

Climate Justice and the Judicial Application of Environmental Law Principles in Uganda

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1.0. Introduction

- Climate change is still a significant challenge currently being faced by the human kind and the global environment.
- In Uganda climate change is manifested by landslides, floods, severe drought, land conflicts, forced displacement, malnutrition, human-wildlife conflicts and unpredictable weather patterns.
- Climate change disproportionately affects some persons or communities i.e., those that contribute less are often more adversely affected.
- Climate justice ensures that there is equitable sharing of benefits and burdens associated with climate change.
- The domestic implementation of the principles of environmental law (PEL) facilitates the full realisation of climate.

Introduction Cont'd.....

- Following decades of legal developments, PEL have been widely recognised as they evolved from instruments such as the Stockholm Declaration, world Charter for Nature, Rio Declaration & Agenda 21.
- The PEL are also vital for the realisation of the right to a clean and healthy environment. See, *UN HRC Resolution 48/13 of October 2021; Article 39 of the Constitution & Section 3(1) of the 2019 NEA.*
- Through the adjudicationg environmental/climate disputes, the judiciary plays an impoert role in promoting climate justice.
- Through litigation, PEL have secured the environment and addressed climate change.
- This presentation discusses the role of PEL in promoting climate justice from a judicial perspective with specific reference to Uganda.

2.0. Nexus between Climate Justice & PEL

- Climate change is increasingly being viewed as a human rights issue.
- It adversely affects the enjoyment of the right to a clean and healthy environment.
- Climate change disproportionately affects low-income countries or communities and the vulnerable (e.g., elderly, women, children, persons with special needs, refugees, indigenous peoples, etc.) that are least responsible for the problem.
- Within the context of climate justice, PEL can effectively be deployed to address the inequities triggered by climate change e.g., the UNFCCC provides for the common but differentiated responsibilities.
- By making reference to PEL, the judiciary can make a meaningful contribution to climate justice by amplifying the climate crisis including, holding the government and private actors accountable.

3.0. The Principles of Environmental Law (PEL)

This section of the presentation discusses the role of selected PEL in promoting climate justice from a judicial perspective with soecific refernece to uganda.

3.1. Sustainable Development

- According to the Brundtland Commission on Environment and Development 1987 report, *Our Common Future*: “Sustainable development is development that meets the needs of the present without compromising the ability of the future generations to meet their own needs”.
- According to Principle 4 of the Rio Declaration: “In order to achieve sustainable development, environmental protection shall constitute an integral part of the development process and cannot be considered in isolation from it.”

Sustainable Development Cont'd.....

- See, Part XXVII(i) & XXVII(ii) of the National Objectives and Directive Principles of State Policy (NODPSP) set out in the 1995 Constitution; section 5(2)(b) of the 2019 National Environment Act (NEA) 2019; and section 5(3)(e) of the 2021 National Climate Change Act.
- In *In Amooti Godfrey Nyakaana v National Environment Management Authority (NEMA) & Others* (Supreme Court of Uganda, Constitutional Appeal No. 5 of 2011), the Supreme Court held that the activities of the appellant endangered wetlands and were inconsistent with the constitutional principles of national interest and common good enshrined in the NODPSP such as, sustainable development.
- The sustainable development principle therefore, ensures that development is not undertaken at the expense of the environment so as to meet the needs of present and future generations.

3.2. Intergenerational Equity

- The present generation has the right to use and enjoy resources of the earth but is under an obligation to consider the long-term impact of its activities and to sustain the resource base and the global environment for the benefit of future generations of human kind.
- Intergenerational equity is also central to the attainment of sustainable development as resources must be used sparingly especially, if they are exhaustible or must be replenished if possible.
- See, Principle 1 of the 1972 Stockholm Declaration; the UNFCCC and the preamble of the 1995 Constitution.
- In the *Minors Oposa Case (Philippines-Oposa & Ors v Fulgencio S. Factoran, Jr. & Ors)*, The court Supreme Court made reference to intergenerational responsibility, by stating that every generation has a responsibility to the next to preserve that rhythm and harmony necessary for the full enjoyment of a balanced and healthful ecology.

3.3. Precautionary

- According to the 1982 World Charter for Nature in its principle 11(b): “Activities which are likely to pose significant risk to nature shall be preceded by an exhaustive examination; their proponents shall demonstrate that expected benefits outweigh potential damage to nature, and where potential adverse effects are not fully understood, the activities should not proceed.
- The Rio Declaration under principle 15 states that: “In order to protect the environment, the precautionary approach shall be widely applied by states according to their capabilities. 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.”
- Scientific uncertainty shall not be a justification for postponing cost effective preventive measures aimed at averting irreversable harm.

Precautionary Cont'd.....

- See, preamble to the Convention on Biological Diversity (CBD); article 3 of the UNFCCC; articles 10(6) and 11(8) of the Cartagena Protocol on Biosafety; and section 5(2)(g) of the 2019 National Environment Act (NEA) 2019.
- Environmental Impact Assessment (EIA) is an elaboration of mechanisms associated with the precautionary principle (principle 17 of the Rio Declaration).
- In *Amooti Godfrey Nyakaana v National Environment Management Authority (NEMA) & Others* (Supreme Court of Uganda, Constitutional Appeal No. 5 of 2011), the Supreme Court held that developers ought to take environmental law compliance seriously by undertaking precautionary or due diligence measures in the form of EIA.

