

**THE CRITIQUE OF THE LEGAL FRAME WORKS FOR THE PROTECTION OF
WETLANDS IN UGANDA: A CASE STUDY OF KAMPALA CAPITAL CITY
AUTHORITY .**

BY

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DECLARATION.

I KIYEMBA GRACE EMMY do hereby declare that this is my original work whereof other people's work have been quoted they have been duly acknowledged and i also declare that this work has never been submitted to any instituiton whatsoever for any academic award of any kind .

Signed..........this 28th day of MAY.....2012.

SUPERVISOR'S APPROVAL

This research work has been done under my supervision and is now ready for submission to the faculty of law with my approval.

Signedthisday of2012

DR TAJUDEEN SANI.

DEDICATION.

This Desertation is dedicated to my wonderful father **Mr Kiyemba Samuel** of Nalwesambula,Mayuge District,my mother **Mrs Namukose Harriet** of Buwenge,Jinja district and my long time friend **Mr Ray Spencer** of Washington DC USA for your love is inspiring.

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My sincere gratitude goes to **Dr Tajudeen Sanni** for his tireless effort and patience while guiding me through this project as he read each and every word of the report herein which ushered my mind into the world of legal writing that i never possessed before.

Iam eternally humbled to my beloved friends **Ray Spencer,Mboira Mary,Apio Harriet,Nsenga Emmanuel,Oriokot Simon Peter,Nakiwala Stella,Luwambo James,Masaba Arthur** and all my course mates for 2008-2011 for their endless support accorded to me while at the university and at the completion of this project.

LIST OF STATUTES

- 1.The Environmental Impact Assessment Regulations No. 13 of 1998.
- 2.The National Environment (Standards for Discharge of Effluent into Water or on Land) Regulations No. 5 of 1999.
- 3.Local Government Act, Cap. 243, Laws of Uganda 2000 edition
- 4.Land Act, Cap. 227, Laws of Uganda as variously amended
- 5.The National Environment (Waste Management) Regulations No. 52 of 1999.
6. The National Environment (Wetlands, Riverbanks and Lakeshore Management) Regulations No. 3 of 2000..
- 7.The National Environment Act, Cap. 153, Laws of Uganda-2000 (Uganda Law Reform Commission)
- 8.Wildlife Act (1996), Cap. 200, Laws of Uganda - 2000 edition
- 9.Water Act, Cap.152, Laws of Uganda - 2000 edition
- 10.Water Act Cap 152
- 11.Mining Act no.9/2003
- 12.The Town and Country Planning Act, Cap. 246, Laws of Uganda - 2000 edition.
- 13.Kampala capital city authority Act 2011

LIST OF CASES

- 1.Auto Garage V s Motokov (No.3) 1971 EA 514
- 2.The Environmental Action Network Ltd Vs The Attorney General and National Environmental Management; Miscellaneous Application No. 39/2001
- 3 Greenwatch Vs. Attorney General & another, Miscellaneous Cause No. 140/2002
- 4.Greenwatch & another Vs. Golf Course Holdings HCCS No. 834/2000.
5. Rev. Christopher Mtikilla Vs The Attorney General, High Court Civil case No.5 of 1995
6. National Association of Professional Environmentalists (NAPE) Vs. AES Nile Power Ltd, High court Miscellaneous Cause No. 286/99.
7. The Environmental action Network Ltd vs. The Attorney General and NEMA Miscellaneous Cause No. 39/2001.
8. The environmental Network Ltd Vs The Attorney General and NEMA H.C. Miscellaneous Application No. 13/2001. J.H. Ntabgoba, PJ (as he then was).
- 9.Advocates Coalition for Development and Environment Vs Attorney General. Misc.Application No 100/2004
- 10 Buganda Road Cr. Case No. 73512001 Uganda Vs. Ddungu
- 11.Greenwatch Vs. Hima Cement 1994 Ltd
- 12 Greenwatch Vs. The Attorney General and Uganda Electricity Distribution Company Ltd.
13. Greenwatch Vs. Uganda Wildlife Authority and Attorney General Miscellaneous Application No.92/2004 (Arising from Miscellaneous Application No.15 of 2004).

List of Acronyms.

DDC: District Development Committee.

EIA: Environmental Impact Assessment.

KCCA: Kampala Capital City Authority.

LC: Local Council.

NEMA: National Environmental Management Authority.

NWCMP National Wetlands Conservation and Management Programme.

NGO: Non Governmental Organization.

PAR: Participatory Action Research.

WID: Wetlands Inspection Department.

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ABSTRACT

The Research evaluated the adequacy of the existing legal frame work for the protection of wetlands, the rationale for the conservation of wetlands and the mechanisms that are put in place to conserve the wetland resources. The case study makes use of qualitative research methods to make a critical analysis of wetland policies in Kampala capital city authority. The research was conducted through legal policy analysis, literature review and interviews with the stake holders such as NEMA, wetland Inspection Department, KCCA and locals.

Although the protection of Kampala's wetlands is an important priority for many, increased population, industrialisation, and conflict of interest has often led to the misuse of the wetlands, the principle of sustainable development cannot only thrive unless the government is committed with strict measures to protect many wetlands in Uganda, it is unrealistic that the citizens always expect NEMA to enforce the law, it should be an individual responsibility to every citizen in Uganda to protect the wetlands ecosystem.

Conclusively, there are many challenges to the legal frame works for the protection of wetlands in Uganda which has led to long term problems as a result of which continued reclaiming of wetlands has led to flooding that anchored the researcher's mind to come up with several recommendations to restore wetlands in city by empowering the stakeholders in the protection of the wetlands to live in union with their surroundings so as to benefit the present and also preserve them for future generations equitably.

CHAPTER ONE

1.0 INTRODUCTION TO THE STUDY

Environmental law as a distinct system arose in the 1960s in the major industrial economies as it was becoming clear that the cumulative negative environmental effects of human activities were becoming unsustainable in the long term. This new field of law has often been hampered by a lack both of institutions and of a common public will supporting enforcement of the laws.¹

Environmental law rests on the recognition of a new relation of humans with the environment a relation in which humans explicitly value the biosphere, no longer assuming that the environment's natural capital can be either freely consumed or freely used for the dumping of wastes. The emergence of environmental law in the twentieth century marks a fundamental shift in human consciousness toward the recognition ultimately that humanity is one family bound together on one planet and jointly responsible to use the environment without destroying it. With many people still committed to their right to freely exploit the environment to their own needs without regard for larger, cumulative effects, environmental law and the institutions supporting its enforcement are still under development.²

The researcher analysed the effectiveness of the legal framework, policy/regulations for the protection and conservation of wetlands particularly in Kampala capital city authority located in the central part of Uganda bordering the districts of Wakiso in the west and Mukono in the east.

The researcher further analyzed the factors leading to wetlands depletion and challenges facing the sustainable use of the wetlands critiquing all the environment legislation with regard to the protection of wetlands notwithstanding its enforcement.

The constitution of Uganda emphasizes that the state shall promote sustainable development and public awareness of the need to manage land, air and water resources in a balanced and sustainable manner for the present and future generation.³

¹ World Encyclopedia On Environmental Law On Wetlands

² *supra*

³ The Constitution Of Uganda National Objective and Principles of State Policy no.27

Accordingly to the constitution provides that utilization of the natural resources of Uganda shall be managed in such way as to meet the development and environmental needs of present and future generation of Ugandans and in particular ,the state shall take all possible measures to prevent or minimize damage and destruction to land,air,and water resulting from pollution or other causes⁴ however the government on several occasions has disregarded the constitutional provisions by giving away wetland to investors which has resulted into wetland degradation.

The legal frame works does not adequately protects wetlands and hence wetlands are misused even when policies are in place. Accordingly the Millennium Ecosystem Assessment, provides that wetlands are the habitat that has been most affected by development and are being lost more rapidly than any other habitat in the world. However, 80% of the global peatland area is still pristine and not severely modified by human activities. And globally, natural peatlands are destroyed at a rate of 4000 square kilometres per year, with 50% attributed to agriculture, 30% to forestry and 10% to peat extraction⁵

Similarly to the above, there are numerous challenges that undermine the sustainable utilization and management of wetlands in Uganda⁶ It is therefore imperative to examine the adequacy and effectiveness of the policy, legal and institutional framework with regard to sustainable wetlands utilization and management closely associated with principle of equitable sharing of natural resources and it is therefore pivotal that the people of Uganda and all those people who live and work in Kampala to know the values attached thereto and why we conserve the wetlands. This will enable them to choose how they live with the wetlands and what demands they want to make of their leaders.

1.1 BACK GROUND TO THE STUDY

Uganda lies astride the equator, and is bordered in the north by south Sudan, in the east by Kenya, in the south by Tanzania,Rwanda and Burundi ,The question of management of wetlands is a key importance to Uganda. The reason for this is that 13% of Uganda's Land area of 205,333 km² is covered by wetlands⁷. Uganda's wetlands range from those fringing the Equatorial lakes

⁴ supra

⁵ Millennium Ecosystem Assessment 2005

⁶ National Environment Management Authority, 2000

⁷ National Environment Management Authority Report , 2000.

at an altitude of 1,134m above sea level to those in⁸ the Afromontane regions of Mt. Elgon and the Rwenzori range which may be found as high as at 4,000m above sea level. This large wetland resource is explained by a climate of high rainfall and the general topography of the country.

The wetland resource has not always been regarded positively since the Buganda Agreement of 1900, by which Britain acquired the status of a protecting power over the Kingdom of Buganda, wetlands were referred to as wastelands and were vested in the Crown. A similar treatment was meted out to wetlands under the other two agreements concluded with Toro in 1900 and Ankole in 1901. The rest of Uganda, was declared Crown land. As such wetlands were governed directly by British law in the whole of Uganda in the colonial period.

It is important to note that in 1902, the British Crown passed the Uganda Order in Council. Under that Order in Council, statutes made by the Crown, the common law and principles of equity were to be the legal regime governing the lives of the people in the protectorate. The Order in Council, however, also permitted the continued application of African Customary Law so long as it was not repugnant to morality and natural justice and therefore, the law on wetlands applicable today was both imported British law and African customary law.

1.2 STATEMENT OF THE PROBLEM

There are a number of international conventions and domestic legislations for the protection and conservation of wetlands in Uganda, The Constitution of the Republic of Uganda 1995, The Wetlands Policy and Regulations⁹ which provides for Wetlands Protection and Sustainable use for a healthy environment however the law does not fully protect the wetlands and as a result wetlands have been depleted due to weak enforcement mechanism hence leading to the floods in the city, the study therefore sought to ascertain the possible recommendation thereto.

⁸ John Ntambirweki, *the evolution of policy and Legislation on wetlands in Uganda* senior lecturer, Faculty of law, Makerere University, Uganda, Switzerland 3-4 July 1998

⁹ wetland Policy 1995

1.3 OBJECTIVES

1.3.1 MAIN OBJECTIVES

The main objectives is to evaluate the legal frame works for the protection of national resources in Uganda with regard to wetland protection, conservation, challenges and policy reforms for wetlands in Kampala.

1.3.2 SPECIFIC OBJECTIVES OF THE STUDY

The specific objectives are as follows;

To Critically analyze the law for the protection of wetlands in Uganda .

To establish policy measures to conserve and protect wetlands in Kampala.

To find out reforms to wetland depletion.

To find out the challenges in the implementation of wetland policies.

1.3.3 RESEARCH QUESTIONS

- i. Why do people encroach on wetlands ?
- ii. How do people understand the importance of wetlands?
- iii What Laws are in place to protect and conserve the wetlands?
- iv How are garbage managed by the Kampala capital City Authority?
- V What are the challenges facing wetlands in Kampala capital city authority?
- Vi What measures should be put in place to solve the challenges faced by the NEMA in protection of wetland ?

1.3.4 SCOPE

(a)SUBJECT SCOPE

The study covers the critique of the legal Frame works for the protection of wetlands resource in Kampala Uganda

(b) CASE STUDY:

The geographical scope of the study shall be wetland in Kampala district.

1.4 SIGNIFICANCE OF THE STUDY

The research is built upon prior research done by environmental scholars on wetlands and the applicability of wetlands regulations.

The study will help the researcher to conceptualize the phenomena and the report will act as partial fulfillment of the requirements for the award of the degree.

The research shall assist policy makers and the government with the solutions to overcome the challenges to the wetlands law enforcement and create awareness among the public.

1.5 LITERATURE REVIEW.

The research went over a number of literature and studies relevant to the present study in different public and private libraries ,different websites which have bearing to the present day study .

The importation of British law into Uganda in 1902 emphasized the individual tenure and ownership as its key feature. Ownership is: "... the right to the exclusive enjoyment of something based on rightful title. It may be absolute or restricted corporeal or incorporeal, legal or equitable.. Vested or contingent in essence, it is based on a relationship *de jure* so that possession of something is not necessary."¹⁰ To buttress individual tenure, the system of land tenure which was introduced emphasized the granting of estates akin to those obtaining in England. Freeholds

¹⁰ L. B. Curson, *A dictionary of Law*, 2nd edition plymouth, mcdonald and evans, page 264

lease holds and "Mailo" tenures were established by both the agreements with the native kingdoms and by statutes such as the Crown lands Ordinance. Since, wetlands had already been alienated to the Crown, individual estates were not granted on them as a matter of policy. Where such grants were made the essence of ownership entitled the grantee almost unfettered rights of use and abuse, limited only by the eminent domain of the Crown.

