

**THE ANALYSIS OF THE LAW ON PROTECTION AND CONSERVATION OF  
FORESTS IN UGANDA. CASE STUDY MABIRA FOREST MUKONO DISTRICT**

**BY**

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**A RESEARCH REPORT SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL  
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**JUNE, 2015**

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## DECLARATION

I **Muganga Emmanuel** declare that this work is original work of my hands and had never been handed over to any other institution for any purpose.

Date: 24<sup>th</sup> June 2015.....

Signature: .....

## **DEDICATION**

This dissertation is dedicated to my parents Mr. & Mrs. Matsiko Silver and my beloved wife Mariam Mirembe. These people have been so inspirational to me.

**APPROVAL**

This dissertation has been submitted for examination to the school of law with my approval as the student supervisor.

Supervisor: MRS. NYACHIYO MARY

Date:.....

Signature:.....

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## **ABSTRACT**

This paper is on the analysis of the Law on protection and conservation on forest resource in Uganda, carried out in Mukono District with the aim among others to identify the lacunae associated with forest law. The evils done on the forests which involve the ignoring of the rules and regulations, the political interference, illegal harvesting and trading of forest products and irrational use of forests are all explained.

This study is basically doctrinal and the researcher has visited many libraries among which include the KIU school of Law Library and LDC Library.

In conclusion I have indicated how the law enforcers and makers should sustainably deal with forests in order to mitigate the loss of forest cover.

## **LIST OF STATUTES/ACTS**

- The 1995 Constitution of the Republic of Uganda
- The National Environmental Act Cap 153
- The National Forestry and Tree Planting Act No.8/2003
- The Land Act Cap
- The Wildlife Act Cap 200
- The National Forestry Policy 2001
- The National Environment Action Plan 1995
- The Local Governments Act Cap 243
- The Uganda Wildlife Policy 1996

## ACRONYMS

NFA	National Forestry Authority
NEMA	National Environment Management Authority
NEAP	National Environment Action Plan
NAPE	National Association of Professional Environmentalists
NEA	National Environment Act
DFS	District Forestry Services
H.E	His Excellence
Cap	Chapter
Art	Article
FRs	Forest Reserves
FD	Forest Department

**CHAPTER ONE**  
**INTRODUCTION**  
**THE PROBLEM AND ITS SCOPE**

**1.0 General Background**

This study is an analysis of the law on protection and conservation of forests in Uganda, this connotes the law on forestry. Forestry is defined as the management and conservation of forests and trees and includes the management of land that does not have trees growing on it, but which forms part of an area reserved for or dedicated to forestry<sup>1</sup>.

A forest is an area of land containing a vegetative association that is predominantly composed of trees of any size, and includes central forest reserves, local forest farming reserves, community forests, private forests, forests forming part of wildlife conservation area, natural forest, woodland or plantation, the forest produce in a forest and the forest ecosystem.<sup>2</sup>

A forest is also an ecological system dominated by trees and other woody vegetation.<sup>3</sup>

A forest can also be defined as a type of vegetation dominated by trees most of which at maturity are tall.<sup>4</sup>

Mabira forest is located in the counties of Ntejeru, Nakifuma, Mukono along Kampala -Jinja road between 52km from Kampala and 28 kilo meters from Jinja and it occupies an area of 29964 hectares.<sup>5</sup> It is a lake shore central forest Reserve managed under the same forest management plan that covers

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<sup>1</sup> Section 3 of the Natural Forestry & tree planting Act 2003

<sup>2</sup> Section 3 of the Natural Forestry and tree planting Act 2003

<sup>3</sup> M. Violet forest and facial perspective in conservation (working paper No.5: forest cover and forest reserves in Kenya; policy and practice 2000 pg 2

<sup>4</sup> State of Environment Report for Uganda 2004/5 NEMA pg 77.

<sup>5</sup> Statutory instruments No. 63/1998. The forests Reserves (Declaration) Order 1998.

Namakupe, Nadagi, Kalangala falls, Nawamanyi and Namanja forest Reserves all under the National Forestry Authority.

Mabira forest is a low lying forest between 1,070 and 1340 meters above sea level and with a wide range of species of flora and fauna. It is estimated that it accommodates 312 species of trees and shrubs, 287 species of birds, 23 small mammals, 21 of butterflies and 97 of months.<sup>6</sup>

Mabira forest being a large forest has important functions influencing water balance, soil stability, and local climate and supporting a diversity of organisms. It is therefore of a vital role to maintain productivity in the surrounding lands, to conserve biological resources and to help meet the country's timber needs. However, the law on the protection and conservation of forests in Uganda has not been adequate to achieve the goals of ecologically and economically found utilization and effective conservation. The forest department replaced by NFA aims not to improve the protective of forest reserve but also to tackle the problems which lead people to destroy forest resources. The selected mabira forest needs conservation measures, because of its great value as a natural resource and the heavy pressures currently upon it.

This research is basically therefore aimed at analyzing the law on the protection and conservative of forests in Uganda a case in point being mabira forest.

### **1.1 Background of the study.**

The law on the protection and conservation of forests in Uganda has evolved with time since the inception of the forest Department in 1989 to incorporate different players according to the needs of the day. Man and nature have since time memorial been mutually supportive of each other in quest of man's needs to improve quality of life.

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<sup>6</sup> Edward Mpubada (2008), participatory Approaches to Forest management pg 27

However, in his endeavour to exploit the natural resources and his desire to be supreme over nature has put him on collision course with the environment thus leading to enactment of laws and policies.

The Ugandan trust forestry policy was written in 1929 and since then, policies and laws on forestry in Uganda have undergone a series of changes. In 1988, there developed an emergency of environmental law in Uganda and as a result, there was a review of the policy on forestry but this contained a united guidance on principles and strategies for implementation, production, conservation, government roles, private sector and community in forestry, linkage with other sectors and land uses<sup>7</sup>.

In 1991, the government of Uganda launched the National Environment Management policy and this was the first of its kind in the history of Uganda.

In October 1995, a new constitution came into force in Uganda. The constitution sets in its national objectives and directive principles of state policy among others, the promotion of sustainable development and public awareness of the need to manage our environment. Article 39 provides for a healthy and clean environment as a human right and article 245 provides for the protection and preservation of the environment under which forestry falls. Its to this effect that forestry rehabilitation programmers came in place and as such, the management of forests was governed by the forestry policy and forests Act<sup>8</sup>. The two instruments distinguished the roles to be played by local authorities and communities.

It should be noted that forest management has always been operationalised at forest unit level. This means that even for central forest reserves management control has been carried at a forest reserve level under a District forest officer

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<sup>7</sup> Pitsawn timber protection in natural forests of Uganda by GG.O Odekonyero (2005) pg. 9

<sup>8</sup> Cap 146 (Repealed).

who is namely assisted Assistant forest officer, forest rangers, forest guards and workers.<sup>9</sup>

Today, there is a new Act called the National Forestry and tree planting Act 2003. This Act is for conservation, sustainable management and development of forests for the benefit of people of Uganda, to provide for the declaration of forest reserves of purposes of protection and production of forests and the forest products, to provide for the sustainable use of forest resources and the enhancement of the promotion of the planting, and to consolidate the law relating to the forest sector and trade in forest produce also, to establish the National Forestry Authority, it is this Act that repealed cap 246 and the Timber Export Act.

### **1.2 Statement of the problem.**

The study critically analyzes the law on the protection and conservation of forests in Uganda. The existing legal regime and enforcement machinery does not adequately address the modern methods of conserving and managing forest resources in Uganda thus there is an increasing concern about the deteriorating state of forestry cover which is diminishing, ecological services are declining and there is increasing pressure on forest land and forest products. The management capacity is limited and there is institutional weakness and constraint development.

The law relating to the protection and conservation of forests in Uganda is likely to stay in the statutes themselves without practical effects. In the long run, people instead of protecting the forests take part in their destruction through deforestation and encroachment. There is also violation of these laws by the government. With these disincentives, how can the law on forest management be implemented for better management of forests for the benefit of both today and future generation. There is a need to appreciate that the

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<sup>9</sup> AK Karyski (1998) a paper presented at a workshop on Natural fo0rest Resource management at the sub national level, Kampala 21<sup>st</sup>-22<sup>nd</sup> January.

forests are a fundamental branch of the environment as is provided in the constitution<sup>10</sup> and the National Environment Act cap 153<sup>11</sup>.

