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Enhancing Environmental Conservation through Legal Policy and Institutional Framework: A Case Study of Uganda

Acen Susan

School of Law, Kampala International University, Uganda

ABSTRACT

Environmental conservation is a pressing global concern, with Uganda experiencing its own challenges in combating environmental crimes. Despite recent developments in conservation laws, the effectiveness of these measures remains uncertain. This article investigates the legal policy and institutional framework surrounding environmental crimes in Uganda, drawing on diverse sources including legislative provisions, journal articles, and case law. It explores the disconnect between short-term gains and long-term environmental sustainability, highlighting the need for heightened awareness and inclusive policymaking. Recommendations include leveraging constitutional provisions, strengthening water catchment conservation efforts, and fostering community engagement in environmental management. Additionally, the paper underscores the importance of capacity building for law enforcement agencies and emphasizes the role of international conventions in promoting environmental stewardship. By addressing these issues, Uganda can advance its conservation agenda and mitigate the detrimental effects of environmental degradation.

Keywords: Court, Environmental crimes, Institutional framework, Legal policy, Legislation.

INTRODUCTION

An environmental crime is any deliberate act or omission leading to degradation of the environment and resulting into harmful effects on human beings, the environment and natural resources[1]. Environmental crimes include all violations of environmental laws attracting criminal sanctions. Environmental crime prosecutions therefore refer to the prosecution of environmental cases in the criminal courts[2]. Historically, traditional criminal law did not care about environmental protection despite the advocacy for it to be included among those crimes that affect public order, morality and social economic development. In the case of *Nyakaana v National Environment Management Authority & Ors*[3], the court discussed the concept of environment and sustainable development as it has evolved in international law and the environment and sustainable development as growth that meets needs of the present without compromising the ability of the future generations to meet their own needs.

In the subject of environmental law, enforcement becomes one of the most important components. Environmental enforcement relates to those sets of actions that government or other persons take

to achieve compliance within the regulated community and to correct or halt situations related to environmental crime[4]. Enforcement by government usually includes inspections, negotiations, compliance promotions and legal actions of civil litigation and criminal prosecution. Environmental crimes can also be broadly defined as illegal acts which directly harm the environment. They include illegal trade in wildlife, smuggling of ozone depleting substances, illicit trade in hazardous waste, and unreported fishing.

In the initial days of environmental legislation, violations carried largely insignificant civil fines and penalties. Original environmental laws and regulations had little or no deterrent effect on corporations, individuals, or governments that breach environmental laws[5]. The environmental law enforcement agencies and police services do not operate in a vacuum; the legislative instruments that political systems implement govern their activities and responsibilities within society. However, apparently it is the legislative instruments implemented by governments that determine many of the strategies utilized by police services in protecting the environment. Usually

these International, Regional, National and County legislative instruments are designed to ensure industries, individuals, and governments comply with the various environmental obligations embedded in national statutes and laws[6]. Environmental crime is currently one of the most profitable criminal activities and it is no surprise that organized criminal groups are attracted to its high profit margins.

Estimating the scale of environmental crime is problematic but Interpol[7] estimates that global logging and the associated trade in stolen timber. Environmental crime such as illegal logging contributes to deforestation. It deprives forest communities of vital livelihoods, causes ecological problems like flooding, and is a major contributor to climate change. Up to one-fifth of greenhouse gas emissions stem from deforestation[8]. Illicit trade in charcoal contributes to a thinning ozone layer, which causes human health problems like skin cancer and cataracts. The World agenda document highlights the gravity of environmental crime, and plus the fact that it is not taken seriously as a crime as it should [9]. The World agenda tries to bring out the vicious cycle of this crime, its complications and underlying issues that fuel environmental crime. A lot of efforts are currently being made by many different players, through operative environmental crime management and environmental law enforcement agencies operate at international level whereas others only operate at the local level.

Furthermore, environmental law enforcement agencies utilize various enforcement methods to ensure compliance to environmental legislation. In

some cases, enforcement agencies rely on coercive powers to demand compliance to environmental laws, generally labeled command and control strategies, while others rely on conciliatory and educational strategies to persuade individuals, organizations and governments to comply with environmental laws and regulations[10]. With a significant population of wildlife living outside protected areas on a seasonal or permanent basis, the country's wildlife resource has suffered from the effects of human economic activities, poaching, human-wildlife conflict, demand for wildlife products in the illegal market, and weak legislation, among other factors [11]. The key institutions actively involved in environmental crime management currently are National Environmental Management Authority, Uganda Wildlife Service, Uganda Forest Service, Uganda Police, and Uganda Plant Health Inspectorate Service. Other international institutions based in Uganda include Lusaka Agreement Taskforce, United Nations, and Non-governmental organizations. However, much there are efforts by government to reduce the problem, breach of environmental law is increasing daily. Environmental crimes no longer pose only a conservation and biodiversity problem but also a threat to international security and economic growth and development of Uganda. There are deficiencies in enforcing environmental laws which undermine citizen participation in effective environmental implementation. This has left environmental crime a challenge in as far as its reduction is concerned. Therefore, it is in the light of this background that this paper examines legal policy and institutional framework on environmental crimes in Uganda