Similarly Both the British Crown and its successor, the Government of Uganda did not give a lot of priority to management of wetland resources. Their basic concern was with the control of water resources. It was for this reason that: "All rights to the water of any spring river, stream, watercourse, pond or lake on or under public land whether alienated or not shall be reserved to the Government."¹¹

Further more the other resources of the wetlands were not considered valuable. The areas they covered, apart from the water resources they contained, were considered wastelands. If the wetland contained other valuable resources such as minerals, or forests, these could be extracted under the authority of sectoral laws as no controls were placed on the methods for extraction of those resources. In Uganda, today wetlands are referred to as swamps however elsewhere in the world they are known as marshes. It is mostly located in the central, west, eastern and the southern regions of the country¹²

In the alternative the definition of wetland comes from the Ramsar Convention¹³ held in Ramsar, Iran to establish standards for wetlands and promote their protection. The definition agreed upon is that "wetlands are areas of marsh, fern, peat-land, or water, whether natural or artificial, permanent or temporary, with water that is static, or flowing, fresh, brackish or salty, including areas of marine water that do not exceed 6 meters at low tide."¹⁴ This definition is similar to the definition set forth by the National Wetlands management and Conservation Policy of 1994, "an area that stay wet long enough for only certain plants and animals to grow even when there is no

¹¹ John Ntambirweki, *The Evolution of Policy and Legislation on Wetlands in Uganda* Senior Lecturer, Faculty Of Law, Makerere University, Uganda gland, Switzerland 3-4 july 1998

¹² Wetland Management Report 2009

¹³ Ramsar Convention 1971, held in Ramsar Iran

¹⁴ Wise Use of Wetlands Handbook, Ramsar Convention Secretariat, Gland, Switzerland 2007

rain.”¹⁵ Both definitions will be usable and are applicable for this paper during the last twenty (20) years, the kampala city has faced a number of challenges including the environmental degradation, High Population, Corruption, Garbage, Potholes, Sewer service. Construction, the economic boom has led to a mushrooming of both commercial and residential construction. However, due to either (a) total disregard of existing laws governing construction or (b) selective and lax enforcement of those laws, many buildings are built in road reserves, in gazetted wetlands and often without following established construction specifications. On a regular basis, buildings under construction collapse, killing or injuring construction workers, bystanders or both.

Similarly there has been no effort to mitigate the environmental degradation visited upon the city by the rapid population explosion, including the destruction of green spaces and wetlands. Noise pollution and smog are also of particular concern.¹⁶

★ Geographically Kampala capital city authority is referred to as a city of seven hills separated by valleys with swamps and streams also called wetlands. in the same way Kampala capital city authority wetlands include, Nakivubo, Lubigi, Luzira, Bugolobi, Kansanga, Bwaise, Nateete, wetlands are important ecosystems with high biodiversity values and ecological and economic benefits through the various products and services for sustainable livelihoods of the communities that live near them. Economic valuations of some wetland areas reveal that their overall contribution to the national economy can be estimated as being hundreds of millions of US dollars per year.¹⁷

However today the wetland in this area is on the verge of extinction as they are being threatened by the increasing population in the city, wetland are mostly located on the shores thus their waters are collected and poured in the lakes like Victoria which is the largest in East Africa. What has remained of these places is the drainage channels which have diverted the flow of water out of these wetland. The expansion of the city from its old self to the current location has greatly lead to the depletion of wetlands around it.

¹⁵ National Wetland Management and Conservation Policy 1994

¹⁶ Wikipedia, kampala city council authority

¹⁷ UNDP projects 2009

Presently wetlands and its immediate environment is managed and administered by the KCCA formerly KCC. The body has greatly fostered destruction of these treasured areas. The city council Authority had neglected the laws set up to protect the wetland. Similarly under section 74 of the Public Health Act, is to the effect that one who interferes with the land around the city should be sued in court but, however the punishment is not severe and as such Kampala capital City authority formerly (KCC) has sold off these areas to "money hungry" people who have reclaimed these areas to an extent of extinction hence resulting into wetland encroachment¹⁸

In the alternative therefore Wetlands attributes are the less tangible but very important values which people attach to a beautiful landscape and cultural heritage¹⁹. Wetland depletion has become a global environmental issue and internationally people have become concerned about the environmental international organization like Ramsar, United Nations Environmental Programme, Nature Uganda and NEMA are trying to conserve and advocate for wise use of wetlands and their biological resources.

The draft mangrove and coastal wetlands protection draft policy and regulation²⁰ provides that one of the goals set out in support of the overall aim of sustainable use of the Jamaica's wetlands was to bring an end to all activities that cause damage to the wetlands

According to Apunyo political interference in the allocation of wetlands to people for settlement, industrialization and crop cultivation, through political rewards is a high challenge.²¹

He further states that this deters the operation of the legal framework for the protection of wetlands in place, he was of the view that under staffing of the environment inspection officer has put pressure on the limited number of staff especially at the national level.

It is further observed that wetland inspection division which is the umbrella institution for the protection of wetlands in Uganda has only five staff members and that there is no formal mechanism to coordinate between sectors and wetland management

¹⁸ 21st Century School House 1997

¹⁹ National policy for Conservation of wetlands Resources (Uganda) 1995

²⁰ The Draft Mangrove and Coastal Wetlands Protection Draft Policy and Regulation 1997

²¹ Apunyo Robert Managing wetlands with Changing Times Experience: Makerere Institute of Research Kampala Uganda 2005

»Apunyo in his report “ management of wetlands in Uganda” it is observed that in his report he seemed to be interested in identifying problems in respect to the encroachment on wetlands he didnot address the weaknesses in the legal frame works for the protection of wetlands.

In spite of the uses and valuable ecological functions, wetlands continue to be degraded by various human activities in Uganda as Wetlands are drained for agricultural purposes; especially those with shallow water have been put under intensive cultivation for crops like sugar cane, yams, potatoes and eucalyptus²². In most cases, the ecosystems of these wetlands have been substantially modified by the drainage. The situation of wetlands drainage has reached a critical level in the kampala wetlands destroyed compared to central, northern and western regions, respectively²³

The Government of Uganda has recognized the role of WID and appreciated as a vital natural resources sector in collaboration with government and conservation NGO were enhanced ,three wetlands coordinating offices that is the East,central and west and a committee were established with one for the north²⁴ .However long term sustainability of the achievements is questionable due to high expenses and un reliable ,responsiveness of collaborating institution ,the new institutional structure at local level may end up being un sustainable a better approach was to adopt the use of existing structures such as district environment offices but they are the influence of orders from above.

In recognition of the benefits associated with wetlands restoration there are numerous restoration projects initiated globally degraded wetlands present restoration opportunities for improvement to water quality, habitat, water storage and other functions and these opportunities can be particularly useful for water shed scale environmental planning,the goal of restoration is typically to re establish wetland eco system to levels that existed prior to human influence²⁵

²² Hppt.www.opio mores: An Institutional Analysis Of The Management Of Wetland Resources: A Comparative Study Of Floahreppur Municipality In South Iceland And Oyam District In Uganda

²³National Environment Management Authority report , 2004

²⁴ National wetlands programme ,End of term evaluation :Development of institutional frame work for wetlands management ,NWP November 2003

²⁵ Understanding our wetlands ,published by the Nile Basin initiative August 2009 page 90

Consequently the ministry of internal affairs recently passed out 51 police officers to form the environmental protection police unit under the ministry of water and environment ,state minister for internal affairs James Baba said that the unit will help in enforcement of environment policies ²⁶, big thanks to the ministry of internal affairs

As we are well aware of the immediate danger of pollution by industrial waste and sewage waters, the convention on wetland of international importance especially as water fowl habitat recommended to the state parties to take action to halt the implementation of any such planning until appropriate research has been demonstrated that no harmful effect will result²⁷ this has been rendered weak as there is no international enforcement in countries that degrade the wetlands.

The world pollution is increasing at a rapid rate more chemicals and fertilizers will be required to meet the increased food production requirements more industries required has narrowed the gap between the residential area and factory location more so in urban areas, this problem has become more acute for highly populated area of of bombay,calcuta and delh,²⁸ the population of these cities will be susceptible to the mult prolonged and cumulative effects of pollution ,Science and technology have therefore to be kept abreast of these development and newer methods should be developed to meet the demands of stricter controls that will become necessary in future²⁹.

✍The Ramsar Convention as the only global environmental treaty that deals with a particular ecosystem. The treaty was adopted in the Iranian city of Ramsar in 1971 and the Convention's member countries cover all geographic regions of the planet with its mission of "conservation and wise use of all wetlands through local and national actions and international cooperation, as a contribution towards achieving sustainable development throughout the world".

The Convention uses a broad definition of the types of wetlands covered in its mission, including lakes and rivers, swamps and marshes, wet grasslands and peatlands, oases, estuaries, deltas and

²⁶ New vision Wednesday page 8 April 4 2012

²⁷ Encyclopedia of environmental pollution and awareness in the 21th century vol 26 convention on wetland of international importance especially as water fowl habitat 1971 page 109 edited by v.k prabhakar 1st edition

²⁸ Encyclopedia of environmental pollution and awareness in the 21th century vol 6 convention on the control of industrial pollution edited by v.k prabhakar published by Amol publication PUT ltd 1st edition

²⁹ libid

tidal flats, near-shore marine areas, mangroves and coral reefs, and human-made sites such as fish ponds, rice paddies, reservoirs, and salt pans.

At the centre of the Ramsar philosophy is the “wise use” concept. The wise use of wetlands is defined as "the maintenance of their ecological character, achieved through the implementation of ecosystem approaches, within the context of sustainable development". "Wise use" therefore has at its heart the conservation and sustainable use of wetlands and their resources, for the benefit of humankind.³⁰

1.6 METHODOLOGY

1.6.1 INTRODUCTION

The research paper describes the methods through which the study is conducted this includes research design, population of the study, and source of data, methods of data and analysis and limitation to the study.

1.6.2 RESEARCH DESIGN

The researcher used descriptive analytical study

1.6.3 POPULATION STUDY

The research covers wetland areas of Kampala district including Nakivubo Channel, Nakawa Industrial Area, Industrial Areas, Nateete.

1.6.4 DATA SOURCE

The data used in the study is both primary and secondary

1.6.5 PRIMARY DATA

The researcher used primary data was mainly from Observation, Questionnaires, Interviews, Library research

³⁰ Ramsar Convention 1971

1.6.6 SECONDARY DATA

The secondary data was obtained from what had been written on wetland protection and conservation, the researcher obtained information from different places like libraries, text books, news paper magazines and journals

1.6.7 DATA PROCESSING.

The data was collected through questionnaires, interviews and observation that was edited, coded, tabulated and classified before it was entered into the computer for analysis

1.6.8 DATA ANALYSIS.

The research visited reputed libraries such as law development centre, Kampala International University, KCCA, Directorate of Environment, National Wetland Programme and National Environment Management Authority library in an effort to find relevant texts, books, journals, news papers, magazines, regulations, statutes, decided cases and government policy materials on the subject

The research made an analysis on some of the aforementioned sources to extract relevant information as was reviewed in the literature reviews part of this research paper

1.6.9 USE OF QUESTIONNAIRE.

The researcher used a questionnaire which was sent to the officer in charge of wetland management, KCCA Directorate of Environment who seemed to have no time to respond to the interview

1.7. CASE STUDY METHODS

Since wetland management and protection is established by law, the research desired to find out the response to the enforceability of the legal frameworks and case law decided if any which would be part of research

1.8 LIMITATIONS TO THE STUDY.

Matters regarding wetlands in Kampala are sensitive to the extent that the respondents were suspicious of the researcher's intention and some declined to give reliable information in respect of the topic

However the questionnaire made clear to the respondents that all information will be kept confidential this convinced the respondents to fill the questionnaires for the research information

Time of completion of the research was short due to limited time i had to do the research ,time to gather the data was not enough since some time was needed in the field to meet the respondent personally who were not available when required none the less the research worked tirelessly to the research be completed in time

Funds were not generally available and the big problem since there is no specific budget which can be drafted to be helpful exactly as was planned.

CHAPTER TWO

2.0 THE LEGAL FRAME WORKS AND INSTITUTIONAL MANAGEMENT FOR THE PROTECTION OF WETLANDS IN UGANDA.

INTRODUCTION

This chapter presented a review of the literature relating to the variables under investigation presented in line with the objectives of the study, analysis of the existing legislation for wetlands protection in Uganda for instance the Constitution of the Republic of Uganda 1995, The National Environment Act cap153, Environmental Impact Assessment Regulations 1998, The National Environment (conduct and certification of environment practitioners) Regulation 2003, wetlands management institutional framework and international legal frame work.

2.1 THE CONSTITUTION OF THE REPUBLIC OF UGANDA 1995.

The Constitution as the supreme law provides for environmental protection and conservation. Under the National Objectives and Directive Principles of State Policy the Constitution provides that the state shall promote sustainable development and public awareness of the need to manage land, air, and water resources in a balanced and sustainable manner for the present and future generations³¹.

The Constitution further provides that the utilization of the natural resources of Uganda is to be in such a way as to meet the development and environment needs of present and future generations of Ugandans. In particular, the state is required to take all possible measures to prevent or minimize damage and destruction to land, air, and water resources due to pollution or other causes. Article 39 of the Constitution entitles every Ugandan to a clean and healthy environment. Under Article 17(1) (j) it is the duty of every citizen of Uganda to create and protect a clean and healthy environment.³²

The Constitution imposes a duty on the state to protect important natural resources; including land, water, minerals, oil, fauna and flora on behalf of the people of Uganda. In its Article 245,

³¹ Constitution of Republic of Uganda 1995 NODPSP No,27as amended version 2006.

³² supra

the Constitution provides that parliament shall, by law, provide for measures intended to protect and preserve the environment from abuse, pollution and degradation, to manage the environment for sustainable development; and to promote environmental awareness. Parliament has ably done this through the enactment of the National Environment Act, the Water Act, the Land Act, the Wildlife Act and the Local Government Act, among others.³³

Article 23 7(1) provides that, Land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in the constitution. The constitution has provisions for enhancing conservation and management of the environment and natural resources.

Similarly Objective no. XIII of the National Objectives and Directive Principles of State Policy together with Article 237(2)(b) of the constitution pronounce the public trust doctrine³⁴, thereof it enshrines the public trust doctrine and provides that the government or local government holds in trust and protects for the common good of all citizens of Uganda certain environmentally sensitive areas such as natural lakes and rivers, ground water, natural ponds and streams, wetlands, forest reserves, national parks and any other land reserved for ecological and tourist purposes³⁵but the constitution does not provide for the enforcement mechanism.

