

**THE EFFECTIVENESS OF THE LAW TOWARDS PROTECTING
WETLANDS IN UANDA**

BY

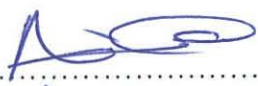
**NALUWENDE MIRIA
LLB/31581/102/DU**

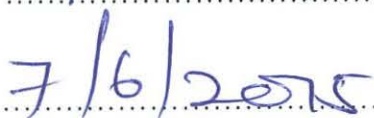
**A DISSERTATION SUBMITTED IN PARTIAL FULLFILMENT OF THE
REQUIREMENT FOR THE AWARD OF A DEGREE
OF BACHELOR OF LAWS IN KAMPALA
INTERNATIONAL
UNIVERSITY**

APRIL, 2015

DECLARATION

I NALUWENDE MIRIA declare that the work presented in this dissertation has never been presented for the award of any degree to any other university.

Signature 

Date 

APPROVAL

NALUWENDE MIRIA has been carrying out her research entitled the (effectiveness of the law towards protecting wetlands in Uganda) under my supervision.

This research report is now ready for submission to Kampala International University for partial fulfillment of requirement of the award of a degree, bachelor of laws of Kampala International University.

Signed.....*Kanoel*.....

KANOEL ROSEMARY (SUPERVISOR)

Date ..*7/06/2015*.....

DEDICATION

This presentation is dedicated to my dear husband Mr. Lubega Charles and my children Nalwanga Ritah, Lubega Denis and Yiga Mathias, without your sacrifice, inspiration and contribution I would not have been able to accomplish this work.

ACKNOWLEDGEMENT

A number of people have contributed both directly and indirectly at different stages of this study .it is impossible to mention them all. However special consideration goes to the following.

I am greatly indebted to my parents, friends and relatives for the environment created around my academics.

I am appreciative to my supervisor Kanoel Rosemary for her outstanding commitment and positive criticism changed this work into its present form.

I wish to extend gratitude to my dear friends for support in form of guidance in my research

My family of Kampala international university Uganda community for their support in the accomplishment of my academics.

LIST OF STATUTES

1. The Constitution of the Republic of Uganda, 1995
2. The Registration of Titles Act Cap 237
3. The National Environment Act Cap 253.
4. Water Act Cap 152
5. The Rivers Act Cap 357
6. The Land Act. Cap 227.
7. The Penal Code Act Cap 120
8. The Police Act. Cap 303
9. The Uganda Wildlife Act Cap 2006
10. National Environment (Wetlands, Riverbanks and lake shore management) Regulations
2000
11. The Ramsar Convention, 1971
12. The World Charter of nations , 1945

LIST OF CASES

1. Bombay Environment action Group Vs Pure Continental Board (1 986)
2. Ryland Vs Fletcher
3. Rich Vs National Parks and Wild Life Service
4. Bandhua Mukii Morcha Vs Union of India.
5. British American Tobacco Ltd Vs Environmental Action Network. High Court Miscellaneous Application No. 27 of 2003.
6. Greenwatch (U) Ltd Vs The Attorney General and Others. High Court Misc. Application No 140
7. Gann Vs Free Fishers (1867) ALL. ER. 1305

ABSTRACT

The study was set to assess the effectiveness of the law towards protecting wetlands in Uganda. It was guided by three research objectives which included analyzing the legal and institutional framework towards wetlands, establishing the effects and challenges in enforcement of law on conservation of wetland and making any recommendation that may be of help to future policy making.

In order to produce a comprehensive research, substantive law, its interpretation by case laws, designed questionnaires and inter personal interviews were deployed to suit the situation. This was done through the collection of data on conservation of wetlands social and economic dependency on it and analyzes the purpose for which this law was made; the degree to which it has helped in the conservation of the wetland and to what extent the wetland is protected.

The study findings were that wet land conservation practice is poor, landowners view the restriction on the wetland as a way of depriving them of the use of their land without any alternative source of income to sustain their families, population increase is a risk to wetlands, Several provisions of the law are flouted when converting wetland into a commercial village for example Katanga besides absence of environment impact assessment. Administrative interference was cited as key interference to wetlands management, poor sensitization on wetlands including amongst the local council leaders.

The researcher concludes that conservation law on wetland in Uganda is a recent development, which is vet to bear fruitful results as far as sustainable use of it is concerned. Although the institutional and legal framework is in place, and capacity building in progress. There is still need to identify the crucial part of the monitoring and enforcement agencies that would build consciousness the viability of conserved wetland in a wider environmental perspective. It could depict the economic, social and legal requirements. 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. Important aspect of sensitization is towards what wetland conservation legislation intends during the research. It was evident that most people still do know the importance of wetland conservation.

The researcher recommend for full adoption and implementation of the Ramsar international convention, increase legal enforcement on those who attack wetlands, increases sensitization on the need for wet land conservation in order to enhance an effective legal framework on the wetlands management.

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CHAPTER ONE

INTRODUCTION

1.0 Introduction

Section J of the National Environment Act defines Environment to mean the physical factors¹ of the surroundings of human beings, including land, water, and atmosphere, and climate, sound Odour taste, the biological factors of animals and plants and the social factors of aesthetic and includes both the natural and built environment.

Wetland is defined by the regulation to mean areas permanently or seasonally hooded by water where plants and animals have become adapted, and includes swamps, peal land mountain hogs. Banks of rivers, vegetation and areas of impeded drainage or blockish salt¹, It forms the most productive ecosystem with an immense variety of species of microbe's plants, insects amphibians, reptiles, birds, fish and mammals, which form part of the ecosystem.²

A good site of the population of Uganda depends either directly or indirectly on wetlands natural resources which covers the total land area of the country for its livelihood.³ Despite the country's high wetland natural resource potential, factors such as population growth, economic reforms, the desire for steady increase in per capita income and other pressures of development process are putting severe strain on wetlands and its natural resource base.⁴

There is therefore, a need to harmonize the country's economic development strategies with the use and management of wetland natural resources upon which lies the principle of sustainable development, which means "development that benefits this generation without compromising the rights of future generations to benefit equally from the environmental resources."⁵ The principle measure of sustainable development is that, all activities that are carried out to achieve development must take into consideration the needs of wetland conservation, protection and preservation.⁶

The developer must bear in mind that future generations will need the same wetland to sustain their livelihoods. The pattern of investment therefore should balance the interest of

¹ R.2. National Environmental River bank and Lake Shores Management) Relations 2000

² Auckland Regional Council Community Consultation policy, Teraijhatanga Taiao. USA

³ The National Environment Management Poetic frt. Uganda, Kampala MNR. 1994.

⁴ The GOU, The National Environmental Management Policy for Uganda, Kampala, MNR. 1994

⁵ Ntambweki. Sustainable Industrial Development and Environmental law in Africa. U EP 1999.)

⁶ John Ntambweki. A paper Presented to the ACDEI Workshop. August 2004

development with the need of conservation of the wetland resources. This is because the basic premises sustainable development are the recognition that environment and development are so intertwined that one depends on the other for meaningful existence.

Most political and administrative decision tends to separate the socio -economic development from the environmental concerns.⁷They heavily peg their arguments to economic development as improving the standard of living by relying more on industrialization, which creates jobs. This definitely betrays the principle of sustainable development and put to risk the needs of future generations who will need the same wetlands in the form we find them now not in the degraded form that causes irreparable damage to environment. It is therefore necessary to search for analytical tool and methodologies, which will enable us, achieve and accommodate social and wetland consequences in economic development. One of the most effective tools available for this purpose is regulations and legislations regarding the use and management of wetlands and its resources under the National Environmental Management Authority (NEMA).

In Uganda, a series of studies commissioned to specifically review existing legislation on wetlands revealed that there was almost no legislation in Uganda directly related to wetlands as an entity, apart from reference to only swamps (which is only one type of wetland) in the Public Land Act and Public Health Act⁸. The studies further revealed that enforcement of these laws were not sufficient to guarantee wetland conservation. As a result of these studies, The National Environmental (Wetlands, Riverbanks and Lakeshore Management) Regulations, was enacted to reinforce the National Environmental Act. Cap. 153 to deal specifically and directly with Management of wetlands and wetland resources.⁹

1.1 Background of environmental law in Uganda

The development of environmental law in Uganda can be devised into 5 phases and which include, pre-colonial phase, colonial phase, post independence phase, Amin regime phase and post 1986 phase.

⁷ The statement is deduced from the hitghightinh political interference I management of wetland policies and regulations made by Busulwa H.S and Paul G Mafabi if the article can be access at mail Uganda Wetlanddorg page 3(though not numbered)

⁸ Mafabi Paul, in January 2007 report entitled: Review of Sectoral Policies and Legislation related to wetlands. National Wetland Program, government of Uganda. Resource document,case study no. 5 found page 6 of 9 of case studies for Guidelines for developing and implementing National Wetland policies

⁹Mafabi Paul, 7007 National Wetland Program, Government of Uganda.

Pre-colonial phase. Prior to the establishment of colonial rule in Uganda, rural communities had evolved various customary rules which governed use of natural resources such as forests and wetlands. There was commercial use of natural resources such as water, and forests and the management of resources was based on rules of nature such as nomadic pastoralism and shifting cultivation. Certain flora and fauna species were given special protection due to medical or religious reasons. Certain medicines for example were protected for herbs¹⁰.

Among the Masai for example, game meat was not eaten and this way, animals were protected. Traditional religion also saw the conservation of certain features which were regarded as a bodes for the goods for example Lake Victoria, also known as lake Nalubaale was considered a home for the "Balubaale"

Colonial phase 1890- 1960 During this phase(several laws related to the environmental management were developed. These were intended to regulate use of specific resources and collect revenue. The laws did not consider elements of sustainable development and applied command and control theory. These laws dealt with specific resources and they were designed to regulate resource use and collect revenue and these included;

- The forestry Act 1974
- The timber export Act
- The Fish and crocodile Act
- The game park preservation Act

These Acts were particular and therefore had a significant contribution to sustainable management of resources. These were no issues like public participation, sharing of revenue under the wildlife Act

Post independence phase. When Uganda pined independence in I 962, most basic aspects of the polices, and laws governing natural resources remained intact. All that was done was to substitute words and names such as public for "crown" and "Uganda" for "Britain."¹¹

The failure to develop home grown concepts and laws to govern expensive premium on the environment. Apart from the forestry and fisheries sector, the management of other natural

¹⁰ Wetlands International 2009

¹¹ Wetlands International 2013

resources (Soils, water, wild life and vegetation e.t.c) was on the basis of numerous laws were so scattered that their implementation has often resulted into pitched conflicts between government departments (the similarity of basic principles, interests and goals not witnessing) which in turn undermined their effectiveness on the ground¹².

The colonial laws were re-enacted and adopted. Therefore there was no significant change in the laws for example the forestry Act of 1947 became the forestry Act of 1964, the game parks preservation Act 1952 became the national game Act 1952 became the National game parks and preservation Act 1964

Amin's Regime Phase 1971-1978. During this phase, the economy and infrastructure started to crumble. Environment degradation grew rapidly as a result of the political instability that ensured and the dictatorial and undemocratic systems of government that followed. There was no meaningful development policies during this period and this led to poor environment management.

Attention was not given to the natural resources and the environment of the country in general and government investment in this area was drastically Zero, except that one law was enacted the prohibition of burning grass decree, which required permission from the Agricultural officer, with the supervision of the chief before one could burn grass. This has today been reenacted.

It was not until 1986 when the national resistance movement (NRM) ascended to power that a number of measures to address the environment problems were embraced on. The cabinet portfolio and ministry of environmental protection (MEP) were established. The mandate of the ministry was to coordinate and regulate national efforts in the wise management of life supporting natural resources so as to ensure their available for sustainable development.

In 1991, the government initiated a participatory and consultative process to improve environmental governance through NEAP. In order to achieve the overall policy, goal of sustainable development, the NEMP recommended four initial actions which included inter alia, the creation of an appropriate institution and legal framework as well as the revision and

¹² The National Policy for the Conservation and Management of Wetland Resources, 1995

modernization of sectoral policies, laws and regulations. It was through this process that the current legal regime relating to the management of the environment emerged.

