

**REPORT OF THE PROCEEDINGS OF THE TRAINING  
WORKSHOP ON**

**ENFORCEMENT OF ENVIRONMENTAL LAWS  
FOR  
DISTRICT ENVIRONMENT OFFICERS  
AND  
ENVIRONMENT INSPECTORS IN UGANDA.**



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**9<sup>TH</sup>-11<sup>TH</sup> APRIL, 2006**

***THE JOHN D. AND CATHERINE T. MAC ARTHUR FOUNDATION***



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***If we all did little, we would do much***

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Special mention is made of the various resource persons for the valuable contribution to this programme. Your papers and presentations enabled the participants to acquire more skills, learn and share practical experiences in environmental compliance and enforcement.

We particularly acknowledge the efforts of **Greenwatch secretariat** for the in-put provided in the planning, design and selection of the various resource persons and experts on the different topics presented. We are thankful for the tireless efforts exhibited to ensure that the workshop was a success.

## ACRONYMS

ACODE	Advocates Coalition for Development and Environment
CIEL	Centre for International Environmental Law
CID	Criminal Investigation Directorate
CIEL	Centre for International Environmental Law
CSO	Civil Society Organization
EIA	Environment Impact Assessment
E-LAW	Environmental Law Alliance Worldwide
ELI	Environmental Law Institute
DEO	District Environment Officer
DPP	Directorate of Public Prosecutions
LEAT	Lawyers' Environment Action Team
NAPE	National Association of Professional Environmentalists
NEA	National Environment Act
NEAP	National Environment Action Plan
NEMA	National Environment Management Authority
NEMP	National Environment Management Policy
NFA	National Forestry Authority
NGO	Non Government Organisation
UNEP	United Nations Environment Program
UWA	Uganda Wildlife Authority
UWS	Uganda Wildlife Society
WID	Wetlands Inspection Division
WRI	World Resources Institute

## INTRODUCTION

Since the enactment of the National Environment Act (NEA) in 1995, other substantive legislation (acts of parliament) and a number of subsidiary legislation (regulation, by-laws, ordinances) have been enacted for the good management and protection of the environment and natural resources in Uganda.

The institutional framework has been put in place and is functional. However there is no significant improvement in the state of the environment in Uganda. It is largely agreed that this is because of one factor, lack of or poor enforcement of legislation.

The law provides for a wide range of measures for the protection and management of the environment. Some of these are administrative such as Environment Impact Assessment (EIA), some are judicial or quasi judicial such as environmental restoration orders, criminal/ civil proceedings.

Since 1995, emphasis has been put mostly on sensitization, education and on the administrative aspects of compliance. This has had limited success in the area of compliance but largely successful in the aspect of public awareness and sensitization. The country is now ready for the enforcement of environmental law.

Environmental law provides for three (3) major aspects of enforcement and compliance namely administrative, civil and criminal. As already noted above, a lot has been done administratively. A number of civil suits have been filed in courts of law for enforcement of environmental law and have been largely successful. But civil procedure is long, expensive and complicated. Criminal aspects of environmental law have been largely unexplored yet it has the greatest potential of effectively dealing with a wide range of environmental violations especially at grassroots' level. It has been determined by NEMA, **Greenwatch** and other civil society organisations that the reason hindering enforcement of environmental law through criminal procedure is lack of capacity.

District Environmental Officers (DEOs) and Environmental Inspectors liaise with the authority on matters relating to the environment and are mandated to gather and manage information on the environment and the utilization of natural resources in the district. Criminal law is enforced by the police, the prosecutors and the judiciary.

**Greenwatch** and NEMA have since 2000 been conducting training of judicial officers in environmental law, both civil and criminal from the magistrates courts to the Supreme Court. The training for District Environment Officers and inspectors in environmental law is hoped to enhance their capacity in protecting the environment and encourage them to cooperate with police officers in investigation of environmental crimes.

This training was conducted by **Greenwatch** in collaboration with NEMA and selected districts. This is the first training of its kind and it is envisaged that they will be conducted for a period of three (3) years with financial support from the John D. and Catherine T. MacArthur Foundation.

## About Greenwatch

**Greenwatch**'s mission is to increase public participation in the sustainable management and protection of the environment and to advocate for a legal and institutional frameworks that will enable them do so. Its objectives are:

- To promote public participation in the management, use and protection of the environment through the use of sustainable conservation methods.
- To formulate policies those promote rational management of natural resources and sound environmental practices.

**Greenwatch** has also at times engaged in Public Interest Litigation as a means of encouraging public participation, access to information and access to justice in environmental matters. Greenwatch works closely with the National Environment Management Authority (NEMA), the lead agency in managing and coordinating environmental issues in Uganda and it also networks with the different Government Ministries like Ministry of Land, Water and Natural Resources, that of Energy and Mineral Development as well as other line ministries. **Greenwatch** works with like minded civil society organizations at both the local, regional and international level, these include, Advocates Coalition For Development and Environment (ACODE), Uganda Wildlife Society (UWS), Environmental Alert, National Association of Professional Environmentalists (NAPE), Lawyers Environment Action Team (LEAT) in Tanzania, Institute of Law and Environmental Governance(ILEG) in Kenya among others.

**Greenwatch** has also worked closely with international institutions such as the Environmental Law Institute (ELI), World Resources Institute (WRI) and the Center for International Environmental Law (CIEL); all these institutions are based in Washington DC. The United Nations Environment Programme (UNEP) has also worked with Greenwatch on a number of programmes.

The Environmental Law Institute (ELI) has in the past provided support in form of funding and materials for training lawyers and the judiciary on environmental law, policy and access to justice while the World Resources Institute (WRI) has provided assistance to Greenwatch in the monitoring and compliance of the Environmental Impact Assessment (EIA) legislation.

Greenwatch has since 2000, conducted training for judicial officers, lawyers, District Environmental Officers, Local government Leaders, police officers and public officers in basic principles and concepts of environmental law and procedure.

## EXECUTIVE SUMMARY

This report contains the proceedings and technical papers presented at the District Environment Officers and Environment Inspectors training workshop on Enforcement of Environmental laws held from 9<sup>th</sup>-11<sup>th</sup> April at Ridar Hotel, Seeta.

The workshop was attended by twenty one (21) participants and resource persons from private practice and government. The training was conducted and facilitated by **Greenwatch**, NEMA, Directorate of Public Prosecutions (DPP), Environmental Law Resources Centre and National Forestry Authority (NFA).

The aim of the workshop was to strengthen and enhance the capacity of District Environment Officers and Environment inspectors' in enforcing environmental laws and also equip them with strategies of doing so.

The overall objective of the programme is to strengthen Government's ability to enforce environmental laws, which builds upon the premise that integrity of our ecosystems, the conservation and wise use of our natural resources and our progress towards sustainable development all require strong and effective compliance and enforcement efforts, by government institutions, civil society among others.

The workshop was officially opened by Mr. Eugene Muramira, the Director of Policy Planning and Information Management at NEMA and attended by the District Support Coordinator of the National Environment Management Authority (NEMA) Mrs. Margaret Lwanga and the Executive Director **Greenwatch**, Mr. Kenneth Kakuru. The workshop lasted three (3) days and was closed by Mrs. Margaret Lwanga the District Support Coordinator NEMA.

The technical papers present concepts, insights and experiences from enforcement practitioners and they cover a wide range of subject matter, including: the State of the Environment in Uganda which highlights an overview of environmental problems in Uganda, the major natural resources and what the current state of the environment is; the achievements made by NEMA at the national scene and how the general principles of environmental law can be applied in the enforcement process.

The proceedings also feature the critical link between the history and source of environmental law and good governance; how the law and policy in Uganda can be applied in protecting our forests and how Criminal Environmental law can be applied in the enforcement process.

These proceedings also describe the challenges faced by monitoring and enforcement officials in enforcing environmental laws including enforcement mechanisms and tools, components of a good enforcement programme, framework of an enforcement programme. The interconnection between criminal procedure /conduct of an investigation and evidential difficulties in prosecution of environmental offences are also highlighted.

The proceedings contain a simulation exercise in which participants engaged which highlighted the practical steps of how to proceed in an enforcement process.

Participants reiterated the need for more training programmes and for environmental considerations to be streamlined into the district plans and policies.

They also suggested that **Greenwatch** should investigate areas of cooperation in capacity building not only in the form of exchanging ideas and sharing experiences, but also by providing human resource assistance to those now designing enforcement systems so that they do not repeat the same mistakes already made by others.

Thus, **Greenwatch** should investigate capacity building not just in terms of field implementation, but also in terms of strategies.

At the end of the training, the participants and facilitators were satisfied that the objective of the workshop had been met in reference to the presentations made by the resource persons and to the workshop theme.

## **1.0 OPENING REMARKS**

### **1.1 Remarks from Mr. Kenneth Kakuru *Director, Greenwatch***

Mr. Kenneth Kakuru, the Director of Greenwatch welcomed the participants to the workshop on enforcement of environmental laws in Uganda.

He informed participants that the workshop was a result of what has been happening in the last ten (10) years of the National Environment Management Authority's existence. NEMA put in place institutional framework which has been legalized. In the last ten (10) years, substantive legislation has been passed for instance the Land Act, as well as subsidiary legislation like the Regulations on management of Riverbanks and Lakeshores. He noted that the need to refer to this background because the people had to be sensitized on good environment management.

The state of the environment in Uganda has since 1997 had some remarkable improvement in many sectors, some stagnation in others and in some areas, no progress has been made, specifically in the area of enforcement. Thus the need to focus on enforcement because people still violate environmental laws with impunity, while some do not seem to know about the laws. Other challenges include political interference, conflict over development and conservation and the conflicting laws.

It was stressed that environment officers and inspectors are the people on the ground and as such, are better placed to establish why laws are being flaunted and why there is no marked improvement in compliance with the law. The essence of the workshop is to share and learn from each other's experiences, to plan and set targets and have goals or objectives which we can work towards. He noted that similar workshops have been going on for some time but that emphasis now is enforcement of the established laws..

Greenwatch was founded in 1995 with the main objective of enhancing public participation in protection and enforcement of environmental laws. Greenwatch focuses at policy, law and enforcement. Greenwatch has realized that enforcement can not be handled by one institution alone; there is need for concerted effort and cooperation from lawyers, judicial officers, Environmental officers and civil society organizations.

The participants were informed that Greenwatch has trained magistrates, lawyers, Judges of the Supreme Court and Court of Appeal, and Judges of the East African Court of Justice. Greenwatch also works in partnership with other NGO's at national, regional and International level. Such include Lawyers Environment Action Team (LEAT), United Nations Environment Programme (UNEP), World Resources Institute (WRI), Environmental Law Institute (ELI).

## 1.2 OFFICIAL OPENING CEREMONY

### 1.2.1 Remarks from Mr. Eugene Muramira *Director of Policy, Planning and Information, NEMA*

Mr. Eugene Muramira officiated at the opening ceremony of the training workshop for environmental officers and environmental inspectors on enforcement of environmental laws in Uganda.

He expressed his gratitude to Greenwatch for complimenting on NEMA's work and the MacArthur Foundation for availing the financial support.

He observed that the role of environmental education and public awareness in pre-casing enforcement is important to prepare communities for the different consequences of their course of action and avail them with alternatives. Hence environmental education and public awareness is emphasized by NEMA. He informed participants that NEMA disseminates the various options and alternative course of action to the public before any enforcement mechanism is applied.

*Picture below: Mr. Eugene Muramira, Director of Policy and Planning, NEMA making remarks at the official opening ceremony of the training. Extreme right is Mr. Kenneth Kakuru, Director, Greenwatch.*



The linkage between trade, compliance and competitiveness was stressed and noted that the provisions of the various Acts and regulations have implications on trade. He observed that this workshop presented an opportunity to research on this relationship or inter-linkage between trade, compliance and competitiveness. He urged Greenwatch to take up this important area to research on the implications of such issues on trade.

The aspect of application of economic instruments is an area which has not been applied before in Uganda in regard to enforcement. The need to institute economic instruments as mechanisms of convincing regulated communities to voluntarily comply with the regulations was highlighted. Also highlighted was the need for adequate knowledge and experiences to achieve compliance and enforcement.

The participants were informed that NEMA publishes State of the Environment Reports based on the District State of the Environment Reports that the District Environment Officers (DEO's) submit to NEMA. The participants were thus cautioned to use the opportunity to identify loopholes in previously submitted District reports and identify how best they could improve in the future reports. He emphasized the important role of DEO's in ensuring that environmental considerations are mainstreamed in other plans.

Participants were urged to use the opportunity to share amongst themselves their different experiences. They were urged to participate fully in the training to ensure that they are equipped with knowledge and skills to improve in their work.

He particularly thanked the organizers for coordinating the event and the participants for attending the workshop.

The workshop was then officially declared open on at 8.00 pm on 9<sup>th</sup> April 2006.

## DAY TWO: 10<sup>TH</sup> April 2006

### 2.0 PAPER PRESENTATIONS

#### 2.1 Overview of Environmental problems in Uganda

*By Mrs. Margaret Lwanga, District Support Coordinator, NEMA.*

The presenter observed that Uganda for long was known as a country rich in diversity of flora and fauna, beautiful landscape, a variety of eco systems which supported a wide range of plants and animals. Uganda was regarded as the Pearl of Africa by Winston Churchill.

However, the current threats to environment have challenged the productivity and sustainability of the state's resource base. These include poverty, population growth, low levels of awareness, low levels of environmental management, poor planning of urban and rural settlements, poor management and technical capacity. In NEMA's ten (10) years of existence, a lot of emphasis has been put on awareness raising. However there is need for technical capacity to cause impact. She also noted that laws are in place but they are not being enforced. She cited political interference as a challenge which in most cases interferes with enforcement of environmental laws.

She stated that wetlands which make up 13% of the total land and contribute to the economy in terms of fisheries, sewage cleaning and provision of water are being degraded due to population growth, dairy farming and crop cultivation. She noted that this year, the value of conservation of water resources has been realized. She cited the electricity black outs which is due to low levels of water in Lake Victoria resulting from destruction of the water catchment areas. Other resources noted include wild life and biodiversity, fisheries, forests and the land resources.