In the alternative under the Land Act, Government has no powers to lease or otherwise alienate any natural resource mentioned above but may only grant concessions or licenses or permits in respect of that natural resource this has given government an opportunity to give away wetlands without considering the damage to the environment.

2.2 THE NATIONAL ENVIRONMENT ACT, CAP, 153.

The National Environment Act Cap 153, of 1995 includes Environmental Impact assessment in its general principal as a requirement for proposed projects and activities which may significantly affect the Environment or use of natural resources. The Act also establishes the

³³ Justin Ecaat, Nema, Uganda, A review of The Application of Environmental Impact Assessment (EIA) in Uganda a report prepared for the United Nations Economic Commission for Africa

³⁴ supra

³⁵ Ibid

National Environment Management Authority (NEMA) as the principal agency responsible for supervising, coordinating and monitoring all aspects of the environment, including the review of environmental impact assessments carried out for various projects however the authority is overwhelmed with so many wetlands to the extent that the authority cannot supervise each and every wetland.

Further more the Act empowers NEMA, in consultation with lead agencies, to issue guidelines and prescribe measures and standards for the management and conservation of natural resources and the Environment with different stakeholders in the EIA process³⁶. Section 19 of the Act imposes an obligation on all developers to carry out EIA for their projects that are likely to have adverse impacts on the environment.

The Act further addresses environment protection in general, and since wetlands are part of the environment, it provides for their conservation (wetlands) management and protection in one way or another big thanks to Uganda police under the department of environmental protection unit though they are constrained to supervise 24 hours to each and every wetlands.

In the same way, Wetlands are protected as land reserved for purposes of ecological and not to be alienated to any person. In complimenting section 106 of the Act³⁷ which provides that where Uganda is a party to any convention or treaty

Basing on the above authoritative provisions the research recommends institutions on environment(NEMA) to modify and strength the laws to fit the current need of wetlands and environment protection instead of using court based procedures in protecting the future and present wetlands .similarly the National Environmental Act which provides for the management of wetlands to the effect that the authority shall,in consultation with the lead agency,establish guidelines for sustainable management of wetlands in Uganda³⁸.

³⁶ Nema Prepared Guidelines For Eia (1997)

³⁷ National environment act cap 153

³⁸ supra

However NEMA together with the wetland inspection department as the body mandated to supervise and inspect wetlands in the country does not have enough man power to enforce wetland regulations.

2.3 ENVIRONMENTAL IMPACT ASSESSMENT REGULATIONS 1998

The EIA Regulations elaborate in detail the provisions of the Act and present the details of the EIA process and roles of various stakeholders. The Regulations also stipulate it as an offence for any person to commence, proceed or execute any project without approval from NEMA³⁹. The Regulations also advocate for the principle of full disclosure in the conduct of EIAs and makes it an offence to make false statements in an EIA and the punishment is not severe to the culprit.

2.4 THE NATIONAL ENVIRONMENT (CONDUCT AND CERTIFICATION OF ENVIRONMENT PRACTITIONERS) REGULATION 2003

Following concern about the quality of EIA done by Practitioners, and in order to provide for a uniform system of certification and registration of EIA practitioners, the National Environment (Conduct and Certification of Environment Practitioners) Regulations 2003 were gazetted and set minimum standards and criteria for qualification as an EIA Practitioner. The Regulations also establish an independent Committee of Environmental Practitioners whose roles include, among others, to regulate the certification, registration, practice and conduct of all environmental impact assessors and environmental auditors. The Committee also has powers to take disciplinary action as it finds necessary for ensuring the maintenance of high professional standards, ethics and integrity of environmental Practitioners in the conduct of EIA and Environmental Audits.⁴⁰

However NEMA recently issued an EIA certificate for Luzira, Butabka hospital wetland to persons who are not the registered proprietors of the lease title and this raised criticism as to whom the certificate was issued.

³⁹ R36 Environmental Impact Assessment Regulations, 1998

⁴⁰ R6 The National Environment (Conduct And Certification Of Environment Practitioners) Regulation 2003

2.5 WETLANDS REGULATIONS AND INSTITUTIONAL MANAGEMENT IN UGANDA

The Wetlands Regulations for the management of river-banks and lake shores are in place. These regulations stipulate that the Government or local governments shall hold in trust for the people and protect riverbanks and lakeshores for the common good of the citizens of Uganda and shall not lease out or otherwise alienate any bank and lakeshore.⁴¹

It further states that environmental impact assessment is mandatory for all major activities on riverbanks and lakeshores, and special measures are essential for protection of such areas against soil erosion, siltation and water pollution

The overall responsibility for wetlands management in Uganda is vested in the Wetlands Inspection Division (WID) under the Ministry of Water, Lands and Environment. WID basically carries out a supportive role to the different players like Forestry, Fisheries and Water resources sectors.

WID is implementing the Uganda National Wetlands Conservation and Management Programme (NWCMP) whose aim is to assist the government in developing the policy and guidelines for conserving and managing sustainably the nation's wetlands and to acquire the technical capacity to do so. NWCMP works in collaboration with many other agencies or institutions, namely: NEMA, Department of Fisheries, Forest Department, Department of Agriculture, Department of Animal Industry, Fisheries Research Institute, Makerere University Institute of Environment and Natural Resources, National Water and Sewerage Corporation, Uganda Electricity Board, and the Uganda Wildlife Authority.

⁴¹ NWP, (Guidelines for Smallholder Paddy Rice Cultivation, General Guidelines for Wetlands Management, Fish Farming in Seasonal Wetlands, Sand and Clay Mining in Wetlands, and Rehabilitation of Sand and Clay Mining Areas) came into force in 2000.

WID has adopted strategies with respect to the use of wetlands to eradicate poverty and these include education and dissemination of information to increase peoples' knowledge for increased wetlands use for example distribution of posters, calendars, wetlands policies, newsletters and other publications, radio messages, television programmes, exhibitions, restoration of hydrological and ecological functions in vital wetlands to improve availability, productivity, value and diversity of wetland products for use by local communities, development and implementation of management plans for key wetland areas to enable resource users to optimise and fairly distribute wetlands benefits; institutional capacity building at the districts and local levels for improved decentralisation of wetland management. However funding to the WID is still well below targets and the Division could do more if it availed additional financial support⁴².

2.5.1 POLICY FRAMEWORK IN UGANDA.

The National Environment Action Plan provided a framework for addressing gaps in environment management as well as a strategy for integrating environment into the national socio-economic development and institutional reforms with the objective of promoting sustainable development.⁴³

National Environmental Policy provided for establishment of the National Environmental Management Authority (NEMA) the principle agency that coordinates monitors and supervises all activities in respect of other environment and inter-ministerial policy committed that environmental issues in regard to National Environmental Management Authority (NEMA)

The overall Goal of the NEAP is sustainable social and economic development which maintains or enhances environmental quality and resource productivity on a long term-basis that meets the needs of the present generations without compromising the ability of future generations to meet their own needs.

⁴² Uganda National Water Development Report - 2005

⁴³ National Environment Action Plan 1991-1994

The Policy provides strategies to guide and assist decision makers and resource users in priorities in the national context and also at the sectoral, private sector and individual level⁴⁴.

It provides for integration of environmental concerns in national socioeconomic development planning process, avenues for inter-sectoral cooperation, and comprehensive and coordinated environmental management. As a result, environmental management is now a key criteria for national socio-economic development decisions. The Policy also recognized the need for sectoral policies in addressing the specific concerns of the identified environmental sectors.

The ministry may by statutory instrument and after consultation with the lead agency with approval of the policy committee on the environment declare a wetland as fully or partially protected⁴⁵

2.6 WETLANDS BIO DIVERSITY

Uganda's wetlands are known to support some 43 species of dragon flies (of which 8 species are known to occur in Uganda only), 8 species of mollusks, 52 species of fish (which represents 18% of fish species in Uganda), 48 species of amphibians, 243 species of birds, 14 species of mammals, 19 species of reptiles, and 271 species of macrophytes. All these species are of conservation importance, including those endemic to Uganda.

Ten sites have been identified as hot spots for biodiversity requiring immediate and special attention. They include Muchoya, L. Nabugabo, Lutembe Bay, Lake Bisina, Albert Nile, Doho Rice Scheme, Kyojja Swamp, Masulu, R. Ssezibwa system and L. Mutanda⁴⁶ and nationally, about 7% have been converted to other land uses, wetland species are highly specialised, and if their habitat are disturbed the impact is great, leading to decline and even extinction of some species and consequently the country's wetlands remain highly susceptible to loss.

2.7 WETLAND MANAGEMENT APPROACHES.

One of the principles of environment management to use and conserve the environment and natural resources of Uganda equitably and for the benefit of both present and future generations, taking into account the rate of population growth and the productivity of the available resources⁴⁷.

⁴⁴ Plan For Modernisation of Agriculture Report 2005

⁴⁵ R8 National Environment (Wetlands, River Banks, And Lake Shores Management) Regulation 2000

⁴⁶ Ministry Of Water Lands And Environment report 2001

⁴⁷ S.2 Nea Act 153

The Management of wetlands is considered under to the effect that NEMA in consultation with the lead agency, establish guidelines for the identification and sustainable management of all wetlands in Uganda⁴⁸ with the assistance of the local environment committees, district environment committees and the lead agency identify wetlands of local, national and international importance as ecosystems and habitats of species of fauna and flora and compile a national register of wetlands.⁴⁹

A brief over view of the common wetland management approaches are discussed as here below:⁵⁰

2.7.1 Environmentally sound management approach

Some times the management of natural resources may be debatable in line with its use causes adverse effect on the environment or not a typical example is the production of bricks from clay soils, this may lead to deforestation around the brick making since they may cut trees to burn the bricks.

However, the smoking of fish using papyrus may be environmentally sound and can reduce the exploitation of fuel wood supplies in the area. In such scenarios since most users of wetlands resources do not take into account other aspect of environment, it is only these uses that they have been proved to be non destructive to wetlands and their surroundings are encouraged and promoted, these include water supply, fisheries, wetlands edge gardening and grazing.⁵¹

2.7.2 SUSTAINABLE USE OF WETLAND APPROACH.

The sustainable use of wetlands is understood as the utilization which ensures that products or services derived from that use are available in the same proportion for the future for example yields from fishing or harvesting of papyrus should be set at level that can be maintained for the foreseeable future to achieve this wetlands need to be utilized in such a way that they do not lose the traditional benefits and one's decision to use wetland must consider the requirement of other users in the community⁵².

⁴⁸ S.37(1)

⁴⁹ S.37(2)

⁵⁰ Prepared by Joseph c.onyu: Understanding our wetland, A resource book to secondary school, published by Nile Transboundary Environmental Action Project Aug 2009 pg 59

⁵¹ Supra

⁵² Ibid

2.7.3 PROTECTION OF VITAL WETLAND APPROACH

Wetlands are important habitat for a variety of biological resources some of which depends entirely on wetlands for their survival ,their conservation would preserve indigenous species of plants and animal is essential for the future bio diversity many attributes of wetlands remain to be discovered earning them ecological importance for many of the Nile Basin countries internationally recognize wetlands outside those that are internationally recognized and also need to be protected ,for that to happen ,fully protected wetlands areas of important biodiversity should be partially established .

Also some wetlands may be partially exploited and used for research ,protected wetlands should be left in their natural state without or very little disturbance from humans

2.7.4 WATER SHED MANAGEMENT APPROACH

A watershed approach recognizes the inter-connectedness of water ,land and wetlands resources and results in more complete solutions that address more of the factors causing degradation,the focus is on the protection and proper management of wetland water shed .it involves the participation of various stake holders including the central government,local government leaders,the community extension staff and,community based organizations⁵³

E) COORDINATED/COLLABORATED APPROACH

Coordination and collaborative management involves multiple stake holders focusing on priority natural resources issues that benefit the different stake holders while maintaining the chemical and biological integrity of the wetlands diversity and environment health within the ecosystem⁵⁴.

2.8 THE CRITIQUE OF THE LEGAL FRAME WORKS FOR THE PROTECTION OF WETLANDS IN UGANDA

Apparently the law and policy for the management of wetlands in Uganda has manifested her willingness to implement her obligations under the Ramsar Convention and the process

⁵³ Ibid

⁵⁴ Ibid

continues with the lead agencies however the regulations formulated has gone along way to achieve the desired goal and as societies change, it is necessary to continue the process of adapting the law fully⁵⁵.

An interview with Mr Wamuga George, monitoring and enforcement officer NEMA he said that the main challenge is the lack of statutory regulation defining the identification or demarcation of wetlands boundaries yet they are protected by law ,developers are given restoration orders and time to stop construction in wetland but they still go ahead and defy this order⁵⁶

The capital city Authority has neglected the laws set up to protect the wetland whereby under section 74 provides that any one who interferes with the land around the city should be sued in court⁵⁷ but, due to corruption, Kampala City Council authority formerly (KCC) has sold off these areas to "money hungry" people who have reclaimed these areas to an extent of extinction. ⁵⁸ and hence non enforcement of law.

Accordingly r.28 provides for a penalty that a person who commits an offence under these Regulations is liable, on conviction to imprisonment for a term of not less than thirty six months or to a fine of not less than three hundred and sixty thousand shillings and not more than thirty six million shillings or both⁵⁹ however this penalty is inadequate as the culprits who commits such offence⁶⁰ can ably pay and hence undermining the regulation .

Similarly under r.7(1) provides for the Duty every landowner, occupier or user who is adjacent or contiguous with a wetland shall have a duty to prevent the degradation or destruction of the wetland and shall maintain the ecological and other functions of the wetland⁶¹ .Any person who

⁵⁵ John Ntambirweki ,*The Evolution of Policy And Legislation on Wetlands in Uganda* Senior Lecturer, Faculty of Law,,Makerere University, Uganda Gland, Switzerland Published 3-4 july 1998 Pg 15

⁵⁶ 15th Jan 2012 Nema Offices.