OVERVIEW OF ENVIRONMENTAL CRIMES

Environmental crimes are committed in many communities across the nation and occur in a variety of settings. Nevertheless, circumstantial evidence strongly suggests that a disproportionately high percentage of environmental crimes take place in communities that lack adequate resources or simply do not have the means to provide redress for the environmental violations [12]. In the case of *Uganda Network On Toxic Free Malaria Control Ltd v Attorney General*[13], the court held that although NEMA issued an Environmental Impact Assessment Certificate to the Ministry of Health, the implementers of the project failed to observe the guidelines issued by NEMAA and conditions set out in the EIA Certificate.

In the words of *Barclay and Bartel* [14], environmental crime as a subject matter has no clear definition. Environmental crime includes poaching, illegal logging and fishing and poses a serious threat to sustainable development. As a major contributor to

the fight against environmental crime, as well as a major destination for contraband, the European Union is currently in the process of reviewing its policies on environmental crime [15]. The United Nations (UN) Secretary General, National Governments and independent NGOs analyses have drawn direct and indirect links between environmental crime and transnational criminal organizations, insurgencies, even terrorist organizations in Africa. Europe has also discovered that many high-level drug traffickers in Brazil, Colombia and Mexico have taken on a significant role in the illegal wildlife trade, with drug and wildlife traffickers smuggling along similar routes and acting in concert with one another [16]. The UN study has raised the alarm on the connection between environmental crime and terrorism, these two phenomena are now becoming a challenge to many countries in Africa.

Environmental crime has been identified as one of the

most profitable and fastest growing areas of international criminal activities, with increasing involvement of organized criminal networks. Serious environmental harms committed by otherwise legitimate corporations for financial motives are increasingly attracting media attention [17].

At the 12th United Nations Congress on Crime Prevention and Criminal Justice, the international community acknowledged the challenges posed by emerging forms of crime that have significant impact on the environment and called on member states to study the issue and share best practices [18]. Environmental crime management according to Morgan et al. [19], refers to the range of strategies that are implemented by individuals, communities, businesses, non-government organizations and all levels of government to target the various social and environmental factors that increase the risk of environmental crime, disorder and victimization. The authors further reveal that environmental crime is now beginning to be recognized as a serious criminal offence, and though it seems profitable, this crime has caused more harm than good, and the authors stated that it is about time that the crime is dealt with.

Legal And Institutional Framework on Environmental Crimes in Uganda

Environmental crime is a serious threat to environmental, social and economic sustainability of the environment. Over the last decades, awareness of the importance of enhanced action against environmental crime significantly increased within the EU institutions. EU efforts to combat environmental crime are intended to improve the effective enforcement of EU environmental law [20]. With the emergence of knowledge that environment can be degraded, common law approach through introduction of a law to mitigate the effects of environmental crime, trespass and escape in the famous case of *Rayland Vs Fletcher* [21] was adopted but was barely effective in protecting environment.

International Laws

The push for international action on environmental crimes began with the launch of Project MAR in the late 1950s. The project was intended to increase awareness of the importance of environment to humanity and contribute to their conservation. It was a joint initiative by three nongovernmental organizations:

The Basel Convention on the Control of Trans boundary Movements of Hazardous Wastes and their Disposal, 1989

It was adopted on 22nd March 1989 by the Conference of Plenipotentiaries in Basel, Switzerland, in response to a public outcry following the discovery, in the 1980s, in Africa and other parts of the developing

world of deposits of toxic wastes imported from abroad. Awakening environmental awareness and corresponding tightening of environmental regulations in the industrialized world in the 1970s and 1980s had led to increasing public resistance to the disposal of hazardous wastes in accordance with what became known as an escalation of disposal costs. In the case of *Bandhua Mukti Morcha union of India and Others*, the Supreme Court of India, in this public interest litigation case, directed the State of Uttar Pradesh to eliminate the carpet industry's use of child labor, issue welfare directives prohibiting child labor under the age of 14 and provide children access to education and health facilities in an effort to abolish child labor since all its activities were against the international rules on environment.