### **1.3 Objectives of the Study**

- (i) To identify the lacunae in the law and factors affecting or likely to affect its applicability.
- (ii) To identify the challenges and problems associated with the law and policy in the management and protection of forests.
- (iii) To identify the importance of forestry in Uganda visa-vi suggestions.

### **1.4 Research Questions**

The main question this study attempts to answer is how far has the law on conservation and protection of forests been implemented? The sub categories of questions include;

- (i) What is the lacuna in the law and factors affecting or likely to affect its applicability on forests protection and conservation?
- (ii) What are the challenges and problems associated with the law and policy in the management and protection of forests?
- (iii) What is the importance of forestry in Uganda and what mechanism can be put in place to the effect of this importance?

### **1.5 Purpose of the study**

The study addresses the implementation and applicability of the law on the protection and conservation of forests in Uganda so as to mitigate the forest cover that has continued to decline.

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<sup>10</sup> Article 39 of the 1995 Uganda Constitution

<sup>11</sup> Section 3 of National Environment Act cap 153



## 1.6 Scope of the study

The study covers the period from 2001 to 2014. The year 2001 is of great significance to natural forest conservation because it is when the current forest policy<sup>12</sup> was promulgated. Also the forest nature conservation master plan (FNCMP) of 2002<sup>13</sup> which was produced after a biological inventory, categorises the conservation importance of forest reserves as prime, core and secondary and then of course the National Forestry & Tree planting Act (2003) enacted to operationalise the policy and to commit the government to protect and sustainably manage the permanent forest estate- Mabira forest inclusive. This period from 2001 to 2014 gives me a chance to analyse the laws on the protection and conservation of forests in Uganda, moreso in 2007 when the government decided to give away Mabira forest<sup>14</sup>, what was and is the position of the law in as far as this give away was concerned? Previous years are also referred to for analytical purposes.

The geographical scope is Mabira forest Reserve in Mukono District located 54 km from Kampala along the Kampala-Jinja highway. It is 20 km north of Lake Victoria shoreline. It occupies parts of Buikwe ad Nakifuma. The forest covers an area of about 306 square kilometers demarcated with numbered concrete posts at the corners, making it the largest in Uganda<sup>15</sup> The forest is located at latitudes 0<sup>0</sup> 54<sup>0</sup> North and longitudes 33<sup>0</sup> 59 East<sup>16</sup>

## 1.7 Synopsis:

The study consists of five chapters: Chapter one consists of the introduction, background to the study, statement of the problem, objectives, scope, hypothesis, synopsis and methodology.

Chapter two gives the review of forest resource management issues.

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<sup>12</sup> The National Forest policy 2001

<sup>13</sup> Final Report: Uganda Biodiversity and Tropical forest Assessment July 2006 by Bob Winter Boston for IRG.

<sup>14</sup> New vision Tuesday April 3<sup>rd</sup> 2007 pg 1

<sup>15</sup> [www.destination Uganda.com](http://www.destination Uganda.com)

<sup>16</sup> [www-wikipedie.org/wiki/mabira-forest](http://www-wikipedie.org/wiki/mabira-forest).8<sup>th</sup> April 2015, 8:15 pm

Chapter three reveals the legal and institutional frame work of forests management in Uganda.

Chapter four entails the research findings

Chapter five gives the conclusions and recommendations

### **1.8 Justification of the study**

This research study is carried out with special concerns to the environmental trends in Uganda, which are of interest. It makes a broad analysis of the laws and policies recently adopted in the forest sector whereupon it gives recommendations. This will provide an insight to policy legal makers and enforcers to adopt more effective and relevant policies, and make changes where necessary.

### **1.9 Significance of the study**

This study is important for the forest sector and to the livelihood of our lives. The study successfully reveals the new means in which the law must be enforced, it also reveals areas of the law which need improvement and suggest ideas that may help the law enforcing institutions in as far as implementing the law on protection and conservation of forests in Uganda is concerned.

The study shows the enforcement of the law in order to achieve sustainable management of forests in Uganda.

The study also shows the implementation and challenges facing the implementation of laws on forests in Uganda and accordingly, other researchers will benefit from it.

The study provides the relevant information to stakeholders inter alia the policy makers to understand the challenges faced by the law enforcement officers during their work of managing the forests.

### **1.10 Methodology of the research**

Literally interpreted, it means the method to be used by the researcher in the data collection in the field. And as such, this research is basically doctrinal in a way that the researcher consulted a number of books, literature magazines, pamphlets, and journals.

The researcher also visited quite a number of libraries among which include KIU law library, LDC library, Makerere institute of Environment & Natural Resource, NEMA library and Wildlife library.

The researcher also looked at various laws and legislations among which include the 1995 Uganda constitution, NEA Act, the Forestry and Tree planting Act, and such other text books on protection and conservation of forests in Uganda.

## CHAPTER TWO

### LITERATURE REVIEW

#### 2.0 Introduction

This chapter presents literature review in as far as the management conservation and protection of Mabira forest and forest cover at large is concerned. It also reveals the status of legislations on forestry and the mechanism underlying the forest law in Uganda.

#### 2.1 Literature Review

It must be observed from the onset that there is a little literature pertaining to the researcher's problem and area of study. The following are the books and other materials which the researcher looked at in as far as the research is concerned.

Professor West A.W in UNEP first ministerial conference on Environment<sup>17</sup> holds the view that the limited resources should be managed, developed and used to the greatest advantage of the nation. He therefore advocates for the underlying need for statutory regulations and that theories leading up to the legislation should be discussed as fully widely as possible.

Kamugisha J.R in his book "Management of Natural Resources and Environment in Uganda"<sup>18</sup> discusses Uganda's environmental laws and the necessary laws and the returns thereto, to ensure sustainable development. However, the book does not offer a serious consideration of the legal aspects, it also does not concern itself with the analysis of institutional frame work for forestry management.

Hulme and Mulphree 2000<sup>19</sup> states that there are various stake holders in the management of Mabira forest including the communities conservation

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<sup>17</sup> UNEP (1985) First ministerial conference on environment Cairo-16-18 December

<sup>18</sup> J.R Kamugisha (1993) Management of National Resources & Environment in Uganda

<sup>19</sup> Huline David & Mershall purpreee, community conservation in Africa

bureaucracies, local government authorities, conservation NGOs, aid donors and private business men and entrepreneurs. When evaluating the success of forests in Uganda, all the various stakeholders need to be considered. However, this is contradicted by Hartwick & Olewiler<sup>20</sup> which is to the effect that there are properly rights which convey unto the owner certain powers to the exclusive use of a natural resource.

According to the United Nations Food and Agricultural Organization FAO<sup>21</sup>, Uganda had approximately 45% of its land covered by forests in 1890 and by 1967, it was 14%, today it is approximately 4%<sup>22</sup>. This rate is alarming where the country is estimated to be losing nearly 0.8% of its forests annually to agriculturalists and other encroachers.

The forest sector review Report of 1998<sup>23</sup> indicated that Uganda wood consumption increased from 16 million tons annually in 1988 to 23.115 million tones ten years later an increase above the annual population growth rate. A sustainable development and forest conservation project in Mukono, Jinja and Kampala districts<sup>24</sup> designed an awareness campaign to limit forest exploitation through education, law enforcement, forest rehabilitation and agro-forestry. In their research, they discovered that much of their literature was not applicable to their areas of operation since it was too old and colonial.

The social forestry project supported by World Bank<sup>25</sup> which encouraged farmers to plant trees and focus on local communities on preservation of their forests and rehabilitating them. However, this project failed due to use of foreign species and over looking the legal aspects of forestry. Erick Tamale pointed out that the project failed because the Muvule trees under this project were owned by the government and one needs a permit to harvest them be it

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<sup>20</sup> Hautick, John M & Nancy D. Olewiler (1998). The Economics of Natural resource use 2<sup>nd</sup> edition

<sup>21</sup> FAO Report 1972

<sup>22</sup> United Nations Environmental program Report 1995.

<sup>23</sup> Economic evaluation of the forest section in Uganda Forestry Department 1999

<sup>24</sup> Sustainable Development & forest conservation project final report

<sup>25</sup> World Bank Participation source book, Environmental paper

on private or government owned land. This became one of the hindrances to the locals planting muvule trees since the trees did not belong to them. However, his recommendation is that there should be research focused on farmers needs and institutional change and this can be criticised for not looking at changing laws, which laws were found to be a hindrance.

Egging in his book "Elementary forestry"<sup>26</sup> says much on Uganda's National Resources, he highlights the problems affecting the management and conservation of forests. However, it should be observed that for any natural resource to be protected, there must be law to govern its management and conservation, which in this case is not provided for. This leaves a loop hole in the law.

