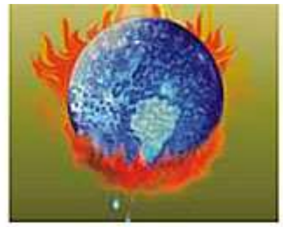
ELRI newsletter

"...act now! Your support for the environment counts". **MARCH 2009 ISSUE 2**



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- Inauguration of ELRI's Governing Board
- Guest Lecture Series on Climate Change

Financial Meltdown, Corporate Environmental Governance and Africa: Time to Reflect

Financial Crisis and Environmental Governance: What Connection?

The global meltdown is certainly wreaking havoc on nations across the continent. As is always the case, pointers are to the effect that Africa will be the worse for it. For environmentalists with the well-founded worry that economic and industrial growth is what is putting pressures on natural resources, the initial reaction is to heave a sigh of relief that a number of labor-intensive and extractive industries will close down. The downside is that the resulting unemployment will further exacerbate poverty. The desperate needs of the poor will in turn lead to unsustainable consumption patterns, more pressure on natural resources and serious environmental deterioration. This ultimately will divert the already scant attention of the State from saving the environment to salvaging the economy the world is indeed, at a crossroad.

In the past ten years, many businesses have "greened" themselves by being environmentally and socially responsible in their implementation of a number of voluntary corporate-based initiatives, and further by promoting sustainable development. For a number of these businesses, however, their environmental disclosures and related corporate social responsibility (CSR) activities were in the true sense of it neither transparent nor motivated by an enlarged environmental conscience. Rather, they were no more than image - reaction mechanisms put in place to legitimize their products and disguise their actual social and environmental performance. For this group of corporate bodies environmental governance is a mere waste of time and money, and an unnecessary "add-on" to business cost. This paper argues that this is a misconception.

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FROM THE EXECUTIVE DIRECTOR'S DESK

Dr Olanrewaju Fagbohun

It gives me great pleasure to announce the latest issue of *ELRI News*. With the assistance of our Sponsors, the dedication of members of our Governing Board, Executive Committee, the Secretariat and the unrelenting interest of our Contributors, we have been able to put together another exciting package. To all those who made it possible for us to "serve" this for your enjoyment, we say thank you.

We are extremely delighted to feature the inauguration of our Governing Board. To these distinguished members of our Board, starting from the Chairman, Judge Bola Ajibola, SAN, CFR, we say hearty congratulations. Our standing ovation to you all for your high level of commitment to promoting the cause of the environment. We also congratulate all new members of the Institute. You are now in a forum that will allow you to truly contribute your quota in the development of initiatives aimed at protecting the environment. We wish you continued success.

His Excellency, the Executive Governor of Lagos State, Governor Babatunde Raji Fashola, SAN, is *'Our Man of the Quarter'*. Your passion and concern for the environment is exceptional. You have greatly enhanced environmental conditions in Lagos, and all Lagosians (indigenes and residents) have taken up the gauntlet to cooperate with your Excellency in making Lagos a model mega city --- talk of leadership by example. We applaud your vision and high standards. We implore your Excellency to keep up the good work.

Our very distinguished readers, we invite you to enjoy this second edition of ELRI Newsletter. Show care to your environment and watch the environment provide for your needs trust us.

Dr. Olanrewaju Fagbohun

ELRI *Briefly*

VISION

ELRI aspires to be recognized as a credible facilitator of superior scholarship and leadership in providing local and global information on environmental law, and the promotion of environmental rights in certain key areas for the benefit of individual citizens, indigenous communities and broader public policy.

MISSION & OBJECTIVES

ELRI's mission and objectives is to achieve the following among others:

- Advance environmental protection and governance in Nigeria by influencing actions and initiatives that can serve as catalyst for the enhancement of environmental law and policy;
- Provide objective, non partisan analysis of law and policies, and deliver educational programs for the improvement of environmental protection and governance;
- Provide information services, advices and publication on environmental practices and programs as it affects sub-Saharan Africa;
- Provide training tools and support to citizens, organizations, government agencies, businesses, environmental managers, communities, indigenous peoples and other relevant stakeholders;
- Engage in sponsored research and related project pertaining to harmonization of laws and issues such as environmental justice, risk assessment and risk communication.

ORGANIZATIONAL STRUCTURE

The ELRI structure is made up of the Governing Board, an Executive Committee, a Secretariat and Specialized Committees as may be required for specific purposes.

GOVERNING BOARD

The Governing Board consists of a Chairman and other Principal Members, one of whom is the Executive Director of ELRI.

EXECUTIVE COMMITTEE

The Executive Committee is responsible to the Governing Board to which its reports concerning all its activities. The Executive Committee meets as many times as necessary for the effective discharge of its activities. The Executive Committee is the implementing organ of the decisions of the Governing Board.