Uganda which is primarily an agricultural country, has in the recent years experienced problems of land degradation and fragmentation. Other environmental problems noted include pollution from factories, stone quarries, discotheques and cars, poor solid waste management especially in the upcoming trading centers with polythene bags ("kavera") being scattered everywhere.

Despite all the above problems, some achievements have been met. These include establishment of a legal and institutional framework, the existence of the Directorate of Natural Resources, creation of partnerships with civil society organisations. She stated that environmental management cannot be left to NEMA alone and emphasized the need to enforce the regulations and standards that are in place to protect the environment.

She concluded by stressing the need to mainstream environmental concerns into all policies, plans and programmes at national, sectoral, local and community levels to make the public take responsibility for whatever actions they engage in. (Detailed presentation contained in annex 1)

## **Discussion.**

In the discussion that followed, the participants noted that stone quarrying was an issue of great concern in many districts. Also of concern was the construction of tarmac roads which have not been done with proper environmental screening. Masindi, Ntungamo-Rukungiri roads were cited as examples where roads were constructed without proper environmental screening.

The participants noted that they cannot access documents containing technical information about proposed projects in the districts. They also observed that excavated soil is dumped in wetlands, obstructing the flow of water in the wetlands which presents a big challenge to environmental inspectors and officers. It was noted that the law empowers people designated by the Executive Director of NEMA, to inspect projects with a likelihood of harming the environment at any one time.

Participants were informed that in the Works Department, environmental officers are in charge of central roads. Environmental officers and inspectors were urged to work with their colleagues in the Works Department directly. Participants were also informed that where they failed to get access to an EIA report, they should contact NEMA directly so that an Environmental Impact Assessment report (EIA) can be availed.

Participants noted that contract guidelines given by the Ministry of Works requiring an environmental compliance certificate should be issued before final completion of works by contractors.

Participants observed that in many instances, contractors working in environmentally sensitive areas when required to carry out restoration work claim not to have funds to restore the environment to its original state. Environment officers and inspectors were informed that they can issue notices to the project proponents during the course of the project, if they found anomalies in the project. Most projects are funded by donors and require that the environmental aspects are complied with. It was further noted that in the project design, mitigation measures are to be catered for. It was noted that for projects whose costs are high, mitigation measures should be in place and should cover all aspects including restoration if need be.

It was also confirmed that not all projects are appraised by Local Government before commencement. DEO's were not to issue a certificate of works before they have carried out physical inspection of projects.

Participants were encouraged to partner and liaise with other departments like health, forestry as all these impinge on the environment. However it was noted that there is need to cooperate with colleagues in other departments in order to gain and share information. This would also help avoid isolation of environmental officers in their work and also avoid issues of duplication of work.

It was observed that many environmental officers were not consulting their colleagues in

other fields like agriculture and forestry. It was apparent from the District State of the Environment Reports that issues of agriculture and forestry were not included. The participants were urged to link with colleagues in other fields to ensure that other issues are integrated in the reports.

Participants expressed concern about projects which “sugar coat” their documents with environmental considerations yet in actual sense do not implement them. They critiqued that environmental considerations are not being implemented at district and national levels.

It was however noted that copies of EIA can be obtained from NEMA about projects to check whether environmental concerns are adequately addressed. Participants were informed that they can also initiate the process of restoration by writing to the Engineer in charge of a said project and by NEMA.

DEO’s were advised to always document all their concerns in writing.

Participants observed that there is wide-spread wetland degradation in Masindi district resulting from disposal of molasses used during the brewing of local gin (waragi). It was reported that in Masindi and Rukungiri districts, local gin/ waragi is brewed in wetlands because of the availability of water for condensing the alcohol. Metallic drums are placed in the wetland to condense the alcohol which obstructs the natural flow of water in the wetland. However, because the technology is cheap, a lot of resistance has been met by the environment officers while trying to evict the brewers from the wetlands.

Further noted was the need to research on the magnitude of the impact of waragi brewing and the need to have guidelines issued on the same. The need to sensitise the brewers on distillation was also cited so that they can take the initiative. There is need to research on the basic data, and find a way of improving on the technology of distillation and disposal of by products.

Rukungiri district is mainly hilly and when restoring hilly places, the problem of land ownership arises especially on community hills where some people want to graze animals while others want the land to be used for tree planting. This has led to conflicts in Nyakisanja village.

It was observed that there is need to facilitate environmental officers and inspectors to enable them perform better at their jobs.

Participants noted that there is need for Local Government Planning Board teams to have an environmental inspector sitting on it. Technical personnel are needed on the national team to back up for officers on the ground.

Participants were also urged to assert themselves in the field of environment. In chapter 1 of the Local Government Planning guide, the environment sector should be reflected. Project profiles should also have environmental mitigation measures costed. This money should be followed up to ensure it is put to good use.

Participants were concerned that the DEOs are not members of the Technical Evaluation Committee and the Technical Planning Committee. It was however noted that the contractors are required to comply with the law, not the evaluation committee which makes the document. Participants were urged to inspect projects in accordance with the law.

It was observed that the law requires the person carrying out an activity to undertake an EIA without being prompted to do so. Inspectors should therefore ensure that the activities do not contravene the National Environment Act (NEA).

Participants stated that environmental issues are only performance measures and not a minimum requirement (condition forms) for local government planning forms,. They recommended that environment mainstreaming should be made a minimum condition.

## **2.2 The History of Environmental Law**

***Mr. Kenneth Kakuru, Director, Greenwatch.***

The presenter began his presentation by stating that environmental law started with only one issue- land; which was looked at as the most important resource for sustainability.

He noted that the law developed from the English land Law. In England all land was vested in the King, whereby people had obligations on that land to use the land in accordance with the King's law. Land defined social status of people i.e. whether one was a landlord or a servant and wealth was produced through utilization of land i.e. harvesting resources. He observed that during the industrial revolution, means of production shifted from land to machines. Land was used as a means of feeding machines with coal, building material, and iron.

Mr. Kakuru observed that land as a resource is limited. There was therefore need for the people who had industrialized to look for resources else where in places like India, America and Africa which were colonized to acquire natural resources. The colonialists created some illusion of a legal system to allow them to take over the natural resources and to justify the exploitative nature of the colonial state.

In the era of imperialism, flimsy agreements were often violated to get resources to feed their industries. In Uganda, colonialists took control of the country through the 1900 Agreement, a document which signified the beginning of the colonial state. It gave land to the Kabaka and a few chiefs. They set apart crown land for the Queen of England/colonial government. This land included vast natural resources. The laws at that time were colonial laws geared towards exploitation. The system of alienating the natural resources for exploitation also alienated the people who had protected the natural resources all along i.e. laws which entailed giving licenses to people to cut trees. This was in contrast to the indigenous customary laws that had protected the natural resources.

After colonialism the country was left with the laws which had been tailored for colonial

exploitation. The Uganda government then looked at the resources for income generation mainly through export thus continuing with the colonial policy. Concessions were granted for mining, hunting, logging and excluded the people. In the 1990s the National Environment Management Policy (NEMP) and other policies reversed this trend because resources were looked at not to be exploited but to be used sustainably. Hence new laws and principles like the Doctrine of Public Trust were made.

The presenter noted that the national legal framework is good and conforms to the institutional standards, adding that civil society organisations are trying to ensure that they enforce the law.

The presentation was concluded by emphasizing that omitting certain requirements by the law like failure to carry out an EIA and ignoring restoration orders amount to criminal offences. ( Detailed presentation contained in annex 2)

### **2.3 Applying the Principles of Environmental Law in the Enforcement Process** *Mr. Asa Mugenyi, Lecturer, Uganda Christian University –Mukono.*

Mr. Asa Mugenyi remarked that his presentation would focus on the application of the general principles of environmental laws including polluter and user pays principle, the precautionary principle to mention but a few.

Principle 16 of the Rio Declaration on environment and development states that a person who pollutes the environment must in essence be able to bear the costs of doing so. Individual remedies can be found under the Law of Tort, cited in the ruling of Ryland vs. Fletcher where nuisance or negligence can be used. Trespass can be by animals or individuals.

The Constitution of the Republic of Uganda (1995) provides for a right to a clean and healthy environment. This right may be violated by a public authority or Local Government. However, an individual can apply for judicial redress and ask for an injunction or mandamus. In case of damages, the polluter or user pays principle should be applied.

The presenter noted that criminal law has also been used to make a polluter pay. The use of licenses and permits for using a resource under section 59 of the NEA, you may apply for a pollution license. He stated that restoration orders are issued if a user destroys the environment, then he can have it restored to its original state before it was degraded. Environmental bonds are a security for good environmental practice, such that in the event that their practice is bad, the offender loses out. Principle 15 of the Rio Declaration is the essence of the Precautionary Principle. He stated that where scientific evidence is not concrete or conclusive, the Precautionary Principle can be used as caution. He urged decision makers to be cautious where there is scientific uncertainty especially where they feel there is a possibility of irreversible damage to the environment. This principle can be used in planning, EIA, Environmental Audit and standards monitoring.

Other principles noted include the inter and intra generational equity which can also be found in the National objectives Uganda constitution, public participation, the Doctrine of Public Trust and sustainable development. (Detailed presentation in annex 3)

*Picture below illustrates a section of participants during one of the training sessions.*



### **Discussions.**

In the brain storming session that followed, it was noted that EIA and Audit reports are mandatory and should be availed to the public for their full participation. People should be informed and educated on the project, the impact it may have on the environment and any mitigation measures that could correct the anticipated impacts.

Participants agreed that polluter pays principle differs from damages in that the polluter bears the cost of cleaning up his mess. It was also noted that with a discharge permit, this principle is being applied.

Queries were raised on the issue of trans-boundary resources and is one of the countries sharing the resources is not doing much to protect it.

It was observed that international law has principles like the principle of state responsibility and how to use shared natural resources. One state cannot use resources to the detriment of another state. In East Africa, we have the East Africa Act and other agreements relating to natural resources. Cases of over fishing by Congo can be reported to NEMA to be dealt with at a national level.

Participants were informed that absolute ownership of land does not give one the right to use the land however you want. It should be used in accordance with the regulations hence plans for housing have to be submitted to the authorities. This is in regard to conflict over land ownership and land use. The old law was that the owner can use and abuse the land the way he/she wanted but now all land titles and leases have conditions.

It was observed that authorities are giving titles to people in sensitive areas like forest and wetlands but such titles are null and void because they contravene the land act. The law should therefore be upheld.

Participants emphasized the need for public awareness because ignorant people were being exploited by being sold land in fragile areas. They stated that Kampala City Council and local authorities have an obligation to compensate those given titles in fragile areas.

#### **2.4 Challenges in Monitoring and enforcement of Environmental laws.** *By Mr. Waiswa Ayazika, Monitoring Officer, NEMA*

The presenter began by defining enforcement as an action carried out to ensure compliance and this can be done through inspections, legal sanctions like closing activities within a given time frame. He noted that some people fail to comply with environmental laws because of lack of knowledge.

Monitoring needs adequate information about a project before it commences. This needs base line monitoring in the pre- project period to enable one to consider alternatives. Mitigation monitoring occurs when monitoring whether mitigation measures prescribed in the EIA are being applied and to note whether they are working. Compliance monitoring is done to find out whether specific conditions or standards are being met and is conducted continually. It can be done by environmental inspectors.

The presenter also enumerated the various ways in which the law is enforced by NEMA. This includes use of regular inspections to determine compliance of the regulated community and to detect violations, negotiations with individuals or managers, and legal action. Enforcement may also include compliance promotion through educational programmes, technical assistance and use of subsidies.

He observed that enforcement is important because to protect the environmental quality an public health, build and strengthen the credibility of environmental requirements like laws an institutions and to ensure fairness with those who voluntarily choose to comply. It also reduces costs and liability over time.

A good enforcement programme should create requirements that are enforceable, know who is subject to the requirement and set programme priorities i.e. consider the areas that are being heavily degraded, promote compliance in regulated communities, respond to violations and clarify the roles and responsibilities. It should also document and report success stories. Some off the enforcement mechanisms and implementation tools noted include the application of the precautionary principle which includes use of environmental easements especially for whistle blowers, polluter pays principle which includes record keeping, regular inspections and the use of criminal law. He observed that the precautionary principle is a better option preferred to avoid mistakes before they

occur.

***Mr. Waiswa stressing a point during his presentation.***



Strategies for compliance that were enumerated include developing laws and regulations that are enforceable like EIA, regulations on wetlands, riverbanks and lakeshores. Regular on - site inspections and monitoring of projects provides feedback on why the law is not being complied with. There is need to have an inventory of the activity that is to be monitored. It is also important to disseminate information about compliance through workshops and broadcasts. He noted that clearer production information,

education and technical assistance should be provided to the regulated community. Timely response is important to avoid more violations. Closing down facilities is often done as a last resort, after all other applicable means have been exhausted.

In conclusion, the presenter highlighted some of the challenges faced in monitoring and enforcement which include lack of adequate enforcement personnel at all levels. The presenter stressed that NEMA cannot exclusively do all the enforcement work, but needs the support of CSOs, other sectoral bodies like Uganda Wildlife Authority (UWA), Wetlands Inspection Division (WID) etc. Thus the need to strengthen the partnership with Civil Society organisations (CSO), local governments and in particular DEO's and environment inspectors who have actual ground information. (Detailed presentation in annex 4)

**Discussion.**

Participants observed that emphasis should not be on criminal procedure in ensuring compliance with environmental laws because this encourages people to violate laws and degrade the environment. Rather incentives like tax holidays should be utilized. It was however noted that the problem with incentives is on what basis to select those who deserve incentives and those who do not and what the incentives should amount to.

It was emphasized that investors should be able to work within the national legal framework.

Participants noted that there is need to strike a balance between development and environmental management.

Queries were raised regarding sending sectoral guidelines to the environmental officers to enable them to perform their duties well. Participants also requested for EIA of the road

sector to be given to environmental officers to review environmental consequences that may arise from the construction and related works..