A good site of the population of Uganda depends either directly or indirectly on wetlands a natural resource which covers the entire country.

1.2 Statement of Problem

Since the introduction of The Environmental (Wetland, Riverbanks and Lakeshores Management) Regulations in 1998, the 1995 constitution of the Republic of Uganda. The land Act, Cap 227, the water Act cap 152, and the Uganda wildlife Act cap 200, as environmental

Legislative framework in Uganda, to regulate and enhance sustainable development and this legislation include;

The 1995 Constitution of the Republic of Uganda is the supreme law and provides R environmental protection and conservation. It sets out the obligations at national level, the constitution also sets out national objectives and directives, principles of state policy. For example principle Xii of the national objectives and directives principles provides that the state shall including water, wetlands, minerals, oil. fauna and Flora on behalf of the people of Uganda.¹³

The conservation requires the government or a local government as determined by parliament by law to hold in trust for the people and protect natural lakes, rivers wetlands, forests reserves game reserves, national parks and any land to be reserved for ecological and touristic purposes for the common good of all citizens.

The Land Act Cap 227: the land cat provides that a person who owns or occupies land shall manage and utilize the land in accordance with the forest Act, the mining Act, the national environment Act, the water Act, the Uganda wildlife Act and any other law. ¹⁴

¹³ Principle xxi of the 1995 constitution of the republic of Uganda

¹⁴ Ibid Article 237

The land Act also provides for the public doctrine by providing that the government or a ¹⁵ local government shall hold in trust for the people and protect natural lakes, rivers, grounds water. Natural ponds, natural streams, water lands, forest reserves, national parks and any other land reserved for ecological and touristic purposes for the common good of the citizens of Uganda and the natural resources referred to in this section.¹⁶

The Water Act Cap 152; The water Act makes provision for water permits¹⁷ According to this Act, it is not allowed to construct or operate any works unless authorized to do so by a permit granted by the director.

A holder of a permit is not permitted to cause or allow any water damage to the source from which water is taken or to which water is discharged after use.

The Act also provides for general rights to use water. It states that a person may while temporarily at any place or being the occupier of or a resident on any land, where there is a natural source of water use that water for domestic, use that water for domestic use, fighting fire or irrigating a subsistence garden.

Wildlife Act Cap 200; the Act provides that ownership of every wild animal¹⁸ and wild plant existing in its wild habitat in Uganda is vested in the government on behalf of Uganda.

The act lays down the procedure for declaration of wildlife conservation areas.¹⁹

This Act further creates a number of offences in the conservation areas²⁰. It states that an person, who in any wildlife conservation areas unlawfully, hunts takes, kills, injures or disturbs any wild plant or animal or any domestic animal, takes, destroys, damages or defaces any object of geomorphologic archeological, historical, cultural or scientific interest or any structure lawful placed or constructed, commits an offence.

However, despite of all these legislations, there is still evidence that wetland is still strained by over stretched economic development policy which has seen most of the wetlands drained

¹⁵ Land Act Section 43

¹⁶ Section 44 of the Land Act

¹⁷ Section 18 of the Water Act Cap 152

¹⁸ Water Act Section 7

¹⁹ Section 3 of the Uganda wildlife Act

²⁰ Section 17 and 21 of the Uganda Wildlife Act

or brushed aside to give way to establishment of habitation or industries and among these are the occupation by UPDF veterans of the wetland strip at Katanga formerly reserved as children park, conservation of Namanve wetland/forests reserve into an industrial park, the construction of business complex at garden city and Nakumati supermarket, the various industrial developments on Kalerwe-Bwaise strip of wetland and construction of maize graining machines in Natete wetland (Kutano) to mention but a few. This in total disregard to the law on the conservation, protection and preservation of wetlands. This research therefore, will try to find out how effective legislation approach has helped in the conservation, protection and preservation of wetlands and where possible the cause for its failure

1.3 Objective of the Study

The general objective of the study is to evaluate, performance of environmental legislations and regulations since its introduction.

1.4 Specific Objectives

1. To analyze the legal and institutional framework towards wetlands
2. To establish the effect and challenge of enforcement of laws on conservation of wetland.
3. To make any recommendation that may be of help to future policy making.

1.5 Research Questions

1. What is the legal and institutional framework towards wetlands?
2. What is the effects and challenges in enforcement of laws on conservation of wetland?
3. What recommendation may be of help to future policy making?

1.6 Significance of the study

The research findings will be significant to the following;

Organizations especially those responsible for wetlands management will be helped in adoption of more realistic approaches regarding the management of wetlands.

The student, the process of this research skills, and contribution to the academic career of the researcher

Future researchers; future researches who might be interested in the field might find the results of the study useful.

There is no doubt the result may contribute to the existing laws on wetlands management in the Ugandan context..

1.7 Methodology

In order to produce a comprehensive research, substantive law, its interpretation by case laws, designed questionnaires and inter personal interviews were deployed to suit the situation. This was done through the collection of Data on conservation of wetlands social and economic dependency on it analyze the purpose for which this law was made; the degree to which it has helped in the conservation of the wetland and to what extent the wetland is protected.

1.8 Research Instrument

The study included the use of primary and secondary data from selected population and existing literature. To achieve this, four instruments shall be used. This Includes:

1.8.1 Questionnaires.

Questionnaires were structured and unstructured to address all research objectives and were pilot tested to ascertain their validity, effectiveness and reliability, Furthermore; they were tested and refined to eliminate those which may be vague, ambiguous and misleading. They will be structured in a way that guarantees confidentiality and encourages them to give authentic information.

1.8.2 Interviews

Interview guides shall be developed and pilot tested to ascertain their validity and reliability. The interview guide was administered to the members and staff of Government Departments. Lead agencies. Non Governmental Organizations (NGO) local leaders and a few selected members of the community. It is intended to provide more data that may not be acquired by the questionnaires.

1.8.3 Existing Literature

This will include the laws enacted in favour of wetland conservation. National Environment Management Authority (NEMA) guides, papers presented in various seminars and workshops and any other publication on the subject matter including the use of internet.

1.9 Scope

1.9 Subject Scope

The study was restricted to evaluation of the general performance of the law and establish whether it has conformed to the objectives upon which it was enacted. If not that are the challenges and how can such be improved. This will be contained in the recommendation that will present the nuclear of the factors that make implementation rather difficult. The paper will also justify the introduction of The Environmental (Wetlands, Riverbanks and Lakeshore Management) Regulations entrusted with the promotion of sustainable development in the field of wetland as a natural resource. This is because in Uganda and many other countries of the world, decision makers have in most cases tended to separate environmental concerns from development planning yet the two are so intertwined to the extent that each cannot do without the other on a long term development basis. The study will further look at the law as a tool that integrates developmental issues with environmental considerations in order to achieve sustainability

1.9.2 Geographical scope

The study was conducted in Kampala Uganda especially in Kampala central division, in Kampala capital city authority from the legal fraternity. This was chosen because of having utmost and necessary information for the study.

1.9.3 Time Scope

The study was conducted for a period of 5 months that is to say from January to April 2015. The study captured information prevailing for the past. The study period was chosen because it was appropriate to enable sufficient research findings.

1.10 Literature Review

A lot of research has already been done towards control and management of wetland leading to the formation of regulations policies and enactment of various legislations geared towards

the conservation, protection and preservation of wetland.²¹ However, most of these literatures are not directed towards effectiveness of object of conservation, protection and preservation of wetland, except the National Environmental (Wetlands, Riverbanks and Lakeshore Management Regulations).²²

The literatures available tend to deal more with the environmental conservation and natural resource management generally with emphasis on sustainable development. This is signified the fact that, in many countries, Uganda inclusive, a lot has been said about rivers, lakes, and forest with very little reference to wetland matters in particular. Even the general public tends to accept this trend of events as was exhibited their reaction to Mabira give away saga where lives were lost and yet when it comes to wetland, hardly will anyone react the same way. This is attributable to the diverse views people have on wetlands, for example, while others look at The National Environmental (Wetlands, Riverbanks and Lakeshore Management) Regulations as a tool for sustainable development, others look at it as a tool for environmental management for cost benefit analysis for use of environmental economic.

According to Larson²³, to achieve the objectives of wetland conservation, protection and preservation, a combination of public and private strategies must be deployed. This argument has been reinforced by the principle of public Participation in environmental decisions-making and Implementation for environmental protection²⁴ further, under the notion of intergeneration justice, the public has a right to participate in decisions affecting the status of the environment be it exploitation, preservation or management²⁵

To operationalize this, the public had to be given the right to institute legal proceedings to indicate their interest and secure the rights of the present and future generations in the form of

²¹ Paul Mafabi Review on Special policies and Legislations related to wetlands. Study No.5

²² Statutory instrument No. 153 -S made under S. 107 of the National Environment Act

²³John Larson. University of Massachusetts, USA case study for the Guidelines for developing and implementing national Wetland Policies RAMSAR posted on internet on July 8th 1999.

²⁴ Articles 16 and 23 World Charter of nature

²⁵The Preamble of the Constitution of Uganda under Art X of the National Objectives and directive Principle of state policy mandates the state to take all the necessary steps to involve the people in the formulation and implementation of development plans and programmes which affect them while Art XIII other National objective directs the state to protect important natural resources including among others wetlands

Public Interest Litigation²⁶, at the international scene. Governments are under obligation to afford an opportunity to all persons to participate whether individually or with others, in the formulation of environmental decisions and to grant access by means of redress when the environment has suffered damage or degradation.²⁷This argument is all fine however it deals only with the ideal procedure when used, which would lead to the realistic out come in the conservation, protection and preservation of wetlands. It does not give us the effects wetland legislation has in the conservation of the wetlands, nor does it give us the gist as to the extent wetland has benefited from wetland legislation, if at all any. Furthermore, if wetland has not benefited from the law, then we ought to be told what could be the cause of the failures.

According to Nathai- Gyan²⁸, the process of formulating wetland conservation, protection and preservation policies and regulations led to the definition of stakeholders most of whom were dependent, to a large degree, on the natural resources of wetlands. This definition led to establishment of a number of factors. The important lessons learnt from the experience brought forward by the definition were put in three categories, which included:

- a). the stakeholders must be involved at all levels.
- b). the nature of involvement must adapt to the particular environment and
- c). All efforts must, be taken to capture the most relevant stakeholders within the net.

To him, this approach has, to a certain extent, helped to reduce the rate at which wetlands were being abused. But the question that this research tends to investigate is whether or not wetlands has benefited from the environmental laws. If it is true that the approach has reduced the rate at which wetland was being abused, does it do so under a legal frame work that obligates stakeholders to act or simply through their good will gestures'? In other words, are they doing it under any legislation within which human activities are restricted and upon which a pen sanction may be applied if and when the parameters of such principles are not met or are the stakeholders operating under a goodwill approach or under the dictate of the

²⁶ OHn Ntambirweki, 2004. Basic Principles of Environmental law

²⁷ Article 16 and 23 of the World Charter of nature and the ruling in the case of Bombay Environment Action Group Vs Pure Continental Board KKR (1986) where the Supreme court in India granted as a right to establish social groups to have access is information with government authorities

²⁸ Defining stakeholder in a National Wetland Policy, Wildlife Section. Government of Trinidad and Tobago

law?, if the are operating under the law, what has been the effect of that law in the conservation, protection and preservation off the wetlands?

According to Rtihec²⁹ there was need to initiate "The Federal policy on Wetland Conservation whose dui was to consider the Scope and complexity for consultation with all stakeholders in the country After the Non-Governmental Organizations National Advisory workshop attended by 25 participants representing National Environmental Organizations and wetland resource user groups in 1987. a course 0 action was laid out which the Federal Government used to guide its implementation of consultations. Subsequently, a meeting of the Canada Committee on Land us attended by stakeholders proposed the creation of Jurisdictional Wetland Policy which recognized that, multiple policies on wetland was better than the one national document.

After several consultations, it was recognized that three levels of Consultation would he established, this included the: -

- i. Inter-ministerial.
- ii. Intergovernmental and stakeholders Organization, and
- iii. The general public.