⁵⁷ The Public Health Act

⁵⁹ R.28 The National Environment (Waste Management) Regulations, S.I. No 52/1999.

⁶¹ The National Environment (Wetlands, River Banks And Lake Shores Management) Regulations, No. 3/2000
(Under section 107 of the National Environmental Act Cap 153)

fails, neglects or refuses to protect a wetland under sub-regulation (1) commits an offence⁶² but NEMA as the implementing agency has never is enforced this provision especially in slum areas.

The National Environment (Wetlands, River Banks And Lake Shores Management) Regulations under r.37 stipulates several offences in regard to wetland degradation however the punishment provided for under paragraph k that a person commits an offence for contravening the provisions therein by so doing he commits an offence and is liable on conviction to imprisonment of not less than three months or to a fine not exceeding three million or both⁶³.

In addition to the sentence a person found guilty may be required to carry out community work that promotes the conservation of wetlands.

However notwithstanding the above the regulations are not strict enough to punishment and deter others offenders from degrading the wetlands and as thus not severe to the extent it attracts the offenders to commit more offences.

In order to avert the emerging challenges there is need for collective responsibility of all stake holders to protect the environment and not government alone.

2.9 INTERNATIONAL LEGAL FRAME WORKS FOR THE PROTECTION OF WETLANDS

The international convention on the protection of wetlands with regard to the Contracting Parties recognizes the interdependence of man and his environment Considering the fundamental ecological functions of wetlands as regulators of water régimes and as habitats supporting a characteristic flora and fauna, especially waterfowl being convinced that wetlands constitute a resource of great economic, cultural, scientific and recreational value, the loss of which would be irreparable,desiring to stem the progressive encroachment on and loss of wetlands now and in the future; recognizing that waterfowl in their seasonal migrations may transcend frontiers and so should be regarded as an international resource being confident that the conservation of wetlands

⁶² Ibid

⁶³ R.38

and their flora and fauna can be ensured by combining far-sighted national policies with co-ordinated international action⁶⁴

The Ramsar Convention works closely with five other organisations known as International Organization Partners (IOPs). These are Birdlife International, the International Union for Conservation of Nature (IUCN), the International Water Management Institute (IWMI), Wetlands International and WWF International. These support the work of the Convention by providing expert technical advice, helping implement field studies and providing financial support.

The objectives to the convention on bio diversity for the conservation and sustainable use of its component and the fair utilization of generic resources including the appropriate access to generic resources and by transfer of relevant technologies taking into account all the rights⁶⁵ for example, at the 2008 Convention of Parties, IWMI scientists contributed directly to a number of resolutions including those relating to wetlands links to human health, biofuels, poverty reduction, biogeography regionalization and biodiversity in rice paddies⁶⁶.

The United Nations Organization most focused on the issues of sustainable development and environmental degradation. with a mission "To provide leadership and encourage partnership in caring for the environment by inspiring, informing, and enabling nations and peoples to improve their quality of life without compromising that of future generations⁶⁷ The intensified and unsustainable demand for land, water marine and coastal resources resulting from the expansion of agriculture and uncontrolled urbanization has lead to increased degradation of natural ecosystems and erode the life supporting systems that uphold human civilization. Caring for natural resources and promoting their sustainable use is an essential response of the world community to ensure its own survival and well-being⁶⁸.

³⁸ Convention on wetlands of International Importance Especially As waterfowl Habitat 1971 Ramsar, 2 February 1971, Protocol, Paris, 3 December 1982

⁶⁵ Encyclopedia of environmental pollution and awareness in the 21th century vol 24 Art 1 convention on bio diversity 1971 page 249 edited by v.k prabhakar 1st edition

⁶⁶ supra

⁶⁷ UNEP was responsible for both the Earth Summit in Brazil in 1992 and the World Summit on Sustainable Development in South Africa in 2002.

⁶⁸ Wikipedia : Sustainable Management And Use Of Natural Resources visited on 24th Jan 2012

2.9.1 THE CRITIQUE OF THE INTERNATIONAL LEGAL FRAMEWORKS FOR THE PROTECTION OF WETLANDS.

The effectiveness of the international law on protection of wetlands is determined in the first place by the sphere of its application however in this respect the Ramsar Convention does not comprise a sufficient number of countries about forty countries, compared with ninety countries participating in the Convention on International Trade in Endangered Species for example Wild Fauna and Flora CITES⁶⁹ As with each method of protecting the environment, the use of environmental law has its shortcomings. For one, laws and regulations can lack effectiveness due to the difficulty of law enforcement. For example, the Pantanal an immense wetland located in South America is protected by many environmental regulations; however, there often is poor enforcement of those regulations given the region's remoteness and vast size in addition, environmental laws and regulations are often enacted subsequent to undesirable consequences that have already occurred. Many environmental regulations have been enacted worldwide to protect wetlands however, this comes after about 50 percent of the world's wetlands have already been destroyed⁷⁰

The Ramsar Convention is justly appraised as the first international environmental treaty aimed exclusively at wildlife habitat protection on a global scale. At the same time, the content of the Convention reflects certain deficiencies of juridical approach to environmental problems which typify the early seventies. Interestingly to note is that the Convention does not exhaustively stipulate the legal status of wetlands of international importance, nor does it provide for the necessary degree of unified state actions for wetlands conservation.⁷¹

The main emphasis of the Convention is the List of Wetlands of International Importance. Parties to the Convention are obliged to designate at least one wetland for the List. Sites in need of priority action are listed on the Montreux Record "where changes in ecological character have occurred, are occurring or are likely to occur" at present there are 60 Montreux sites.

⁶⁹ Convention on International Trade in Endangered Species of Wild Fauna and Flora, Mar. 3, 1973, 27 U.S.T. 1087, T.I.A.S. No. 8249.

⁷⁰ www.New World Encyclopedia On Environmental Law On Wetlands modification 3 April 2008 pg 4

⁷¹ supra

However, it is explicitly stated under the Convention, that there is a general obligation for the Contracting Parties to include wetland conservation considerations within their national land-use planning. They are required to undertake planning to promote the 'wise use' of wetlands in their territory as a National Wetlands Policy ⁷² Furthermore, contracting Parties are obliged to promote the conservation of wetlands in their territory (whether or not they are included in the list) through the establishment of nature reserves and in the same way they also undertake to train personnel competent in wetland research, management and wardening⁷³

Environmental protection has further been criticized for restricting the rights of private property and even contravening national sovereignty; implicit in such laws is the view that protecting the environment is a public responsibility to which lesser private and national interests must bend. The interdependence of all creatures including humans in the web of life requires an ethic of "shared ownership," linking private rights with public responsibility to the environment and by the same token, linking the sovereignty of nations with the greater responsibility to protect the planet Earth.⁷⁴

The Ramsar Convention which resulted into a significant endeavour by the international community, through the signature at the Convention on Biological Diversity⁷⁵, to establish a basic conceptual framework to underpin the various conservation initiatives embodied in the now substantial number of international treaties for the protection of wildlife.

Although the convention's original focus was on wetland as a habitat for the water fowls, Ramsar has developed into an international instrument dealing with wetlands from a broader point of view, Ramsar remains the only international convention that concentrates on a particular type of eco system wetlands rather than on species or other issues .

However the framework emphasizes threefold obligation regarding the conservation of ecosystems, of species and of genetic diversity within species. As each species, and indeed each

⁷² Article 3.1 Ramsar Convention supra

⁷³ (Article 4.5).

⁷⁴ Ibid

⁷⁵ Rio Earth Summit of the 1992

individual member of that species, exists not in isolation but as a functioning unit within a wider ecosystem, it is axiomatic that the protection of natural habitats must continue to play a particularly crucial role in the global conservation effort.⁷⁶

Critics of the precautionary principle argue that it is impractical, since every implementation of a technology carries some risk of negative consequences. Proponents counter that the principle is not an absolute rule; it is a conceptual tool to clarify arguments, and especially an issue of where the burden of proof lies.⁷⁷

The principle is only applied to new technologies, not the existing technologies that the new technology might supersede. Proponents of the principle argue that this is a misapplication of the principle, and that it should be applied to existing as well as new technologies. But it is arguably an argument for the status quo in the absence of sufficient information to guarantee that change will be for the better

The precautionary principle, as stated, does not take into account the potential positive benefits of a technology,⁷⁸ which may be substantial. Its use is often interpreted as protectionism such as the case of beef fed with hormones as dealt with by the World Trade Organization or as Neo-Luddism in the case of opposition to genetic engineering, nanotechnology stem cell research, or even development of wilderness areas, precautionary principle is "self-contradictory," in that the principle itself might have irreversible and unpredictable consequences and as such might on its own terms be the wrong course of action.

The principle was implemented in an international treaty as early as the 1987 Montreal Protocol, and among other international treaties and declarations is reflected in the 1992, Rio Declaration

⁷⁶ M. J. Bowman Article The Ramsar Convention Comes of Age Senior Lecturer in Law and Co-Director of the University of Nottingham Treaty Centre

⁷⁷ www.New World Encyclopedia On Environmental Law On Wetlands modification 3 April 2008

⁷⁸ *supra*

on environment and Development signed at the United Nations Conference on environment and Development.⁷⁹

The theme “**Wetland and water Supporting life, sustaining livelihoods.**”⁸⁰ Was significant that it sought to link wetland conservation and management to the need to support life and sustain livelihoods of especially the poor.

However in Uganda the vulnerability of the Poor's livelihoods to insatiable and senseless destruction of wetlands in the name of development is on the increase More and more Ugandans are being displaced and marginalized from wetland resources, thrown more and more to the margins of nature and forced to earn a living from the remaining but dwindling wetlands.

The ultimate result is a vicious circle of environmental degradation, heightened poverty and rising uncertainty in which access to wetland resources is ever more a nightmare. Loss of confidence in the future and in the political governance is inevitable. This so often means that there is haphazard response to the challenges thereof, on the part of both citizens and government despite availability of policies to guide wetland conservation and/or management. It is then even more, not less, poverty, and more tendencies, among governors (political, bureaucratic and corporate) to abuse environmental and social justice. This continues to cause much restlessness among the environmental advocacy and lobby civil society organizations because it has been their collective goal to ensure that decision-making in environment and development does not deliberately exclude consideration of environmental and social justice, security and peace and, for that matter, respect for the human rights of the poor.⁸¹

⁷⁹ The UN General Assembly in 1982, adopted the first international endorsement of the precautionary principle in the World Charter for Nature

⁸⁰ Ramsar COP 9 The theme “ Wetland and water: Supporting life, sustaining livelihoods’ 2005 kampala conference

⁸¹ www.afuna.org or <http://www.afuna.o-f.com> F.c. Oweyegha-afunaduula department of zoology,makerere university P.o. Box 7062 Kampala , Uganda Poverty Reduction, Wetland Conservation And Sustainable Use In Uganda : Civil Society Perspectives ,3.11.2005

CHAPTER THREE

ENFORCEMENT OF WETLAND REGULATION VISA-VIS THE STRUCTURED STUDY

3.0 INTRODUCTION

This chapter looks at the enforcement of the law visa vis the structured study and discusses the role of NEMA, DPP and the judiciary in the enforcement of wetland regulation

3.1 ENFORCEMENT OF WETLAND REGULATIONS .

The Constitution, the section 44 (1), (4) and (5) of the Land Act thereof enshrines the public trust doctrine and provides that the government or local government holds in trust and protects for the common good of all citizens of Uganda certain environmentally sensitive areas such as natural lakes and rivers, ground water, natural ponds and streams, wetlands, forest reserves, national parks and any other land reserved for ecological and touristic purposes. Accordingly, under the Land Act, Government has no powers to lease or otherwise alienate any natural resource mentioned above but may only grant concessions or licenses or permits in respect of that natural resource.

The Government of Uganda has taken stringent actions to protect public health from environmental pollution & protect the quality of the natural environment. Among the interventions has been the development of management strategies to prevent or control pollution. Most of these strategies also involve legal requirements that must be met by individuals and facilities.⁸²

One of the primary goals of environmental enforcement program is to change human behavior so that environmental requirements are complied with by achieving this goal it involves motivating

⁸² Mr. George Lubega Matovu. Mr. George Lubega is a Natural Resources Management Specialist working with NEMA. Paper presented at a training workshop for Police officers, investigators and State Prosecutors to Enhance Enforcement of Environmental laws.

the regulated community to comply, removing barriers that prevent compliance, and overcoming existing factors that encourage non-compliance

Two broad approaches are used to change human behaviour Promoting compliance thru education and incentives and Identifying and taking action to bring violators into compliance

Compliance is the full implementation of environmental requirements,It occurs when requirements and desired changes are achieved e.g. processes or raw materials are changed so that for example hazardous waste is disposed of at approved sites

Whereas **Enforcement** is a set of actions that governments or others take to achieve compliance within the regulated community and to correct and halt situations that endanger the environment or public health and Enforcement by NEMA usually includes:

- (i) Inspections to determine compliance status of regulated community and to detect violations
- (ii) Negotiations with individuals or facility managers who are out of compliance to develop mutually agreed schedules and approaches for achieving compliance compliance agreement
- (iii) Legal action where necessary to compel compliance and impose some consequence for violating the law or posing a threat to human health or environmental quality
- (iv) Enforcement may also include compliance promotion for example Educational programmes,Technical assistance and subsidies.

3.1.1 ENFORCEMENT MECHANISM AND IMPLEMENTATION TOOLS

There are two categories of enforcement mechanism that is Category A and B as hereunder

The Precautionary Principle Implementation Tools this includes the following,

(i) Environmental Planning

NEMA is enjoined to prepare a National Environment Action Plan to be reviewed after every five years or less (S. 17(1)). The plan shall cover all matters affecting the environment in Uganda (S.18 (2) (a)). Environmental planning ensures that development activities are harmonized with the need to protect the environment in accordance with established standards.

(ii) Environmental Monitoring and Impact Assessment.