Participants were urged to uphold the law and evict those in wetlands. Queries were raised regarding the presidential directive issued during the election period in Kabale district allowing people to remain in wetlands. NEMA was tasked to investigate on the issue of people being allowed to remain in the Kabale wetlands during the election period.

It was also emphasized that Parliament is the only organ that makes laws and presidential directives should not act as a defence for encroachment on wetlands, forest reserves or any other resource.

Political interference was mentioned as the biggest challenge faced in their work. NEMA refers issues to the DEO to provide information i.e. they are to research and provide concrete information on the status quo. NEMA however should not refer a matter back to the DEOs because it is mandated to uphold the law as per the National Environment Act (NEA).

Participants were informed that the public can be involved in challenging the development of projects that have no EIA. Participants were urged to lobby the community to be on their side to reduce the political pressure on the environmental officer. It was emphasized that a tender document does not amend the law. The law should be upheld and projects require an EIA, areas for which it is mandatory are in the NEA. NEMA officials further stated that it is only in the exception of a disaster incident like locusts invasion that an EIA may not be carried out. Then an environmental Audit should be used.

Participants were encouraged to use the media for projects which have conflicting and controversial interests to the environment. The media would cover the issues widely and the offender would then be exposed.

## **2.5 Protecting our Forests: The Law and Policy**

*By Ms .Georgina Kugonza Musisi, Legal Counsel, National Forestry Authority (NFA)*

Ms. Georgina Kugonza, an environmental law practitioner started her presentation by remarking that her paper would cover an overview of the laws and policy relating to forestry management and use in Uganda. She defined a forest as a collection of trees which may be natural or planted by man. She stated that the National Forestry and Tree planting Act does not recognize minerals

Forests are very vital ecosystems and they need to be protected because of the vital roles they play for instance in providing fodder for cattle, herbs and medicines, food, materials for construction, act as windbreakers, are a home to a vast number of biodiversity both

flora and fauna, provide charcoal and firewood, act as watersheds to the big water bodies. She also noted that people who maintain and protect forests also benefit and will be paid in terms of carbon credit. She observed that the clearing of the Kiwaga Forest Reserve in Entebbe was detrimental because of its value to Lake Victoria.

The presenter stated that the establishment of the National Forestry Authority was a result of a public outcry due to address the inadequate Forestry Policy that had been amended in 1963. It was repealed and developed in 2001 because people wanted an increased role of community participation in forestry management, improved and sustainable forestry management for both national and private forest reserves, and promotion of tree growing.

The law recognizes cultural leaders and private landowners as responsible bodies for managing forests, however, it differentiates ownership of forests or trees and ownership of land. It recognizes the rights of a private land owner and obliges private owners to report to the District Land Board whether there is a forest on the district land. Communities' are also recognized but the policy is supposed to lay down by statutory order as to what is the responsible body. Community forests are supposed to meet the needs of the community around on a sustainable basis.

The District Forestry Officers provide technical back-up to private forestry owners on how to sustainably harvest from their forests and also encourage the planting and growing of trees in the district. The NFA manages the central forest reserves. There are also other laws which have an impact on the forestry sector for instance the NEA, National Forestry and Tree Planting Act which also enumerates various offences like starting fires, entry into forests without licenses and giving false evidence.

The presentation was concluded by enumerating some of the achievements made in enforcement process in the forestry sector. (refer to annex 5 for details)

## **Discussion**

Participants were informed that the linkage between the NFA and the District Forestry Services (DFS) is that all of them are mandated to manage forest reserves. The difference is that DFS is personally responsible for how the private owner's work, the NFA is responsible for the central reserves and advises government on the procedure for managing all forests in Uganda.

Queries were raised on the long term effect of planting exotic species like pine and eucalyptus trees and whether a study had been carried out on the long term impact of the trees being planted.

Responding to the participants queries, the presenter said that a study was conducted on eucalyptus trees to assess any impact it may have on the environment and also address the concerns over its ability to drain water from the land. Findings from this study are however still unknown. NFA is in the process of establishing tree plantations of different diversity and variety.

The participants requested to know the implication of biodiversity on the plantations that are being established by the NFA. They were informed that the technical service division in the NFA raised concern about the long term effects of the plantations. However there is need for an EIA to be undertaken before the planting is done to take into consideration the long term effects of the trees or the plantations.

Participants were concerned that the creation of the NFA has left common forests and others subject to degradation.

Of great concern was the issue of trees that are planted in wetlands. It was noted that there are laws regulating the use of wetlands. There is need for an EIA to be carried out before certain activities are carried out in wetlands, this EIA would disclose what is in the swamp i.e. forests and where the swamp is located.

Participants were advised that the public and communities should register their complaints in regard to the government's leasing of forestry areas like Namanve and Mabira forest areas through the District Forestry authorities

It was noted that in Bunyaruguru- Ruhinda bordering the national parks animals leave the parks and destroy people's crops and property. The issue of compensation to these communities was raised and it was communicated that if this was not taken seriously, it would leave the national parks empty due to conflicts with the communities. In some instances the Uganda Wild Life Authority has compensated people when the animals have encroached on their crops.

Participants observed that the new law diversified responsibilities regarding forest management. There is therefore need for other forest management authorities like private owners or communities to become more active.

## **2.6 Criminal Aspects of Environmental Law.**

***By: Mr. Vincent Wagona, Ag. Principal Sen. State Attorney, Directorate of Public Prosecutions.***

In his presentation, Mr. Vincent Wagona noted that not very many environmental cases had been prosecuted.

He noted that there were various ways of protecting the environment using the law. These include inspections, negotiations between NEMA and the parties' concerned and civil litigation. There are various laws which create environment related offences for instance the Water Act. There are also other offences which relate to the environment but specifically address food, water and air.

He observed that the most common one dealt with is common nuisance. The NEA creates several offences and the Acts and Regulations made under it make it an offence to

contravene any of the provisions. It relates to measures that have been put in place to protect the environment. Various measures in place relate to the requirement for an EIA, waste management, pollution, record keeping and the powers of the environmental inspectors. These offences attract imprisonment or a fine or both.

Environmental laws are anticipatory in nature and one does not need to wait for any damage to occur but rather can forestall that damage. The mere breach of any provision of any of the environmental laws will constitute an offence. Environmental offences impose strict and vicarious liability. However the general principal of ordinary criminal law is that criminal responsibility lies with an individual with some exceptions like war. Ordinary criminal law also requires proof of intention- *mens rea* while in environmental law there is strict liability in that you do not have to show that the offence was done knowingly but that it is prohibited under that law. Causation applies to both criminal and environmental law because the Act should be traced to the person before they can be held responsible criminally.

Environmental offences can also be tackled by way of civil proceedings which aim at damages or restoring the environment. Ordinary criminal law requires the burden of proof “beyond reasonable doubt” to be proved while civil proceedings relate to probability.

In conclusion, it was noted that investigations of environmental offences rely heavily on environmental inspectors and investigators in-put. Environmental inspectors serve as technical witnesses in court therefore it is important for them to explain their reports properly to prosecutors so that they will be able to present a case in court. (Detailed presentation in annex 6)

## **Discussion**

It was noted that if an individual is convicted in an ordinary criminal case, it creates a record and there are some public offices for which you would be barred from contesting for. However, a previous conviction is relevant in environmental law if subsequently one is being convicted for a similar environmental offence. However, criminal records are for particular offences like felony.

Participants were informed that any evidence is allowed in court as long as it is admissible and its integrity is not compromised and the chain of evidence has not been broken. Such evidence may include photographs. However, the authenticity of the photographs taken is important. Photographs taken by a police officer would be preferred but what is crucial is to show the court that the evidence is authentic. Photographs should be dated (if possible), witnesses can also be included in the photographs to be able to prove that that is the actual situation on the ground.

Participants discussed noise pollution and were informed that one needs to know that law under which to proceed, whether it is under the NEA or under the Penal Code. The

problem with noise pollution is that the offence is not committed until a certain level is exceeded.

It was also noted that offences can be reported to the police, Local Councils, NEMA or the DEO's. There is need to channel it to the right / relevant authority.

Participants were informed that the Criminal Investigative Directorate (CID) or police are in the process of creating an environmental desk with officers who have been trained to handle environmental matters effectively. The public should be encouraged to inform the police about environmental offenders. The participants were urged to report environmental offences to the police.

Participants also noted that whenever an environmental offence is reported, there is need to first start by helping people comply depending on the nature of the offence being committed for instance hunting of endangered species which requires criminal action. The public should be sensitized so that people are made aware of what constitutes an offence and report them to the relevant authorities.

The need to encourage local chiefs to enforce the by-laws was also cited as one way of ensuring compliance at all levels.

## **DAY TWO**

**9.00 a.m.**

### **2.7 The Conduct of Investigations/ Criminal Procedure.**

*By Ms. Doris Akol, Environmental Law Resources Centre.*

The presenter stressed that her presentation would highlight some of the important issues to be considered while conducting an investigation and then prosecution.

Criminal investigation was defined as the deliberate means of examination or inquiry of available evidence aimed at finding whether or not and by whom a crime has been committed. However, what is important is not finding the offence, but by whom a crime has been committed, she emphasized. The conduct, management and control of investigations must be in compliance with policies regulating criminal investigations keeping in mind the duty to act fairly.

The steps to follow while investigating include: reporting an offence, storage of samples for analysis and documentation of evidence. Information can be obtained from witnesses at the scene of the crime and this must be recorded, noting the date and time of the incident, the physical location, who are parties involved are and what the impact on the ecosystem is. . It is essential for the investigative officers to document all information

including the actions of the investigating officer at the crime scene and statements made by witnesses and suspected offenders immediately to avoid dissipation.

Evidence gathering is a critical step in prosecuting any case. Evidence may be physical, human or documentary. When gathering evidence, the investigative file should contain records of interviews, photos, video recordings field notes and laboratory reports. The sum total of all this is what determines that a crime has been committed. She cautioned the participants on the need to keep the chain of custody of records clear. The standard of proof must be “beyond reasonable doubt” to dispel all doubt that the crime has been committed and evidence gathered must be relevant and point to the offence having been committed by the accused. Security and custody of evidence is necessary to prevent its alteration and establish the validity of all the evidence collected and also to preserve its integrity and credibility.

The presentation was concluded by stressing that the investigator should never lose contact of where each exhibit is. Labeling, marking and preservation of exhibits in safe custody should be part of the permanent record of the crime scene. (Refer to annex 7 for detailed presentation)

## **2.8 Evidential difficulties involved in Prosecution of environmental offences** *By Ms. Doris Akol, Environmental Resources Centre.*

Ms. Doris Akol noted that because of the nature of environmental crimes (the crimes are not typical), evidence is not always obvious.

She said there are some common difficulties an investigator should be aware of when investigating environmental crimes. This includes the delicate nature of the evidence because evidence is hard to preserve for instance in case of noise pollution, the transient nature of the offence i.e. at what point does the evidence apply and how do you determine the ingredients of offences. Determining the degree of destruction in some instance is difficult as apparent destruction may not be visible to the eye.

The continued use of natural resources can not be separated from means of livelihood by communities. People commit offences to survive. This is a socio- economic/ socio-cultural aspect of environmental offences and this is a challenge because one cannot define and determine what the public’s interest is.

Of importance to note is the fact that our investigators have inadequate storage systems for evidence and this may affect the integrity of the evidence. Technology to analyze environmental evidence for instance up to date equipment to measure air pollution is not available. Other problems noted include lack of experts to testify and the relatively low knowledge base in enforcement agencies and judicial institutions on environmental laws. In addition, the standard of proof beyond reasonable doubt is difficult to prove. As a result such offences are usually given low priority as opposed to others like theft, rape or embezzlement.

The presentation was concluded by recommending strategies that could make prosecution of environmental offences more effective. Of particular mention was the need to amend the Evidence Act to allow submission of electronic evidence to show that some offences have been committed i.e. to show that pollution limits have been exceeded. (Detailed presentation in annex 8)

## **Discussion**

The issue of search warrants, their issuance and why the environmental inspectors need them was highlighted noting that the law requires them to inspect project sites. The NEA mandates the environmental inspectors to investigate but this does not mean that allowance is a search warrant. Ms. Doris Akol emphasized that the term used in the NEA is “may”. She urged inspectors to be prudent so as to avoid loopholes of these laws.

Participants also observed that sometimes there is need to expand the scope of the search warrant, to widen the wording of the warrant. Search warrants are in most cases issued by the courts but sometimes they are issued by the police. It however depends on the matter that is in court. Inspectors should therefore apply for a warrant to be expanded allowing them to search any buildings, vehicles or persons on the said property. Search warrants may/can allow an inspector to search and seize but they do not give allowance to misbehave.

Participants were informed that judicial notices comprise of facts that have a common notality. Environmental crimes are continuing crimes.

It was noted that hearsay evidence is admissible in courts of law if it can be collaborated. There should be no doubt in the eyes of court hence proof beyond reasonable doubt is needed.

Participants were advised to handle offenders in a tactful manner so that this may not affect the credibility of the statements got from the offenders. However sometimes it is essential to use scare tactics as an approach which may warn offenders from continuing to carry out the offence.

Emphasis should be on mastering the rules of interpretation of the environmental statutes with special note taken of the wording “may” and “shall”.

Participants shared their various experiences in handling environmental offences and were urged to ensure documentation of all evidence gathered, how it was kept and where and who the evidence was handed to. This should be recorded or noted, the time frame is also important because all this is what is involved in the chain of custody.

Participants were informed that NEMA designates people to be environmental inspectors. However, these inspectors do not have to use a NEMA letterhead to write to

environmental offenders. Designation comes to these inspectors by virtue of their office i.e. District Environment Officer or Environment Inspector.

## **2.9 Necessary steps to think about in the Process of Enforcement** *By Mr. Kenneth Kakuru, Director, Greenwatch.*

The presenter started by emphasizing that environmental officers are only carrying out what the law allows them to do.

A problem starts when it has been noted that there is a mischief that needs to be addressed for instance wetland degradation. This leads to the start or commencing of an investigation to ascertain who is degrading, whether they have licenses etc. The law emphasizes that the offender should be given notice, compliance improvement notice.