Charles Taylor in his book "Tropical Forestry"<sup>27</sup> describes the physical environment in which tropical forests grow. He lists the various factors responsible for tropical forest destruction. Taylor also highlights the measures which may be used to ensure sustainable forest management. However, this book is a study of west- African forests and does not discuss appropriate measures in the Ugandan situation.

Tukahirwa's discussion of the forest policy and legislation of Uganda<sup>28</sup> gives a summary of the evolution of the policy and discusses the 1988 forestry policy. He argues that the policy has been successful to some extent and that short falls have been majorly experienced in the administration, implementation and interpretation of the policy, which have been hampered by poor forest Department with the adaptive of the New forestry policy of 2001. However, the concern of this paper is to analyse the effectiveness of the policy and the law as it stands.

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<sup>26</sup> Egging 'Elementary forestry, Government Printery Entebbe

<sup>27</sup> Charles Taylor (1962) Tropical forestry London, Oxford University press

<sup>28</sup> E.M Pukahimwa (1993) Uganda Environment & Natural Resources management policy and law (issues & Options) Documentation.

The challenge of sustainable forest management<sup>29</sup> discusses mainly the world's temperate and tropical forests, while showing deforestation and its impacts. It demonstrates the role of forests in combating the green house effect. It is mostly been towards the forest management options suggested by the Rio declaration<sup>30</sup> and contends further that most forests laws are not enforceable.

The state of the Environment report<sup>31</sup>, to some extent exhausts all aspects on forests. It appreciably gives current data on the extent of deforestation in the country. It also appreciates the work of the forest department and contends that there is array of hope. A part from identifying problems, it however makes no mention of the inadequacies which exist in the forest legislations.

The National environment Action plan<sup>32</sup> does not adequately provide for the forest section. It gives priority to other environmental sectors like wildlife. It reveals that most of the pressure on forests has resulted from the overdependence by the majority population on wood fuel for energy, it does not however address itself with the issues of legal and institutional for the forest protection and conservation.

Professor George Kirya<sup>33</sup> observed that worldwide worry today in environmental degradation is due to adverse weather changes. In this research, it was established that forests is very important in maintaining good weather. Forest has many roles in society forexample source of local herbs, water catchments, provides building materials, fruits and force of employment among others. Its therefore of atmost important that the forest is being protected.

According to Je Otiendo<sup>34</sup> forestry is looked at as one which provides fire wood and raw materials and its to this effect that there must be need to conserve the

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<sup>29</sup> FAO (1993) the challenge of sustainable forest management, what future for the world's forests.

<sup>30</sup> Rio De janero (1992) United Nations Conference on Environment & Development, Brazil.

<sup>31</sup> State of Environment Report for Uganda (2001) National Environment Authority.

<sup>32</sup> The National Environment Action Plan for Uganda (1995)

<sup>33</sup> Prof. G. Kinya (1989) Uganda forest Association, forest Research centre report of the Nation conference on deforestation of human development of destruction July 2<sup>nd</sup> 7<sup>th</sup> 189 pg 5-6

<sup>34</sup> Y.E Otiendo "An introduction to Environmental Education"

forests. Its emphasized here that in order to protect and conserve the forests, the government should ensure that people get fuel wood and other materials from forests in a sustainable manner.

In the New Vision<sup>35</sup>, an article appeared where Otafire (the then minister of water, lands & Environment) speaking to journalists on Saturday, accused sacked forest officers of conniving with some law millers to destroy forests. The minister recorgonises the need to secure and protect the forestry resources and the asset base and noted that the rate at which these are being eroded and stopped is a serious threat.

In the New Vision<sup>36</sup>, a coalition of concerned citizens under the banner “save mabira crusade” petitioned parliament to held the proposed degazettement of mabira and other forests in the country.

In 1997, the government of Uganda successfully degazetted Namanve forest reserve to create a modern industrial park, two years after approving the constitution that vested natural resources like forests in the people of Uganda in whose interest government has to act as a trustee. The degazettement of Namanve was never challenged Environmental law advocacy was just beginning to evolve and there were most limitations<sup>37</sup>

In 2001, the government issued permit to Kakira sugar worker to convert Butamira forest for sugar cane growing. Butamira was a natural forest in Jinja district. This time, the degazettement was strongly contested by civil society. Scores of people voiced their opposition through memorandum and in the print and electronic media, at what they saw as a blatant violation of the very law that government had created. The natural forest was however cut down in a matter of months to make way for sugar plantations<sup>38</sup>

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<sup>35</sup> The New Vision, Monday December 22<sup>nd</sup> 2003

<sup>36</sup> The New Vision Friday April 13<sup>th</sup> 2007 Pg 4

<sup>37</sup> Twesigye; Lessons from citizen Activism in Uganda

<sup>38</sup> Twesigye Lessons from citizen Activism in Uganda



In 2003,<sup>39</sup> government proposed to degazette Pian Upe cancore Reserve in the Karamoja region, the object was to allocate the land to the Libyan investor for flower growing. The proposal was contested by the civil society and the districts of Moroto and Nakapirit, where the reserve is situated. The civil society and the local authorities prepared an agreement with the government to secure community benefits should the degazettement prevail. While this was happening, it was discovered that the Libyan firm did not exist in the company registry. Under pressure from the civil society and the local authorities, the fictitious investors reportedly pulled out of the project. Upon this effect, it was observed that poor governance constituted a fault line for conservation in Uganda and that it could be confronted through an environment lens.

Ntambirweki<sup>40</sup> points out that the past laws lacked provisions aimed at conserving the natural resource base. The driving force behind these laws was to encourage the exploitation of resources as was the case with the forest Act, the mining Act and the timber Act. His study hardly made the inquiry into the legal adequacy of the laws relating to forest conservation in Uganda today of which this research intends to explore.

Cheptoris S. (2004)<sup>41</sup> comments that to a smaller extent forestry laws are implemented for example a number of people who used to live on the forest land within a few years ago have been compelled to leave the forests. The problem is that the implementation of forestry laws has caused conflict with forest encroachers and as a result, the people don't cooperate with the management authority of the forests thus letting down conservation and protection by lighting the forests, cutting trees and encroaching.

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<sup>39</sup> Tweisgye: south African institute of international affairs.

<sup>40</sup> Ntambirweki J, the legal and policy frame work for Natural resource management

<sup>41</sup> Cheptoris, S (2003) The adequency of the legal framework in the conservation of Natural forests in Uganda.

Irene Makumbi in an article titled forest degazetement in Uganda<sup>42</sup> stated that forest resources has evolved through utilization to protective and conservation and has provided the framework for the existing forest legislation. The forest sector has had a number of policies the most recent being the forestry policy of 2001. She states that, thus acts that prevent the public from using these forests are illegal.

In an article in the New Vision<sup>43</sup>, “why is the law silent on the Mabira give away?”, Anywar emphasised that it is clear that governments’ concern is economic and not to conserve and protect the natural forests which has to a greater extent hindered the implementation of forestry laws, “from recent political pronouncements, it might only be a matter of time before bull dozers start ploughing down the Mabira forest which has supported biodiversity for centuries” “Would it be morally right to replace trees with grass which sugar cane essentially is?” she poses a question.

Forests are no longer thought of just as providers of goods; forests have now come to be perceived as one of the greatest instruments of health, happiness and welfare of human kind. We need to embrace pluralism in forestry in order to accommodate the new roles of forests, the new objectives of management and a wide range of stake holders<sup>44</sup> but how this is done was left to us students who are the upcoming researchers.

The major factors in the loss of forest cover and forest degradation as conversion of forest into agricultural and grazing land, and overharvesting for firewood, a charcoal, timber and non-wood forest products. The cause of this is often institutional failure to ensure a sustainable manner of exploitation of forests. Deforestation has increased fuel wood costs and in some areas triggered more investments in tree planting. Deforestation is cutting down of

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<sup>42</sup> Irene Makumbi “forest Degazetement in Uganda” Forest series No. 5 March 2001 p.g 6.

<sup>43</sup> G. Anywa (2007) New Vision February 1<sup>st</sup> 2007

<sup>44</sup> Internal conference centre at Kampala 27<sup>th</sup> – 28<sup>th</sup> sec 2002

trees in an area<sup>45</sup> However markets fail to respond to loss of environmental values such as soil and water, individuals do not bear the costs<sup>46</sup>. This is important to the research since it points out some of the reasons as to why forests are exploited.