All this was in effort to save the loss of wetlands. However, it is obvious from the face value of the objective of the discussion that all these efforts were geared towards the process of policy and management making. It does not discuss the test made on them against conservation of Wetland At the end the question as to what extent wetland legislation has helped in the conservation, protection and preservation of wetlands remains unsettled.

Kamugisha ³⁰noted that the then existing Laws on natural resources management in Uganda lacked provision aimed at conserving the natural resource base. He asserts that, the driving force behind these laws was to enhance exploitation of resources. This was based on a vision perception that nature is an enemy of man, which had to be conquered for development to

²⁹ Clayton Rube. Consultations for Wetland Policy Development, Department of Environment, government of Canada. Management of National Resources and environment in Uganda, policy and Legislation Land Marks.

³⁰ Kamugisha JR, Management of Natural Resources and Environment in Uganda, Policy and legislation land Marks 198(3990, Kampala DANIDA 1993.

occur.

To avoid this wrong philosophical approach, the author recommends the complimentary of man and nature and not their mutual exclusiveness.

The nuclear of Kamugisha's discussion is the concept of the law. It deals more with the question that led to the enactment of the It does not tackle the impact the law has in the conservation protection and preservation of the wetlands. Yet it is not the creation or maintenance of that is of essence in this research, but rather in what extent has wetland benefited from the existence of environmental legislation '?

Ntambirweki³¹ emphasized the role played by customary laws and practices in environmental conservation and noted that this can best be taken care of through community participation and awareness. He went ahead and stated that there is no better vehicle for the integration of awareness into communities except through accepted beliefs and customary practice. He pleaded innocence in asserting that while legislation could be more comprehensive awareness beliefs and customary practices and participation would inevitably complement the implementation of the legislations. His identities one major problem with legislation as being sector specific. He emphasized that sectoral legislation does not make adequate provision for environmental management especially for those environmental concerns that are across sectoral and inter sectoral in nature. This argument is splendid in so far as the implementation of the common is concerned.

However, the writer has dealt more on the importance of awareness and integration. He went ahead and justified his preference for awareness and customary practices to supplement Legislation. Which he described as being comprehensive. As to whether those public awareness and customary practices did anything to conserve wetland was left hanging. This leaves us with the duty to ascertain the degree of contribution of customary practices towards conservation of wetland.

³¹ Ntamhirweki John: Environmental Legislation in Uganda: Review of Existing Legislations and Formulation of an appropriate legal framework 'or present and Future environmental management, Kampala 1992

The paper on 'The Environmental Law Institute'³² discussed the role played by citizens in enforcement of environmental Laws and regulations. It notes that, because of the intimate connection between individuals and their communities they are able to concentrate on localizing environmental problems. This is because Government agencies are not so intimately connected to the Environmental resource and as such may not be in position to consider small scale threats to the environment which may be serious enough to justify action on the national or regional levels. Apart from that, enforcement of government action on environmental matters requires participation of the citizens from which information on the flouting of the law comes to discard them from the enforcement; process is to limit flow of information that would make enforcement difficult.

It is worth noting here that. Participation, implementation and the impact the environmental law has on wetlands are three different aspects through which wetland may be protected, however. They do not measure the extent to which wetland has benefited a positive consequence in wetland conservation, but it is equally important, especially for this research paper to know how wetland has benefited from it, which the writer did not put in enough effort to discuss.

The World development report³³. The World Bank in 1992 devoted itself to the issue of development and environment which constituted an important input into the UN Conference Environment and Development, (UNCED) in Rio de Janeiro in June 1992. The report provide detailed analysis of the links between economic performance and environmental management, it outlined environmental priorities for development discussed the uses of markets and decision making processes, and dealt with sanitation and clean water, energy and industry, rural environment policy, international environment concerns and the cost of better environment. It emphasized the need to create a balance between development imperatives and environmental considerations. It did not touch the issue dealing with the benefits wetlands have got out of the environmental legislation. This leaves us with the tasks of

³²The Environmental Law Institute, the role of citizen in environmental enforcement (ELI Working Paper) Pg 36

³³ World Bank Development and the Environment, World development Report 1992 Washington D.C World bank 1992

identifying the extent these ideal measures contained in the report has on the conservation, protection and presentation of Wetlands.

1.10. Format

The research paper is divided into, four chapters. The first chapter has been discussed above and dealt with the abstract background to the study, meaning of wetlands, types and functions of wetlands, statement of the problem objective of the study, research question. Methodology, scope of the research, and literature review.

CHAPTER TWO

LEGAL AND INSTITUTIONAL FRAMEWORK

2.0 Introduction

Wetland commonly known as swamps in Uganda is a natural resource of considerable importance and value³⁴. As a natural resource, some early scholars halted it was so abundant that it could not be exhausted thus men are Free to harvest it as a common property³⁵ while others argued that if no control as excited on its exploitation, it could lead to abuse.³⁶ Because human exploitation of wetland as based on his ability and knowledge, which at that time was considerable ineffective to destroy it, the argument that it is so abundant and could not be depleted seemed to have worked, but only for a short period. This was because it did not consider the principle of sustainability of the use of wetland as a natural resource

The continuous regarding of wetland as wasteland and the immense uncontrolled human activities in the name of development continues, further to threaten its existence, thus creating unprecedented risk to the entire environment. With the emergence of knowledge that environment can be degraded, common law approach through introduction of the law to nuisance, trespass and escape in the famous case of Rayland Vs Fletcher³⁷ was adopted but was barely effective in protecting environment let alone wetland. This manifestly posed the common law approach to a tool with no effect in the light to conserve and protect wetland. To conserve protect and preserve the values for which wetland stands, human activities on it must be regulated not only by enacting strong and effective wetland regulations but by putting in place an effective and self sustaining regulatory body to oversee its implementation and this institutions include.

³⁴Traditionally people have utilized wet lands as a source of materials for construction, crafts and furniture hunting and fishing Areas, and wet lands were used communally for grazing animals.

³⁵ Hugo Grotius, A Dutch journalist in his book "Mere libern" while arguing in the premises that natural resources in particular the sea and its resources could not be abused whatever means it was used to harvest it, for it was so abundant that man could not exhaust it.

³⁶ Seldom John, an English journalist who contrasted Hugo's theory by arguing that there must be a proper control in the use management and exploitation of natural resources.

³⁷ The common law principle in Leyland Vs Fletcher (1968). Is that "the person who for his own purposes brings on his lane am collects. keeps anything lightly to cause mischief and if it escapes must keep it at his peril

2.1 International Laws

The impetus for international action on wetlands began with the launch of Project MAR³⁸ in the late 1950s. The project was intended to increase awareness of the importance of wetlands to humanity and contribute to their conservation. It was a joint initiative by three non-governmental organizations: the International Union for Conservation of Nature and Natural Resources (now IUCN-The World Conservation Union), the International Waterfowl Research Bureau (IWRB) and the International Council for Bird Preservation (ICBP). An international conference was convened under the auspices of Project MAR in November 1962⁹⁰ and concluded that an international convention on wetlands was urgently needed. As a preliminary measure, it was decided to compile a list of wetlands of international importance in Europe and North Africa.

The proposal for a wetland convention was endorsed by the First European Conference on the Conservation of Wildfowl in 1963,⁹¹ which recommended that a European network of places of safety for wild birds should be established and coordinated under such a treaty. The IWRB prepared a preliminary draft for a convention, which was considered by a further conference in 1966.³⁹ A second draft was then prepared by the Dutch Government and revised to take account of observations made by the IWRB in 1967. International support for a wetland convention was affirmed by the International Conference on the Conservation of Waterfowl and their Resources in 1968.⁹³ A final draft, submitted to a technical meeting of experts in Espoo, Finland, in March 1970, served as the basis for the negotiations of the International Conference on the Conservation of Wetlands and Waterfowl in Ramsar, which closed on 2 February 1971 with the adoption of the Convention.⁴⁰

The Ramsar Convention entered into force on 21 December 1975. Since that date, it has been amended on two occasions to remedy omissions in its procedural clauses that hampered its early development.⁹⁵ An extraordinary meeting of the Parties (Paris, 3 December 1982)

³⁸ MAR stands for the first three letters of the word used in four languages to refer to this type of habitat: marsh, marisma, marais and maremma.

³⁹ The Second European Conference on the Conservation of Wildfowl, organized by IWRB and the Dutch Government in Noordwijk, The Netherlands, 1999.

⁴⁰ In December 1974, an International Conference on Wetlands and Waterfowl was held in Heiligenhafen (Germany) partly to review progress in the ratification of the Convention. Organised jointly by IWRB and the Federal Republic of Germany, it was the last in this series of non-governmental conferences on wetland conservation. This role was taken over by the Conference of the Parties to the Convention after its entry into force.

adopted a protocol to insert an amendment procedure into the Convention provisions and to make the French version of the text an authentic version.⁴¹ The Paris Protocol entered into force in October 1986. It provided the legal basis for convening a further extraordinary meeting (Regina, 1987) at which the administrative arrangements established under Article 6 of the Convention were amended. These amendments provide for the formal establishment of the Conference of the Parties as an institution of the Convention

African leaders adopted the Lagos Plan of Action and the Final Act of Lagos in 1980 on the premise that through industrialization and regional and continental integration, Africa would reduce its reliance on foreign aid and establish a common bargaining position on a global scale. In response to environmental degradation, African governments established the African Ministerial Conference on the Environment (AMCEN) in 1985 to provide guidance and enhance cooperation in tackling the environmental problems of the continent. AMCEN continues to play a crucial role within the AU structure today. The African Charter on Human and Peoples' Rights (ACHPR), in force since 1986, was an important milestone. Article 24 of this charter grants the right to a "general satisfactory environment favorable to their development" to all Africans, thereby consolidating environmental sustainability as the basis of social and economic sustainability on the continent.

Regional environmental agreements aside, several international environmental agreements to which AU members are party emerged from the 1992 Earth Summit in Rio de Janeiro, Brazil, and in the post-Rio era. Of particular relevance to Africa are the United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, Agenda 21, and the Johannesburg Plan of Implementation role in meeting the Millennium Development Goals in Africa thus cannot be overemphasized.

Today, the AU, especially in collaboration with other partners, plays an important role in streamlining and implementing these agreements and in enhancing cooperation between African states. At the sub regional level, most of the have full-fledged environmental divisions, for instance, the IGAD Climate Prediction and Application Centre.

⁴¹ The Convention negotiators at Ramsar had considered that only an authentic version in English was necessary, which prevented France from acceding.

The Convention on Wetlands (Ramsar, Iran, 1971), the first treaty to promote the conservation of specific ecosystems, was concluded many years before the emergence and international acceptance of the concept of sustainable development⁴². The wise use obligation of the Convention (Article 3.1) can therefore be considered as a pioneering and ambitious objective for its time.

The Convention itself does not define “wise use” or set out substantive measures for its implementation, unlike the more comprehensive approach used in most recent environmental agreements. Possibly for this reason, the Ramsar Convention has tended to be popularly associated with site-specific conservation linked to the List of Wetlands of International Importance. Implementation at domestic level has often focused on the conservation of listed wetlands and wetland reserves, lower priority being given to non-site-specific measures for wise use or to transboundary cooperation on wetland management.

Ramsar’s institutions (Conference of the Parties (COP), Scientific and Technical Review Panel, Bureau (now “the Secretariat) have worked to redress this imbalance and to assist Parties in implementing the wise use obligation. However, wise use is still far from being achieved on the ground. The ecological character of 84% of listed Ramsar sites - which theoretically benefit from the greatest degree of protection - is actually or potentially under threat (Dugan and Jones 1992). Information on the coverage and conservation status of “ordinary” (unlisted) wetlands varies widely among different regions, but it is generally accepted that their loss or degradation is continuing at an alarming rate around the world. This trend presents problems for global sustainable development, as wetlands are essential to the functioning of inland water and coastal systems and to water resource management (Acreman, Howard and Pirot 1996).

Appropriate legal and institutional frameworks are essential components of national and sub national policies to address wetland loss and degradation. This paper, which provides background information on the draft Guidelines for reviewing laws and institutions to promote the conservation and wise use of wetlands, draws on experience round the world. The Background Paper briefly considers the legal commitments accepted by Contracting Parties, the role of a legal and institutional review and areas of complementarity with other international treaties.