Under the Environmental Impact Assessment Guidelines two systems of monitoring are specified as:- Self monitoring whereby the developers themselves are encouraged to monitor the impact of their activities and; enforcement monitoring done by government agencies such as NEMA through environmental inspectors⁸³

(iii) Environmental Audit

Audits occur after the project has commenced and may lead to prosecution of offenders and redesign of a project or the remodeling of its operations.

Under S. 22,NEMA carries out continuous audits with the help of inspectors, to ensure that industries comply with the requirements of the Environment Act,however,the emerging of the many industries before the act was enacted ,Environmental standards were not a key feature then.

(iv) Environment Standard Setting and Licensing.

Some activities require specific permits. In order to control the environmental effects of these substances the law requires their classification and labeling.Standard setting ensures that licences and permits are issued as a measure to control activities that may have deleterious or beneficial effects on the environment.This requires that the licensing authorities should be environmentally conscious to avoid emphasizing the revenue collection aspect at the expense of environmental concerns.

(v) Public Awareness and Participation

The need for popular awareness is a key requirement for enforcement of legislation NEMA is given the mandate to carry out education and awareness campaigns to ensure that the public participates in environmental decision making and enforcement.

(vi) The Use of Easements and Incentives.

⁸³ S. 23(2) NEA

An environmental easement may be enforced by any body who finds it necessary to protect a segment of the environment although he may not own property in the proximity to the property subject to the easement. The Act clearly provides that management measures should be carried out in conjunction with the application of social and economic incentives including taxation measures.



Category B - The Polluter Pays Principle Implementation Tools

(a) Performance Bonds

Industrial plants that produce highly dangerous or toxic substances & therefore have significant adverse impacts on the environment may be required to deposit bonds as security for good environmental practice.

(b) Environmental Improvement Notice

Improvement Notices may be issued by environmental inspectors under section 80(1)(i) of Cap. 153 to require a person to cease activities deleterious to the environment.

(c) Environmental Restoration Orders

Restoration Orders are issued under section 67 of Cap153 requiring a person to restore the environment or to prevent a person from harming the environment. They may award compensation for harm done to the environment or/and levy a charge for restoration undertaken. Restoration Orders are issued by NEMA or a court giving the person a minimum of 21 days to restore what he has destroyed.

Under Section 70(i) of the National Environment Act Cap 153 is to the effect that “where a person on whom an Environmental Restoration Order has been served fails, neglects or refuses to take action required by the Order, the Authority (NEMA) may with all the necessary workers and other officers, enter or authorize any other person to enter any land under the control of the person on whom that order has been served and take all the necessary action in respect of the activity to which that order relates and otherwise to enforce that order as may deem fit.”

(d) Record Keeping and Inspections

Persons whose activities are likely to have a significant impact on the environment are required to keep records of the amount of wastes and by products generated by their activities and as to how far they are complying with the provision of the Act.

Inspections are carried out by gazetted inspectors who have very wide powers under the Act for instance to take samples, seize any plant equipment or substance and close any facility or issue improvement notices.

(e) The Use of Criminal Law & Community Service Orders.

Criminal law remains a veritable instrument for the control of behaviour because of the natural tendency of people to fear the infliction of pain, isolation or economic loss.

Therefore, the Act provides for serious penalties for infraction of its provisions. As an alternative to imprisonment and fines, persons committing environmental wrongs may be required to perform duties in the community as a reparation to the community for the wrong done.

In the alternative therefore the Enforcement of wetlands relates to the set of actions that government takes to achieve the compliance within the regulated society or community and to collect or stop the situations that threaten to endanger the wetland or the public health

⁸⁴Enforcement by government includes compliance promotion and legal action of civil thus criminal prosecution⁸⁵

3.1.2 THE ROLE OF NEMA AND DIRECTORATE OF PUBLIC PROSECUTION IN ENFORCING WETLAND REGULATIONS.

In the last decade, Uganda did modernize her environmental laws with a view of promoting awareness and protecting the environment. The term environment is difficult to define. In its more restricted sense, environment may represent simply the milieu of the individual, that is, his habitat and neighborhood. The National Environment Act Cap 153 Laws of Uganda defines

⁸⁴ Robert wabunoh the criminal aspects of environmental law 7-10 dec 1998

⁸⁵ http://www.dpp.go.ug/perspectives_role.php. role of DPP in Environmental Law By David B. Bakibinga :State Prosecutor - Luwero

environment to mean physical factors surrounding human beings including land, water, atmosphere, climate, sound, plants and the social factor or atheistic includes both the natural and the built environment.

NEMA is mandated to monitor, supervise and coordinate environmental matters in Uganda. NEMA works together with local governments, civil society, communities and development partners. Environmental issues in Uganda are addressed within a sustainable development framework that promotes social, economic and environmental well being through the decentralized and participatory environmental mode of management.

Similarly under S.6 (1) (c) of National Environment Act, NEMA is required to liaise with the private sector, intergovernmental organizations, non-governmental agencies and governmental agencies of other states on issues relating to the environment.

In the same way Article 120 (3) of the Constitution of Uganda, the DPP is mandated to inter alia institute, take over prosecutions against any person or authority of Article 120 provides that the DPP is required to have regard to public interest in the exercise of his or her functions this implies that Environmental matters are of public interest as they have global effects therefore the DPP as one of the lead agencies is enjoined in ensuring the enforcement of environmental law in order to achieve improvement in environmental quality.

Further more despite the fact that most principles of environmental law are a modification of the tort law and principles the perception that redress must be sought under public interest litigation. is misconception that has down played the role of environmental Criminal Law, within the purview of the DPP.

Although the DPP grants licenses to public prosecutors including the NEMA prosecutor, there is a tendency to leave all the prosecutions to NEMA, which have apparently overwhelmed it.

NEMA has occasionally distributed some materials on environmental matters to prosecutors under DPP but there has not been formal training. It follows that there are factors that limit access to environmental justice that require DPP's intervention.

Cost of litigation involved in a case of public interest litigation renders the majority of people incapable of accessing environmental justice. Being a matter of constitutional importance,

NEMA,DPP and other Stakeholders should enforce environmental Criminal Law in order to ensure that the offenders are deterred.

In **GREEN WATCH & ACODE VS GOLF COURSE HOLDING**⁸⁶ the High Court sitting at Nakawa slammed security for costs in the tune of fifty million (50m/=) against Green watch and ACODE. This stalled the matter pending payment.Demanding security for costs would tantamount to shutting people from access to justice as a Constitutional right. It should be observed that the access to justice is about sustainable development, which demands that one should use his or her property in a manner, which will not affect others. It is not a question of sustainable use of property ,under environmental criminal law, security for costs would not arise hence ensuring justice.

Access to environmental justice should be incorporated in the Chain linked Initiative (where all Stake holders, in environmental justice system, coordinate, cooperate and communicate to create public awareness and accountability).

3.2 THE ROLE OF THE JUDICIARY IN ENFORCEMENT OF WETLAND REGULATIONS.

The judiciary as an arm of government is mandated with the duty to interpret the law and in respect of environment law, access to environmental justice according to UNEP means judicial and administrative procedures available to a person aggrieved or likely to be aggrieved by an environmental issue.

According to **Friends of the Earth** ,the concept of environmental justice is based on two basic premises ,the first one is that everyone should have the right and be able to live in a healthy environment with access to enough environmental resources for a healthy life, and that it is predominantly the poorest and least powerful people who are missing those conditions⁸⁷.

In **GREENWATCH VS. THE ATTORNEY GENERAL & UGANDA ELECTRICITY DISTRIBUTION COMPANY LTD.** The above case illustrates the point that access to environmental justice requires access to information as provided by Article 41 of the

⁸⁶ HCCS 834/2000

⁸⁷ The World Special briefing No.7 of November 2001,

Constitution. It is a fact that access to justice involves fairness and impartiality and that justice should never be a "high horse" inaccessible to the ordinary man in other words the Courts of Law should be cheap, easy and quick to access.

Environmental matters normally involve the interest of very poor people who can hardly afford Court fees and or Lawyers fees. These are people who cannot afford to pay costs of litigation. Being a matter of constitutional importance government should come up with a separate Court fees structures in the interest of sustainable development. The question which is asked is why pay fees for the interest of the public?

Since environmental justice is a matter of public interest as it promotes sustainable development however the issue of security of costs can not be left out Sometime back, a High Court circuit at Nakawa slammed security for costs in the tune of Shs.50 million against Green watch and Advocates Coalition for development

Environmental justice implies environmental responsibilities and these responsibilities are on the current generation to ensure that a healthy environment exists for the future generations, and or countries, organizations and individuals in this generation to ensure that development does not create environmental problems or distribute environmental resources in ways which damage other people's health⁸⁸.

The judiciary has a key role in integrating Human Values set in the United Nations Millennium Declaration, Tolerance, Respect for nature and shared responsibility into contemporary global civilization by translating these shared values into action through strengthening respect for the rule of law both internationally and nationally.

The Judiciary should be well informed of the rapidly expanding boundaries of environmental law and be aware of its role and responsibilities in promoting the implementation, development and enforcement of laws, regulations and international agreements relating to sustainable

⁸⁸ Hon. Justice Rubby Aweri Opio is a judge of the High Court of Kampala, Uganda. Paper presented at the magistrates training workshop in environmental law fro 14th-17th August 2005, Sunset Hotel, Jinja.

development, plays a critical role in the enhancement of public interest in a healthy and secure environment.

The importance of ensuring that environmental law in the field of sustainable development feature prominently in academic curricula, legal studies and training at all levels, in particular among judges and others engaged in the judicial process.

However the Deficiency in the knowledge, relevant skills and information in regard to environmental law is one of the principal causes that contribute to lack of effective implementation, development and enforcement of environmental law.

On the other hand one of the leading cases on the various aspects of access to environmental justice is the case of **GREENWATCH VS. ATTORNEY GENERAL & ANOTHER**⁸⁹, where Ag. Justice Lameck N. Mukasa made several landmark pronouncements on several aspects of access to environmental justice basing on the Constitution⁹⁰

In this case the principles of Environmental Management were observed, which duty it owed to the citizens of Uganda. Hence there was a cause of action against it and the Applicant had no locus before the Court in that it did not comply with the provisions of Order 1 rule 8 of the Civil Procedure Rules, the Learned Judge followed the decision of the Principal Judge in the case of the **ENVIRONMENTAL ACTION NETWORK LTD VS THE ATTORNEY GENERAL AND NATIONAL ENVIRONMENTAL MANAGEMENT**⁹¹ where he stated that the State Attorney failed, in his preliminary objection, to distinguish between actions brought in a representative capacity pursuant to Order 1 rule 8 of the Civil Procedure Rules, and what are called Public interest litigation which are the concern of Article 50 of the Constitution and S1 26 of 1992. The two actions are distinguishable by the wording of the enactments or instruments pursuant to which they are instituted. Order 1 rule 8 of the Civil Procedure Rules governs actions by or against the parties that is Plaintiff or defendant together with parties that they seek to represent and they must have similar interest in the suit.

⁸⁹ Miscellaneous Cause No. 140/2002

⁹⁰ Article 245 of the Constitution

⁹¹ Miscellaneous Application No. 39/2001

On the other hand, Article 50 of the Constitution of Uganda does not require that the Applicant must have the same interest as the parties he or she seeks to represent or for whose benefit the action is brought. The Learned Judge accordingly concluded that the wording of Clause 2 of Article 50 grants locus to any concerned person or organization to bring a public interest action on behalf of groups or individual members of the country even if that group or individual is not aware that his fundamental rights or freedom are being violated.

On Public awareness, the Learned Judge observed that there is Limited Public Awareness of the fundamental rights or freedom provided for in the Constitution, let alone legal rights and how the same can be enforced. Such illiteracy of legal rights is even evident among the elites.

Our situation is not much different from that in Tanzania where Justice Rukangira, in the case of **REV. CHRISTOPHER MTIKILLA VS THE ATTORNEY GENERAL**⁹² stated Given all these and other circumstances, if there should spring up a public spirited individual and seek the Court's intervention against legislation or actions that prevent the Constitution the Court, as guardian and trustee of the Constitution and what it stands for, is under an obligation to rise up to the occasion and grant him standing.

In **GREENWATCH VS. HIMA CEMENT 1994 LTD** this was on the right against pollution. Hima Cement Factory was found to be emitting over 80 tons of cement dust into the atmosphere from its factory. The same was causing harm and damage to people, animals, crops and the general environment. The Plaintiff took an action as a public litigant to stop the cement factory from polluting the environment, seeking pollution and environmental restoration order. The matter was however resolved amicably.

in the case of **Greenwich and another Vs. Golf Course Holdings**⁹³ the Greenwich and Advocates Coalition for development (ACFODE) had sued Golf Course holding of constructing a hotel on a wetland and green areas and of carrying out an illegal Environmental Impact Assessment to justify their development on the plot, the Plaintiffs sought among other things, a permanent injunction to restrain further development on the plot, a declaration that the Environmental Impact Assessment carried out by Golf Course was illegal and a declaration that

⁹² High Court Civil case No.5 of 1995

⁹³ HCCS No. 834/2000.

the said land was a wetland and that an environmental restoration order be issued against the Golf Course holdings the Court granted the application but reduced the amount of costs claimed from 300 million to 50 million, which was to be paid within 30 days before the case could take off therefore demanding security for costs on such a premise would be watering down the law to protect the environment and sustainable development.

Uganda Vs Ddungu⁹⁴ That case involves NEMA and a Company called COIN Ltd. Mr. Ddungu was taken to Court as one of the directors of COIN Ltd for constructing a structure on a wetland and failure to carry out an Environmental improvement order, among other things. Those allegations were supposed to have occurred between March 2000 and January 2001 at COIN Ltd. The Court found that the alleged crimes had been committed but held that it had not been proved that it was the accused (Ddungu) who had committed the same personally or under his instructions since COIN Ltd had more than one director. However after the acquittal the Court went ahead to make restoration order against the management COIN Ltd on the basis that the Accused was part of the management. There is therefore need for clear predictability of the law.