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<sup>45</sup> Oxford Advanced Learners Dictionary 6<sup>th</sup> Edition

<sup>46</sup> The National Forestry Plan, final version, ministry of water, lands & Environment. October 2002.

## **CHAPTER THREE:**

### **THE LEGAL AND INSTITUTIONAL FRAME WORK FOR FOREST MANAGEMENT IN UGANDA.**

#### **3.0 Introduction**

The institutional and legal framework connotes the systems of formal laws, regulations, procedures, informal conventions, customs and norms that shape Socio economic activity and behaviour. It is the broad system of rules that governs and regulates decision making, agreements and laws<sup>47</sup>.

In this chapter therefore, emphasis shall be placed on legislations relating to management of forestry resources, the international legal dimensions of forest conservation among which include the African Conventions and more other international and globally recognized conventions on forest protection and management.

#### **3.1 Regional forest management and conservation law instruments**

Several African states over the years have been facing problems regarding the environment. The states in realizing this acknowledged their duty to harness the natural and human resources of Africa and as such they came up with the appropriate means of conserving and protecting the forest cover through conventions.

##### **3.1.1 The Lusaka Agreements on co-operative Enforcement, Operations Directed at illegal trade in wild flora and fauna 1994.**

This is an agreement among members of the East African, central and southern African countries in co-operative enforcement directed at illegal trade in wild flora and fauna. Uganda signed the agreement on 9<sup>th</sup> September 1994. This agreement derived its basis from the African Convention on the Conservation of Nature and natural Resources, Convention on international

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<sup>47</sup> Black's Law Dictionary 3<sup>rd</sup> Edition

Trade in Endangered Species, and Convention Biological Diversity. The agreement aims at reducing and ultimately eliminating illegal trade in wild fauna and flora and establishing a permanent task force to implement that objective.

### **3.1.2 Phyto Sanitary Convention for Africa of 1967**

The objectives of the Convention are to control and eliminate plant diseases in Africa and prevent the introduction of new ones. It calls for member states to share relevant information on the eradication of plant diseases. It calls for vigilance to ensure that plant diseases are not imported into countries signatory to the convention.

### **3.1.3 The African Convention on Conservation of Nature and Natural Resources of Maputo 2004**

This is a frame work convention dealing with natural resources management by bio-diversity. It is primarily pan African legal instrument for the conservation of the environment in general and bio-diversity.

### **3.1.4 The Treaty of the East African Community of 1999.**

One of this treaty's main objectives is to promote sustainable utilization of the natural resources of the partner states. It has articles on the environment and natural resources. Article 3 deals with the management of the environment and natural resources, Article 112 deals with management of the environment alone, Article 114 deals with management of natural resources.

### **3.1.5 The East African Community Memorandum of Understanding on the Environment.**

This is part of the East African Community Treaty. It provides for the development of harmonized national and sectoral mechanisms for the management of shared resources of Trans boundary resources and ecosystems especially the forests, water and wild life.

### **3.1.6 COMESA Treaty**

This treaty is of the objectives among others to preserve, protect and improve the quality of the environment, to contribute towards the protection of human health and to ensure the prudent rational utilization of natural resources

Under Article 123, member states agreed to take necessary measures to conserve their natural resources, to operate in the management of their natural resources and adopt common legislation for the preservation of shared land and forestry resources.

### **3.2 The International and globally recognised conventions on forest protection and conservation**

Uganda has signed several international conventions and treaties in the pursuit to protect and conserve the forests in Uganda and the environment at large.

#### **3.2.1 Convention on International Trade in Endangered Species (CITES) 1973**

Uganda ratified CITES on 20<sup>th</sup> November 1987. The objective of CITES is to prevent international trade from threatening the survival of wild fauna and flora. To achieve the above objective, Cites has established an international network for the control of international trade in live and dead animals and plants and of parts and derivatives thereof. Control of international trade in endangered species is primarily done through government permits/certificates required for such trade. Monitoring international trade is based on Trade Records.

#### **3.2.2. Rio Forest Principles [RFPs]**

RFPs are the non-legally binding authoritative statements for a global consensus on the management conservation and sustainable development of all types of forests of 1992.

It was noted that in these principles the subject of forests is related to the entire range of environmental and development to the entire range of environmental and development issues and opportunities, including, the right to socio-economic development on a sustainable basis.

It proclaimed that the guiding objective of these principles is to contribute to the management conservation and sustainable development of forests and to provide for their multiple and complementary functions and uses.

### **3.2.3. The Stockholm Declaration, 1972.**

The relevant principle of the Declaration provides that states have sovereign right to exploit their own resources pursuant to their own environmental policies. The obligation being to prevent activities within jurisdiction from causing environmental harm beyond the boarder as required under international Law.

### **3.2.4 The Lome IV Convention, 1995**

This convention provides for sustainable management of forest resources. It gives special priority to actions, which support and encourage African, Caribbean and Pacific (ACP) states and their organization to preserve, reestablish and use sustainably their forest recourses, including fight against desertification. The conventions provide that the community shall support efforts made by the ACP states at National, Regional and International and non governmental organizations in furtherance of policies and priorities for conservation of forests and their biodiversity. Uganda needs to ratify and implement the objectives of this convention in relation to preservation and conservation of Mabira forest.

### **3.2.5. The World Heritage Convention**

This applies to forest which are of outstanding universal value, Mabira forest reserve is among such forests of outstanding value in Uganda, which needs protection.

### **3.3 Environmental Legislative Framework in Uganda**

#### **3.3.0 The concept of a framework environmental legislation.**

Framework environmental legislation has the guiding principle of ensuring sustainable development which will use resources without depleting them for the benefit of both the present and future generations. The objectives of the framework legislation are twofold: to provide a planning framework, set standards and coordinate for all environmental-related issues in the country; and to strengthen the sectoral laws. Sectoral laws are enacted in consultation with the lead agencies to ensure coordination and effectiveness. The framework law must be in harmony with society's need to achieve better material standards, reduce poverty and achieve sustainable development.

#### **3.3.1 The Constitutional Provisions**

The Constitution, being the supreme law in Uganda, provides for environmental protection and conservation. It provides, in the National Objectives and Directive Principles of State Policy,<sup>48</sup> 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 generations.

The Constitution further provides that natural resources of Uganda are to be managed and utilized in such a way as to meet the development and environment needs of present and future generations of Ugandans. In this regard, 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. The Constitution also 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 Article 245, the Constitution provides that Parliament shall, by law, provide for measures intended: to

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<sup>48</sup> Principle xxvii



protect and preserve the environment from abuse, pollution and degradation; to manage the environment for sustainable development; and to promote environmental awareness. This has already been implemented through the national Environment Act, the Water Act, the Forest and Tree Planting Act, the Local Government Act, and the Wildlife Act, among others.

### **3.3.2 The Uganda Forestry Policy, 2001**

The objective of the Uganda Forestry Policy is to establish an integrated forest sector that achieves sustainable increase in the economic, social and environmental benefits from forests and trees by the people of Uganda, especially the poor and vulnerable. The policy provides for the protection of Permanent Forest Estate (PRE) under government trusteeship and the development and sustainable management of natural forest on private land. This is aimed at promoting profitable and productive forests. The policy provides a wider cross section of stakeholders' participation in the management of the forest estate.

### **3.3.3. The National Environment Act, 1996 Cap 153.**

This statute provides for sustainable management of all aspects of the environment including forests; and establishes the National Environment Management Authority as coordination, monitoring and supervisory body for that purpose.

The statute has several provisions in relation to forest management among which include; Reforestation and afforestation on hill tops and mountainous areas, Community tree - planting and introduction of vegetation in an area, Conservation of biological diversity, Management of forests in protected areas including forest reserves, and national parks. Forests on lands subject to interest held by private persons<sup>49</sup>.

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<sup>49</sup> National Environment Act Cap 153

### **3.3.4. The National Forestry and Tree planting Act, 2003**

The purpose of this Act is to create an integrated sector that will facilitate the achievement of sustainable increases in economic, social and environmental benefits from forests and trees by all the people of Uganda, to guide and cause the people of Uganda to plant trees and to ensure that forests and trees are conserved and managed in a manner that meets the needs of the present generation without compromising the rights of future generations by safeguarding forest biological diversity and the environmental benefits that accrue from forests and trees.

