatives for sustainability/climate across multiple legal domains is helping to ensure coherence of governance and is encouraging long term planning into business plans. Amending the Constitution resulted in some certainty for investment and this is supported by short, medium, and long-term policies and targets.
- The Law is dynamic and has undergone several reviews pre- and post-Paris: in 2014 to create a tax on fossil fuels; in 2016 to revise Article 94 to frame an emissions trading system; in 2017 to incorporate Paris Agreement language and some of its content into the Law.

4.2.2 Kenya

The *National Climate Change Action Plan 2013-2017* enshrined institutional roles and responsibilities on climate change and paved the way for attention to climate finance. Three years later after a change in government, the subsequent *Climate Change Act 2016* established a national Kenya Climate Fund, which is administered by the national Climate Change Council and chaired by the President. The Kenya Climate Fund is described in the Act as “a financing mechanism for priority climate change actions and interventions” (s25(1)). Funding sources are varied: it will get funds received as revenue from the Consolidated Fund in the form of donations, endowments, grants and gifts (s25(3)); and the *National Climate Change Action Plan 2013-2017* highlights that the Fund “aim[s] to catalyse private sector funding through interacting with other financial intermediaries (e.g. commercial banks)” (p86).

The purpose and funding sources of the Fund are mirrored in the 2016 *National Policy on Climate Finance* which defines ‘climate finance’ as comprising domestic budget allocations, public grants and loans from bilateral and multilateral agencies, and also private sector

investments. Specifically, the Policy sets out how to attract and promote public-private climate finance including.

- development of a climate finance strategy;
- scaling up climate finance through targeted strategic partnerships with bilateral and multilateral partners,
- implementing robust and flexible public financial mechanisms;
- promoting investor confidence and participation;
- focusing on voluntary carbon markets over short term,
- enhancing the generation, management and issuance of emission reduction credits and trading of carbon credits; and
- establishing innovative mechanisms for additional resource mobilisation such as green bonds.

Importantly, by virtue of being established by legislation and also cross-referenced in several national policies and strategic plans, the Fund can become strategically embedded in the legal and policy landscape of Kenya. For example, the *2016 National Policy on Climate Finance* elaborates on the role of the Fund as a legitimate way to “support mobilisation, coordination and tracking of climate finance in Kenya including both domestic and international resources”, which reinforces how the general development vision for *Kenya Vision 2030* and its *Medium Term Plans* had described the Kenya Climate Fund. Additionally, the Fund is highlighted as a mechanism to increase climate-proofing investment opportunities for small and medium enterprises in the *Kenya National Adaptation Plan 2015-2030. Enhanced Climate Resilience Towards the Attainment of Vision 2030 and Beyond*

In addition to the national-level Fund, national legislation has enabled county-level Climate Change Funds by:

- The Kenyan Constitution, which devolves responsibility to county governments to promote social and economic development (ch II); and
- The *Public Finance Management Act 2012*, which permits a local Fund to be established by County executive action. Such funds can receive finance from budgetary allocation, the private sector, and national and international sources.

Counties can enact their own County Climate Change Fund Acts and regulations, which has occurred in several Kenyan counties (eg, *Makueni County Climate Change Fund Regulations 2015*). Through these Funds finance can be disbursed more directly to local communities. Kenya’s County Climate Change Funds have been replicated in other African countries such as Mali, Senegal and Tanzania. The important aspect of County Funds is that they can involve local input and responsiveness, which is especially key to effective climate adaptation

In workshop discussions, several key attributes of this case emerged, including:

- The direct involvement of Treasury in environmental concerns is a core strength and demonstrates the importance of collaboration between ministries.
- A high level of multisectoral ownership and buy-in was created by the *National Climate Change Action Plan* due to the government’s deep attention to finance, governance, and mitigation and adaptation elements of that Action Plan. However, the lag between creating the Action Plan and enacting the Climate Change Act slowed stakeholder momentum, which illustrates the salience of timeliness and political economy factors

- Kenya is one of the most geothermal-developed countries in the world and is demonstrating commitment to energy mixes by issuing wind and geothermal prospectuses and taking on sovereign risk to encourage private sector investment, which raised questions about how best to leverage the private sector.
- The Climate Change Act, the Climate Finance Policy and the Climate Change Fund are all relatively new so their implementation and operation are in-progress, so now is a good time to be considering how to make it most effective for multiple stakeholders.