3.4. Public Trust Doctrine

- The Public Trust doctrine requires the government to preserve and protect certain resources that the government holds in trust for the public good.
- The concept of public trust expresses the idea that the present generation holds the natural resources such as forests, rivers, lakes, wildlife and land of the earth in trust for future generations.
- See, Part XIII of the National Objective and Directive Principles of State Policy (NODPSP) and article 237(b) of the 1995 Constitution of the Republic of Uganda.
- The public trust doctrine provides a viable legal tool for establishing a dynamic and interconnected framework for intergenerational responsibility for the management of natural resources.

Public Trust Doctrine Cont'd....

- In *M. C. Mehta v. Kamal Nath and Others* (Supreme Court of India 1 SC 388 (1997)), the Supreme Court of India relied on the public trust doctrine to set-aside a lease that had been granted for a private motel by ordering the government to take over the area and restore it to its original condition. According to the Supreme Court, the lease of ecologically fragile land was a violation of the public trust.
- In *Advocates Coalition for Development (ACODE) v Attorney General* (High Court of Uganda Misc. Cause No. 001 of 2004), The court held that the government violated the public trust doctrine when it granted concessions or leased Butamira forest reserve it held in trust for the people of Uganda to Kakira Sugar Works without public involvement.

3.5. Common but Differentiated Responsibilities

- While all States have a shared obligation to address the climate emergency and environmental destruction, the wealthy States that have caused the lion's share of the planetary crisis need to take primary responsibility for financing and implementing solutions to the crisis.
- According to Principle 7 of the Rio Declaration: "States shall cooperate in a spirit of global partnership to conserve, protect and restore the health and integrity of the earth's ecosystem. In view to the different contributions to global environmental degradation, states have common but differentiated responsibilities. The developed countries acknowledge the responsibility that they bear in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and the technologies and financial resources they command".
- See, art. 10 Kyoto protocol; art. 20(4) CBD; and art. 5(1) Montreal Protc.

3.6. Polluter Pays

- Polluters are required to repair the damage they have caused either by making actual reparation or paying the necessary monetary compensation to society.
- Such compensation can be paid before (i.e., in form of deposit bonds, which are tied to environmental performance, to be forfeited if performance falls below expected standards) or after the polluting event (i.e., in the form of fines, damages, insurance pay-outs or reparations).
- Polluters are therefore, required to incur the cost of remedying such environmental harms—through restoration, rehabilitation and compensation.
- See, article 2(5)(b) of the 1992 Helsinki Convention on the Protection and Use of Transboundary Water Courses and International Lakes.

Polluter Pays Cont'd.....

- See also, the preamble of the 2003 Protocol on Civil Liability and Compensation for Damage caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters; article 3(2) of the 1996 Protocol to the Convention on Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Convention); sections 5(2)(1) and 85(2) of the 2019 National Environment Act (NEA).
- In *Amooti Godfrey Nyakaana v National Environment Management Authority & Others* (Supreme Court of Uganda, Constitutional Appeal No. 5 of 2011), the Supreme Court reaffirmed the importance of the polluter pays principle by stating that NEMA was within its mandate to ensure that the appellant did not destroy the environment and also bear the cost of restoring the environmental degradation.

3.7. Participatory

- The participatory principle is the bedrock of the right to public participation in environmental decision-making.
- Public participation has become an integral part of environmental governance.
- See, principle 10 of the Rio Declaration; principle 23 of the World Charter for Nature; Agenda 21; article 3(8) of the Espoo Convention; and article 13 of the African Charter on Human and Peoples' Rights (African Charter).
- Civil Society Organisations (CSOs) and Non-Governmental Organisations (NGOs) play a vital role in enhancing public participation in environmental affairs. See, art. 8(3) of the World Heritage Convention and art. 17(5) of the Protocol on Pollutant Release and Transfer Registers (PPRTRs).

Participatory Connt'd.....

- Within the domestic context see, Part II (i) and part X of the National Objectives and Directive Principle of State Policy (NODPSP) in the 1995 Constitution; sec. 5(2)(a) of the 2019 National Environment Act (NEA); and sec. 9 of the 2021 National climate Change Act.
- In *Advocates Coalition for Development (ACODE) v Attorney General* (High Court of Uganda Misc. Cause No. 001 of 2004), The Court held that it was not proper for the government to subject the Butamira forest reserve to a change in land use that deprived the local communities of the benefits that came with the forest reserve without their participation or consulting them.
- It is important to note the rights of access to information (art. 41 Constitution) and access to justice (arts. 50 & 137 Constitution) are imperative for the full realization of the participatory principle.

4.0. Conclusion

- In the past decade the interconnection between climate change and human rights protection has been increasingly recognized.
- Climate justice recognizes that certain groups suffer the most from the impacts of climate change, even though they have contributed the least to the problem.
- It is the view of this paper that the principles of environmental law have significantly shaped the current terrain of inclusive climate action globally.
- The judiciary has a vital role in providing guidance and creativity needed for the domestic implementation of the principles for environmental law aimed at enhancing climate justice.
- This requires equal access to justice, timely and expeditious hearing of climate claims and upholding the rule of law in Uganda.

**** The End ****

Thank You!