### **3.3.5 The Wildlife Policy, 1999**

Wildlife is one of Uganda's most significant biological resources and over the years a number of different types of protected areas have been established in Uganda to help conserve the country's wildlife and forested areas, and to encourage the country's wildlife and forested areas, and to encourage sustainable utilisation of its resources. The overall aim of the Wildlife Policy is to promote long term conservation of the wildlife and biodiversity in a cost effective manner that maximizes the benefits of wildlife resources to people. The policy objectives include conservation of wildlife within the national parks and other wildlife-protected areas, and enabling the people of Uganda and the global community to derive ecological, economic, aesthetic, scientific and educational benefits<sup>50</sup>.

### **3.3.6 Land Act**

The Land Act provides for the tenure, ownership and management of Land. Subject to Article 237 of the constitution, all land in Uganda is vested in the citizens of Uganda and is owned in accordance with customary, freehold, mailo and leasehold land tenure systems<sup>51</sup> The customary mode of land ownership is recognized as a form of tenure and the occupants enjoy security of tenure on

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<sup>50</sup> Section 93 of the Internal Wildlife Act

<sup>51</sup> Section 2. Of the Land Act

former public lands, for which, a certificate of little known as “a certificate of customary ownership” is granted to the owner of such land.

### **3.4 Mechanisms of Enforcement to Maintain Status quo..**

Some mechanisms of enforcement of laws on environment and forestry are provided by the National Environment Act to ensure that the law will be beyond the traditional command and sectoral approach to Criminal law. These include;

#### **3.4.1 Environmental Easement.**

Under the National Environment Act, a person can apply for an easement to protect the environment in view of provision of the Constitution relating to right of a clean and healthy environment and the capacity of any person to enforce that right notwithstanding that this specific right has been affected. It provides that it may be enforced by anybody who finds it necessary to protect a segment of environment although he may not own the property in the proximity of the property subject to the easement<sup>52</sup>.

#### **3.4.2 Environment Restoration Orders.**

Where the person’s activities affect the environment, the authority or court may issue a restoration order requiring the person to cease the activities or to restore the environment as much as possible to its original state<sup>53</sup>. Such order may be given pursuant to an action brought by an individual or upon the initiative of the authority.

#### **3.4.3 Awareness raising.**

This is also another mechanism for which enforcement can be effectively achieved. The need for popular awareness is a key requirement of enforcement of legislations. National environmental Management Authority (NEMA) is given the mandate to promote public awareness through formal, nonformal and informal education about environmental issues and carry out public

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<sup>52</sup> 14 Section 72 of National Environment Act Cap 153

<sup>53</sup> 15 Section 67 of National Environment Act Cap 153

information and education campaigns in the field of environment<sup>54</sup>. This is to ensure that the public participates in the environmental decision making and enforcement. This reduces the pressure and the burden of the high authorities where by the Lead Agencies will 'work with' rather than 'Working for'.

#### **3.4.4 Licensing and Registration of Activities.**

These are activities which require specific permits, these activities include;

Import, manufacture and disposal of hazardous chemicals, wastes and substances in order to control their effects on forests<sup>55</sup>. Also the extraction of forest products from forests such as timber, firewood, charcoal and others require licenses and 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<sup>56</sup>.

#### **3.4.5 The use of Economic and Social Incentives.**

The Act provides that the management measures should be carried out in conjunction with the application of social and economic incentives including taxation.

#### **3.4.6 Environmental Impact Assessment.**

The National Forestry and Tree Planting Act, (2003) provides that a person intending to undertake a project or activity which may, or likely to have a

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<sup>54</sup> 16 Sections 6 (g) & 86 (e) of National Environment Act Cap 153

<sup>55</sup> Sections 53 & 54 (1) of National Environment Act Cap 153

<sup>56</sup> Challenges in monitoring and enforcement of environmental laws in Uganda by George Lubega Matovu, p.7

significant impact on a forest shall undertake an environmental impact assessment<sup>57</sup>. This controls the degradation of the forest as well as the environment, which is so beneficial to the public.

### **3.4.7 The Use of Criminal Law.**

Criminal law remains a variable instrument for the control of behavior because of natural tendency of man to fear infliction of pain, isolation, or economic loss. Therefore the Act provides for serious penalties for the infraction for its provisions<sup>58</sup>. It is however recognized that the law cannot be the main stay for the enforcement of law but it is a necessary supplementary measure to the approaches outlined above.

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<sup>57</sup> Section 38 of the National Forestry and Tree Planting Act, 2003

<sup>58</sup> Part IX-Offences of National Forestry and Tree Planting Act, 2003

## **CHAPTER FOUR**

### **FINDINGS OF THE STUDY**

#### **4.0 Introduction**

This chapter covers research findings and are presented according to the objectives of the study, it reveals the Lacunae in the law and the factors affecting its applicability. It further reveals the challenges and problems associated with the law and policy in the management, protection of forests, and the suggestions thereto.

#### **4.1 The Lacunae in the law and the factors affecting its applicability.**

Uganda is evolved with rich natural source diversity. Despite the country's high forest cover potential, the country is undergoing rapid loss of this forest cover. This sub chapter therefore examines the Lacunae and the factors underlying the loss of forest cover in Uganda.

The law on the protection and conservation of forests in Uganda has been observed and found to be sectoral in effective and lacked the participation of the local people. The result is that the law can not be enforced and has had negative results/impacts on the forests that they intend to protect. This is so because the large segment of the population in Uganda is illiterate and the forest use still base on the indigenous knowledge which does not take into consideration scientific and technological developments. This is also initiated by the low levels of environmental awareness and technical expertise in as far as the protection and conservation of forests in Uganda is concerned. The law itself does not provide for the awareness of the locals in as why the country needs to maintain and protect the forest cover thus a lacunae.

The National Forestry & Tree planting Act 2003 does not look at grazing, camping, fishing, erection of building for recreation and other purposes. The provisions of the law in this Act are not adequate. The Act some how prohibits such activities but does not specify what happens in case these activities took

place on the land before it was made a protected reserve. For example, the Act requires that the local council be involved before an area is allocated a reserve. But because the locals are ignorant and not aware of the law; it so happens that after an area has been declared a reserve, a lot of conflict arise, locals are displaced among others. The law does not adequately provide for what would be the appropriate places for the locals after they have been displaced.

There has been observed a high fuel demand, encroachment into forests for agriculture, the uncontrolled pitsawing, coupled with poor logging and inefficient wood use methods. Section 32 of the National Forestry and Tree Planting Act 2003<sup>59</sup> prohibits the cut, take, work or remove forest produce, clear, use or occupy any land for grazing, camping livestock farming, planting and cultivation of crops, erecting, of buildings among others. This provision of the law is not implemented and enforced to the maximum. In Mabira forest forexample, there is manifested the cutting, encroachment of forest by the locals in seek of different activities. The punishment prescribed under section 32 (2)<sup>60</sup> is also not stringent enough to prevent encroachers from bothering the forestry cover. This provides for a punishment of thirty currency points or imprisonment 3 years. This is not scary at all. It is suggested that the punishment be made more tight than this under sec 32 (2). This follows the provision under section 33 of the Act which is to the effect that a member of a local community may in a forest reserve cut and take free of any charge or see any dry wood or bamboo, but for domestic use. Locals basing on this provision encroach the forests for wood fuel and this has caused uncontrolled pitsawing and hence hindering the protection and conservation of forests in Uganda.

The National Environment Act (NEA) in sections 85-87<sup>61</sup> mandates the National Environment Management Authority (NEMA) to carryout environmental education and awareness campaigns to ensure that public participates in

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<sup>59</sup> Act No. 8 of 2003

<sup>60</sup> Ibid

<sup>61</sup> Ibid

environmental decision making and enforcement. The lacunae here is that NEMA is not mandated to extend its arm or influence or regulation to the forests on private land. Currently there are high rates of forest clearance on private lands for agriculture and charcoal product.

This is now a serious threat as 70% of Uganda's forest cover is on private land much of which is not regulated or managed<sup>62</sup>. Population growth estimated at over 2.5% per year is leading to an increase in the demand for land, food, and energy. Institutions like schools, prisons, and others rely almost exclusively on fire wood for cooking as does over 90% of the population<sup>63</sup>

There is limited institutional capacity and limited resources in both central and local government to improve planning and regulation and little incentive for the private sector to improve its performance in the absence of firm regulation and the enforcement of professional standards. This follows the fact that there is poor planning, weak regulation and inappropriate processing technology which has resulted in the unsustainable harvesting of forest products and thus the degradation of the forest cover. It is estimated that 800,000m<sup>3</sup> of logs are cut each year, a rate of timber harvesting that exceeds sustainable cutting levels by a factor of four. This comes from both government and private land<sup>64</sup> This raises the question of whether or not the law on the conservation and protection of forests in Uganda provides for sustainable harvesting methods and prohibits the inappropriate processing technology? If yes, are these provisions of the law implemented?? It is therefore suggested that there be a stringent law regulating the harvesting and the methods of harvesting tree product. This law should prescribe serious punishments to those who don't abide and it should as well extend to the forests on private land, to regulate such activities like charcoal burning.