3.3. CHALLENGES TO JUDICIAL ENFORCEMENT OF WETLAND REGULATION.

There are emerging challenges to the enforcement of wetland regulations ,research indicates that these problem are both political, social and economic

Public Participation:

The Constitution of Uganda provides for public participation in the administration of justice. However in environmental justice, public participation is very poor. This may be due to the fact that the majority of the citizens are ignorant of their environmental rights. Associated to this is an element of poor leadership. For example the issue of high power tariffs have failed to be resolved and yet parliament had made a resolution to have it reduced.

Public participation is a function of access to information which is guaranteed under Article 41 of the Constitution. Access to information is an indicator of transparency and accountability in

⁹⁴Buganda Road Cr. Case No. 735/2001

public affairs. There is a saying that "an ignorant or ill informed or misinformed populace is prone to manipulation or exploitation as it does not know its rights.

Section 85 of the National Environment Act gives freedom of access to environmental information. However, our jurisprudence shows that in certain cases and for unknown reasons Government is not willing to grant its citizen access to information as a Constitutional right. An example is the case of **Greenwatch Vs. The Attorney General and Uganda Electricity Distribution Company Ltd (supra)**.

Poor Government policy:

There is contention that Government is interested in attracting investors at the expense of sustainable development and when such investors are challenged they seek protection from the executive. Challenging such investors become a political risk and very few Lawyers would be willing to take up such cases. This may explain the reason why cases of public interest litigation are being pursued by very few firms of Advocates.

Advocates' Act and Law Council:

Access to Environmental Justice is a Constitutional right. This is naturally supported by access to information. Recently however, the Law Council came out with a directive under the Advocates Act stopping Advocates from expressing their opinions publicly on Legal and Constitutional issues. Considering the fact that a right to healthy environment is a fundamental right granted by the Constitution, how tenable is that directive? My personal view is that writing an article on a legal and a Constitutional matter does not constitute touting except that it should not offend the rule of subjudice.

General fear of Litigation:

Poor access is also due to the fact that generally people fear litigation for various reasons lack of resources and familiarity with legal institutions, lack of knowledge of how to go to Court, lack of knowledge and trust of remedies available to them. People associate Court with imprisonment

Courts located far from poor people:

The administration of justice in Uganda was established to strengthen colonial administration. To make it coercive it was established in isolated areas too far from the local people. In most cases one has to travel between 20 - 30 miles in order to access justice. Court location is to that extent a great disincentive to access to justice.

This is coupled with abject poverty. Good governance requires that services should be taken nearer to the people. Courts which serve the greatest bulk of our society should therefore be established nearest to the people that is to say the Magistrates' courts as for the High Court, efforts have been made to increase the number of High Court Circuits by creating new circuits of Arua, Masindi, Soroti and Kabale.

However the above efforts should be supported by manpower if there are no judges to man those stations their creation would not have much impact.

Lack of Judicial activism:

The bench and the bar should break off from Orthodox methods of litigation by being creative in order to realize the dynamic nature of the law.⁹⁵

"A judge is not there simply to discover a body of rules then to apply those rules mechanically to situations that arise in litigation where he is called upon to adjudicate. There is a creative role for the judge to discharge, in the sense that he must evaluate for himself the rationale of the rules that he is called upon to apply. It is only then that the law becomes a living mechanism, virile, vibrant, productive and of use to the community. Otherwise it becomes arid and sterile.

Delays of Justice.

Justice delayed is no doubt justice denied. The Constitution of the Republic of Uganda in Article 126 (2) (b) provides that justice shall not be delayed. Environmental justice is more crucial than

⁹⁵ The words of Dr G.L. Peiris in his book. Towards Equity page 273-274

ordinary justice as it is aimed at protecting human health and the environment for posterity. Environmental jurisprudence in Uganda has shown that our courts are not quick in redressing environmental matters expeditiously.

A case in point is **GREENWATCH (U) LTD AND ANOTHER VS GOLF COURSE HOLDINGS** Ltd (supra). That case has not been resolved and yet the hotel has now been completed and is now in operation. The case is unlikely to take off in view of an order for security for costs against the Applicants which I have indicated earlier.

As a matter of fact judicial activism is provided in the 1995 Constitution under Article 126(1) where it is provided that judicial power should be exercised by court in the name of the people and in conformity with law and with values, norms and aspirations of the people. As to how far our courts have lived up to the above expectations is up to the participants to evaluate.

Poor funding:

To offer an adequate service you must have the relevant resources. A good judiciary must have a well-equipped library and modern information technology. It must also have a well motivated staff. All these need adequate funding. Without requisite resources, the judiciary is rendered weak. This reminds me of Amini's regime where courts could not sit because of lack of stationery. In fact litigants were required to provide stationery before their causes could move, just as what police are still doing today. Lack of adequate funding is therefore a crucial bottleneck to access to justice.

Lack of Political Will:

For there to be access to justice the public must have confidence in the judiciary. This can only be realized if whatever is done by the judiciary is supported by the executive at least constructively. There must not be arms twisting between the three arms of other enforcement constraints relate to lack of staff and resources to enhance sound environmental management at national and district level..

Lack of technical training in environmental law is a limitation to the application of basic principles of environmental law such as sustainable development and other environmental

considerations. for instance in **Uganda vs Rogers Ddungu**⁹⁶, although environmental offences by nature appear to be of strict or vicarious liability the court did not expressly state so, this is likely to cause controversy. The court did not find personal liability of the accused having reclaimed or having ordered he reclaiming of a wetland since Coin Ltd had more than one director. However after the acquittal the Court went ahead to make a restoration order against the management of Coin Ltd on the basis that the accused was part of the Management. It would follow that the case creates uncertainty.

Corruption

Corruption in public offices especially those concerned with enforcement and protection of the environment for instance Nasser Ntege sebagala former mayor of Kampala city council have apportioned plots of wetland in bugolobi ,the recent PAMSU commission of inquiry in by Hon Retired Justice Kanyeihamba George William where commission found out Uganda Wild Life Authority was misappropriating funds, Those involved in such practices must be prosecuted and punished. From the above there have to be necessary reforms in order to strengthen enforcement, compliance and development of environmental justice:

3.4.GENERAL CHALLENGES TO MONITORING AND ENFORCEMENT

Environmental planning as a tool of environmental management is intended to ensure that development activities and exploitation of natural resources for different purposes are harmonized with the need to conserve the environment. The publication of national state of environment reports assist in providing the much needed information for planning purposes, resource allocation, national and institutional budgetary processes. However, challenges to environmental planning both at national and district level do exist and these include: population size, growth rate, structure and distribution that negatively impacts on fragile ecosystems like wetlands, rivers banks, lakeshore, hilly and mountainous areas; high dependence on fuel wood for cooking, leading to increase in deforestation and land degradation; soil erosion and land degradation due to poor farming methods;¹⁸and inadequate funding for the environment sector

⁹⁶ Bug Rd CR 735/2001

which is still heavily dependent on the ever decreasing support from development partners/donors, thereby calling for mechanisms to make the sector self sustaining.

These challenges arises from failures at different institutional linkages for environmental management. Whereas for example wetlands are held in trust by Central Government or local Government for the common good of the people of Uganda, recent examples of wetland abuse have included cases where Local Authorities have been the very violators of these constitutional and legal provisions. Where this has happened, local authorities have indicated that they converted wetlands for the sake of providing their communities with economic growth opportunities and for fighting poverty. It is therefore a dilemma that the very institutions entrusted with the protection of wetlands have in some cases not assisted the crusade for their conservation⁹⁷.

Population pressure

More than 90 per cent of the wetlands that existed in Kampala had been encroached on by 2008, according to statistics from the Wetlands management department of the Ministry of Water and Environment of the 345,330 square-kilometers that existed in 1994 only 22 were still existent when a survey to map wetlands resumed in 2008 Kampala sits on wetland and due to the rural-urban migration in the country and unemployment rate of more than 80 per cent, the non-renewable sources have been encroached on in the past decade, a series of shopping malls, entertainment centres and office buildings have cropped up in the 189 square-kilometre city.⁹⁸ There has been a lot of pressure from population growth the city that was designed to hold very few people⁹⁹ Last year's Uganda Bureau of Statistics figures indicated that Kampala had a population of more than 1.5 million people with more visiting it daily to encroach on wetlands

⁹⁷ Christine Echokit Akello School of Law, School of Oriental and African Studies (SOAS) - University of London and the International Environmental Law Research Centre (IELRC). LEAD is published at www.lead-journal.org ISSN 1746-5893.

⁹⁸ Daily monitor City wetlands on brink of extinction Posted by Abdu Kiyaga on Monday, April 9 2012

for settlement, according to experts, is responsible for the increased high temperatures, constant flooding and epidemic diseases, especially during the rainy season.

“We no longer have coolants and resources that would absorb the wastes in the city, drainage has also become a major concern because areas where water would be disposed of are now filled with arcades and this is why we at times we get Cholera outbreaks in slums,”¹⁰⁰

Weak enforcement of the environmental law and the existing regulations to punish wetland developers, squatters who degrade wetlands and hence rendering the existing law weak¹⁰¹

Issuance of Land Title in wetland areas by the Central and Local Governments

Where as it is a constitutional and legal requirement that areas such are wetlands, riverbanks, lakeshores are held in trust by Government and Local Government for the common good of all the citizens of Uganda, there are incidences where the very institutions that are charged with this responsibility are the very ones who alienate these wetlands and even issued land titles, recently the minister of water and environment accused ministry of lands for issuance land titles in wetlands¹⁰²

The minister of water and environment, has advised the government to recall all land title issued on the shores of lakes and banks of rivers in order to reduce the rampant encroachment on the protection zones of the water bodies, she noted that the lands ministry has issued numerous titles on the lake which she want to be recalled in order to ensure conservation of natural resources, however the minister did not mention the number of titles that so far been issued.¹⁰³

During the recent study tour of the lake Victoria, scientists observed area an alarming rate of pollution arising from human activities in the catchment areas leading to environmental

⁹⁹ An Interview With Mafabi the Commissioner for Wetlands At Wetland Inspection Department In Luzira on 9th April 2012 at 12.00pm

¹⁰⁰ Supra

¹⁰¹ NEMA Report 2009-2010

¹⁰² An Interview With The Minister Of Water And Environment ,Hon Maria Mutagamba At The Ministry Head Quaters in Luzira On Thusday 15th March 2012 At 10:45 Am

¹⁰³ Hon Minister Maria Mutagamba Article' New Vision may 2 ,2012

degradation, due to pollution, the government spends billions of shillings towards treatment of water before it is pumped back Kampala's two million people¹⁰⁴.

Enforcement of the legal requirements for protection of the environment and public health.

There is the problem of enforcement of the legal requirements for protection of the environment and public health. Whereas it is now largely accepted that environment is important worth protecting, and whereas enforcement of environment regulations, is expected to be done through a hierarchy of enforcement levels from national (NEMA), Districts down to community levels, the enforcement capacity available at all these levels appears not to be able to match the widespread nature of the problem of environment degradation. In addition, while the responsibility for environment management has been vested under the local authorities, cases of local authority intervention on environmental management are still few, implying that even where local authority intervention would have been enough to stop abuses, such cases still continue to be referred to NEMA. It is stressed that this state of affairs for a dispersed resource such as wetlands requires an enforcement and intervention mechanisms that is closer as possible to the community level if tangible results are to be achieved¹⁰⁵.

In addition to the above, there has also been a problem of wetland filling during holidays and awkward hours when those dumping probably have full knowledge that enforcement staff are not on duty. It remains an uphill task to prosecute these cases, and the affected wetlands can hardly recover their original state even if the culprits are required to restore them.¹⁰⁶

How to transfer management and enforcement responsibility to local authorities and to resource users level.

With the expansion of Central Government enforcement machinery not likely to happen in the foreseeable near future, it is plausible to believe that increased local authority and local community role on matters of wetland management, planning and enforcement, including stopping wetland abuse through community policing could be a more sustainable way to stem further degradation. However, there still remains a fundamental weakness in the sense that local

¹⁰⁴ supra

¹⁰⁵ supra

¹⁰⁶ ibid

authorities have not translated the authority vested under them for natural resources management into meaningful action as far as wetland resources are concerned. The approach adopted by the Wetlands Inspection Division for community wetland management planning is worthy support in this regard. However, lessons learnt from this approach are yet to be popularized to other communities.

Need to harmonize urban planning and land-use in general with modern wetland conservation goals.

NEMA continues to receive development proposal on wetland areas that have been demarcated as plots by planning authorities. This apparently continues to send wrong signals to other wetland users who seem to perceive a sense of no action being taken in especially urban areas where wetland encroachment continues. In Kampala District, most of the wetlands which served as flood relief areas were allocated for industrial and residential developments and this trend has not been halted completely yet. Worth mentioning is the difficulty of enforcing planning requirements in peri-urban flood prone areas where the urban poor communities have massively and indiscriminately encroached into the wetlands, such as is the case in Bwaise and Bukoto areas.

Poverty and wetland resources use relationship

Over the recent years, there appears to be increasing cases of activities being implemented in wetlands in the name of fighting against poverty. While some of these activities are out-rightly not compatible with wetland conservation nor wise use goals, their promoters have vigorously defended them as intended to assist in the fight against poverty. Activities such as brick making in wetlands which are done for economic gains have tended to give no regard at all to conservation nor restoration of the affected wetlands. It is probable that this attitude stems from the old perception that wetlands in their natural state are wasted land¹⁰⁷.

The other challenge relates to environmental auditing of the many industries that were set up before the coming into force of the framework law. Bringing those industries to comply with environmental standards has been very slow and laborious and takes numerous visits of

¹⁰⁷ George Lubega Matovu – Natural Resources Management Specialist – Nema 20/jan/2012

environmental inspectors, several compliance schedules and agreed benchmarks intended to achieve gradual compliance. The issues that usually come up relate to the cost of clean-up operations and adoption of appropriate technology.