5.0 LESSONS LEARNED AND CONCLUSIONS

The overall conclusion from delegates was that the workshop achieved what it set out to do. By bringing together the right mix of participants, it worked in a practical and experiential way to discuss topics of mutual value while building relationships between stakeholders. Looking forward, it has laid valuable groundwork for ongoing knowledge exchange about effective legal and regulatory reform that can facilitate flows of public-private climate finance in-country for developing countries.

The key lessons learned by delegates and the UN Environment/King's partnership are detailed below. In short, the workshop demonstrated the value of:

- a) greater attention to legal frameworks in climate finance;
- b) using the Legal Analytical Framework for informed decision-making;
- c) including facilitative modalities for an integrated regulatory approach;
- d) emerging roles for MDBs in supporting national legal and regulatory reform;
- e) effective South-South knowledge exchange;
- f) engaging the private sector through legal readiness.

1. The workshop brought much-needed attention to legal frameworks for climate finance

Participants agreed that the legal dimensions of public-private climate finance have received little attention to date. The workshop helped to bridge this gap, providing welcome knowledge exchange on the topic of climate finance law and legal readiness for climate finance.

All delegates cited key benefits of the workshop as:

- stimulating them to think about legal and regulatory initiatives for public-private climate finance, particularly in their own country context,
- motivating them to want to learn more; and
- motivating them to want to take new and different actions.

2. Law-makers saw the Legal Analytical Framework as a valuable tool for decision-making

The overwhelming response from participants, especially Parliamentarians and Multilateral Development Banks (MDBs), was that the Legal Analytical Framework provided a new way to consider climate finance law and regulation by:

- depicting initiatives as financial or facilitative, and
- demonstrating the different legal forms that such initiatives can take.

Overall, around two-thirds of delegates gained new knowledge about financial mechanisms and facilitative modalities (see Lesson 3 below); and nearly all delegates (over 90%) learned quite a bit about legal forms as a result of the workshop. Some delegates described the Legal Analytical Framework as the most valuable learning from the workshop.

Importantly, it was seen by delegates as a tool to help law and policymakers *identify concrete actions* to improve their enabling legal and regulatory environment for public-private climate finance.

In discussions, it was noted how the Legal Analytical Framework helps to make the invisible become visible. That is:

- a) it makes explicit and clear what Climate Finance Law ‘looks like’;
- b) it helps bring long-term planning into the present; and
- c) it can be used by law and policy makers to make *conscious and systematic choices* about legal and regulatory options and combinations to adopt for their own country.

Specifically, it can help to identify where policy frameworks provide enabling environments for legal options; when legislation may be more appropriate than policy; when legal backstopping is required and what form it might take; and when a soft coordinative or collaborative approach is preferable.

For example, if a country wants to enhance private sector investment in the energy sector, the Framework shows there are a number of legal options. Law-makers may choose to create a Green Investment Bank (exemplified by the UK and Australia) or instead use a combination of mechanisms - as Mexico chose to do for various reasons including the cost of permanent staff for a Bank - such as combining a Trust Fund together with government guarantees and grants for project funding. The point is that the Framework provides a ready reckoner of options to choose from.

3. An integrated regulatory approach to climate finance is preferable and it requires both financial mechanisms and facilitative modalities

Law-makers and regulators can enact Climate Finance Law in two main ways:

- a) as a stand-alone legislative change, such as amending a Taxation Act (to include tax investment credits for renewable energy) or a Companies Act (for corporate climate reporting), or enacting a new general Climate Change Act; or
- b) as an integrated regulatory approach, being a complimentary mix of financial mechanisms and facilitative modalities across multiple legal domains that adjust or reform a country’s whole legal and regulatory framework to account for climate change and enable greater flows of public-private climate finance.

The choice will depend on country context. However, it became clear from workshop discussions that the integrated approach is preferable for maximising stakeholder engagement and avoiding unintended consequences.

Prior to the workshop, most delegates had equated climate finance with ‘particular financial mechanisms’, namely tax credits, grants, and feed-in tariffs. Yet during the workshop delegates gained understanding of a much broader range of financial mechanisms related to carbon pricing, blended finance, and green bonds. Indeed, over two thirds of delegates stated they learned quite a bit about financial mechanisms during the workshop.