Participants were urged to assist the public in ensuring compliance by telling them what to do. It is essential to help people comply with addressing the mischief that you want to reduce. He cited the example of Stirling Company in Mbalala along Jinja-Kampala highway which was polluting the area with stone-dust from quarries. Greenwatch shared with the company means of mitigating this problem through information obtained from Environmental Law Alliance Worldwide (E-LAW) and they were able to control the stone dust using the recommended technology. The matter was thus settled out of court.

*Mr. Kenneth Kakuru, Director Greenwatch, presiding over one of the sessions during the training.*



It is important to interview the offenders to establish why they fail to comply with the law, then a formal complaint can be lodged with the police together with all the relevant supporting documents. It was noted that charging people is not always the best option, the preferred alternative is to ask court to issue restoration orders. The costs of the restoration order will be born by the offender. An aggrieved person can also report to the environmental officer/inspector who

can then commence his/her investigation from the information provided by the aggrieved party. It is essential to find out what law is being violated and by whom.

The law also provides for likelihood of harm if an activity is likely to harm, is harming or has caused harm to the environment. In the instance that the offence has happened against an aggrieved person and where there is a likelihood of harm or is likely to happen, the intention is what should be considered. Others include violation of the right i.e. the right to a clean and healthy environment where the complainant does not have to be aggrieved

him/herself, or the violation of the law. In this instance there is need to state which law has been violated. Any activity that does not violate the law cannot be stopped.

The presentation was concluded by emphasis being made that NEMA is the overall authority mandated to oversee the management and coordination of the environment. However it cannot do so exclusively, but does so with several other partners including DEOs at the district level. The DEO's and environmental inspectors were urged to be vigilant in their duties.

### **Discussion.**

Participants were urged to consult with NEMA, Criminal Investigative Directorate (CID) or the Police if they encounter any problem during the investigation of criminal environmental offences and enforcing the law.

It was stressed that when a file is opened, all evidence including notices, letters or any form of documentation should be included. It is important to have another person witness and if possible to sign on the documents that will be tendered in court as exhibits. If there is equipment being used at the time of investigation, the environment officer/inspector can confiscate it and use it as an exhibit during the investigation process. Police officers can also confiscate such equipment.

Environmental inspectors by virtue of their work can be summoned as witnesses to the aggrieved person in court. If a particular environmental law is violated, one can seek redress from court, challenging the violator's action. The law can also be challenged without challenging the action. Challenging the law may involve an activity being declared void. Participants were warned about witnesses who may not be cooperative but under criminal summons, they are obliged to answer in court.

It was also advised that when instituting a suit, all the parties being sued should be known and the cause of the suit. The overall project should be reviewed and all this information should be known during the course of the investigation and not during the court proceedings to avoid instances of hiding behind corporate personality.

It is also important to know what orders one is seeking before the court and what court to go; for instance to know what one wants court to do and whether the case should be filed at the High Court, or Magistrates court. Participants were advised to seek legal counsel and advice from NEMA and Greenwatch whenever they are unsure of how to proceed with such suits.

### **3.0 Live Simulation Exercise : The Moot**

Participants were divided into three (3) groups and given a moot problem which they discussed and the results are as follows.

#### **GROUP I**

##### **OFFENCES COMMITTED**

1. Ecological sensitive site –gazetted as forest reserve and wetland.
2. Denying entry and access to environmental inspectors.
3. Trespass on the ecologically gazetted land held in trust by the government for the people of Uganda.
4. Threatening with violence (penal code act )
5. failure to comply with improvement/compliance notice
6. Concealment of information on potentially hazardous chemicals/substances.
7. failure to undertake a G.A
8. Violation of the constitutional right to a clean and healthy environment.(Act 39).
9. violation of convention on biodiversity (Rio conference 1992) (objective 28 of constitution)

##### **Practical steps.**

###### **Administrative**

- Visit scene to verify the reports and allegations.
- Identify the principal culprits.
- ED NEMA to issue restoration order. If this is rejected by developer then proceed to court.

##### **Legal steps.**

- Issue notice of intention to sue.
- Identification of parties.

###### **Plaintiff**

1. Mr. Obonyo
2. Twekambe women's group.
3. Green Watch
4. NEMA
5. Others to be named (act 50 of constitution.)

###### **Defendants**

1. Mr. Patel and his company

2. Attorney general
3. Wakiso district (S.7 LGA)
4. Uganda Investment Authority

### **Remedies sought from government**

1. Temporary injunction
2. Cancellation of investment license
3. land title cancellation
4. eviction of the developer
5. Environmental restoration order.
6. permanent injunction
7. Restraining Mr. Patel and relevant bodies from licensing his acts.
8. Damages to communities for pecuniary loss and damage for loss of eco-systems.  
Costs.

### **GROUP II**

#### **1. Environmental offences committed:**

- Reclaiming and dumping murram into a wetland without permission (S.36)
- Failure to prepare and submit the project brief or EIA (S.96)
- Obstruction of environmental inspectors and failure to carry out and improvement order. (S.95 (h)).
- Failure to disclose information. (S.99(h) )
- Issuing of a lease in a wetland contrary to wetland banks and lake shores Regs(2)
- Violation of an international treaty on the migration of birds.
- Failure to comply with S.43 of the land act.
- Contravened the convention of Biodiversity
- Wrongful issuance of land title within a forest reserve.

#### **2. Practical steps to protect the environment.**

- Application for court order to stop any developments on the wetland / forest reserve.
- Advising NEMA and DEO to get a search warrant to know the contents of the drum (among other things )
- Advising the DE NEMA to brief the responsible minister on the matter.
- Lodging a caveat to stop any developments and use of the land title.
- Advise Eco World to consult other interested /affected parties (stake holders)
- Advising Eco world to carry out public hearings.

#### **3. Advice to Mr. Obonyo.**

- Can take civil or criminal action in the courts of law.

## **GROUP III**

### **ENVIRONMENTAL OFFENCES**

- Reclaiming the wetland by filling it with murram without an EIA
- Obstruction of inspectors (threatening and chasing).
- Ignoring compliance notice.
- Failure to disclose content in the drums.
- Depriving community of access to goods and services in the wetland.
- Fencing off the shore.
- Destruction of habitat for migratory birds.
- Acquisition of land title approved physical plan, and investment license in a wetland contrary to NEA.

### **Practical steps to undertake.**

- a. Collect evidence in collaboration with the police.
- b. Open a criminal case file with the police.
- c. Court proceedings.
- d. Seek court injunction.
- e. Court ruling.

### **Advice to Mr. Obonyo**

- Verify evidence from site
- Seek legal advice from NEMA.
- Wait for NEMA action and response.
- If no response/ action (-ve) –sue the developer.

## **4.0 Recommendations and way forward.**

It was resolved that:

- The magnitude and impact (basic data) of the nature of *waragi* brewing should be researched on to find a way of improving on the technology of distillation and disposal of the by products.
- The brewers of local gin (*waragi*) in Masindi and Rukungiri districts be sensitized on distillation so that they can take the initiative to avoid degrading the wetlands
- Licenses and guidelines on brewing of alcohol i.e. *waragi* be issued
- Environmental considerations be streamlined into the different district plans and policies
- Environmental mainstreaming should be made a minimum condition (requirement) in the Local Government Planning process rather than a performance measure.

- District Environment Officers and inspectors liaise with NEMA and Criminal Investigative Directorate or Police to forge linkages in environmental management and protection
- Initiatives should be taken by District Environment Officers and inspectors to consult with NEMA and sensitise the community on environmental laws.
- More awareness raising be conducted in rural areas on environmental protection
- More stringent laws for environmental offences be applied to stop would-be offenders
- The Evidence Act be amended to allow submission of electronic evidence to show that some offences have been committed e.g. to show that pollution limits have been exceeded.

It was also suggested that Greenwatch could investigate areas of cooperation in capacity building not only in the form of exchanging ideas and sharing experiences, but also by providing human resource assistance to those now designing enforcement systems so that they do not repeat the same mistakes already made by others. In other words, Greenwatch should investigate capacity building not just in terms of field implementation, but also in terms of strategies

## **5.0 CLOSING REMARKS**

### **5.1 Remarks by Mr. Kenneth Kakuru**

Mr. Kenneth Kakuru thanked the participants for attending the workshop and for their active participation through out the sessions. He urged them to contact Greenwatch for any technical assistance regarding environmental law issues and hoped that the experiences they had shared and knowledge acquired on enforcement would enable them execute their duties better.

### **5.2 OFFICIAL CLOSING CEREMONY.**

Mrs. Margaret Lwanga, the National District Support Coordinator of NEMA officiated at the closing of the workshop.

She commended Greenwatch for conducting the training on enforcement of environmental laws adding that by doing so, Greenwatch was assisting NEMA in executing its mandate to manage and protect the environment.

She noted that the main purpose of the training was to equip DEO's and environmental inspectors with the legal mechanisms for enforcing environmental laws. She hoped that the participants would be able to apply the new approaches to enforce that they had learnt.

Participants were urged to emulate the best practices in enforcement disseminated to them and customize them to suit their localities and conditions. By doing so they would be able to analyze whether the way they have been carrying out their work is efficient and effective. She further urged them to use the experiences they had gained to take environmental protection to a new level.

The participants were further urged to ensure that there were improvements in the areas of waste management and sanitation, restoration and protection of wetlands, forests management, improved land use, integration of environmental concerns and adequate screening for all projects. She reiterated that our efforts in enforcement are geared towards improved environmental management. She promised that NEMA would study the recommendations made during the workshop and seek appropriate means of addressing them.

She extended her gratitude to Greenwatch for coordinating and organising the workshop and commended the John D. and Catherine T. MacArthur Foundation for availing funds which made the workshop possible. The participants were also thanked for taking interest in attending and fully participating in the workshop.

The workshop was declared officially closed at 1:30p.m.



*Picture above: Ms. Margaret Lwanga, receiving certificates of attendance and participation from Ms. Irene Ssekyana, National Coordinator Greenwatch. The certificates were presented to the participants at the end of the training.*

## **6.0 WORKSHOP EVALUATION**

At the end of the training, participants were asked to fill out an evaluation form, on the way the training was organized, conducted, the nature of the presentations and facilitation and on the facilities provided. Of the 25 forms that were distributed, 20 were received back by the secretariat. Participants on the whole gave high marks, rating very good for the workshop.

Below is the detailed summary of what their response was:

**6.1.** Participants stated that the timing of the workshop was convenient and most of them received their invitations on telephone. Written invitations sent through mail were received later.

(a) The venue was convenient for the workshop.

(b) Most of the participants rated the venue chosen for the workshop as good.

Participants said they were well received upon arrival by the workshop organizers

### **6.2. Comments on the workshop program**

#### **(a) Topics**

Participants noted that the topics chosen were relevant to their job descriptions and were well handled by the various presenters. They however expressed the need for more practical examples to be included for instance on procedure for the opening up court cases.

#### **(b) Duration**

Most participants were of the view that the duration of the workshop was adequate and the time allocated to each topic was adequately handled.

Some participants however, felt that the duration of the workshop should be made longer to allow more time for discussions.

### **6.3 Ratings of the presentations by topic.**

#### **A) State of the environment in Uganda**

Participants rated the topic as very good. It was noted that the topic was well researched and adequately handled. The presenter was very elaborate, organized and well informed. She presented to the participants the real situation on the ground regarding the environment in Uganda.

The presenter was knowledgeable and had vast experience.

## **B) Applying the Principles of Environmental Law in the Enforcement Process**

The topic discussed was good.

Participants stated that the topic was fairly handled, however, the presenter failed to adequately respond to some of the questions asked by the participants' for instance those regarding trans-boundary resources.

## **C) Monitoring and enforcement of environmental laws in Uganda**

Majority of the participants opined that the presenter was articulate and well researched. Participants noted that the presenter had a practical grasp of the issues and was organized. Practical experiences were well highlighted in the presentation. The discussion was ably handled.

However, it was observed that the time allocated for the presentation was not adequate.

## **D) Criminal aspects of Environmental Law**

The topic was rated good by majority of the participants.

However, some participants felt that since the paper presented was too technical, more time should have been allocated to it.

The paper was informative and educative. However some participants noted that the style of presentation was lacking and that the presenter was not audible enough.

## **E) The conduct of the investigation / criminal procedure**

The presentation was good and the presenter highlighted the practical experience during the presentation.

The presenter was eloquent and her presentation was well discussed and well researched. It was also noted that the presenter was a good teacher, her paper involved participatory discussions although the paper was found short.

## **F) Practical exercise in initiating the investigation**

It was rated a very good presentation. Participants noted that most of the issues identified in this exercise as offences were not taken as "serious" before. The paper was very informative and educative. The counsel given by the presenter was good and it was a learning experience as participants acquired practical skills on how to proceed when initiating an investigation. The presenter was very knowledgeable and experienced.

## **6.4 Comments on whether participants' expectations were met.**

On the whole, most of the participants observed that their expectations were met according to the workshop program. The presentations made were relevant to the

workshop theme and enhanced their knowledge and capacity and also enabled them to acquire skills in enforcement and compliance.

Participants commended the organizers for the choice of the resource persons selected. Ms. Georgina Kugonza Musisi was noted to be a well informed resource person whose presentation was participatory and encouraged learning.

However some of the participants expressed disappointment because they thought the workshop would create opportunities to obtain funding for their activities. They requested Greenwatch to assist them source for funding for activities to enforce environmental laws and to facilitate their duties.

### **6.5 Suggestions for improvement.**

The following were suggestions that the participants felt would help complete the chain of enforcement work;

- Include police officers, magistrates, state prosecutors and Local Council persons in the trainings
- Create awareness on legal rights with regard to the environment in the communities.
- More training needed and follow-up on enforcement.
- Provide handouts on all the presentations.
- allocate enough time to all presentations.

### **6.6 Comments on whether there is a need to hold other workshops covering other aspects of Environmental Law.**

Most of the participants noted the need to hold other workshops because:

- the technicality of legal issues is not easily understood and more practical experience is needed.
- It would also help participants understand the legal language, expose them to a number of local environmental offences and other countries,
- help them evaluate the progress made in enforcement,
- equip them with legal mechanisms and technicalities of enforcing the law
- and include other issues that still require more training i.e. issues on transboundary resources regarding resources shared between two or more districts.