SECRETARIAT

The Secretariat operates under the supervision of the Executive Committee. The Secretariat carries out the day-to-day execution of activities of ELRI under the direction of the Executive Director. The Secretariat is made up of all staff of ELRI.

SPECIALIZED COMMITTEE

Specialized Committees may from time to time be set-up for the effective discharge of the activities of the Institute.

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UNDERSTANDING CORPORATE ENVIRONMENTAL GOVERNANCE

Environmental governance has been defined as encompassing the full range of best practice approaches to the management by companies of their environmental impacts, risks, performance and opportunities. It includes such key business considerations as:

- Environmental values (visions, missions, principles);
- Environmental policy (strategy, objectives, targets);
- Environmental oversight (responsibility, direction, training, communication);
- Environmental processes (management systems, initiatives, internal control, monitoring and review, stakeholder dialogue, reporting and verification);
- Environmental performance (use of KPIs, benchmarking, eco-efficiency, reputation, compliance, liabilities, business development.

Already, there are established guidelines on how to produce good quality environmental reports, and, how to measure and report on the three key impacts common to all companies, namely greenhouse gas emissions, water use and waste.

MISCONCEPTION OF THE BENEFITS OF ENVIRONMENTAL GOVERNANCE

Contrary to the misconception that environmental governance is harmful to financial returns, one of the major advantages that corporate environmental governance confers is corporate reputation. A company that is not sensitive to issues of pollution and waste management or that allows its effluents to continuously pollute the underground water of its host communities will be an embarrassment to its shareholders and will certainly not command the respect of other members of the community. If there had been appropriate risk assessment, it would have disclosed what mitigation strategy should be put in place.

Environmental governance also gives competitive advantage. A company that regularly and routinely complies with the law will not only find it easy meeting the requirements of tenders and bids, it may also find itself having an edge over companies that are not so compliant. Further, a company that has worked with regulatory bodies and industries to develop beneficial legislation would have the competitive advantage of adapting its business plans and forecasts in line with pending regulation thereby reducing future costs. It would also have its constraints factored into such laws.

Environmental governance enables compliant companies to break into international environmentally-driven markets, access capital markets on acceptable terms, help companies to identify emerging risk factors, decrease insurance costs and minimize long-term operational costs. It also serves as a useful barometer of management quality and commitment to operating excellence.

WHY BUSINESSES MUST BE PROACTIVE

There are several reasons why it makes more sense for businesses to be proactive in the area of environmental governance even in the face of bitter financial crisis. First, the burgeoning developments in the realm of Public Private Partnership (PPP) are environment sensitive, particularly where it involves international partners. A disguised or deceptive corporate environmental governance will not see a company through the requisite due diligence.

Second, businesses must begin to appreciate in clear terms that good environmental governance in itself helps to deliver better financial performance. Third, businesses in Africa should stop making the same mistakes that their counterparts in European and Asian countries made. European countries were the first to reap the whirlwind of environment-related problems in the aftermath of industrialisation. The Asians, regrettably, followed the same potentially environmentally-destructive pathways of the Europeans with very dire consequences for their environment.

Lastly, businesses in Africa should hearken to the clarion call for the protection of Africa's rich biodiversity. Africa is already exposed to a number of resource-consuming stressors such as corruption, lack of effective environmental laws and policies, deficiencies in governance, high level of poverty, regional conflicts and civil wars. Companies would thus be contributing immensely to the society when they minimize negative effects on the environment by taking the lead in responsible sustainability.

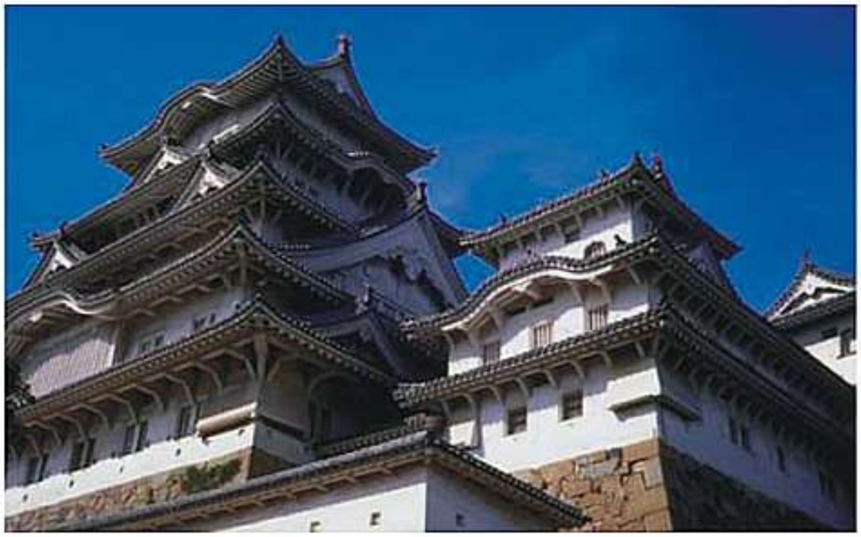
An immediate riposte to the above is to argue that expecting business to change its behaviour is utopian. An argument in this direction will be on the premise that business cannot regulate its own questionable practices. What must be realised is that we are not advocating that traditional regulators abandon their statutory duties. Neither are we urging environmental groups to become lax on their commitment to enforcing environmental accountability. Rather, our point is that business should stop seeing environmental performance as a waste of time for investors, or as actively harmful to financial returns.