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<sup>62</sup> over view on the Uganda forestry policy by Henry Kajura

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The law on conservation and protection of forests in Uganda does not adequately call for proper private forest management. The owners of forested private land are guardians of 70% of Uganda's forests and woodlands, which provide a rich source of wood and non-wood forest products and services. However, due to the inadequacy of the law, much of the private forest is poorly managed or being converted to agriculture or grazing land, with charcoal as a major by product. Private forests are seen largely as a land bank for cash and agriculture or grazing and this is a major constraint on the sustainable management of private forests which result in the continuing decline of forest cover in Uganda.

Collaborative forest management. Where people live near government forests, there is typically a history of open-access use of these forest reserves, by individuals farmers or local residents who depend on these forests for wood and non wood products. This has been the case with Mabira forest since the residents of Mukono and the neighbouring districts of Buikwe have historically had an open-access to use Mabira forest domestically. The government administration finds it increasingly difficult to police and regulate this open access without communal responsibility. New developments in collaborative forest management show that organized communities can play a key role in natural forest management and conservation in government forests, while substantially improving their livelihoods. This role is however weakened by a number of constraints in the law as ranging from policy and institutions forexample lack of involvement of these locals in decision making about resource management.

The Land Act provides for land and tree ownership. The constitution of Uganda and the Land Act gives a lead on questions of land ownership and tenure. Land in Uganda is customary, freehold, mailo and leasehold land<sup>65</sup>. This connotes that all land is owned including the trees growing on it, whether

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<sup>65</sup> Article 237 and section 3 of the 1995 Uganda constitution and Land Act respectively

government or private land. It also connotes that customary ownership of land is valid and legal whether registered and titled or not. However, there is an ambiguity in the special conditions applying to trees of reserved species. Although trees planted on private land have always been privately owned, trees of reserved species are not widely planted because of uncertain ownership. The forestry and tree planting Act 2003 defines the reserved species to mean the species reserved under Section 30<sup>66</sup> section 30 is to the effect that the minister may in the case of a tree species of international or national importance that is endangered, rare or threatened, declare by statutory order that the tree species are to be a reserved species which shall be subject to such controls as the minister may specify in the order. The section mandates also the district council to do the same in the appropriate circumstances. These reserved species may not be adapted by the locals since their uncertain of the ownership. It is suggested that the law provides for this certainty.

The law on protection and conservation of forests in Uganda seem to divide the responsibilities. The National Environment Act (NEA) provides and establishes the National Environment Management Authority (NEMA), then also the National Forests Authority (NFA) being established by the Forestry & Tree Planting Act<sup>67</sup> among others. This connotes that the responsibility for managing and conserving forests is currently scattered amongst a variety of government institutions, often with overlapping mandates and competing interest. Although there is a leading ministry responsible for forestry, a number of other ministries have a direct interest in the forest sector. The lack of coordination between these interests in the part has led to inefficiency and waste of public resources. Important to note also is that the forest sector cuts across many management boundaries including energy, agriculture, water, industry, wildlife, education and economic development planning. The division of responsibilities of artificial sectoral boundaries have created a number of

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<sup>66</sup> Section 3 and 30 of the forestry and tree planting Act No.8 2003

<sup>67</sup> Section – 52 of the Forestry and Tree Planting Act. No. 8 2003

potential and actual conflicts between the lead agencies such as the forestry department, the Uganda Wildlife Authority and the National Environment Management Authority, also between the central government, local government and local community priorities for the use of forest resources. It is suggested therefore that the law on protection and conservation of forests should aim at sectoral coordination. Such a coordination should bring all the relevant authorities' representatives from all the government ministries, involved in forest sector as well as the representatives from the private sector and civil society.

It is therefore suggested that the law on the protection and conservation be strengthened basing on the reform of the central and local governments' roles and responsibilities, a greatly increased role for the private sector and non governmental organizations, improved regulation of the sector, new approaches to the sustainable use of forest product, and re-defining relationships between the relevant authorities and the establishment of a better legal basis between these authorities.

The law on protection and conservation of forests in Uganda has seemingly been weak to the extent that there is wide discretionary powers given to the public officers including forests officers. At Mabira forest, it has been observed that instead of using their powers to enhance the protection of natural resources and the forest cover, the forest officers use their powers to authorize the destruction and waste of the forest resource. According to the press reports, forest officers authorize logging of vital virgin forests instead of protecting them. More to note is that the public officers, magistrates and judges whose possess wide discretionary powers in relation to the forest product often use their powers to deny the public to environment justice and information.

It is recommended that there should be strengthening of the general law relating to administration, especially on matters of conduct and ethnics; there

is also need to enhance the general knowledge of the public servants on the forest resources issues.

There is also a need to include in the law the right of a citizen to require public officials through court petitions, to do their duties in order to abate abuse of power and neglect of public responsibility in regard to the forestry resource.

The lacunae in the law as regards protection and conservation of forests in Uganda reveals itself also in the fact that the legislation lacks effective sanctions to deter infraction, legislation does not provide sufficient mechanisms for co-ordination and as such, it is not comprehensive enough and therefore a need for the basic or frame work legislation on the forest cover and the forest product.

The law itself is hard to implement. In the case of **Rwabitontozi & Kinyonyi – Vs-Uganda**<sup>68</sup>, the two accused were convicted on their own pleas of guilty by a magistrate Grade II, of illegal occupation and grazing in a forest reserve and each was fined 500 shillings or three months imprisonment on default. They were also ordered to quit the area within 30 days.

On appeal, the two were acquitted on grounds that the magistrate Grade II has quoted wrong law, also that the accused could not easily establish a new life within 30 days. It is observed that the ignorance of the law on the side of the magistrate saw the two being acquitted even on their own pleas of guilty. Besides the punishment prescribed under the law can no longer serve its original purpose of deterring encroachers! Section 14 (9) of the forestry and tree planting Act 2003<sup>69</sup> for example is to the effect that a person who contravenes the provisions under section 14 commits an offence and is liable on conviction to a fine not exceeding fifty currency points or to imprisonment for a term not exceeding five years or both. Fifty currency points is just one million Uganda shillings. Imagine a person who exploits a forest reserve on

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<sup>68</sup> (1979) HCB

<sup>69</sup> Act No. 8/2003

pursuit of timber and infact, he harvests like fifty thousand tones timber and on being arrested, he is fined to pay one million shillings. It is therefore recommended that the punishments be stringent enough and well implemented.

Section 88 of the forestry and tree planting Act 2003<sup>70</sup> provides for the powers of an authorized person. This is to the effect that an authorized person may arrest, without warrant any person whom he/she reasonably suspects he/she committed or is in the process of committing an offence under this Act. An authorized person may detain any forest produce ....., It is observed that this section is ambiguous and promotes corruption. What will happen in case the same authorized officer has interest in the activity (the illegal produce). This can let many suspects off the hook as long as they are able to pay the forestry or authorized officer. This reflects the loopholes in the law upon which many exploiters stand and exploit the forest resource illegally. It is suggested therefore that the law be revised and provide an appropriate mechanism of handling the offenders not merely through authorized persons.

#### **4.2 Challenges and problems associated with the law and policy in the management and protection of forests.**

Enforcement of laws is the mechanism of implementing government programs and policies provided under different legislations, statutes and policies. The purpose of any legislation is to protect the rights of the particular individuals and public or rights of properties. It involves the use of different approaches which includes use of force, use of courts of law, use of economic incentives like taxes, use of criminal law which includes punishments, use of sensitization and education of the public among others.

Enforcement of laws is recognized by most legislations at all levels including the Constitution of the Republic of Uganda which provides for enforcement of rights and freedoms by courts; empowers the police to preserve law and order;

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<sup>70</sup> Supra

empowers the IGG to enforce the leadership Code of Conduct; provides for the protection of natural resources and forests; provides for the protection and preservation of environment<sup>71</sup>. The National Environmental Act provides for enforcement of environmental restoration orders and many more others<sup>72</sup>. Enforcement is a very important tool in protecting, preserving and promoting the environment.