⁴² It was signed a year before the 1972 Stockholm Conference, 11 years before the adoption by the United Nations of the World Charter for Nature, and 21 years before the adoption of the Convention on Biological Diversity and other environmental instruments at the UNCED in Rio de Janeiro.

Environmental Legislation took initial stages from the United State of America. According to Roberta Chew⁴³ and Gilberto Cintron,⁴⁴ conservation of wetlands evolved over the years through patchwork of laws granting authority to various federal agencies that regulated private and governmental actions with regards to land that include wetlands. They assert that, over 25 (twenty five) federal laws relating to wetlands have been made, the first being 'Rivers and Harbors Act' dating as far back as 1899. To them, this process continued until 1970s when most states started formulating comprehensive environmental legislations from the piecemeal, or segmented regulations in practice then.

2.2 National laws

2.2.1 National Environmental Management Authority (NEMA)

This authority was established under the NEA 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 includes; Ensure the integration of environmental concerns in over all national planning through coordination with the relevant ministries, departments and agencies of the government

- It promotes public awareness through formal, non formal and informal education about environmental issues
- Coordinates the implementation of government policy and the decisions of the policy committee
- It liaises with the private sector intergovernmental organizations. Non-governmental agencies and governmental agencies of other states on issues relating to the environment
- It mobilizes expedite and monitor resources for environmental management.

⁴³ Development of State Government of the United States of America

⁴⁴ Wild life Service. Government of the United States as published in the resource document case studies for the guidelines for the developing and implementing national wetlands policies January 2007

Therefore NEMA has performed such functions as the government may assign to the authority or as are incidental or conducive to the exercise by the authority of any of the functions provided for under the National Environmental Act.

b). Wet Lands Inspection Division

In the year 1989 the Uganda government established the national wetland conservation strategies for the sustainable management of Uganda's wetland. This came in the wake of a slowly emerging realization in government circles and civil society that wetlands are extremely important ecosystems which contribute considerably to the national economy and rural livelihoods. During its ten year existence the NWP has been instrumental in assisting the government of Uganda to make advances and improvements in the management of her wetlands and the wetlands natural resources hence, in fulfillment of this policy an institutional framework has been established centered at present on the wetlands inspection division of the ministry of water, lands and environment.

This inspection division is required to;

- Make an inventory of all wetlands and this inventory shows for each wetland location of the wetland, type of fauna and flora.
- Periodically inspects the wet lands to determine the necessity for revision or correction of the inventory in wetlands
- Publish in every five years the inventory of wetlands reflecting the current state of wetlands included in the inventory
- In consultation with the executive director of (NEMA), grant temporary permits for the use of a wetland \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

c). Parliament

The Constitution of the Republic of Uganda requires Parliament⁴⁵ by law to provide fur measures

intended to protect and preserve the environment from abuse, pollution and degradation, to

⁴⁵ Article 245 of the Constitution of the Republic of Uganda

manage the environment for sustainable development and to promote environmental awareness.

d) Court

The constitution provides that any person who claims that a fundamental right or freedom guaranteed under this constitution has been infringed or threatened⁴⁶ its entitled to apply to competent court for redress which may include compensation, hence in the enforcement or environmental laws and rights.

The constitution requires the courts in adjudicating cases of both a civil and criminal nature, the courts subject to the law⁴⁷, do justice to all irrespective of their social or economic status, no to delay justice. Hence with the effectiveness of the Courts in its roles has been achieved as follows;

- Interpreting rules and provisions
- 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.

2.2.2 Evolution of Environmental Legislation

In Uganda prior to 1986, environmental issues were relegated to the background mainly because of the then Governments getting more involved in various wars starting with the ouster of Iddi 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 the environment was in. established 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 ads ice Governments on policy and legislative reforms so as to ensure sound environmental management.⁴⁸

⁴⁶ Ibid Article 50

⁴⁷ Ibid Article 126 (2) (e)

⁴⁸ UM 24

To achieve the objectives of conserving the environment, the Ministry and other stakeholder commissioned a study of a series of wetland legislations to specifically review existing wetland legislation in Uganda. These studies found out that, there was almost no legislation in Uganda directly related to wetlands as an entity; however, there was reference to "swamps" (only one type of wetland) in the Public Land Act and Public Health Act, The study further noted hint enforcement of these laws was not sufficient to guarantee wetland conservation. As a result, a National Environmental Action Plan (NEAP) was launched which subsequently established the National Environmental Management Policy (NEMP) with the overall goal of ensuring a sustainable social and economic development.⁴⁹

By 1990, National Policy for Conservation and Management of wetlands resources was formulated.⁵⁰ It recommended the creation of an institutional and legal framework. transformation of existing environmental management systems, evolution of new sustainable conservation culture, modernizing sectoral policies, laws and regulations and establishing an effective monitoring and evaluation systems to assess the impact of policies and actions on environment⁵¹, Consequently, the National Environmental Policy was formulated and it was to be enforced by the National Environmental Act⁵²

Similarly, in order to protect wetland, there was need for a framework for environmental conservation to guide policy makers and stakeholders in ensuring an effective management system that would protect wetlands⁵³. As a result, there was need to formulate wetland protection policy which was incorporated into the National Environmental Act for implementation. These formulated policies were later incorporated in the Constitution and other laws with the main objective of strengthening the cause of wetland conservation and protection that eventually became the institutional framework for the environmental conservation.⁵⁴

⁴⁹ Handbook in Environmental law in Uganda. Environmental law Institute. first Edition. 2004 at page 68.

⁵⁰ State of Environmental report 1 998 also found in Handbook in environmental law in Uganda. Environmental

⁵¹ Law Institute. First Edition. 2004. at page 68.

⁵² Cap 153

⁵³ Supra 26

⁵⁴

In 1995 when the Constitution was promulgated, the policies had been codified into laws and other legal principles to be implemented through measures established by parliament exercising its obligations imposed by the Constitution⁴⁷. In compliance thereof, parliament enacted several laws aimed at implementing those constitutional provisions and such laws include:- National Environmental Act⁴⁸, Uganda Wildlife Act⁴⁹, Water Act⁵⁰, Registration of Titles Act⁵¹, Land Act⁵² and the Local Government Act S3 that employs comprehensive codification of basic legal principles and other legal provisions approved by policy makers relating to conservation and management of wetlands.

2.2.3 Development of Wetland Policy

Wetland policy was formulated to reinforce The National Environment Policy and the National Policy for Conservation and Management of wetlands resources. This could be attributed to the fact that, the formulation of the National Environment Policy alone was so broad that it could detail individual aspect of environment; thereby a need to specify each aspect of it, and wetland is one among such important aspect⁵⁵. In so doing, wetland policy was formulated in 1995 with the following provisions:

- i. There will be no drainage of wetlands unless more important environmental management requirements supersede. By this, the policy emphasizes the need to convince the authority in consultation with the lead agency that the project to be undertaken that requires drainage of wetland is of utmost necessity and that its importance supersede environmental management requirement, in other words, the project is not only important but that it meets the required precautionary and mitigating factors that will not adversely affect the environment, and that there are more benefits in the project than calamities.

- ii. Under the environmental sound management, only those uses that have proved to be non destruction to wetlands and their surroundings will be allowed and encouraged. These include water supply, Fisheries, wetland edge gardens and grazing.

⁵⁵Supra 28.

iii. Where permission is granted, management must ensure sustainable use of that wetland. The word "sustainable use is defined as a wetland utilization, which will ensure that the product of goods and services derived from the use, are available at the same level that can be maintained for the foreseeable future. In that regard therefore, wetland may be utilized in such a way that they do not lose traditional benefits presently obtained from them and that and decision to use wetlands must consider the requirements of all other users in the community.

iv. To reinforce sustainable use of wetlands, the user must bear in mind the need to conserve the very wetland under his use. But because of different desires of wetland users, it is the inevitable that Government has to establish fully protected wetland areas of important biological diversity and those which it may need to use for partial exploitation for research purposes. Once those areas are established, no modification, drainage or other impacts will be allowed or entertained for the so protected wetlands.

v. The policy further calls for any water serving as a source of water supply or receiving effluent as part of designated service to any human settlement such areas shall be fully protected wetland from any encroachment, drainage or modification.

vi. In conformity with the provision of Article 237 of the Constitution the policy provides for all wetlands to be public resources to be controlled by the Government on behalf of the public. The policy prohibits leasing of any wetland to any person or organization in Uganda at any given moment and for whatever reason. Where communal use is allowed, such must conform to the principles of conservation and sustainability of the use thereof it is worth noting that the policy recommends for the termination, by government such communal use if it is found out that the community or any person has not adhered to the environmental obligations, principles and strategies of the policy. For easy management. the policy provides for all future land tenure documents including maps and layouts to indicate whether the area contains a wetland so that such wetland are accordingly excluded from tenure⁵⁶, It further

⁵⁶ Regulation 7.6 (iii) The National environment (Wetland, River Banks and lake Shore Management) Regulation. 2000. It can also be found in the hand book entitled. Legislation Governing the Ownership, use and Access to Wetlands and their resources at page 17.

provide for the layouts to be advertised in the parish where land is to be given out for a period of 30 days. The policy invites Government to include wetland conservation consideration in its national land use plan for purposes of maintaining ecological character of wetland. Still on the tenure and use of wetland, the policy urges Government to issue permits for wetland developers and users as a tool for the conservation and protection of wetlands, the policy urges Government to allow drained wetlands to regenerate with the aims of restoring the soil hydration so as to yet establish the wetland vegetations in as far as its ecology is concerned. This can be either partially, here the lease of land is still running or permanently here the lease has either been counseled or has expired.

vii. On Environmental Impact Assessment and monitoring, the policy urges Government to ensure that all modifications to be done on the wetland must be subjected to EIA, the result of which would determine whether such restoration or modification should proceed and if so to what extent It further proposes a compulsory EIA process for all new wetland development projects and a continuous monitoring of those, which were assessed. Where mitigating factors are not adhered to such projects ought to be halted.

viii. The policy further provided for equitable distribution of wetlands benefits to all stakeholders and maintaining an optimum diversity of uses and user and consideration for other stake-holders when using a wetland. This means that, those wetland users upstream should recognize that wetlands are flowing water system and those using the same wetland downstream of the development will be affected by an abuse of it.

2.2.4 The 1995 Constitution of Uganda.

The Constitution of the Republic of Uganda is the supreme law of the land with a binding force

on all authorities' and persons throughout Uganda. I lam law or any custom is inconsistence with any of its provisions, the Constitution shall prevail, and that other law or custom shall, to the extent of inconsistency, be void⁵⁷.In recognition of the importance of environment, the Constitution, both in its National Objectives and Directive Principles of State Policy and

⁵⁷ Article 2 of the Constitution of the Republic of Uganda

other provisions therein, did provide for conservation and protection of environment, wetlands inclusive. Accordingly, in its provision for the utilization of natural resources, the Constitution emphasizes like importance of managing natural resources to be done in such a way that it meets the development and environment needs of the present and future generations of Uganda. In Sh011, the Constitution is providing for the conservation and protection of environment from degradation the major culprit of which is man and his uncontrolled activities driven by the desire for economic, social and political satisfaction of oneself in disregard to the consequences such actions has to the entire environment.

In order to check such human activities, the Constitution under its National Objectives and Directive Principles of State Policy, imposes a duty on the state to protect important natural resources, including land, wetlands, minerals, oil. Fauna and flora on behalf of the people of Uganda. A part from that, it further provides that: -

(a) The state shall promote sustainable development and public awareness of the need to manage land, air and water resources in a balance and sustainable manner for the present and future generations. The utilization of natural resources of Uganda shall be managed in such a way as to meet the development and wetland policy was formulated in 1995 with the following provisions:-

i) There will be no drainage of wetlands unless more important environmental management requirements supersede. By this the policy emphasizes the need to convince the authority in consultation with the lead agency that the project to be undertaken that requires drainage of wetland is of utmost necessity and that its importance supersede environmental management requirement. In other words. The project in not on important but that it meets the required precautionary and mitigating factors that will not adversely affect the environment, and that there are more benefits in the project than calamities.