This in turn led some operators to seek cheap disposal options for hazardous wastes in Eastern Europe and the developing world, where environmental awareness was much less developed and regulations and enforcement mechanisms were lacking. It was against this background that the Basel Convention was negotiated in the late 1980s, and its thrust at the time of its adoption was to combat the "toxic trade", as it was termed.

The International Waterfowl Research Bureau (IWRB)

In 1947, London (UK), Bird Life International, as a specialist group dealing with wildfowl and wildfowl conservation reconstituted 1954 as International Wildfowl Research Bureau. Its work is to ensure conservation of the environment and environment biodiversity and more particularly promote sustainable use; stimulate and coordinate research involving environment ecosystems which are among the most threatened by modern developments.

The International Council for Bird Preservation (ICBP)

Bird Life International (formerly the International Council for Bird Preservation) is a global partnership of conservation organizations that strives to conserve birds, their habitats, and global biodiversity, working with people towards sustainability in the use of natural resources. It is the world's largest partnership of conservation organizations, with over 120 partner organizations. Bird Life International's priorities include preventing extinction of bird species, identifying and safeguarding important sites for birds, maintaining and restoring key bird habitats, and empowering conservationists worldwide. Guided by a global council, member organizations implement the group's strategies on local, regional, and national levels. Bird Life International has identified 7,500 important bird areas and manages more than 2,500,000 million acres (1,000,000 hectares) of wildlife habitat. As the official listing authority for birds for the World Conservation Union's Red List

of threatened species, Bird Life International has identified more than 1,000 bird species threatened with extinction and has developed conservation strategies for each of them. It's also in line with the Conservation of Wildfowl which in 1963, recommended that a European network of places of safety for wild birds should be established and coordinated under such a treaty.

National Environmental Management Authority (NEMA)

In the case of *Serugo v Kampala City Council* and another, they held that NEMA is responsible for affairs related to environment in executing its oversight role on environmental management in Uganda. This authority was established under the National Environment Act as the principal agency in Uganda for the management of the environment to coordinate, monitor and supervise all activities in the field of the environment. NEMA has roles to play in environmental management and these include; to ensure the integration of environmental concerns in overall national planning through coordination with the relevant ministries, departments and agencies of the government, to promote public awareness through formal, non-formal and informal education, to coordinate the implementation of government policy and the decisions of the policy committee, to liaise with the private sector, intergovernmental organizations, non-governmental agencies and governmental agencies of other states on issues relating to the environment, to mobilize expedite and monitor resources for environmental management.

Wet Lands Inspection Division

In the year 1989, the Uganda government established the national environment conservation strategies for the sustainable management of Uganda's environment. This came in the wake of a slowly emerging realization in government circles and civil society that environment is extremely important which contributes considerably to the national economy and rural livelihoods. During its ten-year existence, Wet Lands Inspection Division has been instrumental in assisting the government of Uganda to make advances and improvements in the management of the environment and in fulfillment of this policy an institutional framework was established to center on the wetland's inspection division of the ministry of water, lands and environment.

This inspection division is required to; Make an inventory of all environments and this inventory shows for each location of the natural resource in the environment, type of fauna and flora, periodically inspects the wet lands to determine the necessity for revision or correction of the

inventory in the environment, publish in every five years the inventory of natural resources reflecting the current state of environment, In consultation with the executive director of NEMA.

More so, the division grants temporary permits for the use of some natural resources like wetlands where there is need to irrigate an area pending a construction and need to use water for emergency situations pending the availability of alternative sources of supply and natural forests in case of timber by government constructing like a school or hospital near a natural forest.

The parliament

The Parliament, by law and the Constitution of the Republic of Uganda, provides measures intended to protect and preserve the environment from abuse, pollution and degradation, manage the environment for sustainable development and to promote environmental awareness.

The court

The constitution [22] provides that any person who claims that a fundamental right or freedom guaranteed under the constitution has been infringed or threatened is entitled to apply to competent court for redress which may include compensation, hence in the enforcement of environmental laws and rights. The constitution requires the courts in adjudicating cases of both civil and criminal nature, the courts subject to the law, do justice to all irrespective of their social or economic status. Hence with the effectiveness of the courts its roles have been established as follows- interpreting rules and provisions of the law, defining of pre-existing rights, ensuring compliance and the incorporation of international agreements into domestic law, strengthening compliance through building trust and incentives which have a prior effect of compliance enforcement.