Just as importantly, the category of ‘facilitative modalities’ created a new way of seeing climate finance regulation. Although most delegates were aware that improved information

and capacity building are important to good governance and policy implementation, they had not previously considered those elements as modes of regulation for improving flows of climate finance. Almost two thirds of workshop delegates learned quite a bit about facilitative modalities as a result of discussions, especially regarding corporate conduct, prudential regulation, knowledge sharing and capacity building (egs improved information; and 'Ideas Labs' to generate novel responses)

4. Greater MDB support is needed for legal and regulatory initiatives and capacity building.

Taking an integrated regulatory approach to climate finance is more likely to create systemic and transformational change, and thus achieve NDC implementation and SDG goals. Yet simultaneously, the Mexico experience exemplifies how taking an integrated regulatory approach *requires* domestic systemic change through regulatory overhaul

It was clear from discussion that comprehensive reform is complex. So the *first step* must be legal and regulatory *mapping*. That is, undertaking a comprehensive assessment or review of legal and institutional strengths, incentives, barriers and gaps for addressing climate change and enabling climate finance. Mapping is critical because it allows a country to develop a legal roadmap to get the 'right' law and institutional structures in place and to inform Parliamentarians, government, public and private financiers, and civil society about the scale and types of support it requires to meet legal readiness for climate finance and NDC objectives.

Such a massive legal transition requires equally large financial input and expert capacity. Participants noted that, as the main intermediaries for public international funds and also as facilitators of private finance, MDBs can play a greater role in supporting in-country legal assessments and innovation that will pave the way for enhanced flows of climate finance. Specifically, MDBs can support developing countries not only with finance for projects but also with financial support for:

- integrating facilitative modalities
- mapping existing legal and regulatory architecture, and
- building capacity: legal, technical, educational

Although some MDBs and the GCF have a specific mandate to fund projects (not capacity building), participants noted that legal initiatives can be integrated with transactional proposals or even funded as a necessary precursor to them. For example, the *GCF Readiness Programme* provides US\$1 million/year/country for successful proposals, for which countries could request funding to map their regulatory architecture, or to hire experts to work with their Attorney-General's department, Treasury, or the Energy Ministry to assess and strengthen enabling law and policy or legal expertise. Similarly, funding proposals for short-medium term actions such as amending or introducing law or policy to enable private investment for a specific project or programme could go to the *GCF Project Preparation Facility* (providing US\$1.5 million/year/country). Moreover, several recent successful GCF funding proposals have incorporated legal mapping and technical capacity building, such as Project FP019 *Priming Financial and Land Use Planning Instruments in Ecuador* (with the Inter-American Development Bank) and Project FP030 *Catalysing Private Investment in Sustainable Energy in Argentina* (with UNDP); and the Asian Development Bank's Office of

General Counsel is providing technical assistance for reviews of legal frameworks in countries such as Fiji and the Lao PDR.

5. South-South knowledge exchange through direct dialogue is empowering and effective

Nearly all delegates (over 90%) found it useful to share experiences and learn from each other. Several delegates described learning about the case-study experiences and building capacity by sharing knowledge as the most valuable aspects of the workshop. While the cases demonstrated there is no one-size-fits-all approach, participants agreed that case-studies can provide inspiration and ideas for law and policymakers in different jurisdictions. One delegate described how it is inspiring to discuss countries' "success stories and their journeys to where they are."

Specifically, cross-comparing the Kenyan and Mexican experiences *in person* gave rich learnings for all delegates, especially Parliamentarians.

- Discussions focused on points of inflexion: triggers, incentives, successes, barriers, remaining challenges, local context, and replicability to other jurisdictions. Most workshop delegates stated that they now better understand these issues as a result of the workshop.
- Direct dialogue enabled knowledge exchange that was dynamic, honest, often humorous, and helped to build trust.

In addition to dialogue *between countries*, the workshop highlighted the importance of communication and collaboration *between government branches* on climate finance law and policy, rather than working as siloes. Specifically, the case-studies showed the value of Treasury working with Energy and Environment ministries as well as with Parliamentarians that have finance and environment portfolios.

For some delegates, increased dialogue extends to public education with one participant stating they would use the workshop ideas to "begin a discussion on climate change [and finance] back home especially with the masses who are most affected by climate change and have the least knowledge about it."

6. Legal readiness for climate finance encourages private sector engagement

Multi-stakeholder participation was high on delegates' wishlists for enabling climate finance, ranging from central banks to civil society. In particular, delegates indicated a strong desire to engage with private sector actors on this work, especially corporate lawyers, financiers and investors.

This is encouraging. Climate mitigation and adaptation efforts by the private (especially corporate) sector will help countries to meet their NDC targets; and capital-allocation decisions by the market will facilitate the transition (or not) to a low-carbon economy. Those efforts and decisions are shaped by law and policy. Having 'legal readiness' can encourage investor confidence by:

- a) increasing the financial attractiveness of climate-related investments; and

- b) minimising barriers to investment by reducing perceived and actual regulatory and sovereign risks.