(ii) Under the environmental sound management only those uses that have proved to be non-destruction to wetlands and their surroundings will be allowed and / or encouraged. These include water supply, fisheries, wetland edge gardens and grazing.

(iii) Where permission is granted. Management must ensure sustainable use of that wetland. The word "sustainable use is defined as a wetland utilization which will ensure that the product of goods and services derived from the use, are available at the same level that can be maintained for the foreseeable future. In that regard therefore, wetland may be utilized in

such a way that they do not lose traditional benefits presently obtained from them and that any decision to use wetlands must consider the requirements of all other users in the community.

(iv) To reinforce sustainable use of wetlands the user must bear in mind the need to conserve the very wetland under his use. But because of different desires of wetland users it is inevitable that Government has to establish fully protected wetland areas of important biological diversity and those which it may need to use for partial exploitation for research purposes. Once those areas are established, no modification, drainage or other impacts will be allowed or entertained for the so protected wetlands.

The policy further calls for any water serving as a source of water supply or receiving effluent as part of designated service to any human settlement such areas shall be full a protected wetland from any encroachment, drainage or modification.

i) In conformity with the provision of Article 237 of the Constitution. The policy provides for all wetlands to be public resources to be controlled by the Government on behalf of the public. The policy prohibits leasing of any wetland to any person or organization in Uganda at any given moment and for whatever reason. Where communal use is allowed, such must conform to the principles of conservation and sustainability of the use thereof. It is worth noting that the policy recommends for the termination, by Government such communal use if it is found out that the Community or any person has not adhered to the environmental obligations, principles and strategies of the policy.

For easy management, the policy provides for all future land tenure documents including maps and layouts to indicate whether the area contains a wetland so that such wetland is accordingly excluded from tenure⁵⁸. It further provide for the layouts to be advertised in the parish where land is to be given out for a period of 30 days. The policy invites Government to include wetland conservation consideration in its national land use plan for purposes of

⁵⁸ 19 Regulation 7.6 (III) the National Environment (Wetland, Riser Banks and Lake Shore Management) Regulations 2000, it can also be found in the hand book entitled. Legislation governing the ownership, Use and Access to Wetlands and their resources' at page 17.

maintaining ecological Government to issue permits for wetland developers and users as a tool for the conservation and protection of wetlands, the policy urges Government to allow drained wetlands to regenerate with the aims of restoring the soil hydration so as to re-establish the wetland' vegetations in as far as its ecology is concerned. This can be either partially, where the lease of land is still running or permanently where the lease has either been counseled or has expired.

vii) On Environmental Impact Assessment and monitoring, the policy urges Government to ensure that all modifications to be done on the wetland must be subjected to EIA, the result of which would determine whether such restoration or modification should proceed and if so to what extent. It further proposes a compulsory E I A process for all new wetland development projects and a continuous monitoring of those which were assessed. Where mitigating factors are not adhered to such projects ought to be halted.

viii) The policy further provided for equitable distribution of wetlands benefits to all stakeholders and maintaining an optimum diversity of uses and user and consideration for other stake-holders when using a wetland. This means that. Those wetland users upstream should recognize that wetlands are flowing water system and those using the same wetland downstream of the development will be affected by any abuse or it.

2.2.5 The National Environment Act

The National. Environment Act provides for sustainable management of the environment. Apart from that, the Act establishes an authority as a coordinating, monitoring and supervisory body for that purpose and for other incidental to or connected with wetlands. It defines wetland to mean areas permanently or seasonally flooded by water where plants reclaiming or draining wetland:

It defines wetlands to mean areas permanently or seasonally flooded with water where plants

- a) reclaiming or Draining wet lands
- b) Erecting, constructing, placing, altering, extending removing or demolishing any structure that is fixed in, on, under or over any wetland, rivers. Wetlands, forests reserves, and any land to be reserved for ecological and touristic purposes.
- c) disturbing any wetland by drilling or tunneling in any manner that has or is likely to have an adverse effect on the wetland

(d). Depositing in or under any wetland any substance in a manner that has or is likely to have adverse effects on the wetland.

(e). Destroying, damaging or disturbing any wetland that has or is like' to have an adverse effects on any plant or animal or its habitat and;

(f) Introducing or planting any exotic or introduce plant or animals in the wetland, unless he or she has the written approval from the authority, given in consultation with the lead agency. In a situation where a person needs to carry out any activity or development on an area declared as a wetland, he or she must apply to the Authority and that such an application may with the consultation of agency be granted⁵⁹.

Provided an environmental impact Statement conforms to the provision of the law. This may extend to the traditional use of land so declared as wetland. Furthermore, and in conformity with the statutory requirement imposed under section 38 of the Act, the authority is not only mandated to establish guidelines for identifying and sustaining management of wetland in consultation with the agency.

It shall, with the assistance of the local Environmental Committees. District Environmental Committees and lead agency identify wetlands of local, national and international importance as ecosystems and habitat of species of fauna and flora and compile a national register of wetlands

and lastly. The authority still has the mandate. in consultation with the lead agency and District Environmental Committee to declare any wetland to be a protected wetland thereby excluding or limiting human activities in it.

2.2.6 The National Environmental (Wetlands, River Banks and Lake Shores Management) Regulations, 2000.

The National Environmental (Wetlands, River Banks and Lake Shores Management regulations. 2000 relate to management of all wetlands in Uganda. It re-emphasizes the

⁵⁹ 55-60 Are offences prescribed under Regulations 37 SI 153 -5. the regulation itself is created under the provision Section 107 of The National Environment Act. Cap 153.

obligation of Government and Local Government as imposed by the Constitution.⁶⁰ to hold in trust for the people and protect wetlands for the common good of the citizens of Uganda. and forbids local government from leasing out or otherwise alienating wetlands.⁶¹ It is intended to provide for the conservation and wise use of wetlands and their resources in Uganda in the following ways) to give effects to sub Article 2 of Article 237 of the Constitution; to ensure water catchments conservation and flood control, sustainable use of wetlands for ecological and touristic purposes for the common good of all citizens:

- (a) To ensure that wetland are protected as habitats for species of fauna and flora;
- (b) To provide for the regulated public use and enjoyment of wetlands;
- (c) To enhance research related activities: and
- (d) Minimize and control pollution.

The principles set out in this part of the regulations shall be observed in the management of all wetlands in Uganda as follows:

Wetland resource should be utilized in a sustainable manner compatible with the continued presence of wetlands and their hydrological functions and services:

i. Environment Impact Assessment as required under the national Environmental Act⁶² is mandatory for all activities in wetlands likely to have an adverse impact on the wetlands.

ii. Special measures are essential for the protection of wetlands of international importance. National and local importance as ecological systems and habitat for fauna and flora species and

for cultural and aesthetic purposes as well as for their hydrological functions and

iii. Wise use of wetlands shall be integrated into the national and local approaches to the management of their resources through awareness campaigns and disseminating on information.

Under the Land Act.⁶³ Government or local Government, in control of use of land, may acquire land in accordance with the provision of the Constitution .Furthermore, the act imposes a duty on the owner of land which has not been acquired by Government to use and manage such land in the manner prescribed by the various laws including the National

⁶⁰ Article 237 (2)

⁶¹ Section 45(4) of the Land Act. Cap 227

⁶² Cap 153, Laws of Uganda.

⁶³ Cap 227 of the Laws of Uganda.

Environmental Act and the National Environmental (wetlands, River Banks and Lake Shores Management) Regulations 2000⁶⁴.

In further control of environmentally sensitive areas, a duty is imposed on the government or local Government to hold in trust for the people and protect natural lakes rivers, around water, natural ponds, natural streams, wetlands, and any other land reserved for economical and touristic purpose for the common good of the citizens of Uganda Other responsibilities imposed on local Government include holding in trust any natural source mentioned above and any other that may be discovered though not mentioned herein after a request to Government. The regulation does not allow leasing out or otherwise alienating any natural resource referred to above, but may grant concession or se or permits in respect of their use.⁶⁵

2.2.7 The Local Government Act.

The Local Government Act⁶⁶ provides for the system of local government which is based on the district.⁶⁷ Below the District there are lower local government and administrative units called a council with each being managed by an Executive Committee composed in manner prescribed by the Act.⁶⁸ Among the Executive committee, there are sub-committees one of which is that of Production and Environment Protection. The Act gives the District Council powers to make laws while the lower councils comprised of a sub-county Council, A Citydivision council, a municipal council, a municipal Division council and a Town council has powers to make bye- Law.⁶⁹

2.2.8 The District Local Council

This is the highest political organ in the District with powers imposed on it by both the Constitution and⁷⁰.The Local Government Act⁷¹, to make laws, policies and regulations

⁶⁴ 72 Section 43 of the land Act allows Government and Local Government to acquire land in accordance with the provision of Article 26(b) and 237 of the Constitution of Uganda. &Section 44 of the land Act imposes an obligation to any person who owns 01' occupies land to manage and utilize that land in accordance with the Forest Act, Mining Act, the National Environmental Act, the Water Act, and another law.

⁶⁵ Part Two of the first schedule of the Local Government Act. Cap 253, Laws of Uganda.

⁶⁶ Cap 243 Laws of Uganda.

⁶⁷ Article 176 (1) of the 1995 Constitution of Uganda and Section 3 (I) of the local Government Act, which provides that. The system of Local Government shall be based on the district as a unit under which there shall be lower government and administrative units.

⁶⁸ Section 25 of the Local Government Act

⁶⁹ Section 38 and 39 of the Local Government Act product for the making of laws and byelaws respectively.

supervise their implementation. The Act further imposes other functions some of which are relevant to this study. They include:

- a. To carry out or supervise land survey:
- b. Manage land administration:
- c. Manage or supervise physical planning in their respective districts:
- d. Supervise to ensure proper use and protection of forests and wetlands:
- e. Ensure environment and sanitation in the District is managed properly: and
- f. Protection of stream, Lakeshores, wetlands and forests.
- g. Implementation of these laws policies and regulations established by the District Council the lower Local Council relating to wetland management and conservation is developed to the lower Local Government Council to handle.

2.3 Institutional framework

2.3.1 Enforcement agents.

The National Environmental (Wetlands, River Banks and Lake Shores Management) Relations. 2000. Imposes a duty on the District Environment Committees to be responsible for coordinating, monitoring and advising District Councils on all aspects of wetland and wetland resource management ⁷². On the other hand the Local environment committee, set at the lower

Local Government Council shall be the implementing organ in conserving and managing wetland resources in its jurisdiction.⁷³ The regulations further impose specific functions that the Environment committee has to do in relation to wetland management⁷⁴. These functions include:

- a) Ensuring that any activity undertaken within the catchments area of a wetland does not affect the water level of the wetland;
- b) Regulating activities, which may include supply of water for domestic purposes fishing, swamp edge gardens. Grazing and papyrus harvesting to ensure sustainable use of wetland:

⁷⁰ Article 180(1) of the Constitution of the Republic of Uganda

⁷¹ Section 38 of the Local Government (Amended) Act. Cap 243.

⁷² Section 26 of the local Government Act, Cap 243 Laws of Uganda.

⁷³ Section 26 of The local Government Act, Cap 243 Laws of Uganda.

⁷⁴ Regulation 7 (1) of the National Environmental (Wetlands, River Banks and lake Shores Management)

c) Advising the authority, after the prior approval of the District Council, to declare an area a "protected wetland" in accordance with these Regulations:

d) Authorizing research activities in protected wetland

e) Issuing local guidelines and directives for the better carrying out of the provisions of these regulations and ensure wise use of wetlands

f) With the approval of the District Environment officer, directing that an environmental Impact Assessment be carried out on a project that involves the use of a wetland or an area within ten meters of the edge of wetland:

g) Declaring that a wetland is closed for some or all activities for the purposes of regeneration: Formulating bye-laws and local laws on proper management of wetlands: and performing any other duty assigned to it by the Executive Director under the Act.

In addition to 'the Local Council Committees, the police from both central and local administration establishment and Courts of law are used whenever circumstances require enforcement of the laws and regulations.