Evolution of Environmental Legislation

In Uganda prior to 1986, environmental issues were consigned to the background mainly because of the then Governments getting more involved in various wars starting with the ejection and removal of Idi Amin from power in 1979 and the subsequent National Resistance Movement (NRA) liberation war of the early 1980s. After the success of NRA in 1986, relief of life was infused into the environment when the Government in recognition of the bad state of the environment was established in the Ministry of Environment Protection with its specific objectives to coordinate and enhance natural resources management and harmonize the interest of resource users, monitor polluter levels and urge governments on policy and legislative reforms so as to ensure sound environmental management.

To achieve the objectives of conserving the environment, the Ministry and other stakeholder commissioned a study of a series of environment legislations to specifically review existing environment legislation in Uganda. These studies found out that, there was almost no legislation in Uganda directly related to environments as an entity; however, there was reference to "swamps" (as part of environment) in the Public Land Act and Public Health Act, the study further noted enforcement of these laws was not sufficient to guarantee environment conservation. As a result, a National Environmental Action Plan (NEAP) was launched which subsequently established the National Environmental Management Policy (NEMP) with

Environment legislation in Uganda has gone through a number of transformation and elevation. the latest of which is found in Part II of the National Environmental (Environment, River Banks and Lake Shores Management) Regulations, 2000 which aims at ensuring that environmental crime reduces in the country. However, this article has shown that conservation law against environmental crimes in Uganda is a recent development, which is yet to bear fruitful results as far as sustainable use of it is concerned. Although the institutional and legal framework is in place, capacity building is much needed. It was evident that most people still do not know the importance of environment conservation. This is attributable to their looking at the short term benefits instead of the long term effects environmental degradation has on the entire environment. It is therefore important that they are properly educated on both the long term and short term effects of environmental degradation.

Despite the growing awareness of environmental crimes, it still often fails prompt response by individuals, governments, the enforcement community and the public, because it is still perceived as victimless crime. Environmental crimes do not always produce an immediate consequence, the harm may be diffused or go undetected for a lengthy period of time. The study has shown that there is still need to identify the crucial part of the monitoring and enforcement agencies that would build consciousness and the viability of conserved environment in a wider environmental perspective. The current approach seems, to tilt more on the legal concept leaving aside the economic and social aspects. This makes the population believe that they are being robbed using the law.

Therefore, the article recommends the need to provide conservation and wise use of environment and their resources by given effects to clause 2 of Article 237 of the Constitution of Uganda and ensuring that

the overall goal of ensuring a sustainable social and economic development.

By 1990, National Policy for Conservation and Management of environmental resources was formulated. It recommended the creation of an institutional and legal framework, transformation of existing environmental management systems, evolution of new sustainable conservation culture, modernizing sectorial policies, laws and regulations and establishing an effective monitoring and evaluation systems to assess the impact of policies and actions on the environment. Consequently, the National Environmental Policy was formulated and it was enforced by the National Environmental Act.

CONCLUSION

water catchments conservation and flood control. There is need to strengthen Article 2.1 of the Ramsar convention which argues that each contracting party shall designate suitable wetlands within its territory for inclusion in a list of wetlands of International Importance, hereinafter referred to as "the List" which is maintained by the bureau established under Article 8. The boundaries of each environment shall be precisely described and also delimited on a map and they may incorporate riparian and coastal zones adjacent to the environments, and islands or bodies of marine water more than six metres at low tide lying within the environments, especially where these have importance as waterfowl habitat. For example wetlands and natural forests should be selected for the list on account of their international significance in terms of ecology, botany, zoology, limnology or hydrology.

The process of formulating environmental crime laws should be inclusive with wide consultation among stake holders, especially local communities. This will ensure ownership by the local and hence will play a key role in the management of environmental crimes. This way, environmental crime management in the country will be highly enhanced. Estimates of environment loss worldwide should ideally be reached by comparing the total area of environments at a given date in the past to the areas now remaining. However, establishing a past baseline presents considerable difficulties where there are no established criteria, definitions or techniques for the standard measurement of environments. There is an urgent need to develop and promote public awareness towards environmental conservation and encourage research and inventory of environment and its resources.

Furthermore, there is need to encourage research and inventory of environment and its resources through promotion of capacity building in matters connected to environment management and strengthening environment legislation to curb environmental

crimes in the country, ensure sustainable use of natural resources in the environment for ecological and touristic purposes for the common good of all citizens, ensure that natural resources are protected as habitats for species of fauna and flora, provide for regulated public use and enjoyment of the surrounding, strengthen conservation of environment regulations and practices so as to minimize degradation through maintaining water supply and affluent treatment, managing and guiding the use of

environment owned by individuals. More so, environmental crimes should be addressed by policy and legislation so that to ensure that local communities benefit from the country's natural resources so that they value and protect them. Finally, environmental crime management should be greatly enhanced by improving the capacity of environmental law enforcement officials and agencies through training.

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