However a few of the participants stated that rather than hold another workshop, there is need to maintain contacts and provide technical guidance/ backstopping and advice to DEO's / environmental inspectors and to ensure implementation of the workshop recommendations.

## **6.7 Suggestions to improve on future trainings.**

The following were suggestions that the participants felt ought to be applied to make future training programmes much better:

- The workshop should not be full board residential but per diem and out of pocket allowance should be provided to the participants.
- Participants should chair some sessions
- Involve other stake holders in the workshops like police officers.
- Create awareness and sensitization so that people understand the law and regulations.
- Conduct needs assessment to train people in areas where they lack capacity.
- Need for visual aids or video recording about the degraded resources.
- Have an annual review to follow-up workshops conducted to evaluate and assess the impact of the workshops and whether what was addressed is being implemented and take action accordingly.
- Increase on group work because it enhances learning and understanding through experiences.
- Participants should be encouraged to keep time.

## **6.8 Conclusion**

In conclusion, the participants expressed strong satisfaction of the workshop outcomes. They said that the workshop created an opportunity for the various environment officers and environment inspectors from different districts to share and learn from each other's experience of their enforcement work.

The lessons learned and the issues raised by the participants will be carefully analysed by Greenwatch to shape and improve in future workshops.

**THE STATE OF ENVIRONMENT IN UGANDA:AN OVERVIEW OF ENVIRONMENTAL PROBLEMS**

***BY : MARGARET LWANGA:DIRECTOR, DISTRICT SUPPORT CO-ORDINATION AND PUBLIC EDUCATION - NEMA.***

**1.0 Introduction**

Environment as defined by the Uganda National Environment Statute, 1995, means “the physical factors of the surroundings of the human beings including; and, water, atmosphere, climate, odor, taste, the biological factors of animals and plants and the social factors of aesthetics and includes both the natural and the built environment. The state of environment is a major worldwide concern because environmental assets provide three main types of services to the human society:

- i) The natural resource base provides essential raw materials and inputs, which support human livelihood;
- ii) Environment serves as a sink to absorb and recycle (often at little or not cost to society) the waste products of economic activity;
- iii) Environment provides generalized services ranging from simple amenities to irreplaceable life support functions e.g. stabilization of global climate or filtering out harmful ultra-violet rays by stratospheric ozone layer.

In Uganda, the concept of environment protection is very much linked to the need to eliminate or reduce the risk of jeopardizing people’s well being in the current and future generations.

Vital to the livelihood of millions of Ugandans are the country’s diverse peoples and cultures, agricultural lands, lakes and rivers, fish and wildlife, pasture, woods and construction material. The importance of these resources for development in Uganda is demonstrated by the following:

- i) Uganda is primarily an agrarian country with agriculture supporting over 80% of the population most of which is rural based. In addition, the agricultural sector,

- which is mainly based on the natural state of the environment, contributes highest to the GDP (about 43% of the GDP)
- ii) Energy is critical for the well being of the Ugandan community. Ninety-six percent of energy used in Uganda is woody biomass-based gathered from forests, woodlots and agricultural fields.
  - iii) The fisheries resources are a major source of animal protein as well as income for the people of Uganda. The fisheries sector contributes about 2% of the GDP.
  - iv) Eighty percent of Uganda's estimated 24 million today live in the rural areas. Sixty percent of these rely on lakes, rivers, wells and wetlands to meet their water needs, so do 25% of the people living in urban areas of Uganda.

The above few examples illustrate the important role environmental resources play in the development process in Uganda.

## **2.0 Key Underlying Concerns of Environmental Management in Uganda**

Despite the above-demonstrated importance of environment in the development of the country, there are already signs of unsustainability of Uganda's development process. This evidenced by the wide array of environmental problems, which reflect loss of quality, stability, diversity and productivity of environmental resources. These environmental problems pose constraints to the people to earn income and have better standards of living. The underlying factors that have led to environmental degradation are:

### **i) Population growth**

Following the last national population census, the population of Uganda is estimated at about 24.5 million having risen from about 2.5 million in 1911. This is an increase of about 1000%. This rate of population growth has led to sudden rise in demand of natural resources to meet the human basic needs.

### **ii) Lack of Public Participation of the local people in Environmental Management and Development Programs.**

Until recently, most of the decisions and required actions for improved environment conditions and development were not targeted at the participation of the local community. This led to the alienation of people from these resources,

loss of capacity and incentive for sound environmental management. Under these circumstances capacity in environment management deteriorated, benefits were not equitable shared and where opportunity arose, resources were misused/exploited by the local people (who were the supposed beneficiaries), leading to their degradation or depletion.

**iii) Poverty**

Poverty is both a cause and a result of environment degradation. Poverty stricken communities will harvest any available resources, including cultivating in marginal or fragile ecosystems. This accelerates environmental degradation, yet the victims of environment degradation are normally the poor families and individuals in both urban and rural areas. While the wealthier individuals may cause environmental degradation, they may not be victims of degradation because they can afford the costly alternatives.

**iv) Lack of Environmental Awareness**

For meaningful interaction between the community and the environment, the communities need a good understanding and appreciation of the environment. This can only be developed through formal and non-formal environment education programs so as to build upon their indigenous knowledge. In the past environment educational and public awareness programs were lacking and therefore the community was not adequately guided in prudent resources use and management.

v) The other underlying factors for environmental degradation are:

- Poor planning of urban and rural settlements
- Lack of management and technical capacity at local government levels
- Inadequate enforcement of regulations;
- Lack of access to appropriate /efficient technology
- Inadequate private sector participation

**3.0 Main Environmental Problems in Uganda**

The above factors among others, have resulted into severe stress on the environment and development, leading into the environmental problems including the following:

### **3.1 Soil and Land Degradation:**

Soil erosion and land degradation are highly pronounced in the country particularly in the hilly areas of South Western, Eastern and North Eastern Uganda. This is caused by deforestation and inappropriate farming methods. This has led to loss of soil fertility and hence decline in agricultural productivity. In addition, soil erosion leads to pollution and siltation of water bodies. Overgrazing, bush burning and deforestation among others are the causes of this problem. It is estimated that soil erosion accounts for 80% of total cost of environmental degradation in Uganda. Conservative estimates indicate that, soil erosions causes a loss of 4-12% of the Gross National product (GNP) per annum.

### **3.2 Deforestation and Loss of Wood Cover:**

This is widespread in the country. Forest and woodland cover has declined from 45% in 1800s to the current estimated 21%. This is as a result of agricultural encroachment and uncontrolled charcoal burning and vegetation clearance. This has resulted into accelerated soil erosion and shortage of wood fuel and other wood products. There is evidence to show that people's diets and shelter has deteriorated as a result of shortage of firewood and building poles respectively.

### **3.3 Water Contamination and Pollution:**

This affects Lake Victoria and other lakes, rivers and wetlands, which provide water for domestic, livestock as well as industrial purposes. These water bodies are however uses as receptacles for untreated effluent and other waster particularly from industries and urban settlements.

The main polluting industries are located in the major towns of Kampala, Jinja, Mbale, Mbarara, Kasese and Lugazi. The key industries are breweries, soft drinks, textiles, sugar, leather tanning and mining.

In addition, in the rural areas, the rise in the use of agro-chemicals and the poor farming practices are responsible for the increasing release of these chemicals into the water bodies. Further more in the rural areas, the faecal matter deposited on open ground gets washed into water bodies leading to contamination.

Water being an essential element in the life cycle as well the production cycle means that a wide segment of the population as well as the ecosystem is negatively impacted. These impacts are manifested by among others reduced fisheries production, poor human health and higher costs of production where good quality water is required.

### **3.4 Wetland Degradation**

This is a growing problem due to rapid population growth and decline in productivity of upland soils. Wetlands vital for water storage and spawning of young fish are being drained for dairy farming, crop cultivation and for industrial expansion, particularly in urban areas including Kampala City. The consequences of wetland degradation include loss of traditional grazing and watering grounds, shortage of water, loss of fish and other wetland products, increased incidents and scale of floods and water pollution resulting into higher costs of purification of water.

### **3.5 Bio-diversity Loss**

Uganda is relatively well endowed with bio-diversity (the variety of life and living things.) Most of Uganda's bio-diversity is found in natural forests. But considerable amount is also found in open waters, wetlands, dry/moist savanna and agricultural systems. Uganda's bio-diversity ranges from the variety and variability of wild animals, plants, fish to insects (e.g. butterflies) and their habitats, to the domesticated plants and animals in the different farming systems. There however, has been degradation of bio-diversity as evidenced by extinction of the White Rhino in Uganda. In addition, the large herds of wild animals that used to roam Uganda are now restricted to protected areas, which have also shrank in size. Uganda's indigenous domestic animals and crops are also diminishing in number and distribution. The major causes of this bio-diversity loss are: habitat conversion, introduction of alien species, pollution of ecosystems, over harvesting and trade in live plants, animals and derived parts and climate change.

The implications of this bio-diversity loss are:

- loss in the tourism value and potential;
- loss of life support services;
- poor coping during hardy periods and

- loss of educational and research values.

### **3.6 Air and Noise Pollution**

There is increasing indoor and outdoor air pollution by smoke from indoor combustion from use of firewood, charcoal and paraffin for cooking and lighting. Cigarette smoking is also a significant contributor to indoor pollution. However, outdoor pollution by emissions from industries (particularly cement and coffee factories and stone quarries) and motor vehicle traffic is the major problem and cause of air pollution. This pollution is blamed for the increase in incidents and spread of respiratory diseases particularly in the urban centers.

Noise pollution is an increasing menace particularly in urban areas as a result of motor vehicles traffic, discos and places of worship.

### **3.7 Poor Solid and Municipal Waste Disposal/ Management**

Generally due to lack of well-planned and developed solid waste disposal facilities or land fills there is indiscriminate disposal of solid waste including hospital waste, municipal garbage and household waste in rural areas. Of critical concern is clinical waste, polyethylene waste material (carrier bags-buveera), municipal garbage and scrap metal.

The prevalence of the above environmental problems is already having negative impacts on the people variously affected. This is therefore compromising sustainable development, as the natural resource capital, which underpins development, is deteriorating in quantity, quality, stability and productivity.

### **4.0 Strategies for Environmentally Sustainable Development**

The measures that have been taken and/ or ongoing to stem environmental resources depletion and degradation, in order to assure the people of Uganda of Sustainable Development are not a subject of this discussion. However, an integrated approach has been adopted to tackle the environmental problems. It encompasses the following strategies among others:

- i) Making specific provisions and requirement for rational and sustainable use of environment and natural resources in the Constitution.
- ii) Completion of the National Environment Action Planning Process resulting to: National Environment Management Policy, 1994, National Environment Action Plan;
- iii) Developing and enforcement of laws and regulations on environment management e.g. National Environment Statute, 1995 and its subsidiary laws;
- iv) Institutional development at national and local level;
- v) Integrated development and environment planning at national and local level;
- vi) Training and public awareness on environment management;
- vii) Support to community natural resources and environment management initiatives;  
and
- viii) Cross-district, regional and international collaboration.

## THE HISTORY OF ENVIRONMENTAL LAW

*By Kenneth Kakuru, Director Greenwatch*

### 1.1 Introduction

Environmental law seeks to protect human health, manage natural resources and sustain the biosphere. This is frequently done through laws that set standards for environmental planning, wildlife, mineral resources, land use and activities that can affect the air, water and soil.

### 1.2 Religious, cultural and historical roots

Religious traditions entail an evolving body of norms that govern most aspects of life. The Shari'ah- the body of Islamic law- mentions the environment, commanding the respect for the environment. When combined with the Islamic emphasis on cleanliness (and thus constraining pollution), the Shari'ah can be a powerful source of norms for environmental protection. African customary or traditional, tribal law frequently governs important natural resources such as water, grazing, timber and minerals, particularly pigments. Additionally, some tribes seek to protect the quality of their drinking water by prohibiting livestock from the vicinity of wells and other sources of portable water.

### 1.3 The Green revolution

The Green Revolution came as a result of unchecked industrialization. Industries developed new chemical compounds, Organic compounds used as pesticides and herbicides, bio-accumulated in fish and birds, threatening various species with extinction, inn addition to causing cancer and birth defects in humans.

### 1.4 The end of colonialism

The end of colonialism is perhaps the most important predicate condition, as this has allowed Africans to decide whether and how to utilize their natural resources, as well as to set their own priorities for public health and development.

### 1.5 The English Law of Tort

The environmental law is in fact a modification of tort law and principles. In Uganda, other than the question of locus standi, the polluter pays principle, the doctrine of public trust as incorporated in the constitution and the 1998 land act. All the other principles are of environmental law and basically tort law.

In 14th Century England remedies for wrongs were dependent upon writs. Osborn's Concise Law Dictionary describes a writ as a document in the Queen's (King's) name under the seal of the crown commanding the person to whom it is addressed to do or forbear from doing an act. Where there was no writ there was no right.

## 1.6 Trespass

The term is usually used in reinforce to forcible or unauthorized entry on land. The underlying principle here is protection of private property. The Feudal order was based on ownership of land by a few individual landlords and protection of their exclusive right to land was of fundamental importance.

The industrial revolution made land less important and promoted the ownership of commodities and other forms of means of production such as machinery etc, Ownership of chattels became as important as ownership of land, as land had become a commodity on the market like any other. There remained however and still remains a great legal requirement to protect private ownership of property in whatever nature or form.

We shall argue in this paper that it has since been realized that damage to ones property in the end results in damage to the property of others and that the total damage caused by each person to his own property eventually adds up to gross damage to the property of all resulting into degradation of mans natural habitat, that effects his quality of life for which development and private ownership of property was meant to enhance. The need to address this led to the emergency of the modern environmental law.

## 1.7 Nuisance

The tort of nuisance extended to cover any actions committed by any one on the land adjoining that of the plaintiff it does not matter that the land where the nuisance is created does not belong or is not occupied or in possession of the said defendant.