#### **4.2.1 Financial and Domestic needs.**

Deforestation and degradation of natural forests is largely due to the cutting down of forests to meet financial and domestic energy, and food needs of the people. The challenge is how to transform forest management and conservation, as well as trees on farms into profitable enterprises.

Uganda's human population and economy are growing, leading to an over increasing demand for forest products. The challenge is how to step up the supply of forest products to meet the rising demand, which currently exceeds supply. Given the current population and economic trends, most of Uganda's energy needs will continue to be met from woody biomass for many years to come.

Deforestation and forest degradation are not seen as urgent problems that need priority attention by the Government. Therefore, the challenge lies in changing the attitudes of decision-makers so that due priority is given to forestry.

#### **4.2.2 Legal Framework.**

Enforcement of laws, regulations and standards relevant to forestry is a challenge to forest management, largely because of political positions and legal framework.

Internal contradictions in National legal frameworks are common; for instance the Kingdom and Chiefdoms were not considered by the decentralization to get

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<sup>71</sup> Articles 50, 212 (b), 234, 237 (2) (b) , 245 of 1995 Uganda Constitution

<sup>72</sup> Section 70

back the forests in their Kingdoms. In July 1993, the Traditional Rulers (Restitution of Asset and Properties) Statute was gazetted. This would have paved the way for the traditional rulers to reclaim the forests that belonged to their Kingdoms before 1967.

The traditional rulers, unfortunately today, do not have legal authority to hold Central Forestry Reserves or Local Forestry Reserves because the Local Government Act (Cap 243) does not legally define traditional institutions. Example in point is that, in 2001, an Executive Order under a memorandum of understanding between the Central Government and authorities of Bunyoro Kingdom providing for the return of some of the Forest Reserves to the King could not be effectively implemented. Much as the Kingdom authorities were allowed to take over management of Mukihani Forest Reserve, the **Government Solicitor General** advised that the Kingdom couldn't hold Forest Reserves in trust for the people of Uganda<sup>73</sup>.

Taking advantage of the standoff, the Kingdoms simply continued to allow timber harvesting in an uncontrolled manner, resulting in the degradation of the forest plantation to the financial advantage of a few individuals and not even the Kingdoms as institutions.

#### **4.2.3 Insufficient enforcement capacity.**

This is often due to institutional weaknesses coupled with lack of transparency and accountability in the implementation of the forest policy and legal framework. Powerful interests that are directly or indirectly involved in illegal forest operations, and lack of alternative economic opportunities for local people can result in passive acceptance of forest illegality.

Deficiencies in coordination within and between forest-law-enforcement and judicial bodies decrease the chances that wrongdoers will be caught and

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<sup>73</sup> Decentralization of Forest Management in Uganda by Steve Amoti Nsita

prosecuted. Even those who are arrested and prosecuted find their way out on principle that 'every person who is charged with a criminal offence is presumed to be innocent until proved guilty or until that person has pleaded guilty'<sup>74</sup>. Basing on this, judicial officers grant the accused persons court bail, which they do not honour rendering the case to take longer and eventually be dismissed from court due to want of prosecution.

The enforcement of regulations on industrial capacity is often weak, leading to a disproportionate demand for logs that help drive illegal forest land conversion, logging in national parks and other protected areas, and the over-harvesting of production forests. There is need for developing adequate capacities among all stakeholders.

#### **4.2.4 Insufficient information.**

The condition of the forest resource and its change over time makes it difficult to monitor what is happening in forests. For proper enforcement, information is needed on production activities, cultural operations, the movement of timber within a country, and the volume of cross-border anti other trade, yet statistical systems and market information are often inadequate.

The dissemination of information is often limited and existing information is not used effectively by stakeholders. Due to a lack of political will as well as budget constraints, advanced technologies for monitoring and control are not applied and stakeholders are prevented by circumstances from monitoring activities.

The law has no proper system of communication, some areas have no network and reporting of illegal acts on forests becomes impossible; in most cases the forests staff communicates either by letters or first travel long distances which consumes a lot of time and money thus leading to discouragement.

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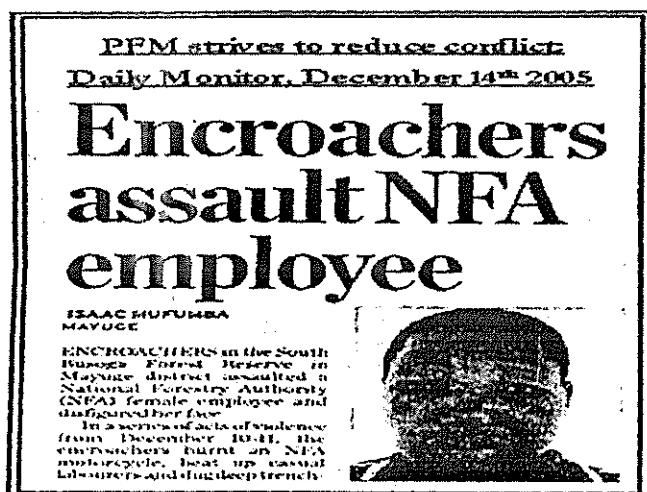
<sup>74</sup> Article 28 (3) (a) of the Constitution of Uganda 1995



and awareness. It is also observed that cases related to forests do not cause injury to any individual in short run and therefore cannot put much pressure on the public to travel long distances to report the matter to concerned authorities.

#### 4.2.9 Aggressive offenders.

Most offenders are aggressive, they go to the forests armed with some weapons, some are more trained than law enforcers and they end up causing injury or death to some law enforcers; this is mostly common with forest encroachers and smugglers of forest products. (See picture no.4 below).



Picture4: Shows the law enforcement officer; assaulted while executing her duty.

#### 4.3 Importance of forestry in Uganda visa vie Suggestions

Most of the suggestions are dwelling on sustainable development with the conservation of natural resources and to harmonize and integrate environmental concerns for better livelihood.

Uganda's forests and woodlands are centered to the three pillars of sustainable development i.e. the Economy, Society and Environment and that the forestry

sector is one of the contributors to poverty eradication to the majority of people.

The forest is important in all aspects; socially, economically and is the source of life to many living organisms. It provides energy, forests and tree products, employment, livelihood support, government revenues, business opportunities, environmental functions and services, and they maintain ecological integrity among others. If it is not sustainably conserved Ugandans would suffer.

#### **4.3.1 Gross Domestic Product (GDP).**

The forestry sector contributes to Uganda's gross domestic product (GDP), household incomes and employment, provision of ecosystem services such as carbon sequestration and water catchment, and national biodiversity. It is therefore important for the country's development process, including the attainment of the Millennium Development Goals (MDGs).

In spite of this contribution, Uganda's forest cover is reducing at an alarming rate, especially outside the protected areas. While there are clear policy and legal frameworks in the forest sector, the main weaknesses have been in the area of governance, particularly in the implementation and enforcement of these policies and laws, which need to be improved.

The contribution of forestry to the nation's (GDP) was valued at 6% in 1999 and the annual turnover of business in forestry is currently about 356 billion with a further estimated annual value of Uganda Shs.112 billion attributed to environmental services. Other contributors to this GDP include; Domestic fuel wood (Shs.120 billion), Charcoal production (Shs.70 billion), Non-wood forest products (Shs.66 billion), Commercial fuel wood (Shs.43 billion) and sawn timber (Shs.40 billion)<sup>76</sup>. This contribution is attributed to the working hard of the stakeholders, of which when given adequate financial facilitation, more revenue would be collected.

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<sup>76</sup> Uganda Biodiversity and Tropical Forest Assessment by International Resource Group

Environmental benefits also contribute over 330 billion. In addition to the above, such a contribution is so significant and as such makes forestry an important sector<sup>77</sup>.

#### **4.3.2 Consumption of forest products.**

Consumption of forest products mean and include; firewood used as fuel, timber for construction, furniture and other manufactured poles for both construction and electricity transmission. There are also non-timber and wood products in form of honey and fruits. The economic value of these products is significant to 17% of the forest sector to the GDP. Non- consumptive use of forests is high, in the form of environmental services and tourism which alone also contributes 1.7% to the GDP. Over 95% of the national energy demand is met from wood fuel, where by 65% is consumed as house hold firewood and about 16% as charcoal and commercial while 14% as Industrial fire wood<sup>78</sup>.

The demand for forest products is rapidly increasing with the increasing population, urbanization, Industrialization and Agriculture production as well. This necessitates the government to priotise forest sector by any means possible.