LIST OF ANNEXURES

1. Workshop Participant Organisations
2. Workshop Agenda

APPENDIX 1: WORKSHOP PARTICIPANT ORGANISATIONS

African Development Bank, Climate Investment Programme

Commonwealth Secretariat, Commonwealth Office of Civil and Criminal Justice Reform

Green Climate Fund, Legal Team

King's College London: The Dickson Poon School of Law; Geography Department; King's Business School

National Assembly of Kenya: Environment and Natural Resources Committee; Finance and Planning Committee

Ministry of Energy Mexico

Ricardo Energy and Environment

SEMARNAT Mexico

UK Department for Business, Energy and Industrial Strategy (BEIS)

UN Environment, Law Division

UNFCCC Secretariat: Regulatory Development Unit; Sustainable Development Mechanisms Programme

University of Nairobi, School of Law

APPENDIX 2: WORKSHOP AGENDA

DAY 1 Understanding Legal Readiness for Climate Finance	Friday 9 March (public session)
5.00pm	Tea and coffee upon arrival
5.30- 7.00pm	<p>Welcome <i>Presenters:</i></p> <ul style="list-style-type: none"> • Professor Reza Razavi, Vice President and Vice Principal for Research and Innovation, King's College London • Professor Tanya Aplin, Vice Dean for Research (Law), King's College London • Dr Megan Bowman, Associate Professor in Law and Director of the Climate Law and Governance centre, King's College London <p>Legal Readiness for Climate Finance <i>Presenters:</i></p> <ul style="list-style-type: none"> • Mr. Perumal Arumugam, Programme Officer, Sustainable Development Mechanisms programme, UN Framework Convention on Climate Change (UNFCCC) Secretariat • Mr Steven Malby, Head of the Commonwealth Office of Civil and Criminal Justice Reform within Governance and Peace Directorate, Commonwealth Secretariat • Ms Jenny McInnes, International Climate Finance: Head of Partnerships and Capability, UK Department for Business, Energy and Industrial Strategy (BEIS)
7.00pm	Drinks reception
DAY 2 In-Country Case studies: Learning from Experiences	Saturday 10 March (closed session)
9.00am	Registration, tea and coffee
9.30am	<p>Welcome and Point of Departure <i>Dr Megan Bowman, The Dickson Poon School of Law, King's College London</i></p>
10.00am	<p>Participant introductions Day 2: In-Country Case Studies: learning from experiences</p>
10.30am-12.00pm	<p>Case study: Mexico <i>Chaired by Dr Megan Bowman</i></p> <p><i>Presenters:</i></p> <ul style="list-style-type: none"> • Senator Leonardo Beltrán, Undersecretary of Energy Planning and Transition, Ministry of Energy, Mexico • Mr Juan Carlos Arrendondo Brun, General Director for Climate Change Policy, Undersecretary of Planning and Environmental Policy, SEMARNAT, Mexico
12.00-12.30pm	Break out groups: Participant Wishlists for an Enabling Legal and Regulatory Environment
12.30-1.30pm	Lunch
1.30-2.30pm	Case study: Kenya

Chaired by Dr Helen Adams, Geography Department, King's College London

2.30-4.00pm

Break out groups comparing Kenya and Mexico experiences

4.00pm

Tea Break

4.30-6.00pm

Plenary and synthesis

Co-Chaired by Dr Helen Adams and Dr Megan Bowman

7.30pm

Workshop Dinner

**DAY 3:
Testing a New
Legal
Framework**

Sunday 11 March (closed session)

9.30am

Tea and coffee

10.00-10.05am

Introduction to Day 3 of the workshop

Day 3: Testing a New Legal Framework

Chaired by Prof Juliane Reinecke, King's Business School, King's College London

10.05-10.35am

Demonstration of the Commonwealth Secretariat's Law and Climate Change Toolkit

Presenter: Richard Briggs, Commonwealth Secretariat

10.35-11.45am

Providing a Legal Analytical Framework for Climate Finance Options

Presenter: Dr Megan Bowman

11.45-12.45pm

Break out groups: Application of the Legal Analytical Framework for Climate Finance Options

12.45-1.30pm

Plenary and synthesis

1.30 - 2.30pm

Working Lunch: closing remarks and next steps

Co-chairs: Dr Megan Bowman and Robert Ondhowe, UN Environment