Insufficient capacity of law enforcers, both in terms of environmental law and management expertise and equipment and facilitation, thereby underscoring the importance of continuous training and capacity building; inconsistent political positions and statements on the environment, especially during election undermine the integrity of the environment

3.4 SUCCESSES OF THE MONITORING AND ENFORCEMENT OF WETLANDS REGULATION.

Environmental monitoring and Environmental impact assessment provided for under the framework law, have been useful tools in regulating activities which have or are likely to have deleterious impacts on the environment and an EIA database has been created to track this activities.¹⁰⁸ There is, however, need to maintain political support for use of EIAs at both central and local level and measures to improve public consultation. On the other hand, the challenge remains that of ensuring effecting monitoring and achieving compliance with environmental standards. In some of the recently approved projects such as the use of DDT for indoor residual spraying for malaria control and approval of environmental aspects for Bujagali hydro power development, it has been sought to circumvent this challenge by creating joint monitoring teams. It is yet to be seen how well these teams will operate, given their multi-sectoral nature and the limited resources at their disposal.

The use of economic and social incentives as an approach to environmental regulation has provided a basis for payment of fees, levies and charges under the permit and license system. The disincentives approach was also used in the 2002-2003 National Budget to impose tax of 50 per cent (later reduced to twenty per cent), on polythene carrier bags. It was equally used in the 2006-2007 National Budget to impose an environmental tax on imports of second hand clothing and motor vehicles of more than 10 years from the date of manufacture. In addition, local administrative units in districts such as Mukono, Iganga and Kamwenge have applied the

¹⁰⁸ . The Eia Report March 2007

incentive/disincentive approach in the Law, Environment and Development Journal For example, permits under the Water Act,¹⁰⁹

In 2011 NEMA and police force managed to evict city dwellers who forcefully occupied the Lubigi wetland as one of the critical wetlands in Kampala is used to filter the waste water from Kawempe, Bwaise and other city areas, this was not the first time people are trying to encroach on the critical wetland, in 2009 officers from NEMA displaced Bemba Musota a witch doctor who had encroached on the wetland before another occupied the swamp¹¹⁰

It could be argued, however, that the use of incentives should go hand in hand with valuing natural resources, considering the cost that development activities have on the environment and calculating the contribution of the environment sector to the gross domestic product (GDP), among other factors. NEMA, in collaboration with its development partners, has started some work along the lines of valuing natural resources. However, a lot still needs to be done in this and related areas.

Enforcement provisions include the use of environmental restoration orders, improvement notices and inspections. NEMA has successfully used these enforcement measures usually after attempts at achieving compliance have failed. Although recourse to court is provided for and is urged, NEMA prefers to use the above mentioned regulatory tools at its disposal, taking into account the fact that in some instances environmental awareness is not high enough to warrant use of enforcement measures, the cost of compliance may be prohibitive thereby calling for a longer compliance schedule, and poverty impacts on how the local people use natural resources thereby calling for poverty alleviation interventions, among other factors.

In light of the above provision there has been an increase in environmental jurisprudence especially in the field of public interest litigation which can be demonstrated by a growing number of cases. notwithstanding, enforcement measures that have been undertaken including eviction of encroachers from wetlands, forest reserves and other protected areas, confiscation of equipment used to dump murrum in wetlands or making noise and arrest and prosecution of suspects.

¹⁰⁹ S.32 water act Cap. 152, Laws of Uganda - 2000 edition

¹¹⁰ Red pepper Saturday 11 June 2011

CHAPTER FOUR .

4.0 GAZZETED WETLANDS IN KAMPALA CAPITAL CITY AUTHORITY

The government has started gazetting wetlands in Kampala district. The gazetting of the wetlands has started with those of critical importance like Nakivubo wetlands, located in Nakawa Division and will then be followed by Kinawataka, Kamwokya and Kansanga, the population of illegal settlers in the wetland is estimated to be over 10,000 with the major concentrations being in Kitintale zone in Nakawa Division and Namuwongo in Makindye division. A statement from Nema indicates that in Nakivubo wetland, the original area of intact wetland vegetation mostly papyrus of 4.4 square Km was reduced to 2.8 square Km in 1991, 1.9 Km square in 1995 and 1.3 square Km in 2000. Current estimates indicate the size to be less than 1 square Km.

4.1 FACTORS THAT HAVE LED TO WETLAND DEPLETION IN UGANDA

This chapter sheds light on the main practical challenges for wetland conservation at length by looking at the major factors that contributed to wetlands depletion considering political, social and economic factors¹¹¹. In spite of the obvious advantages accruing from the presence of wetlands in the country, they are being increasingly put under threat both in the developed and under developed areas of the country.

Lack of respect for the law has triggered an out of control on Kampala's wetlands and paints a grim picture of national environment body's desperate push to preserve the country's eco system, wetlands have been destroyed by poorly planned houses¹¹².

Wetlands have been reclaimed so as to provide land on which industries are being built every other day. Government has entirely ignored the importance of wetlands at the cost of earning extra revenue. This has already or is in the process of creating severe changes in climatic conditions now and in the near future.

¹¹¹ Uganda wetland report 2009

¹¹² The wetland status report 2009-2011

The growth of industries has resulted into increased amounts of waste being given off by industries. These wastes are being deposited into former wetlands as the garbage dumping areas in Kololo and Wakaliga near Natete. This has definitely polluted these areas not forgetting the foul odor accruing from the waste.

Urbanisation has greatly been responsible for wetland depletion since the wetlands have been turned into economically viable areas. There has been rapid development in the country which has led to growth of towns, construction of infrastructure and migrations all of which need a great deal of land to be fully developed.

The wetlands are fertile and this has attracted many people to carry out agriculture. Crops such as yams, sugarcane, maize and sweet potatoes do well in wetlands. This results in over-cultivation of the wetlands due to desire for high yields, hence high rate of their depletion. The increased desire for utilization of the natural resources in the wetlands such as the aquatic life, water for domestic use, hunting and many others lead to increased population growth around the wetlands. This will leave people with no alternative but to encroach on the wetlands so as to enable each and every one to satisfy their diverse needs.

Brick making is one of the most serious threats to wetlands in Uganda today. This leaves behind big holes, which greatly hinder movement and communication. It is also associated with the clearing of vegetation around the wetlands so as to provide fuel with which to make them. Fires that are both natural and those started by man destroy the fertility of the wetlands. The fertility that had accumulated over the years in the soil is lost during the burning of the existing vegetation. These fires are caused by prolonged drought or clearing land for human activity.

On many occasion court has stopped developers from developing wetlands but John Imaniraguha also known as John To has defiantly gone ahead to degrade wetlands with construction work along Bunga, Nakawa, Kinawataka at the Nakawa – Ntinda junction opposite spear motors

Due to the high poverty level in the country, there has been a tremendous increase in slums. These slums such as kibuye, Makerere-kivulu and kisenyi which were once wetlands are now being used for human settlement.

Wetland depletion has also been associated with floods. Wetlands are known to have been able to store water but since they have all been destroyed, there is no way water run-offs can be controlled. This has resulted into increased floods around the clock-tower area, Nsambya, Bugolobi, Jinja-road and Nakawa. These floods have greatly hindered movement within the city and around the affected areas.

In addition, the floods have increased the number of people suffering from waterborne diseases. Areas mostly affected by these epidemics were formally wetlands which were depleted. An example of such epidemics include the most recent cholera epidemic which killed a large number of people in areas of Kisenyi, Mulago, Kivulu, Kibuye and many others. To add on, the streets of Kampala now have a bad stench due to the garbage deposited on its streets by these floods.

4.2 AREAS OF WETLAND DEPLETION IN KAMPALA

The wetlands in Kampala are continuously being depleted in spite of the numerous calls by the different environmental bodies such as National Environmental Management Authority (NEMA), Ministry of Natural Resources and different wildlife clubs.

Initially the areas of Wakaliga (between Rubaga and Natete), the dumping grounds of Kololo were viable wetlands for different purposes. However, the Kampala City Council Authority, licenced by Government, used these areas as dumping grounds for waste. This situation was worsened by the licencing of private firms into rubbish disposal industry which used the same grounds for disposal of waste. Not only has this polluted the wetlands but it has rendered these areas unsuitable for human settlement.

The area occupied by the Mukwano industries, Lugogo trade show grounds, Kitante golf club, Nakawa industrial area, Owino Market area, Luzira-Bugolobi and until recently Munyonyo recreation grounds were all wetlands. Garden city, Nakumati, Golf course Hotel, Shop Rite Clock Tower, Lugogo Shopping Malls these wetlands areas have been abused greatly and turned into industrial, recreation and trading areas.

4.3 RESTORATION OF WETLANDS

According to NEMA under PART IX of s.67(1) of the National Environment Act therein provides for Environmental Restoration Orders and Environmental Easements to the effect that the authority may issue to any person in respect of any matter relating to the management of the environment and natural resources an environmental restoration order.

An environmental restoration order may be issued for any of the following purposes;¹¹³

- (a) requiring the person to restore the environment as near as it may be to the state in which it was before the taking of the action which is the subject of the order.
- (b) preventing the person from taking any action which would or is reasonably likely to do harm to the environment,
- (c) awarding compensation to be paid by that person to other persons whose environment or livelihood has been harmed by the action which is the subject of the order
- (d) levying a charge on that person which represents a reasonable estimate of the cost of any action taken by an authorised person or organisation to restore the environment to the state in which it was before the taking of the action which is the subject of the order.

It should be noted that environmental restoration order may contain such terms and conditions and impose such obligations on the persons on whom it is served as will, in the opinion of the authority, enable the order to achieve all or any of the purposes set out in subsection (1).

Under s.67(4) provides that without prejudice to the general effect of the purposes set out in subsection (1) or the powers of the authority set out in subsection (2), an environmental restoration order may require a person on whom it is served to.

- (a) take such action as will prevent the commencement or continuation of or the cause of pollution;
- (b) restore land, including the replacement of soil, the replanting of trees and other flora and the restoration, as far as may be, of outstanding geological, archaeological or historical features of the land or the area contiguous to the land specified in the order
- (c) take such action as will prevent the commencement or continuation of or the cause of an environmental hazard

¹¹³ S.67(2)

(d) cease to take any action which is causing or may cause or may contribute to causing pollution or an environmental hazard

(e) remove or alleviate any injury to land or the environment or to the amenities of the area;

(f) prevent damage to the land or the environment, aquifers beneath the land and flora and fauna in, on, under or about the land specified in the order or land or the environment contiguous to land specified in the order.

The National Environment Regulations of 2009 require owners or operators of facilities, whose activities are likely to have a significant impact on the environment, to establish environmental management systems to the National Environment Management Authority (Nema).

However, wetland encroachment is diverse and needs all stakeholders to pull resources in order to avert the same it is squarely a Nema responsibility but it is a shared responsibility to ensure that the law is enacted.¹¹⁴

4.4 FLOODS CONTROL AND MANAGEMENT

Kampala is served by two major wetland systems; namely the Nsooba – Lubigi and Nakivubo Wetland systems. These also act as the main drainage systems out of Kampala. Recent developments have seen the clearing of the buffer zones of forests and open spaces, as well as encroachment on the wetlands in favour of unplanned settlements. Most of Kampala's land surface in the built up areas is highly paved leading to reduced water infiltration which leads to generation of high storm waters. Of late storm water causes flooding in some places such as Bwaise, Kalerwe, Clock Tower and Kyambogo. Floods due to unplanned settlement in water channels.

Flooding is already one of the most frequent and widespread of all environmental hazards. flood disasters "affected more people across the globe 140-million per year on average than all the other natural or technological disasters put together"¹¹⁵ floods cause more damage than any other natural disaster. Huge annual losses result from the disruption to economic livelihoods, businesses, infrastructure, services and public health¹¹⁶.

¹¹⁴ An Interview With Spokes Person Ms Naomi Karekaho At Nema Offices On 10th April 2012

¹¹⁵ The International Federation of Red Cross and Red Crescent Societies, between 1993 and 2002,

¹¹⁶ The United Kingdom Environment Agency and the UK-based Tyndall Centre for Climate Change Research 200

In developing countries where infrastructure is often weak, the effects of flooding can cause particular difficulties. "The water seeped into the floor and broke the cement. Even the teachers' houses have been affected"¹¹⁷.

Precautionary approaches such as those introduced in Bangladesh to develop adaptive strategies to improve coping capacities against flood risks which may provide immediate benefits for populations suffering and or at risk from floods¹¹⁸.

4.5 EFFECTS OF WETLAND DEPLETION ON NATURE AND MAN MADE ENVIRONMENT AS WELL AS HUMAN HEALTH.

Of recent, because of poor drainage systems in Kampala and pollution of the existing drainage channels like the Nakivubo channel, Kampala is experiencing a problem of flooding when it rains. This flooding is mainly because of man's interference with the existing wetlands around Kampala City. In Kampala today, flooding of waters is a problem in many parts formerly occupied by wetlands. Another effect of exploitation of the wetlands is the destruction of natural habitats. Many kinds of animals and plants inhabit the wetlands of which fish, papyrus and crocodiles are examples. These species have been displaced and this has affected both the species and the Ugandan tourism industry. The wetlands are characterized by fertile soils, like the acidic soils of bogs which are suitable for agriculture. Repeated cultivation of these areas has led to continuous problems like soil erosion and soil exhaustion which in turn has affected settlements around these wetlands due to continuous flooding.

The wetlands also harbour dangerous animals and insects like mosquitoes and Nairobi flies which has rendered the areas around them unsuitable for human settlement. Since drainage of wetlands in Uganda is mainly by digging channels, it lowers the water table of the area and this leads to the drying up of uplands (highlands) around the affected areas. The fish in the wetlands have been displaced by either over fishing or destruction of the wetlands especially in the swamps through pollution. This exploitation of the wetlands has led to scarcity of fish. Many wetlands have been extensively drained especially the swamps to create more land for

¹¹⁷ Ismael Orot, the Kumi district chairperson, discussing the extensive infrastructure rehabilitation needs in Uganda.

¹¹⁸ Ibid

cultivation. Wells and streams have dried up and this has resulted in a serious water shortage for the people and animals as well.