There was certainly a need to balance the conflicting interests of two property owners with adjoining lands. Whereas each enjoys a right unless actual damage is thereby caused, the earlier position was that even if such damage was caused, the plaintiff could not recover if the damage was due to natural growth of the trees for example. This in the case of *Reed vs Smith (1914) 19 B.C.R. 139 at 140*.<sup>20</sup> It was successfully argued for the defendant that "he did not grow the trees, he did not root them and he did not blow them down. It all happened in the cause of nature. But the law has since moved from this position to cover liability in nuisance from the escape of things from the defendant's land to that of the plaintiff even if they were naturally on the plaintiffs land.

But what amounts to injury has been extended to cover not only physical injury to property but also injury to the value of the property. Noise from adjoining property may reduce the rental value of a residential house for example. But still this kind of injury ought to be proved. In case of physical damage actual not potential damage must be proved. However no action will lie for nuisance in respect of damage which ever, though substantial, is due to the fact that the plaintiff is absolutely sensitive or uses his land for exceptionally sensitive purposes.

It is no defence that the plaintiff came to the nuisance and hence consented to the injury. A person is not expected to refrain from buying land or occupying premises because a nuisance exists there. It is no defence that the nuisance although injurious to the individual is beneficial to the public at large. The fact that Mukwano Soap Factory in

Kampala produces soap for the benefit of the public, employs many people and pays government taxes is no defence to an individual's suit against it in nuisance, due to fumes emitted from the said factory.

Nor is it a defence that the place from which the nuisance emanates is the best location the defendant can get on the best suitable for the purpose or that no other place is available for which less mischief would result. If no place can be found where the action causes no nuisance then it can only be carried out with the permission or agreement of adjoining proprietors or under the sanction on an Act of Parliament<sup>23</sup> Lack of negligence is no defence to an action in nuisance.

## 1.8 Negligence

The rule of negligence is very simple that man must take reasonable care in his pursuit for personal well being so as not to injure others in the process. If one is to blast rocks for weeks to build a road to acquire money, he must not injure others in the process. If one is to cut trees in a forest he must not put others at risk by his activity. If one is selling food to others who have no time to prepare their own food he must ensure that the food is safe.

**The rule in Rylands Vs Fletcher 1868 LR 3 HL 330** was stated by Blackburn .J. in Exchequer Chamber as follows;-

*"We think that the rule of law is that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does not do so is prime facie answerable to all damages which is the natural consequence of its escape".*

## 1.9 None natural user of land

Rylands Fletcher established the rule that as a pre-requisite to liability the defendant must have brought on the land something that was not naturally there. This was originally an expression of the fact that the defendant has artificially introduced onto the land a new and dangerous substance. This rule in my view seems to have come as a result of the need to protect property owners from their neighbours' dangerous industrial ventures. It was also a recognition that the increased industrial development by necessity requires that land be used for purposes it was never naturally intended to be used for. That more and more natural environment was being replaced with unnatural environment and there was need to protect those using their lands naturally from those putting theirs to new use.

## 2.0 THE EMERGENCE OF ENVIRONMENTAL LAW IN UGANDA

The law of tort has its own limitations. It is based on personal injury or injury to property. However for protection of the environment, this question of *locus* became a very big hindrance. The law including the constitution of most countries had to be changed to address this problem and other related ones. A lot of precedents on this issue and the common law position were reviewed by **Lugakingira J** (in the now famous case of) **Mtikila Vs Attorney General- civil case [No 5 of 1993]1 High Court of Tanzania p.5.**

## **2.1 THE RIGHT TO A CLEAN AND HEALTHY ENVIRONMENT**

In 1991 the government of Uganda launched the National Environment Action Plan (NEAP). It intended to provide a frame work for integrating environmental considerations broadly defined to include natural and man made environments into the country's overall economic and social development. In 1994 the government endorsed the National Environment Management Policy (NEMP).

## **2.2 THE EVOLUTION OF ENVIRONMENTAL LAW AND POLICY**

The NEMP 1994, The policy set out the objectives and key principles of environmental management and provided a broad framework for harmonization of sector and cross sectoral policy objective. It was on this policy that a comprehensive legal and institutional frame work was designed. The policy through legislation has created new capacity building needs in environmental planning, information generation and dissemination and the use of environmental tools in managing the environment.

## **2.3 THE CONSTITUTION OF THE REPUBLIC OF UGANDA**

In October 1995 a new Constitution came into force in Uganda, the 1995 Constitution. The Constitution sets out in its National Objectives and Directive principles of state policy, among others, the promotion of sustainable development and public awareness of the need to manage our environment.

Chapter 4 of the Constitution sets out a detailed Bill of rights, particularly, the right to a healthy and clean environment as a human right Under Article 39 enjoyable and enforceable as any other form of human rights.

The Constitution recognized the importance of the environment and health as inseparable from all forms of human rights.

## **2.4 ENFORCEMENT OF ENVIRONMENTAL RIGHTS**

Article 50 of the Constitution provides for the enforcement of the rights provided under Chapter IV and for the first time in history of Uganda and unlike in many other jurisdictions, the Constitution provides a right of standing for any aggrieved person. The person enforcing the right does not have to be one personally or physically affected by the violation. The framers as of the Constitution must be given great credit for this as indeed this clearly manifests the power of the people in the Constitution whereas in many jurisdictions the courts have gone to great lengths to look for the locus standi through interpretation, in Uganda it is provided.

The enforcement of environmental rights takes many forms. Providing information is the simplest, the cheapest, at times the most effective way of enforcing environmental rights. By simply reporting an oil spill, illegal dumping, or a forest fire in time would save money and the environment a great deal. If the public was sensitized to know that reporting environmental degradation is very important, a lot would be achieved at the least possible expenses and would be in the interest of developers, producers, investors or

government. The information does not only have to be after the fact. The information might be also before the fact such as threatened destruction of a wetland or forest.

There must exist an entity to which this information must be delivered that is within very reasonable reach of the population. The Local Councils for example are in law in charge of environment with Local Defence Units as an enforcement arm. This would be in addition to all arms of government e.g. police, local administration police, etc should be informed and available as reporting centers for environmental problems.

Action ought to be taken upon reporting for the populations to be able to continue reporting environmental damage. If it is fire the population should be mobilized to put it off or police fire station called. If it is pollution like oil spill, immediate action needs to be taken, victims compensated, culprits arrested.

If this is not done the reporter will never report again. On the other hand if the reaction is swift and appropriate action taken that would encourage reporting.

### **3.0 THE PRINCIPLES OF ENVIRONMENTAL LAW**

Listed below are the main principles governing environmental law;

- The Precautionary principle
- Polluter pays Principle
- User pays principle
- Public Trust Doctrine
- Public participation
- Access to Justice and Information
- Inter – Intra generational principle and Equity
- Sustainable Development

#### **3.1 THE PRECAUTIONARY PRINCIPLE**

The precautionary approach extends the principle of prevention of environmental damage to situations of scientific uncertainty

When there is **certainty** regarding the risk of harm to the environment, a regulatory measure is preventive; when there is **uncertainty**, a regulatory measure is precautionary

The precautionary approach does not dictate specific regulatory measures, but determines the time at which regulator measures must be adopted

In precautionary regulation the burden falls on the proponent of the new substance, act, or technology to demonstrate that it is not harmful

### **3.2 RECOGNITION BY NATIONAL COURTS**

The precautionary principle has been recognized by some national courts as implicit in the national environmental policies and legislation, therefore applied independently from its status at international level and its incorporation in the national regime:

“The precautionary principle is a statement of common sense prior to the principle being spelt out” [...] “where uncertainty or ignorance exists concerning the nature of environmental harm (whether this follows from policies, decisions, or activities), decisions-makers should be cautious

**(Leatch v. National Parks and Wildlife Service - 1994 -Australia)**

### **3.3 POLLUTER PAYS PRINCIPLE**

National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment” (Rio Principle 16)

### **3.4 RATIONALE**

PPP introduces economic thinking into environmental law - it deals with allocation of costs of pollution or damage to the environment

The costs of pollution or damage to the environment (or more in general degradation) have to be borne by the person responsible of such pollution or damage, regardless of whether the costs are incurred through direct regulation, taxes, permits or other mechanisms

The PPP also works as an incentive to modify behaviour towards the environment. In more general terms, it means that the environmental costs of the production of particular goods or of providing given services should be reflected in the costs of such goods or services

PPP calls for the abolition of hidden subsidies for goods and services which result from the fact that the deterioration of the environment resulting from production or services is borne by the public and not reflected in the remuneration for such goods or services

### **3.5 USER PAYS PRINCIPLE**

In more general terms, it means that the environmental costs of the production of particular goods or of providing given services should be reflected in the costs of such goods or services

PPP calls for the abolition of hidden subsidies for goods and services which result from the fact that the deterioration of the environment resulting from production or services is borne by the public and not reflected in the remuneration for such goods or services

### **3.6 PUBLIC TRUST DOCTRINE**

The Public Trust Doctrine is one of the oldest but constantly evolving doctrines relating to the ownership and use of essential natural resources. It governs the use of property where title is presumed to be held by a given authority in trust for citizens. This doctrine is provided for under article 237 of the Uganda Constitution.

The flexible statutory and judicial interpretation of the responsibilities of the trustee and the resource rights of the beneficiary could lay the basis for a vibrant and thriving legal regime on public interest litigation under the public trust doctrine.

### **3.7 ACCESS TO INFORMATION**

Prior to the enactment of the NES and the Constitution, there existed no inherent right of access to environmental information nor government held information/records. The Official Secrets Act, the Public Service Standing Orders and Public Service Act were the regulating access to information, which was at a fee.

The right to environmental information is a statutory right created by S.86 of the NES. Art. 41, confers upon citizens a right of access to information held by the state or its organs subject to disclosure not being prejudicial to state security interests or an invasion of personal privacy.

Art. 41(2) provides that parliament is under a duty to prescribe a classification system and procedural aspects of access. However, to date, information access mechanisms have not need formulated.

(See the case of Greenwatch V attorney General and NEMA)

### **3.8 ACCESS TO JUSTICE**

S. 72 of NES provides for a person to apply to court for an environmental restoration order against any person who has harmed, is harming or likely to harm the environment.

Sub section 2 provides;

“...it shall not be necessary for the plaintiff ...to show that he has a right of or interest in the property in the environment or land alleged to have been harmed or in the environment or land contiguous to such environment or land...”

Art. 137(b) a person who alleges that an Act of Parliament or any law or anything done under the authority of law or any act or omission by any person or authority, is inconsistent with the Constitutional provisions, may petition the Constitutional Court for redress where appropriate.

Art. 50 of the Constitution of the Republic of Uganda

### **3.9 SUSTAINABLE DEVELOPMENT**

According to the National Objectives and Directive Principles of the Constitution, the State is empowered to promote sustainable development and to prevent or minimize damage and destruction to land, air, and water resources. In the case of NAPE V AES Nile Power Ltd (1999), an action was brought to court seeking a completion of the EIA process by NEMA.

### **3.10 INTER-GENERATIONAL & EQUITY PRINCIPLE**

Every generation has a responsibility to the next generation to preserve the rhythm and harmony of nature for the full enjoyment of a balanced and healthful ecology. See the Oposa case.

### **3.11 PUBLIC PARTICIPATION**

This is one of the key aspects of the NEAP process. This is through community awareness of;-

- environmental concerns,
- How the changing state of environment affects their livelihood,
- And how their lifestyle impact on the environment and natural resource base.
- PP is stressed under Objective XVII, which requires the state to promote, inter alia, public awareness of the need for a balanced and sustainable management of the natural resource base.

## APPLYING THE PRINCIPLES OF ENVIRONMENTAL LAW IN THE ENFORCEMENT PROCESS

By : Asa Mugenyi, Faculty of Law, Uganda Christian University, Mukono.

### GENERAL PRINCIPLES OF ENVIRONMENTAL LAW

S.1 of the National Environment Act<sup>1</sup> defines the environment as

“the physical factor of the surroundings of the human being including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factor of aesthetics and includes both the natural and the built environment.”

Environmental law regulates man’s activities affecting natural resources and the environment. It ensures and facilitates the rational management of natural resources.

The continuing focus by the international community on a wide range of serious environmental principles such as the warming climate, growing desertification, disappearing rain forests, floods has aroused concern and awareness of environmental issues. The following principles have developed to protect the environment: -

- 1) Polluter and user pay
- 2) The precautionary principle
- 3) Inter and intra generational equity
- 4) The doctrine of public trust

The environmental problems we face in Uganda include soil erosion, deforestation, poaching, and encroachment on wetlands, pollution, and loss of wildlife. In Uganda, like in many other countries in Africa, we are waking up to environmental problems rather late. The National Environment Action Plan (NEAP) triggered of the major milestones. This was followed by the National Environment Management Policy, which culminated in the environmental protection in the 1995 Constitution and the National Environment Act. However in order to tap the benefits of the environment law the enforcement mechanisms have to be effective. The enforcement of the law involves the comprehension and application of the principles, which have developed to protect the environment.

### 1. POLLUTER AND USER PAY PRINCIPLE

The Polluter Pay Principle has been enshrined in the Rio Declaration on Environment and Development as Principle 16, which reads as follows:

*“National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account that*

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<sup>1</sup> Cap 153

*the polluter should in principle bear the costs of pollution, with due regard to the public interest and without distorting international trade and investment.”*

The essence of this principle is that those who pollute the environment should meet the costs of their activities and put in place preventive measures.

Environmental law grew out of the law of tort, which gave effect to the principle of polluter pay. The most common causes of tortious actions were negligence, occupier's liability, trespass, nuisance, and the rule in *Rylands V Fletcher*. Under common law, the traditional principles of establishing a cause of action formed the basis of liability and placed the burden on the person alleging the injury.

The Uganda Constitution provides for a right to a clean and healthy environment.<sup>2</sup> It also provides for public interest litigation whereby a person may file a suit although he is not directly affected by the violation.<sup>3</sup> To use the words of Obaseki J.S.C in The Attorney General of Bendel State V AG<sup>4</sup>

“The constitution has opened the gates to the courts by the provisions and there cannot be justifiable reason for closing the gates against those who do not want to be governed in accordance with the provisions of the constitution.”