The regulations apart⁷⁵ from allowing people who desire to carry out any regulated milies listed in the second schedule of these regulations such as allowing traditional access to enter and harvest wetland, medicinal plants, tree and reeds. Cultivation where the cultivated area is not more than 25% of the total wetland area. Fishing using traps. Spears/ baskets or other methods· than weirs. Collection of water for domestic use: and hunting subject to theprovision of Wildlife

Act.⁷⁶The regulation in mitigating damage to wetlands. Does prohibit any of the above listed activities to continue or minimizes such activities once the Executive Director makes an order restricting or prohibiting of any such activities in the said area, and declares it either open or closed season in respect of the area and any further entry or act of defiance will amount to an offence.⁷⁷

⁷⁵ Regulation 7 (4) of the National Environmental (Wetlands, River i3anks and Lake Shores Management) Regulations

⁷⁶ The National environmental (Wetlands, River Banks and Lake Shores Management) Regulations. 2000.

⁷⁷ Regulation 11(2) of the National environmental (Wetlands, River Banks and lakeshores Management) Regulations.

Further to that, the regulations imposes certain duties on the people which include observance of all the conditions attached to any use of a permit issued in respect of use of wetlands. For those who are landowners, occupiers or users who are adjacent to or contiguous with a wetland. They have the duty to prevent the degradation or destruction of the wetland and shall maintain the ecological and other functions of the wetland⁷⁸ The regulations conclude with a penal sanction, which state. "Any person who fails neglects or refuses to protect a wetland commits an offence"⁷⁹ Under the National Environmental Act,⁸⁰ more coherent offenses together with their penal sanctions are stipulated, These offences induce: -

a) Offences relating to inspection of environment.

The Regulation numerates different acts that lead to the commission of the offence and on conviction of any or one of them. The offender is liable to imprisonment term of not less than twelve months or to a fine of not less than one hundred and twenty thousand shillings or to both⁸¹

(b) Offences related to Environment impact Assessment

Regarding the above, the regulation stipulates that any person who:

- i. Fails to submit a project brief contrary to section 19: or
- ii. Fails to prepare an environmental impact assessment contrary to section 19: or,
- iii. Fraudulently makes a false statement in an environmental impact statement submitted under

section 20, commits an offence and is liable on conviction, to imprisonment for a term not exceeding Eighteen months or to a fine of not less than one hundred and eighty thousand and not more than eighteen million shillings only or both.⁸²

c) The Act further imposes a duty to all affected persons to properly keep records relating to activities, products, by-products and wastes as required. Failure upon or fraudulently altering any such records would result in the commission of an offence and the person on conviction

⁷⁸ Regulations 7 of the National Environmental wetlands River Banks and Lake shores Management regulations

⁷⁹ The National Environmental (wetlands, River banks and Lake Shores management regulations 2000.

⁸⁰ Regulations 11(2) of the national Environmental wetlands, river banks and lake shores management, regulations.

⁸¹ Part XIII <the National Environment Act, Cap 153, Laws of Uganda

⁸² Section 95, The National Environment Act. Cap 153.

will be liable to imprisonment for a term of or to a fine of not less than one hundred and twenty thousand shillings and not more than twelve million shillings or to both.⁸³

d) Wasteful use of environment is as well as prescribed offence. Any person found guilty of the same will be liable to imprisonment to a term not exceeding eighteen months or to a fine of not less than one hundred and eighty thousand shillings and not more than eighteen million shillings or to both⁸⁴

e) Furthermore, omission to act as required under sections 52,53,54 and 310r carelessly or negligently disposes any chemical or hazardous wastes contrary to this act, or knowingly mislabels any wastes and matter associated with it, or withholds information about the management of wastes which are hazardous or aids or abets the illegal traffic in wastes, chemicals or radioactive substance commits an offense and is liable to imprisonment for a term of not less than thirty six months or to a fine of not less than three hundred and sixty thousand shillings and not more than thirty six million shillings only⁸⁵

f) Pollution of environment is another area where a person found doing so would be liable on conviction to imprisonment term of not less than eighteen months or to a fine of not less than one

(g) Once the Executive Director makes an orders relating to restoration and or easement and the person fails to comply with such an order the / she will be liable on conviction to imprisonment

to a term not exceeding twelve months or to a fine of not less than one hundred and twelve months and not more than twelve million shillings only or to both⁸⁶

Person contravenes any provision of the Act; such a person will on conviction be liable to imprisonment to a term of not less than three months or to a fine of not less than thirty thousand shillings only and not more than three million shillings only.

⁸³ Section 96 of the National Environment Act. Cap 153

⁸⁴ Sections 97 The National Environment Act. Cap 153

⁸⁵ Sections 98 The National Environment Act, Cap 153

⁸⁶ Section 100 of the National Environment Act Cap 153

CHAPTER THREE
EFFECTS AND CHALLENGES OF ENFORCING LAWS TOWARDS
WETLAND PROTECTION

3.0 Introductions

In the last chapter, we looked at the evolution of environmental legislation in Uganda, the various laws concerned with the conservation of wetland. Enforcement agents and procedure. We concluded that Uganda has put in place adequate legislation towards the conservation of wetlands. In this chapter, we will look at the mechanism and effect of enforcement of environmental legislation.

3.1 Katanga case

Katanga is located in Wandegewa, a busy commercial center to the North of the City of Kampala, about one and half kilometers on the way to Mulago natural referral Hospital. The land would best be described as wetland due to its nature and location. The land has rationally been used as garages and small dwelling houses. However, in the last seven years or so, the area has seen various development activities ranging from huge hostels. Schools, motor garages, timber workshops, bars, guest houses, shopping centers, video halls and individuals dwelling houses. It has also seen its only green belt, formerly used a children's park turned into a market by the veterans of Uganda Peoples Defense Forces.

This takeover or change from children's park to the shopping center is said to be a directive from a top district administrator who has no authority whatsoever to make such a directive. This does not only violate the constitutional provision on the use and management of wetlands⁸⁷, but also breaches several other provisions of other laws discussed above including the Local Government Act⁸⁸, The Land Act⁸⁹

⁸⁷ Articles 180 of the Constitution of Uganda.

⁸⁸ Section 9 of the Land Act, Cap 243

⁸⁹ Section 44, the Land Act Cap 243.

The National Environment Act⁹⁰ the water Act⁹¹ and the National Environment (Wetlands, River Banks and Lake Shores Management) Regulations. The act has exposed the various challenges faced in monitoring the use and management of wetlands.

3.2 Problems Associated With Wetland Conservation.

In the words of Matovu⁹² Uganda has high natural resource potential on which more than 90% of the country's population depends directly for their livelihood. Likewise, the country's development process and opportunities mainly depend on the natural resource base. With a GDP growth rate of about 6% and a population growth rate of 62.7%⁹³, natural resource exploitation will continue to form the basis for livelihoods of the majority in the foreseeable future. However, the resources are facing tremendous pressures from the rapidly expanding population, economic activities and in some cases outright abuse by users, which has continued to experience environmental degradation manifested by different Forms of problems some of which are directly linked to the health and well being of wetlands and water resources. The major forms of land degradation with direct bearing on the state of the wetland and wetland resources include encroachment into wetland areas land and vegetation, degradation with associated loss of biodiversity, land and water pollution and poor land management, among others.

3.3. Principals of Environmental Law Enforcement

Because of the need to establish the principle by which wetland resources can optimally be used now and in future, and practices which reduce wetland productivity, maintain the biological diversity of natural or semi-natural wetland and maintain wetland functions and values, the Government of Uganda has put in place stringent measures to protect public

Health from environment pollution and protect the quality of natural environment through interventions which has been developed to manage strategies to prevent or control pollution

⁹⁰ Cap 153

⁹¹ Cap 153 Laws of Uganda

⁹² Cap 152 Laws of Uganda.

⁹³ George Lubega Matovu, Natural Resources Management Specialist (Aquatic Biodiversity) NEMA A Paper Presented at a Training Workshop to strengthen and enhance the Capacity of Police Investigators and state prosecutors to enforce environmental Laws. March 2006

⁹⁴Most of these strategies which are essential foundation for environmental and public health protection. Involve legal requirements that must be met by individuals and institutionalize facilities as a first step. The second step is compliance, which relates to getting the groups that are regulated to fully implement the regulations and the third step is to ensure compliance by enforcement of the legislation, where compliance has failed. To achieve this primary goal of environmental legislation enforcement, efforts must be put to encourage and compel change in human behavior⁹⁵, which forms the basis of enforcements⁹⁶

This is best done by motivating the regulated community to comply, removing barriers that prevent compliance, and overcoming existing factors that encourage non compliance which takes the form of either promoting compliance through education and incentives or through identifying and taking action to bring violators into compliance Enforcement⁹⁷

The duty to ensure compliance is charged on the NEMA, which are the lead agency and other regulatory institutions such as the Police District Council and the lower local councils to mention but a few. This must be pursued in the context of an interaction between conservation and national development strategies and activities. A coordinated and cooperative approach involving all the concerned people through organizations, which bring about change in people's attitude and perception of wetland as waste land would equally be of great importance. The appropriate way to deal with this aspect is through inspections to determine compliance status of regulated community and to detect violations. Negotiations with individuals or facility managers community and to correct and halt situations that endanger the environment or public health. who are out of compliance 10develop mutually agreed schedules and approaches for achieving compliance. This is intended to result into a negotiated compliance agreement. Legal action where necessary to compel compliance and impose some consequence for violating the law or posing a threat to

⁹⁴ Part VIII of the National Environment Act, Cap 153 Laws of Uganda.

⁹⁵ Kenneth Kakuru, in a paper entitled, Environmental law: A tool in peaceful Resolution of conflict

⁹⁶ George Lubega Matovu, Challenges in Monitoring and Enforcement of Environmental Laws in Uganda-Natural Resources Management Specialist - NEMA 2

George Lubega Matovu in his report on mentoring and enforcement of environmental legislation defines Compliance to mean the full implementation of environmental requirements which occurs when both the human requirement and desired changes are achieved.

⁹⁷ Enforcement is defined as asset of actions that authority takes to achieve compliance within the regulated

human health or environmental quality, and enforcement may also include compliance promotion.

3.4. Importance of compliance & enforcement

To ascertain the impact of the law in conserving wetland, compliance plays a very vital role in that it is only through it that: - the environmental quality and public health can be protected: the credibility of environmental requirements including observation of the laws and institutions can be built and strengthened fairness can be ensured in the enforcement of the law: and it reduces costs and liability in that compliance breeds an overall healthier environment, reduces public health and medical costs as well as long term cost to society of cleaning up the environment.

3.5 Enforcement Mechanism and Implementation tools

Compliance and enforcement of the law on conservation of wetland involves a number of issues that must be addressed either simultaneously or concurrently, depending on the nature and magnitude of each issue. It follows therefore that NEMA must set principles that require compliance and enforcement where compliance fails. In this regard NEMA set up enforcement mechanism and implementation tools, which is broadly divided into two categories, to include Precautionary Principle Implementation Tools⁹⁸ and polluter Pays Principle Implementation Tools⁹⁹

Under the Precautionary Principle Implementation Tools, NEMA is enjoined to prepare a national Environment Action Plan to be reviewed after every five years or less.¹⁰⁰The planning shall cover all matters affecting the environment in Uganda. Environmental planning ensures that development activities are harmonized with the need to protect the environment in accordance with established standards. Apart from the environmental Plan,

⁹⁸ Pre-cautionary principle is best explained under Principle is of the Rio declaration on environment which slate that. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation. Judicially, the principle was interpreted in the case of rich vs. national parks and world life service there court stated that," to stick to particular plan on the basis or conclusion of all studies and conclusion research cannot be said to be a policy of prudence and precaution. And taking precaution will not necessarily mean cracking the whole scheme hut matter making adjustments alterations. Additions which may ensure safety and security or at least minimize possible hazards.

⁹⁹ Polluter pay principle is sometimes called user pay principle which means that, a person responsible for pollution or degradation of environment must bear the costs associated with its preventive control and up it is based on the old age saying that prevention is better than cure. In Uganda, in the principles of Environmental planning. Environmental impact Assessment. Environmental Audit Standard setting and pollution control and environment awareness.