#### **4.3.3 Employment.**

Forest sector is a significant employer in Uganda. It provides nearly one million jobs to Ugandans in both formal and informal sector. Of these jobs over 100,000 jobs are in formal sector as full time employees while the majority in the informal sector forest based activities like firewood and Charcoal production, in plantation establishment and management, forest Industries and Institutions, commercial firewood, industrial and others<sup>79</sup>.

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<sup>77</sup> National Forest Plan, 2002 and Uganda Forestry Policy 2001

<sup>78</sup> Uganda Biodiversity and Tropical Forest Assessment by International Resource Group

<sup>79</sup> ibid

If forest sector is well considered and planned efficiently and sufficiently, it is observed to be very potential and likely to become one of the major employers and economic base in the country.

#### **4.3.4 Subsistence needs and Agriculture production.**

Forestry provides basic forest subsistence needs to a large proportion of the rural population from either farm forestry or from natural forests and woodlands. These products are for wood and non-wood forest products, i.e. food security, Agriculture productivity and cultural, customs and spiritual values that are depending on trees and environmental services from forests and wood lands.

#### **4.3.5 Environmental Services and Biodiversity.**

National forest covers approximately 4.9 million hectares in Uganda, equivalent to 24% of the total land area. Forestry contributes significantly to economy of country in the range of ecological Services and biodiversity values although not easily quantified; they are recognized as integrals to agricultural productivity, climate regulation, soil and water conservation, nutrient recycling in the soil among others.

Forest is a very important reservoir of the country's biodiversity, including its unique genetic resources and diverse ecosystems. It is the only comfortable home for fauna and flora. It is catchment area for most rivers. It models climate, and is a source of rainfall through the process of evaporation. It promotes respiration in animals through the exchange of Oxygen and carbon dioxide; it neutralizes the environment and air in particular hence controlling pollution. It is the only source of nutrient recycling to the soil and one of the factors in the production and Manufacture of the soil. With all these functions the forest indeed qualifies to be a basic resource and part of human life not to be eliminated.

#### **4.3.6 Tourism.**

Much tourism in Uganda is based on forest woodlands and their constituent wildlife and natural beauty of our country created by forests and vegetation cover. Mainly because of nature of forest cover on hill tops and mountains make Uganda the Pearl of Africa and thus calls for more tourists to come and see for themselves.

Although poorly developed, tourism contributes to economic and social development and to resource conservation. The Uganda Wildlife Authority revenues from tourism are approximately US\$3 billion annually and over one third of this is derived from forest based mountain gorillas tourism; beautiful birds in Mabira forest and other species. This evidenced by a number of locals and foreigners who go to Mabira forest for recreation and camping. Its therefore suggested that the forest cover be protected and conserved.

## CHAPTER FIVE

### SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATION

#### 5.0 Introduction.

This gives over view of the study, Conclusion and Recommendations.

#### 5.1 Over view of the Study.

Forest resource is declining, by 1938 forest cover was 52% of the total land area of Uganda but today it has reduced by more than a half up to 24% of the total land area just during the last century. This has been attributed to the underlying causes revealed by this research.

The National Biomass Study (2003) projected a decline in the per capita forest area from 0.3 hectares in 1991 to 0.1 hectares in 2025. If this trend in forest loss continues and there is no substantial investment in forestry, it's likely to result in:

- increased hardships for the poor who directly derive their livelihoods from forests and trees for their energy needs;
- reduced energy supply: over 97 percent of the energy needs of Ugandans come from woody biomass;
- decreased quantity and quality of water for domestic and industrial use;
- reduced raw materials for construction;
- increased global temperatures; silting of rivers and lakes;
- adverse effects on the forestry-related sectors such as fisheries and livestock;
- spending the scarce foreign currency to import forest products or substitutes for timber<sup>80</sup>.

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<sup>80</sup> Enhancing Forests' Contribution to Growth, Employment and Prosperity by Kaggwa, R., Hogan, R., and Hall, B. 2009 p.23

## **5.2 Conclusion.**

It should be noted that although this decline has been recognized and reported in several reports; and legislations made both at National and International levels during conferences, conventions and treaties among others, little has been achieved on the ground. The forest and environment has continuously been degraded in different ways mentioned in this research, some challenges in enforcement of relevant laws have also been mentioned in this research plus the strategies to the way forward mentioned in recommendations of this research.

It must be emphasized that, the whole country is in great danger if the government can not priotise the forest sector and the environment in general to stop this trend of degradation on the environment. The future generation is at stake and its ability to exist is highly compromised.

What is most worrying is that the relevant Authorities, Politicians, implementers and enforcers of Laws and Policies who are charged with the responsibility of protecting, promoting and conservation of these natural resources, some of them have been identified in the scandals of violating and championing all sorts of illegal acts against these resources; they have become chief violators instead of being promoters. Evidence is out in most newspapers, the New Vision and daily Monitor like the one of 24th June 2006 where Government officials were reported involved in degradation around Lake Victoria. One may not forget to mention also one of the houses belonging to Local Council official that was demolished by NEMA around Bugolobi, having been constructed in a wetland.

This should serve as a warning and an eye opener for new strategies to be formed other wise consequences are destruction and dooms.

However, in the current effort to make laws and legislations to protect and conserve the environment, a credit should be given to where it deserves to this

government; some legislations that have been made do recognize the environment like the Uganda constitution of 1995, Art. 39 provides for a right to a health environment, Art. 245 provides for protection of Environment among others.

The Government of Uganda since 1986 unlike other past Governments has taken a step to recognize the importance of forests and environment. Many legislations and Policies have been made, replacing those out dated ones, they include; National Environment Management Statute which provides for NEMA, National Forestry and Tree Planting Act 2003, National Forestry Policy 2001 and National Forestry Plan 2002 to mention but a few.

Although much is still lacking, there is no doubt, the government effort is a step towards a positive direction.

In summation, all that has been revealed by this research is more than to raise concerns of all responsible citizens of this country. It is now high time the Government and the whole public priotised forest conservation and environment by providing all that is required because of its great significance and immense benefits.

If we all do little we can achieve much. Let us all protect and conserve forest, it is the source of life.

### **5.3 Recommendations.**

The civil society has played a big role in reporting cases of poor governance to the extent that the public demanded and fought for preservation and sustainable management of forests.

To improve forest governance, the private sector and civil society should play dominant roles.



The government should consider mitigating the issue of political interference in the forest sector that has compromised the NFA and NEMA from performing their duties diligently.

The researcher emphasized in the challenge of and need for developing adequate capacities among all stakeholders. Capacity building should include awareness of Policies and laws dealing with forest and tenure reform; exercising rights and responding to acquired responsibilities like, developing simple forest management plans or conducting resource assessment; compliance with the new legal requirements associated with reform e.g. requests te titling; marketing of forest products; and negotiating with other stakeholders, including loch authorities and the private sector.

A key role in these processes should be played not only by government extension services and similar institutions, but also by NGOs and the private sector, which have a comparative advantage in terms of efficiency, neutrality and proximity to stakeholders.

A fundamental requisite to guarantee the sustainability and success of a forest concern is to ensure active stakeholders' participation in the development of relevant policies and law, including strengthening participatory approaches in forest administrations, empowering marginalized groups in policy processes and promoting participatory development of management plans. It is important to use simple language to ensure the distribution and dissemination of policies, laws and regulations to a wide range of stakeholders.

Better harmonization of different sector policies and consistency among policies and legislation related to forests should be ensured, as well as clear definitions of responsibilities and authority at the Local, Regional and National levels of the Ministries involved.

Where possible, simplification of the regulatory framework, including adaptation of management plans to local capacities, conditions and needs,

would also improve the performance of community and allow for better monitoring.

Degradation should be viewed not as the beginning of deforestation process but as a form of poor forest management that needs to be dealt with. The magnitude of the problem should prompt government with the help of International and Non-governmental Organizations as well as the private sectors, to step up their analysis of the socio-economic causes and consequences of insufficient forest law compliance. This will resolve the following issues;

Uncertainty surrounding land use and land-use change and forest tenure and use rights; flawed forest policy and legal framework; weak forest law enforcement; insufficient information on forest resources, coupled with increasing demand for forest products; corruption and lack of transparency.

In this study, the researcher noted the unlimited growth of human population and the unabated exploitation of nature and unlimited consumption of materials and energy, which are impossible to sustain. Therefore, man's developmental quest should be accompanied by environmental assessment methods and environment management considerations, skills and strategies so that our balance and dynamic equilibrium is maintained.

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