Judicial review provides remedies specifically targeted towards challenging the exercise of power by a public authority/body. Environmental litigation therefore resorts to remedies available under judicial review. Such remedies include the following: certiorari to quash the offending decision, injunction to maintain the status quo, mandamus to require the performance of a public duty, declaration to declare the legal position of the litigants, damages to compensate, prohibition

Criminal law has been used as an instrument for the control of behaviour because of the natural tendency of man to fear the infliction of pain, isolation or economic loss. Statutes provide for offences and penalties for actions causing damage to the environment. For instance the National Environment (Standards for Discharge of Effluent into Water or on Land) Regulations<sup>5</sup> make it an offence to contravene the regulations. The regulations obligate persons to mitigate pollution and impose a duty to keep records.

The state and local authorities to ensure that polluters bear the cost of polluting the environment also use licenses and permits. In order to cut and saw trees one requires to obtain a license and pay the prescribed fees. A license is required to mine minerals. Under S. 59 of the National Environment Act<sup>6</sup> one may apply for a pollution license to carry on an activity which pollutes the land, water or air in excess of the standards or guidelines prescribed. There are other activities that require specific permits. These include the import, manufacture and disposal of hazardous chemical, wastes and substances.

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<sup>2</sup> Article 39

<sup>3</sup> Article 50

<sup>4</sup> 3 NCLR 88

<sup>5</sup> Statutory Instrument 5 of 1999

<sup>6</sup> Cap 153

Where a person's activities affect the environment The National Environment Authority or a court may issue a restoration order requiring the person to cease the activities or to restore the environment as much as possible to its original state<sup>7</sup>. The order may be given pursuant to an action brought by an individual or upon the initiative of the authority.

It is known that some industries produce highly dangerous or toxic substances and therefore have significant adverse impacts on the environment. At times some plants may not be prepared to operate and comply with the law. Such plants and industries may be required to deposit bonds as security for good environment practice. In the event their practice is bad they forfeit the bond. Such bond is refundable after such duration after the operator had observed good practice to the satisfaction of NEMA.

## **2. THE PRECAUTIONARY PRINCIPLE**

In the international community science cannot provide sufficient evidence of the ecological impact of certain activities, processes, technologies or chemicals. In these cases, the international community has consistently agreed that a precautionary approach be adopted.

Principal 15 of the Rio Declaration on Development and Environment<sup>8</sup> states:

*“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 for postponing cost effective measures to prevent environmental degradation”*

However what is lacking is the actual theoretical contextualization of the precautionary approach.

It is not always possible to predict with scientific precision the probable environment impact of a chosen cause of action. If preventive and corrective measures were to be based only on the availability of hard scientific evidence, substantial and perhaps irreversible environmental damage could be occasioned before such evidence become available. The precautionary principle therefore demands that preventive action should be taken notwithstanding the lack of full scientific certainty about environment consequences.

### **b. The Application of the precautionary principle by courts**

Courts have been undecided in applying the precautionary principle. Courts give judgment based on evidence and not speculations. The precautionary principle appears to question the foundations of evidence law. The precautionary principle has been applied in a few cases.

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<sup>7</sup> Ibid S. 67 and 71

<sup>8</sup> This was a result of the United Nations conference which was held in Rio De Janeiro in June 1992.

In Jane Lugolobi and 9 others V Gerald Sigirinya<sup>9</sup> the court held that the consequences of continued processing of curry powder in the neighborhood of the applicants by the respondents are so serious and long term that they cannot be compensated by the damages. The court further held that the precaution principle is applied in this case.

In Leatch V National Parks and Wildlife Service and Shoal Haven City Council (Land and Environment Court of New South Wales) the judge observed that

*“..... In my opinion, the precautionary principle is a statement of common sense and has already been applied by decision makers in appropriate circumstances prior to the principle being spelt out. It is directed towards the prevention of serious or irreversible harm to the environment in situations of scientific uncertainty. Its premise is that where uncertainty or ignorance exists concerning the nature or scope of environmental harm (whether this follows from policies, decision or activities,) decision makers should be cautious”*

In Shela Zia and others V WAPDA<sup>10</sup> [Supreme Court of Pakistan) citizens in Islamabad expressed fear about the construction of a grid station near their locality. They alleged that the electromagnetic field from the high voltage transmissions at the station would pose a serious hazard to the residents. A number of inconclusive studies had been made on the effect of electromagnetic field. As a result the court was confronted with the issue of scientific uncertainty on the subject. The court observed that;

*“There is a state of uncertainty and in such a situation the authorities should observe the rules of prudence and precaution. The rule of prudence is to adopt such measures, which may avert the so-called danger if it occurs. The rule of precautionary policy is to first consider the well-fare and safety of human beings and the environment and then pick up a policy and execute the plan which is suited to obviate the possible danger or make such alternate precautionary measures which may ensure safety”*

The court concluded.

*“To stick to a particular plan on the basis of old studies or inconclusive research can not be said to be a policy of prudence and precaution.”*

The court further emphasized the fact taking precaution did not necessarily entail scrapping the whole scheme and rather making “such adjustments alterations and additions which may ensure safety and security or at least minimize the possible hazards”.

In R V Secretary of State for Trade and Industry ex parte Dundridge<sup>11</sup> an application for judicial review of the decision of the Secretary for Trade and Industry whereby he declined to issue regulations to the National Grid Company and other licence holders under the Electricity Act 1989 so as to restrict electro magnetic fields was dismissed. The court held that community law did not impose upon member states an immediate obligation to apply the precautionary principle in considering legislation relating to the environment or human health.

It appears from the judicial decisions courts are reluctant to apply the precautionary principle. There are a number of products, processes and activities that are created and their impact on the environment is uncertain due to insufficient knowledge. Therefore

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<sup>9</sup> Misc. Application 371 of 2002

<sup>10</sup> The Environmental Law Hand Book: op cit p.24

<sup>11</sup> Vol 7. No 2, 224 (UK)

the courts have to balance economic growth against the welfare of society and human beings.

### **c. Application of the Precautionary Principle in enforcement**

The precautionary principle can be implemented through the following tool:

- i) Planning. During the process of planning policy makers, where scientific evidence is not conclusive or knowledge is insufficient, may use the precautionary principle in to order to forestall any hazardous consequences that may result from a project or plant. S. 17 and 18 of the National Environment Act provide for planning both at the national and district level. The precautionary principle maybe applied at both levels.
- ii) Environment Impact Assessment. This is an examination conducted to determine whether or not a project has an adverse impact on the environment.<sup>12</sup> Projects where there is uncertainty as to their impact on the environment due to insufficient knowledge the precautionary principle may require that an environment impact assessment is done regularly.
- iii) Environment audit: This refers to the systematic, documented, periodic and objective evaluation of how well an organization is performing in conserving the environment. The precautionary principle maybe implemented by requiring projects to submit environment audits.
- iv) Standards and monitoring. Under the National Environment Authority and the concerned lead agency may establish standards to prevent the degradation of the environment. The precautionary principle may be useful when setting up standards.

## **4. INTER AND INTRA GENERATIONAL EQUITY**

Intergenerational equity is a value concept, which focuses on the right of future generations. Intergeneration equity speaks of the right to use the environment without compromising the right of future rights. Intra generational equity looks at current distributional effects and examines how the policies debated and decided upon today affect different countries and sectors. The split between developing countries and developed countries, also referred to as the North-South divide, centers on the questions of intra generational equity.

Edith Brown Weiss states that the central theme of this concept is the need to conserve options for the future use of resources including their quality and that of the natural environment. She notes that<sup>13</sup>

*“We hold the natural and cultural environment of our planet in common with all members of the human species, past, present and future generations. As members of the present generation, we hold the earth in trust for future generations. At the same time, we are beneficiaries entitled to*

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<sup>12</sup> S.1 of the National Environment Act

<sup>13</sup> Edith Brown Weiss: “In fairness to future generations: international law, common patrimony, and intergenerational Equity.” p.1

*use it and benefit from it. We are also part of the actual system, and as the most sentient of living creatures, we have a special responsibility to protect its robustness and integrity.”*

She proposes three basic principles of intergenerational equity<sup>14</sup>.

*“ First, each generation should be required to conserve the diversity of the natural and cultural resource base, so that it does not unduly restrict the options available to future generations in solving their problem and satisfying their own values, and should also be entitled to diversity comparable to that enjoyed by previous generations.*

*Second, each generation should be required to maintain the quality of the earth so that it is passed on in no worse condition than that in which it was received, and should also be entitled to overall environmental quality comparable to that enjoyed by previous generations. In implementing this principle, trade offs are inevitable.*

*Third each generation should provide its members with equitable rights to access to the legacy of past generations and should conserve this access for future generations.”*

This concept has some criticisms. Some writers argue that future generations cannot have a right because they are composed of individuals who do not yet exist. It has also been argued that for every right there must be a right holder with the corollary obligation to the right with the capacity to enforce such a right. This future generation is a legally hypothetical concept.

#### **a) Application of the principle**

A number of countries have since the 1980s included the principle of intergenerational equity in their national laws especially as constitutional equity. The 1995 Constitution of Uganda Objective XXVII (ii) provides that the utilization of the natural resources of Uganda shall be managed in such a way as to meet the development and environmental needs of present and future generation of Ugandans.

Enforcement of intergenerational equity is appropriately done by a guardian or representative of future generations as a group, not of future individuals, who are of necessity indeterminate.

In India and Philippine, courts have used constitutional provisions to enforce and protect the rights of future generations. In India in the case of Mehta Vs Union of India and others<sup>15</sup> the court in ordering the closure of polluting tunnels stated as follows:

*“What is needed in an enthusiastic and calm state of mind, an intense but orderly work to defend and improve the human environment for present and future generations has become an imperative goal. Achievement of this environment goal will demand the acceptance of responsibility by citizens and communities and by enterprises and institutions at every level”*

In the Philippine courts have forcefully affirmed the rights of future generations. In the case of Juan Antonio Oposa & Others V Fulgensio Factoran and another (supra) the petitioners were a group of miners who brought a suit on their own behalf and on behalf of generations yet unborn through a representative action. They argued that the country's forest was being destroyed at such a high rate that the country would be left with no

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<sup>14</sup> Ibid p.1

<sup>15</sup> (1988) AC 1037

forest resources soon or later. They prayed for an order directing the Secretary of the Department of Environmental Resources to cancel all existing timber licence agreements and cease approving or accepting new agreements. The court recognized at the onset that this case raised the right of the people of the Philippines to a balanced ecology and the concept of intergenerational justice. The court held inter alia that the petitioners had a right to sue on behalf of succeeding generations because every generation has a responsibility of the next to preserve the harmony of nature for the full enjoyment of a balanced and healthy ecology.

The emerging juridico philosophy is that future generations have a stake and enforceable rights in the present generation's stewardship of the environmental resources of the earth. These rights can be enforced through legal action by members of the present generation.

## **5. PUBLIC PARTICIPATION**

The traditional approach to dealing with environment protection was to place power in the hands of the central government, local government and lead agencies. The government gave powers to forest officers to issue licenses. Under the Games Preservation Act if one was to hunt without a license it is up to the games department to prosecute him. The participation of the public in the protection of the environment was minimal.

Modern environment protection requires the involvement of the public in all activities since the environment is a public good. The public can play a major role in shaping and implementing environment enforcement programmes.

The Constitution of Uganda provides for public participation in the protection of the environment. Article 17(1) (ii) of the Constitution provides that it is the duty of every citizen of Uganda to create and protect a clean and healthy environment. This duty is participatory. As a duty it is difficult to enforce taking into consideration the fact that most Ugandans are seeking to obtain basic livelihood. Secondly the majority of the citizens are ignorant of their environmental rights. Associated with this the lack of leaders to appreciate the need to protect the environment. Hence the enforcement of such a duty is an illusion.

In order to have a participatory public in the protection of the environment it is necessary to have an informed public. Article 41 of the Constitution enables concerned persons to access information. Access to information is an indicator of transparency and accountability in public affairs.

### **Participation of the public in the enforcement process**

The public can play a role in the protection of the environment through the many mechanisms that have been set to protect the environment.

- i) Public awareness. The first method to protect the environment is through public awareness. An informed public would be less likely to commit violations against the environment. Members of the public should be made aware of the need to protect the environment. Secondly they should be made aware of their environmental rights.
- ii) Environment Impact Assessment. In some developed countries the impact statement are given wide publication in the papers and members of the public are invited to give their comments on the likely effects of a project.
- iii) Whistle blowers. Members of the public may be given incentives to report those who are committing violations against the environment. Members of the public may for instance report an individual is dumping toxic materials in a wetland.
- iv) Public interest litigation. Article 50 of the Constitution enables a person to bring a suit where he may not be directly affected. In Mtikila V Attorney General<sup>16</sup> the court said:
 

*“In matters of public interest litigation this court will not deny standing to a genuine and bona fide litigant even where he has no personal interest in the matter.”*

S. 5(2) of the National Forestry and Tree Planting Act entitles any person or responsible person to bring action against any person whose actions or omissions are likely to significantly impact on a forest or for the protection of the forest.
- v) Community service orders was at one time considered but was later dropped as a means of ensuring enforcement of environmental requirements. In this case a person committing an environment requirement would be required to perform duties such as cleaning streets, mowing parks etc as a reparation to the community for the wrong done.
- vi) Environment audit. Environmental regulation does not end with environmental impact assessment. After the environmental impact assessment has been approved and after completion of the project or the commencement of its operation, the developer is required to undertake a self – environment audit of the project. The audit maybe published and members of the public invited to contribute.