¹⁰⁰ Section 17 (1) The National Environmental Act. Cap 153

NEMA has designed an environmental Monitoring and Impact Assessment guidelines". This encompasses self- monitoring mechanism and enforcement monitoring systems. The other tools for environment enforcement mechanism and implementation include Environmental Audit.¹⁰¹ Environment Standard Setting, Licensing and regulations made hereunder. ¹⁰²For the above principle to be fully complied with NEMA is mandated to carry out popular awareness and participation campaign as a key requirements for enforcement of the laws that will equip the public with the knowledge to participate in decision-making and legislation enforcement. This goes hand in hand with ¹⁰³in the use of Easement and incentives that ought to, or is intended to change human environmental behavior which may be achievable through Education, Capacity building and Improve legal institutional requirement.

Polluter Pays Principle Implementation Tools on the other hand encompasses mechanism. Which includes Performance Bonds.¹⁰⁴ Environmental improvement mechanism environment restoration Orders.¹⁰⁵Record Keeping and Inspections and The use of Criminal Law and Community Service Orders. ¹⁰⁶The irony of this principle is to effect that Environment is not a free good. He who harvest it to achieve an economical, social or political interest must pay for it as a basic public good which form she required noble techniques of raising finances to realize the intended goal of environmental conservation.¹⁰⁷This may conveniently done through charges

¹⁰¹ Section 17(2) the National environment Act

¹⁰² Section 37, The National Environmental Act. Cap 153.

¹⁰³ An environment easement may be enforced by anybody that finds it necessary to protect a segment of the environment although he may not own property in the proximity to the property subject to the easements

¹⁰⁴ This mechanism is applicable to Industrial plants that produce highly dangerous or toxic substances & therefore have significant adverse impacts on the environment may be required to deposit bonds as security for good environmental practice.

¹⁰⁵ Improvement Notices may be issued by environmental inspectors under section 80(1) (i) of Cap. 153 to require a person to cease activities deleterious to the environment

¹⁰⁶ Restoration Orders are issued under section 67 of Cap. 53 requiring a person to restore the environment, or to prevent a person from harming the environment. They may award compensation for harm done to the environment or: and levy a charge for restoration undertaken. NEMA or a court issues Restoration Orders if in the person a minimum of 21 days to restore what he has destroyed. Under Section 70(i) of the National Environment Act Cap 153. where a person on whom an Environmental Restoration Order has been served fails neglects or refuses to take action required by the Order, the Authority (NEMA) may with all the necessary workers and other officers enter or authorize any other person to enter and land under the control of the person on whom that order has been served and take all the necessary action in respect of the activity to which that order relates and otherwise to enforce that order as may deem fit.

¹⁰⁷ Criminal law remains a variable instrument for the control of behavior because of the natural tendency of people to tear the infection of pain, isolation or economic loss. Therefore, the Act provides for serious penalties for infraction of its provisions. As an alternative to imprisonment and fines, persons committing environmental wrongs may be required to perform duties in the community as a reparation to the community for the wrong done.

for services rendered by the institutional organs in charge of environment, licenses and permits for various activities carried out on the wetlands, fines for infraction of wetland laws, Environmental bonds, and other funds from external sources.

3.6 Enforcement Procedure

Although enforcement of wetland laws is spearheaded by National Environmental Authority (NEMA) established under the National Environmental Act¹⁰⁸The constitution and the Local government Act¹⁰⁹ decentralized its implementation to local government authorities¹¹⁰. In effect, the Katanga and the Kalerwe / Bwaise wetland areas, which falls within the jurisdiction of Kampala City Council is primarily the responsibility City Council of Kampala which it does by integration of its wetland activities into District Development Plan through the District Technical Committee. This must follow the framework to guide local governments in planning and budgeting for wetland which is drawn by the wetland inspection division in consultation with the lead agencies bed on the wetland sector strategic plan 2001 -2002.

To achieve their goals, the district has to deploy economic institutions and other tools of environment management set up by the National Environmental Act and other sector for management of environment and environment resources. Various institutions, depending on the circumstance, have been set up to implement these economic, institutional and other sectoral laws. The most prominent institutional implementing bodies are:-

a) The Lower Local Council Committee of the villages, parishes and sub-county committees under the overall supervision of the district council committee. This they do through ensuring that development of projects is carried out in accordance with the approved project plans by the Technical Committee of the District. They also ensure that no major development is done in the wetland area without establishing the environmental impact assessment such a project has in environment.

b) The Wetland Inspection Division under the Ministry of Water and Environment is another institutional tool for enforcement of wetland legislation.

¹⁰⁸ Section 101 of the National Environment Act Cap 153

¹⁰⁹ Section 102 the National Environment Act. Cap 153

¹¹⁰ Section 5 (xii) The National Environment Act. Cap 153.

c) Where wetland is located in the designated forest area; the National Forest Authority will take charge to protect the wetland by co-coordinating, monitoring and managing all activities related to the use and harvesting resources of that wetland.

(d) Similarly, where the wetland is found within the designated game parks, the wetland will be protected by the Uganda Wildlife Authority, which has the duty, imposed on it b' the Wild Life Act to protect such areas in the manner prescribed by the law.

e) Apart from governmental institutions, there are also a number of Non Governmental Organizations whose role in protecting wetlands is highly recognized.

In summary Uganda has put in place the necessary environmental legislations. Institutional and legal framework for the conservation of wetland in particular and the environment as a whole. It has also been established that both the institutional and legal tools of operation to conserve wetland has been put in place. What reminds to be discussed in the next chapter is the effects and or impacts that environmental legislation and the institutional and legal framework has had in the conservation and protection of wetlands.

3.7 Criminal Law as a tool for wetland conservation.

There are a few provisions in our Penal Code Act relating to wetland conservation in areas I rights to clean and healthy environment. ¹¹¹To remedy these short comings in the Code Act, the National Environment Statute, now Act¹¹² was enacted which reduced fundamental changes that brought in to play three aspects used in monumental law enforcement. This included: -

a) The Traditional criminal law, which is implemented by imposing fines and imprisonment terms to the offenders of environmental law. This practice was not so effective in the conservation of environment as its purpose was basically to punish the offenders individually, leaving the environment to suffer the damage already done to it.

¹¹¹ 120 The Penn Code Act, under Part XVI has limited provisions (S. 171 & 172), which deals with offences related to nuisance, health and convenience.

¹¹² Cap 153

b) Punishment through community service is most effective if its orientation is to conserve wetlands. This is because it acts as an instrument of depicting shame in a public manner. It is more deterrent than fines and imprisonment, especially on the rich and personalities influence who are prone to abuse wetlands.

(c) Publicity which brings along with it perception of the good intention of wetland conservation. It is important in that it creates deterrent and compliance on matters of the environment, especially where offenders publically apologize for wrong done to wetlands

3.8 Police as a tool of wetland conservation

The duty imposed on the police by the law is to monitor and enforce the law and regulations made there under.¹¹³ This they do by ensuring compliance of the laws and regulations affecting standards and evictions from sensitive ecosystems like wetlands, river banks and lake shores, through arresting environmental offenders, increase 'awareness in environmental crimes, training and strengthening National and International linkage in environment and its natural resources through exchange of information with relevant offices which include NEMA., the Directorate of Public Prosecution and other partner organizations. ¹¹⁴

3.9 The Role of Courts in Wetland Conservation

The promulgation of the 1995 Uganda constitution marked the beginning of a formulation of a new and major institutional change in jurisdiction and right to protect environment which is a public interest through public interest litigation¹¹⁵ the corner of this provision lies under article 50 (2) of the constitution ¹¹⁶in upholding this principle court in British American tobacco Ltd vs. environment action network Ltd held that is to say that our constitution does not recognize the existence of d' and oppressed persons and

¹¹³ Kaggwa Ronald in a paper entitled, " Mainstreaming Environmental concerns into policies, plans and programs or the Uganda Police Force" presented in a training workshop to strengthen and enhance the capacity of police investigators and State Prosecutors to enforce Environmental laws, held at Rider Hotel, Seeta -Mukono from 19 102 I March, 2006.

¹¹⁴ Section 2 (h) of the Police Act, Cap 303 gives the Police the authority to detect and bring offenders to justice.

¹¹⁵ Public Interest Litigation as defined by Bhagwati CJ in *13andhiia Mukti Morcha Vs Union of India* as not being in the nature of adversity litigation but a challenge and an opportunity to Government and its officers to make basic human rights meaningful to the deprived mid vulnerable sections of the community and to assure them social and economic Justice, which is the signature tune of our constitution.

¹¹⁶ Article 50(2) of the constitution state that "Any person or organization may bring an action against the violation of another person's human rights matters related to the issues of human rights and environment

therefore cannot allow actions of public interest groups to be bought on their behalf is to demean the constitution.

By this ruling, the issue of Locus Standi, which had been rendered impotent, was reactivated in matters of public interest including wetland. The ruling has allowed public litigation actions to be brought by a third party so long as it satisfies that the matter before court is of public interest. In the same vein, the green watch case survived being thrown out on technicalities were raised by the respondent the essence of this law is to allowed subjective justice be done in determining matters of a public interest nature the law relaxes the need to pose individual interest while' allowing proof of public interest in the matter before court.

Furthermore, the continuous conviction and sentencing of wetland offenders by courts. equally contributed positively to checking the excesses of individuals who violate laws in this way. Courts have played a significant role in the conservation of and more especially where sentences of community services are handed down to offenders.

3.10. Challenge in monitoring and enforcement.

Generally speaking, there are many challenges faced by both NEMA and other institutional structures entrusted with monitoring and enforcing wetland legislation. This includes both administrative and political interference which can be summarized as institutional dis-linkage lack of adequate funding" lack of trained personnel, ambiguous on land tenure system and poorly defined regulations imposed to guide the use of wetlands owned by an individual.

3.10.1. Institutional dis-linkage and management of land held by central and local Government in trust for the good of the people.

There is the problem arising from failures at different institutional linkages for environmental management for example, whereas wetlands are held in trust by the central government and local governments for the common good of the people of Uganda recent experience of wetland abuse have included cases where Local Authorities lie been the very violators of these constitutional and legal provisions. The said actions not only violates the provision of the Constitution¹¹⁷ and The Land Act¹¹⁸ but also rpublic Trust Doctrine.¹¹⁹

¹¹⁷ Article 237 (2) (b) of the constitution provides that, "notwithstanding clause (1) of this constitution, the government or local government as determined by parliament by law shall hold in trust for the people protect natural lakes, rivers, wetlands, forests reserves, game reserves, national parks and to be reserved for ecological and touristic purposes for the common good of all citizens

3.10.2. Problem of enforcement of the legal requirements for protection of the wetland

Whereas it is now largely accepted that wetland is an important natural resource worth protecting and whereas enforcement of wetland regulations is expected to be done through a hierarchy of enforcement levels from National Environment Management authority (NEMA), districts council down to community levels, the enforcement capacity available at all these levels appears not to be able to match the widespread nature of the problem of wetland degradation in addition, while the responsibility for wetland management has been vested under the local authorities, cases of local authority intervention on environmental management are still few and if any such is directed to little known peasants as was the case with Banda Market.¹²⁰ The implication is that even were local authority intervention would have been enough to stop abuses, it is either done selectively as stated by Nyakana in the above publication or are still referred to NEMA. It should be stressed that this state of affairs for a scarce resource such as wetlands requires an enforcement and intervention mechanism that is as close as possible to the community level if tangible results are to be achieved.¹²¹

3.10.3 The "anonymous" "holiday" and "awkward hour" dumping syndrome.

Without an effective grassroots enforcement mechanism, it has been extremely difficult to control indiscriminate dumping of materials in wetlands along the roads and other remote areas by anonymous individuals such as truck drivers who probably view wetlands as "good" open space to dump in rather than drive long distances to designated dumping sites. According to

¹¹⁸ Section 45 of the land act vests the control in trust for the people and enjoins it to protect all those natural resources mentioned under article 237 (2) (b). It however, under subsection 4 of section 45 that government or local government shall not lease out or otherwise alienate any of the resource referred to under the section.