The drained areas have become semi-arid and hence unsuitable for settlement. This could lead to desertification as the end result. There has been a major change in climatic regimes especially in relation to rainfall totals. This is because land reclamation directly affects the rate of evapotranspiration, a process which adds water to the atmosphere. This partly explains why areas formerly occupied by wetlands used to be among the coldest parts of Uganda but they are gradually becoming warm. Kabale district, which used to be the coldest in the country, is now relatively warm. Considering the level of income of some Ugandans, swamps are a major source of building materials such as papyrus for thatching and making ropes.

The only solution to urban reclamation of wetlands in this case is the encouragement of vertical rather than horizontal expansion. City planners, Engineers and Architects should make sure that wetlands are left out of their plans for expansion of the city.

CHAPTER FIVE

5.0 RESEARCH FINDINGS, RECOMMENDATIONS AND CONCLUSIONS TO THE STUDY

5.1 RESEARCH FINDINGS

It is a sad story, but true Kampala city has almost lost all its wetlands to the construction sector. The scramble for Kampala wetlands has resulted from the population growth in the city. In 1962, there were about 500,000 people living in Kampala, but the population has now grown to over two million people, according to KCC Encroachers invade the wetlands and before the National Environment Management Authority (NEMA) gets to know of it, they have already put up structures some of the encroachers dodge NEMA by building on weekends and at night, while others hire private security guards to oversee the wetland destruction, this reporter established.¹¹⁹

Crest Foam mattress factory was for instance in August found to be reclaiming a swamp near Ntinda stretch at night under the watchful eye of a private security guard. NEMA had earlier stopped the industry owners from reclaiming the wetland in January, NEMA officials have on several occasions accused Kampala City Council (KCC) now KCCA of endorsing construction plans in wetlands, yet KCC itself has a wetland protection division. Some of the wetland plots that KCC(KCCA) leased out are in Nakawa, Luzira and Bugolobi.¹²⁰

The most notable wetlands that Kampala has lost includes Wandegaya Children park, Kyambogo wetland (car depots), Centenary Park, Bwaise, Luzira, Kinnawataka, Bugolobi, Garden city, Shoprite/Game shopping mall, KCC playgrounds in Lugogo, Clock Tower and Nakivubo.

These were hitherto serving a number of environmental purposes to the city. Such purposes included preventing floods by acting as water catchment areas, filtering effluents from industries

¹¹⁹ Hppt :Archive New vision Kampala wetlands are no more: What is the way forward? Publish Date: Oct 31, 2008 By Chris Kiwawulo visited on 21st april 2012.

¹²⁰ supra

before the water gets into Lake Victoria and being habitats for aquatic creatures yet the aquatic creatures play an important role in the eco-system.

Whereas NEMA has since its formation in 1995 stood firm against encroachment on some wetlands, it has approved the reclaiming of several of them. For instance, the encroachment on wetlands where Garden City, Lugogo Shoprite and Nakumatt shopping malls are located, were approved by the Government.

In such circumstances, however, it has to be proved that the advantages accruing from the investment outweigh the existence of the wetland. Besides, an environmental impact assessment has to be carried out by NEMA before construction starts.

While Government sometimes gives out wetlands to developers through the right procedure, they are in some instances grabbed. In some areas, the developers politicise the wetland encroachment thereby arm-twisting NEMA beyond its limits.

A case in point was the Wandegaya Children Park in Kawempe division, where part of the wetland was grabbed by people with disabilities under their umbrella organization The Salvation Army early 2006. In July the same year, UPDF veterans also grabbed the remaining piece of the wetland. Efforts by both NEMA and KCC to evict the veterans were futile as they literally resisted and chased away KCC law enforcement officers, who had gone to demolish their structures. They were armed with sticks and reportedly, guns. The veterans argued that President Museveni should back their move to settle and carry out their businesses in the wetland as a reward for fighting to liberate the country initially, they talked of putting up temporary structures, but with time, they started erecting permanent ones that have now filled the whole hitherto swamp. The wetland was acting as a catchment area for water that runs from Makerere and Mulago hills before it joins Lubigi water channel, but this is now history.

In April this year, NEMA destroyed small gardens in a bid to restore Kinnawataka swamp in Nakawa division and stop its further degradation. A squad of over 30 police constables from Jinja Road Police Station was deployed to provide protection to a group of 60 men hired by NEMA to destroy the crops. The men cleared crops covering over 20 acres, which is about 10%

of the affected area of the swamp that stretches from Kyambogo, Ntinda to Butabika through Kinnawataka, Mutungo and Bbiina.¹²¹

NEMA had earlier issued several warnings to the residents to stop cultivating in the wetland so that it can be preserved. The restoration of Kinnawataka swamp followed a directive by Water and Environment minister Maria Mutagamba to restore Kampala swamp, saying Inspections proved that the encroachment was contributing to contamination of Lake Victoria but as soon as the crops were destroyed, the residents petitioned their local leaders. Consequently, the matter turned political and the eviction of the encroachers was stopped.

It worth noting that the rate at which wetlands in Kampala are disappearing is worrying and experts warn that this will have adverse effects on the eco-system. NEMA staff approve wetland encroachment by wealthy people and harass the poor but the Executive director NEMA dismissed the allegations as untrue and promised to investigate the matter.

The “anonymous” “holiday” and “awkward hour” dumping syndrome and noise pollution. Without an effective grassroots enforcement mechanism, it has been extremely difficult to control indiscriminate dumping of materials in wetlands along the roads and other remote areas by anonymous individuals such as truck drivers who probably view wetlands as “good” open space to dump in rather than drive long distances to designated dumping sites. Time and again, people living in and around wetland areas where marrum and waste dumping has taken place have indicated that the dumping is done by unknown truck drivers at awkward hours.

Tear gas and heavy shooting were experienced in Lubigi wetland as police Battled with people who forcefully occupied the wetland. Lubigi swamp is one of the critical wetlands in kampala that is used to filter the waste water from kawempe, bwaise and other city areas, this was not the first time people are trying to encroach on the critical wetland, in 2009 officers from NEMA displaced Bemba musota a witch doctor who had encroached on the wetland before another occupied the swamp¹²²

¹²¹ ibid

¹²² Red pepper Saturday 11 june 2011

Nyanama wetland ,Nakivubodrainage ,kinawataka,lubigi and all the nalukolngo wetlands have been hugly degraded by developers who have put their interest above the law however more blame should be on the Uganda land commission,district land boards and kampala city council authority for issuing land titles in wetlands yet they clearly know the law .

In an effort to address environment problems related to wetlands protection in Uganda the researcher has found out that the high demand for land for settlement in urban centers like Kampala has tended to endanger the existing wetlands forexample Nakawa, Industrial area,Nalukolongo ,lubigi,Bwaise,Nateete. No wonder that today most of these areas are affected by frequent flooding, especially when it rains heavily.

There is need for a massive education and campaign through meetings with their local councils and through publication of different environmental sectors.

More so, alternative sources of income generation may be the best alternative instead of exploiting the wetlands . People are encouraged to take strong measures in their activities in order to avoid the natural casualties. Instead of displacing some of these animals, one can instead preserve and protect them thereby earning income through the tourist industry. Political stability is one of the main factors whereby if not considered, everything is left in pieces. Some of these places, for example the swamps and forests, have turned out to be battlefields one example is the recent fight between traders and police at Lubiigi wetland,the scuffle between hajji Nasser sebagala and residents of Bugolobi wetland.however if considered, this will help in the smooth running of some industries, for example the tourism industry.

In addition to the above, environmental bodies has been formed like the National Environmental Management Authority together with the environmental protection police to aid in wetland conservation. Clubs like the wetland Wildlife which assist in the sensitization of the masses about conservation of both the flora and the fauna. The government should legislate against swamps and wetland reclamation. Swamps must be allowed to re-grow ,however the government in this case should put rules that people must follow in that before one goes on with the reclamation of wetlands, one must get proper documentation from the government. Government should be prepared to act when confronted with cases of unnecessary wetland and swamp reclamation.

As mentioned before, overpopulation has been noted as one of the problems in these wetlands a number of measures can be taken to avoid all this. One major one could be, controlling population growth rate through adopting better family planning programs. This aims at minimizing excess demand for land which tends to force people to encroach on this wetland.

This, though it goes without saying, is another method of reducing on wetland reclamation; encouragement of excess population by the government to migrate to areas of sparse population outside their home areas. There has been destruction of marine animals in form of pollution of their natural habitats. Given the case of the Lugogo area in Kampala where the present Uganda Manufacturers Association build showground stands where some animal habitats are limited.

The only solution to urban reclamation of wetlands in this case is the encouragement of vertical rather than horizontal expansion.

In order to implement the wise use concept in national legislation, the following should be observed in view of the Ugandan experience controlling development in wetland areas determining what activities are unsustainable on the basis of a country's social and economic circumstances and prohibiting such activities providing incentives for conservation of wetlands especially for activities which do not affect the natural properties and functions of wetlands, controlling the introduction of alien species; requiring for Environmental Impact Assessment and environmental audits in wetlands; creating strict nature reserves for representative samples of wetlands maintaining a national inventory of wetlands.

Increasing public awareness of wetland values and functions; and providing modalities for restoration of degraded wetlands on the basis of the polluter pays principle and the user pays principle.

5.3 RECOMMENDATIONS

Having criticized fully the legal frame work for the protection of wetlands ,the research recommends that in order to over come the challenges identified in enforcing wetland regulations there is need for an open up to allow advocates to speak freely and express their views on legal and Constitution matters on behalf of the disadvantaged or marginalized groups development partners like TEAN, Greenwatch, NAPE, NEMA, ACODE, ELI and UNEP.

The research discovers that the people most affected by environmental degradation are the poor and therefore there is an urgent need to strengthen the capacity of the poor and their representatives to defend environmental rights, so as to ensure that the weaker sections of society are not prejudiced by environmental degradation and are enabled to enjoy their right to live in a social and physical environment that respects and promotes their dignity.

Environmental Public Awareness

Creation and increase in awareness and availability of public education on pertinent issues regarding wetlands utilization and management should always be integrated into interventions. There is a need for a concerted effort to scale up awareness and the creation of public education programmes about the functions, values and benefits of the wetlands in the kampal district. Information about the provisions in the available policies, laws, regulations and guidelines should also be widely disseminated. Wetlands users in the kampala District should be helped to make wetlands management plans that will guide the sustainable utilization and management of wetlands, while ensuring equitable benefit.

The need for judicial activism.

Explore the possibility of making environmental education gain foundation from primary up to tertiary institutions. The same should be made compulsory in law schools.

All the environment enforcement agents and friends should be effectively supported and strengthened.

Transparency and accountability

Government must be transparent and accountable in all matters concerning sustainable development. Access to environmental justice should be incorporated in chain link initiative to create public awareness and accountability.

Need for an effective, efficient and independent Judiciary which is well informed of environmental issues.

The Judiciary and its members must be well funded and motivated with adequate remuneration otherwise their conscience would be compromised. The adage that whoever controls your

subsistence also controls your conscience is not a recent truth. Equally important is that the method of recruitment to the Judiciary should not leave room for the appointment of officers who would be sympathetic to the political agenda of the day. I would say that the current system of an independent Judicial service commission and Parliamentary approval appears to satisfy the above goal.

There is Need to integrate environmental concerns in the plans and policy formulation of the Police.

We also need to regularly review these policies, plans and institutional frameworks to ensure relevance and adherence to our shared goals.

Police personnel .

To tackle the specifically environment-related grievances, the preparedness and capacity of the police force to fight environment specific violations and crimes need to be developed and more so Police personnel should be specifically designated to handle environmental concerns;

Creation of specialized units in the Police force handling environmental issues e.g. environmental squad, environmental desk etc; big thanks to the ministry of environment in conjunction with Uganda police force

Our citizens should be informed of the Legal and Constitutional issues governing them. I would go by the practice in the United States where Advocates are allowed to advertise and tout for business. After all when I get a poor lawyer I am the one to pay costs. Why is it that the same law does not allow me room for choice?

There is need for constant training for the bench and the bar in the evolving principles and practice especially in environmental litigation. .

The best solution to wetland depletion is massive education of the people. It is also important to note that high demand for land for settlement in urban centers like Kampala is endangering existing wetlands forexample Nakawa, Industrial area, Nalukolongo and Bwaise. Today, most of these areas are affected by frequent flooding especially when it rains heavily. This education and

campaign can be done through meetings with the local councils and through different environmental programs.

Considering the level of income of some Ugandans, swamps are a major source of building materials such as papyrus for thatching and making ropes. Alternative sources of income generation may be the best alternative instead of exploiting the wetlands. Instead of encroaching on these wetlands, one can conserve them thereby promoting the tourism industry.

The government should take a leading role by legislating against the reclamation of swamps and wetlands. More so, the government should provide proper directions and guideline on the procedure to be followed when reclaiming wetlands if this becomes inevitable. Government should also be prepared to act when confronted with cases of unnecessary wetland and swamp reclamation.

As mentioned before, over population has contributed to wetland depletion. A number of measures should be taken to control the population such as adopting better family planning programs. This aims at minimizing excessive need for land which tends to force people to encroach on these wetlands

5.3 CONCLUSION

Globally, wetland ecosystems have important values, functions and uses which are beneficial to both man and the environment the overriding causes of wetlands degradation includes pollution from municipal and industrial sources conversion for agricultural production, encroachment for urban and rural settlements and population pressure and poverty, leading to both over-dependence on and over-harvesting of wetland products however, wetland ecosystems are being increasingly threatened by abuse and degradation for example Nakawa Industrial area, Nalukolongo, Lubigi, Bwaise, Nateete, Nyanama, Kansaga, Kinawataka. The major challenges of sustainable utilization and management of wetlands are failures in the policies and institutional arrangements, poor governance and attendant political interference, and poor participation of stakeholders in management issues.

It is of great consequence for governments to establish enabling policy and institutional frameworks for sustainable utilization and management of wetlands.

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