The viewpoint should be that there is a positive correlation between environmental governance and financial performance.

Dr. Olanrewaju Fagbohun
Executive Director, ELRI

The Kyoto Protocol...

Reducing The Global Heat Towards Agenda 21



There are calls for a review of the Kyoto Protocol; in line with Agenda 21 the program of action adopted before the dawn of the last century, at UNCED 1992 in Rio de Janeiro as a blue print to guide the global community into the 21st Century. The 'global climate regime' encapsulated by the Kyoto Protocol (KP) and the United Nations Framework Convention on Climate Change (UNFCCC) is at the core of international law response to the threat of global climate change. The KP was adopted in Kyoto, Japan on 11th December, 1997 at the Third Conference of the Parties (COP-3) to the UNFCCC. It entered into force on the 16th of February, 2005. As at the last count in January, 2009, more than 180 nations, including Nigeria, had ratified or acceded to the treaty. With barely three years to its expiry date of 2012, the treaty is undergoing review globally amongst diverse groups because of its strategic importance and purpose for Planet Earth. Officially, in 2006 at the Second Meeting of the Parties (MOP-2) in Nairobi, countries agreed in principle to bridge the gap between the 2012 commitments and the next period of commitments. The year 2008 was consequently set as the target to complete a review of the Kyoto Protocol in preparation for establishing the next set of commitments.

The nexus between the KP and the UNFCCC is strategic and represents a logical outflow from a process that started out in 1990 with the United Nations authorization of the Intergovernmental Negotiating Committee on Climate Change to begin discussions of a global treaty to protect our Planet from the looming scourge of global warming due to anthropogenic emissions of greenhouse gases (GHGs). The outcome of this was the 1992 United Nations Convention on Climate Change signed at UNCED (Earth Summit) in Rio de Janeiro. This preliminary climate treaty, the UNFCCC sets a general framework for the control of Climate Change, through exhortatory non-binding obligations. A more stringent measure was required for the goal of greenhouse gases reduction to be attained. The KP filled this gap by prescribing binding "targets and timetables" for the developed / industrialized countries to reduce GHG emissions, in contrast to the UNFCCC which merely encouraged them to "stabilize GHG emissions."How effective has the KP turned out in this regard?

A quick x-ray of the KP reveals binding targets for no fewer than 37 industrialized countries and the European Community for greenhouse gas (GHG) emissions reduction. By this Accord, the industrialized Parties must trim their GHG emissions by an average of 5.2% below the 1990 level between 2008 and 2012. The Treaty has been described in certain quarters as a 'favorable treatment of developing countries and unfavorable treatment of developed polluting economies'. The obviously 'indiscriminate' focus on developed countries under the KP is not unconnected with the fact that these countries were in the forefront of technological and industrial activities mainly responsible for spewing GHG emissions into the global atmosphere over a period spanning more than 150 years since the Industrial Revolution. Justification for the posture adopted by the KP is rooted in the principle of "common but differentiated responsibilities".

Although the KP was meant to introduce for the first time within the Climate Change regime binding terms on industrialized States, it nevertheless, presents a 'carrot and stick' approach. This plays out through very significant platforms dubbed the "Kyoto Mechanisms". Under Article 2 Annex 1 of the Protocol each Party in achieving its quantified emission limitation and reduction commitment must embark on national programmes to implement policies and measures, which include for instance, enhancing energy efficiency in relevant sectors of the economy, progressive reduction or phasing out of market imperfections, fiscal incentives, tax and duty exemptions and subsidies in all greenhouse gas emitting sectors that run counter to the objective of the Convention and application of market instruments, etc. These countries can also meet their targets through three market-based mechanisms provided by the KP. The KP Mechanisms are:

1. Emissions trading ("the Carbon Market");
2. Clean Development Mechanism (CDM);
3. Joint Implementation (JI).

The KP Mechanisms could directly or indirectly favor movement of manufacturing or technology investment from the developed to the developing countries. A pertinent issue this might raise is: Was the Accord a real attempt to stem global warming or another tactic in the strategy to move manufacturing from expensive western labor markets to lower costs and less regulated locations in developing countries? Either way, the fact is that the KP Mechanisms provide the 'litmus test' in the assessment of how successful the KP has been in its first commitment period in response to the challenges of climate change.

The Climate Change regime transcends mere environmental concerns as there is a strong link between climate change and the achievement of national