¹¹⁹ Public Trust doctrine refers to the principle that certain resources like sea, air, water, wetland, have such great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership of the resource being gift of nature which should be freely available to everyone irrespective of the status of life." in the case of GANN vs. FREE FISHERS (1867) ER (1305 the house of lords held that, " the bed of all navigable rivers where the tides froze or a estuaries of the sea is by law vested in the crown. But this ownership of the crown is of the subject and cannot be used in any manner so as to derogate from or interfere with the rights of navigation which belongs by law to the subject of the land"

¹²⁰ In the New Vision of Tuesday 21 September, 2004. under the article entitled 'What determines who can build in a wetland that can't? The Law on Wetlands is abused by the rich' Godfrey Nyakaana was complained that the rich walk away scot-free but the law runs after small men. Nyakaana a City Council (KCC) councilor was ordered to demolish his house because it was built in the Nakivubo wetland. He said that, the public has a right to hear from the authorities concerned why it is for some people to build in wetlands without being put to task while others are treated like the Banda vendors. The law should not be applied discriminately! What are the provisions in law that some people can build in a wetland and others enforcement and intervention mechanism that is as close as possible to the community level if tangible results are to be achieved

¹²¹ Kenneth Kakuru, in article entitled, "The Challenges in Monitoring and Enforcement of Environmental laws in Uganda, 2004.

the Wetland Inspection division ¹²²dumping of waste paper is escalating on wetland banks in Kampala.

The most affected areas are on the Kampala-Jinja Road. Between Ntinda junction and this activity is also happening along Kinawataka Road. It was also revealed that sites with flowing water are the main targets of the "anonymous" "holiday" and "awkward hour" dumping syndrome. This is because the papers dumped in these areas are exported to Kenya packed in bales and sold in kilos, the purpose of dumping them in the water is to increase the weight of the bales our concern here is not the haphazard dumping, ¹³² but the consequences of such dumping to wetland conservation process and principles.

Further report from the people living in and around wetlands areas where marrum and waste dumping has taken place indicates that dumping is done by unknown truck drivers a awkward hours and addition to the above, there has also been a problem of wetland filling during holidays and awkward hours when those dumping probably have full knowledge that enforcement staffs are not on duty it remains an uphill task to prosecute those cases and the affected wetlands can hardly recover their original state even if the ci4iits are required to restore them.

3.9.4 Need to harmonize urban planning and land use with modern wetland conservation

goals.

Until now NEMA continues to receive development proposals on wetland areas that have demarcated as plots by planning authorities this apparently continues to send wrong signals to other wetland users who seem to perceive a sense of no action being taken to wetlands, especially in urban areas where wetland encroachment continues unabated in Kampala district and in particular, Katanga wetland areas which is the case studs' area, of the wetlands, which served as flood relief areas, were allocated for commercial and residential developments. This trend has continued with no signs of the practice being halted or signs of it being abandoned completely.

¹²² Wetlands inspection division interview with wetland inspector July 2007 at their offices on parliament ministry of lands head quarters.

Because of the above it becomes very difficult to enforce planning requirements in pen-urban flood prone areas where the urban or communities have massively and indiscriminately encroached into the wetlands has is the case in Bwaise and Bukoto areas.

3.10.5 Poverty and wetland resources use relationship

Over the recent years, there appears to be increasing cases of activities being implemented lands in the name of fighting poverty. While some of these activities are out rightly note compatible with neither wetland conservation nor its wise use goals, their promoters have vigorously defended them as intended to assist in the light against poverty. Activities such brick making in wetlands that are done for economic gains have tended to give no regard at all to conservation and or restoration of the affected wetlands. It is probable that this attitude stems from the old perception that wetlands in their natural stale are wasted land.

Conclusion

This chapter has established that enforcement and compliance to laws and other legislations, is an important issue. This has to be taken care of by all wetland users. The additional forms of enforcement by means of fines and terms of imprisonment is also found not be sufficient to ensure compliance, primarily of its command theory or approach. This calls for the need to establish a new comprehensive and educative approach. In fact, the use of economic devices such as aid disincentives would most likely breach the gap left by the traditional practices. Under the incentives, tax credits, tax exemptions, rewards for good environmental performance, soft loans and subsidies are the key elements for effective conservation of Wetlands. On the other side, high taxes and charges for behavior deleterious to environment is operates as deterrent elements for those who would wish to carry on with prevalent practice that would harm wetland. In the final analysis, this approach derails the practice that see only' the poor being criminally victimized while the rich buys way out of such environmental crimes ¹²³

¹²³ Hand book on Environmental Law in Uganda Volume 1, page 35 .

CHAPTERFOUR

FINDINGS OF THE STUDY

4.0 Introduction

This chapter is concerned with findings, conclusions and recommendations for the study.

4.1 Findings

4.1.1 Wetland conservation practice

As earlier pointed out, the responsibility of carrying out monitoring and ensuring monitoring and enforcement of the above wetland legislations lies with the District council and the lower local government and administrative units called the council by the Executive Committee. This they do under the watchful eyes of the National committee. Management Authority the lead agency created under the National Environmental Act, Cap 153 the choice of lower local government to monitor compliance is based on the fact that they are the ones staying close to these wetlands and any slight encroachment or damage to wetland is first detected by them.

However the science of wetland conservation being a new area in the life of ordinary population there is needed to put in efforts to build their capacity through long and protected practices. This is exhibited by the many activities going on geared towards the conservation of wetlands, including the formation of NGOs.

Ironically though I did not come across the code of conduct set for persons and organizations spearheading wetland conservation and compliance. Information from the Wetland Inspection Division in the Ministry of Water and Environment indicates that the process of formulating a nationwide code for practitioners of wetland conservation which will have the force of the law is in the offing. The objective of these regulations shall be to provide a system of professional conduct and ethics in carrying out the policies of compliance and enforcement of wetland conservation and protection legislations at different levels of its application. Apart from that, the regulations are intended to equip wetland conservation practitioners with skills to carry out their work impartially, with high degree of professionalism, maintenance of consistency integrity, registration. Certification and standardization of the practice of conducting wetland damage assessment.

It hoped that when these regulations come into force, most of the shortfalls on wetland anon practices and or process shall be reduced considerably or eliminated completely and the wetland shall achieve the full benefit from the law.

4.1.2 Attitudes towards wetland legislation

Wetland conservation legislation in Uganda are received with mixed feelings on the part of the landowners and developers / investors. Most landowners view the restriction on the i.e. of wetland as a way of depriving them of the use of their land without any alternative source of income to sustain their families. They believe it is intended to impoverish them and subject them to begging on the other side, developers look at the imposition of environmental impact assessment as an additional burden to their business.

4.1.3 The growing population

Population growth brings about increase in the number of persons using the same piece of land. The more the population increases the less the land for production of consumer path and the more wetland become vulnerable to encroachment. Inevitably, once such a land is entitled into then it will most likely be abused. This dilemma can only be ended by either establishment of a good national policy on population growth or redesigning policy to cater for those whose population has outgrown their land.

4.1.4 Flouting of the law

Several provisions of the law were flouted when converting Katanga wetland into a commercial village. The first being the requirement for sustainable use of wetland it is true that both the constitution and the local government act impose a duty on all sons to use wetland in sustainable manner, as explained in chapter two above. This principle was never observed in the Katanga project and there is no evidence that they ever considered any of the procedures prescribed by the laws. For example, it is not possible to state that the development is compatible with the continued presence of wetland and their hydrological functions and services, when the entire wetland is turned into a commercial village. All that is seen are houses and concrete compounds.

4.1.5 Environmental impact assessment;

Apart from that, the requirement for the environmental impact assessment was never do the implication is that nobody will ever know the damage the project will inject into the

environment

until it happens. as to whether restoration order can revive its natural structure and functions remain to be seen.

4.1.6 Administrative interference

a part problem exposed by this project is the administrative interference. Under the legal framework established by the law as discussed above, the office or the district commissioner (RDC) has no legal authority to allocate land, leave alone the decision to allow development of Katanga. Like any other wetland, bi taken by the lower local councilor the district environmental committee. To say that the land was allocated by the office of the resident district commissioner, is to admit that the office of the RDC has taken over the role of managing and monitoring wetland, which contravenes sub sections 4 and 5 of section 44 of the land Act, 2000. Cap 227

4.1.7 Awareness and sensitization

During the research, it was evident that most people including the local council officials and potential developers take wetland legislation on conservation as time wasting and denial of access to wetland. They portray the exercise as having no benefits at all. This I would associate with lack of knowledge on the cost which environmental degradation weighs against economic' benefits derived from those projects. This would otherwise determine the viability of the project. It is therefore recommended that an awareness and sensitization campaign on wetland conservation be launched to educate the public and decision makers about wetland conservation and its necessity.

The sensitization and awareness should target especially district officials who play a major role in monitoring compliance and ensure enforcement of the laws on wetland in their respective areas of administration. The second category to be targeted by this awareness campaign would be the lead agencies and the local population because they have a big role to play in the conservation of wetland.

Specialization training should go to financial institutions because they finance projects which sometimes are carried out in wetlands. It should be brought to the attention financial institutions that a development projects, which has got significant impact on the wetland is not economically viable and the end result would fail to pay back the loan.

The other group of persons who need sensitization includes lawyers and judges as they comprise the major partners in the enforcement process of environmental legislations and as such require enough information on it. this will limit the extent or degree of ignorance judicial officer would have when determining wetlands matters as was claimed by one such judicial official in her paper entitled, " administration of justice without undue regard to the technicalities". in the said presentation. The lady justice confessed that she is not a discipline of environmental law, though she supported efforts of all those who are involved in the struggle to make Uganda a clean place to Live sensitization of such judicial officers would bring them to terms with the reality of need to conserve wetland.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATION

5.0 Introduction

This chapter is concerned with conclusions and recommendations of the study. This is based on study conducted on the topic effectiveness of the law towards protecting wetlands in Uganda..

5.1 Conclusion

Conservation law 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, and capacity building in progress. There is still need to identify the crucial part of the monitoring and enforcement agencies that would build consciousness the viability of conserved wetland in a wider environmental perspective. It could depict the economic, social and legal requirements. 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.

Important aspect of sensitization is towards what wetland conservation legislation intends during the research. It was evident that most people still do not know the importance of wetland conservation. This is attributable to their looking at the short term benefits instead of the long term effects wetland degradation has on the entire wetland. It is therefore important that they are properly educated on both the long term and short term effects of wetland degradation.

4.2 Recommendations

4.2 Wetland Legislation

Wetland legislation in Uganda has gone through a number of transformation and deification, the latest of which is found in Part II of the National Environmental (Wetlands, River Banks and Lake Shores Management) Regulations, 2000 which:

Provide for the conservation and wise use of wetlands and their resources. Give effects to clause 2 of Article 237 of the Constitution of Uganda and ensuring that water catchments conservation and flood control.

Strengthening 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 wetland shall be precisely described and also delimited on a map and they may incorporate riparian and coastal zones adjacent to the wetlands, and islands or bodies of marine water deeper than six metres at low tide lying within the wetlands, especially where these have importance as waterfowl habitat.

Wetlands should be selected for the list on account of their international significance in terms of ecology, botany, zoology, limnology or hydrology. In the first instance wetlands of international importance to waterfowl at any season should be included

Estimates of wetland loss worldwide should ideally be reached by comparing the total area of wetlands at a given date in the past to the area now remaining. However, establishing a past baseline presents considerable difficulties where there are no established criteria, definitions or techniques for the standard measurement of wetlands.

Ensure sustainable use of wetlands for ecological and touristic purposes for the common good of all citizens, ensure that wetland are protected as habitats for species of fauna and flora; provide for regulated public use and enjoyment of wetlands

Strengthen conservation of wetlands regulations and practices so as to minimize degradation through maintaining water supply and affluent treatment, managing and guiding the use of wetland owned b individuals:

Recover previously drained or wasted wetlands ensure that any development to be carried out in the wetland has passed the required standard to avoid wetland degradation, Initiate.

Develop and promote public awareness towards wetland conservation and encourage research and inventory of wetland and its resources.

Encourage research and inventory of wetland and its resources through promotion of capacity building in matters connected to wetland management and strengthening wetland legislation Institutional arrangement and sectoral legislations,

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