## 6. THE DOCTRINE OF PUBLIC TRUST

The essence of the doctrine of public trust is the legal right of the public to use certain land and waters. It governs the use of property where a given authority in trust holds title for citizens.<sup>17</sup> There are two co-existing interests in trust lands; the *jus publicum*, which is the public right to use and enjoy trust lands; and the *jus privatum*, which is the private

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<sup>16</sup> PLD 1988 SC 46

<sup>17</sup> Environmental law handbook for practitioners and judicial officers: op cit p.26

property rights that may exist in the use, and possession of trust lands. The state may convey the *jus privatum* to private owners, but this private interest is subservient to the *jus publicum*, which is the state's inalienable interest that it continues to hold in the trust land or water.<sup>18</sup>

Objective XIII of the Constitution of Uganda provides that the state shall protect natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda. Article 237 (2) (a) provides that the government or a local government may, acquire land in the public interest. Under clause (b) the Government or local government shall hold in trust for the people and protect, natural lakes, rivers, wetlands, forest reserves game reserves, national parks and any land to be reserved for ecological and touristic purposes for the good of all citizens.

### **b) The application of the Doctrine of Public Trust by courts.**

Under Common Law, the Public Trust Doctrine imposed a high fiduciary duty of care and responsibility upon the state. Professor Joseph L. Sax has asserted that a fiduciary duty under a trustee – beneficiary relationship entails three major restrictions on the trustee. “First, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public: second, the property may not be sold, even for a fair cash equivalent: and third, the property must be maintained for particular types of uses.”<sup>19</sup>

In Mehta V Kamal Nath and others<sup>20</sup> the Supreme Court of India emphasized the essence of the doctrine in the following term:

*“The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon government the duty to protect the resources subject to the trust for the enjoyment of the general public rather than to permit use of private or commercial purposes.*

In Nairobi Golf Hotels Kenya Ltd. V Pelican Engineering and Construction Co. Ltd<sup>21</sup>. It was observed that the government is a trustee for the public. As the government is the people, the body logically belongs to the people but the government has to preserve it, control it and apportion it for the general good of the people.

In Attorney General V Lohay Akona and Joseph Lohay<sup>22</sup> it was noted that firstly as trustee of public land, the president's power is limited in that he cannot deal with public land in a manner in which he wishes or which is detrimental to the beneficiaries of the public land. Secondly as trustee, the President cannot be the beneficiary of public land. In other words he is excluded from the beneficial interest.

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<sup>18</sup> Paul M Bray: “The Public Trust Doctrine” (internet)

<sup>19</sup> Ibid p.27

<sup>20</sup> Petition No. 182 of 1996

<sup>21</sup> Civil Case 706 of 1997

<sup>22</sup> Civil Appeal 31 of 1994

The public doctrine helps protect the natural resources by empowering the sovereign to hold them in trust for the people. In the event the sovereign breaches its duty as a trustee or threaten to do so the beneficiaries may petition court for redress. This is in line with the 1995 Constitution, which states in Article 1 that all power belongs to the people who shall exercise their sovereignty in accordance with this constitution. Art 126(1) states that judicial power is derived from the people and shall be exercised in the name of the people. Under Article 237(1) land belongs to citizens of Uganda as provided in the constitution.

## 7. SUSTAINABLE DEVELOPMENT

The most frequently quoted definition of sustainable development is the one from the report “Our Common future” otherwise known as the Brundtland Report<sup>23</sup> that:

*“Sustainable development is development that meets the needs of the present generation without comprising the ability of the future generations to meet their own needs”*

Sustainable development, therefore, focuses on improving the quality of life for all people on earth without increasing the use of natural resources beyond the capacity of the environment to supply them indefinitely.

Objective XXVII of the 1995 Constitution reads

*“(i) The state shall promote sustainable development and public awareness of the need to manage land, air, water resources in a balanced and sustainable manner for the present and future generations.*

*(ii) The utilization of the natural resources of Uganda shall be managed in such a way as to meet the development and environment needs of present and future generations of Ugandans and in particular, the state shall take possible measures to prevent or minimize damage and destruction to land, air and water resources resulting from pollution to other causes.”*

Hence the constitution incorporated the principle of sustainable development in the protection of the environment.

The sustainable development principle embodies the following concepts:<sup>24</sup>

- The concept of ecological interdependence
- The concept of intergenerational equity
- The concept of common but differentiated responsibilities
- The concept of shared or transboundary resources
- The concept of global commons
- The concept of notification and consultation.

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<sup>23</sup> World Commission on Environment and Development (WCED), “Our Common Future”, Oxford University Press, 1987, P. 43 See also East African Community Secretariat, Protocol for Sustainable Development of Lake Victoria, EAC Secretariat, Arusha, 2003 p.5 (i.e. Article 2 of the Protocol)

<sup>24</sup>

The main issues for sustainable development include:

- 1) Integrating environment and development. Whereas development requires improving the peoples' well being it becomes increasingly clear that balance between people and their natural resources is being seriously threatened. Sustainable development requires the need of utilizing resources without depleting them and conserving the environment.
- 2) Food security, including the technological basis for agricultural advances. Efforts to meet rapidly growing food needs combined with insufficient attention to the environment and practices have caused great environmental damage. These include degradation and depletion of soil and forests; drought and desertification; loss and deterioration of surface and ground water, reduction in diversity of fish stocks etc. Agricultural technology has to march development.
- 3) Population and human resources. Sustainable development requires limiting population growth, controlling the impact of such growth on resources, developing human resource can take more care of their resource base.
- 4) Energy including fuel crisis. The needs of accelerated economic growth in order to achieve development and growing population require rapid expansion in energy production and consumption. The major problems in this regard include diminishing supplies of, and inadequate access to fuel wood resulting in deforestation, acidification of the environment, accumulation of greenhouse gases and the consequent climatic changes. An ecologically sound energy policy is decisive for sustainable development.
- 5) Species and ecosystems. One aspect of development means that man's habitat is developed at the expense of the habitats of other creatures. Today plant and animal life is being destroyed on an enormous scale. The diversity of species is necessary for the normal functioning of ecosystems and the biosphere as a whole. Sustainable development seeks to maintain an ecological balance suitable for people's livelihood.
- 6) Industrialization and technology. Whereas industrialization brings obvious benefits, industry is perhaps the human activity that most interferes with the ecological balance. The negative aspects of industrialization include: wasteful use and depletion of the scarce natural resources, pollution, accidents etc. Sustainable development has tried to bridge the gap between development and environmental destruction by encouraging the use of technology that offers higher productivity, increased efficiency and decreased pollution.
- 7) Urbanisation. With development existing towns grow and new ones come up. However with urbanization come the increasing problems of poor sanitation, pollution, traffic jams congestion etc. The problem of urbanization in developing countries is compounded by poor urban planning. Hence the need of sustainable development requires to reverse the environmentally degrading impact of urban growth.

While sustainable development entails improving and maintaining the well being of people and ecosystems this goal has not yet been wholly achieved.

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**THE CHALLENGES IN MONITORING AND ENFORCEMENT OF ENVIRONMENTAL LAWS IN UGANDA**

*By: Waiswa Ayazika, Environmental Impact Assessment (EIA) coordinator, NEMA.*

**1. INTRODUCTION**

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% (World Bank – World Development Indicators Database April 2002), 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.

Uganda 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 water 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.

The Government of Uganda accord high priority in the protection of natural resources. This is reflected in the Constitution, the Land Act, the Local Government Act, the Water Act and the National Environment Acts and the Regulations there under.

The National Environment Management Authority (NEMA) was established under the National Environment Statute, 1995, now an Act, as the principal agency responsible for monitoring, supervising and coordinating all activities in the field of environmental management in Uganda. In order to improve the capacity of Government in ensuring sustainable use of natural resources, Government through NEMA put in place a number of Environmental Regulations. The Implementation of the Regulations including monitoring an enforcement, is the responsibility of the District Authorities and relevant Lead Agencies while NEMA's role is to provide oversight on enforcement of the Regulations. It should also be emphasized that local communities and resource users have a key role to play in the protection and sustainable use of natural resources.

**2. PRINCIPALS OF ENVIRONEMNTAL ENFORCEMENT**

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

These requirements are an essential foundation for environmental and public health protection but they are only the first step. The second step is compliance – getting the groups that are regulated to fully implement the regulations. Compliance doesn't happen automatically – achieving it usually involves efforts to encourage & compel behaviour change that is enforcement.

One of the primary goals of environmental enforcement program is to change human behaviour so that environmental requirements are complied with. Achieving this goal involves motivating the regulated community to comply, removing barriers that prevent compliance, and overcoming existing factors that encourage non-compliance

Two broad approaches are used to change human behaviour:

- Promoting compliance thru education & incentives
- Identifying and taking action to bring violators into compliance

### ***What is Compliance?***

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

### ***What is Enforcement?***

Is a set of actions that governments or others take to achieve compliance within the regulated community and to correct and halt situations that endanger the environment or public health.

Enforcement by NEMA usually includes:

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

## **3. IMPORTANCE OF COMPLIANCE & ENFORCEMENT**

- (i) To protect environmental quality & public health - this only becomes a reality only if environmental requirements get results
- (ii) To build & strengthen the credibility of environmental requirements (including laws and institutions) – to get results, environmental requirements and the govt

agencies that implement them must be taken seriously. Enforcement is therefore essential to build credibility meaning society perceives its environmental requirements 7 the institutions that implement them as strong & effective

- (iii) To ensure fairness – without enforcement, facilities that violate environmental requirements will benefit compared to facilities that voluntarily choose to comply
- (iv) To reduce costs & liability – an overall healthier environment created by compliance reduces public health and medical costs as well as long term cost to society of cleaning up the environment

#### **4. COMPONENTS OF A GOOD ENFORCEMENT PROGRAMME**

- (a) Creating requirements that are enforceable
- (b) Knowing who is subject to the requirements and setting programme priorities
- (c) Promoting compliance in the regulated community
- (d) Monitoring compliance
- (e) Responding to violations
- (f) Clarifying roles and responsibilities
- (g) Evaluating the success of the program and holding program personnel accountable for success

#### **5. STRATEGIES FOR COMPLIANCE/ENFORCEMENT**

- (i) Developing Laws and Regulations that can be enforced
  - Interpreting broad environmental laws with specific regulations
  - EIA Regulations; Wetlands, Riverbanks and Lakeshores Mgt; Hilly and Mountainous areas Mgt; etc
  - Providing feed back to legislatures to revise laws that are unenforceable
- (ii) Identifying the Regulated Community
  - Clearly understand who is required to meet what requirements
  - Set priorities based on degree of environmental consequences
  - Likely require inventory & information management system to keep track
- (iii) Promoting Compliance
  - Disseminating information about environmental requirements
  - Providing cleaner production information, education and technical assistance to regulated community
  - Building public awareness and support
  - Publicising success stories
  - Providing economic incentives & facilitating access to financial resources
- (iv) Permitting & Licensing Facilities
  - A permitting system enables environmental requirements to be tailored to the circumstances of specific facilities

- Requires the development of permit application procedures, processing of applications, issuing in coordination with other lead agencies
- (v) Monitoring Compliance
  - Inspections by NEMA & LA's/Gazetted inspectors
  - Self monitoring, record-keeping and reporting to NEMA/Lead Agency
  - Community monitoring and citizen complaints
  - Sampling of environmental conditions (air, water, soil) in vicinity of facility
- (v) Timely Responding to Violations
  - Every compliance & enforcement programme must develop a hierarchy of enforcement responses consistent with its social-economic & cultural situation
  - May involve taking administrative, civil, criminal actions meant to achieve:
    - ◆ Return violators to compliance
    - ◆ Impose sanction
    - ◆ Remove the economic benefit of non-compliance
    - ◆ Correct environmental damages
    - ◆ Correct internal facility management problems
  - Various types of enforcement responses: issuing administrative & legal notices; closing down facility or particular operation; revoking a permit; seeking compensation; fining; prison
- (vi) Gazettement and equipping of Environmental inspectors
  - Section 80 of the NES 1995
  - 178 Inspectors currently Gazetted for two years
  - Some Inspectors are now equipped with portable equipments that are able to detect changes in environment
- (vii) Using the existing structures in the enforcement and technical assistance
  - Local Governments
  - Government Departments (DWD, WID, etc)
  - Police
- viii) Development of Technical tools for the implementation of the laws and regulations
  - Manuals
  - Guidelines

## **6. ENFORCEMENT MECHANISM AND IMPLEMENTATION TOOLS**

### **Category A - The Precautionary Principle Implementation Tools**

- Environmental Planning
- Environmental Monitoring and Impact Assessment

- Environmental Audit
- Environment Standard Setting and Licensing
- Public Awareness and Participation
- Environmental Easements
- The Use of Economic and Social Incentives

(i) Environmental Planning

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

(ii) Environmental Monitoring and Impact Assessment

Under the Environmental Impact Assessment Guidelines two systems of monitoring are specified as:- Self monitoring whereby the developers themselves are encouraged to monitor the impact of their activities and; enforcement monitoring done by government agencies such as NEMA through environmental inspectors (S. 23(2))

(iii) Environmental Audit

Audits occur after the project has commenced and may lead to prosecution of offenders. Audits may also lead to the redesign of a project or the remodeling of its operations. NEMA carries out continuous audits (S. 22) with the help of inspectors, to ensure that industries comply with the requirements of the Environment Act. The problem, however, is that many industries were set up before the Act was enacted and environmental standards were not a key feature then.

(iv) Environment Standard Setting and Licensing

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

(v) Environment Standards and Regulations

- The Environmental Impact Assessment Regulations No. 13 of 1998.
- The National Environment (Standards for Discharge of Effluent into Water or on Land) Regulations No. 5 of 1999.
- The National Environment (Waste Management) Regulations No. 52 of 1999.
- The National Environment (Hilly and Mountainous Areas Management) Regulations No. 2 of 2000.
- The National Environment (Wetlands, Riverbanks and Lakeshore Management) Regulations No. 3 of 2000.
- The National Environment (Minimum Standards for Management of Soil Quality) Regulations No. 59 of 2001.

- The National Environment (Management of Ozone Depleting Substances and Products) Regulations No. 63 of 2001.
- The National Environment (Control of Smoking in Public Places) Regulations No. 12 of 2004.
- The National Environment (Access to Genetic Resources and Benefit Sharing) Regulations No. 30 of 2005.

(vii) Public Awareness and Participation

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

(viii) The Use of Easements and Incentives

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

**Category B - The Polluter Pays Principle Implementation Tools**

- Performance Bonds
- Environment Restoration Orders
- Record Keeping and Inspections
- The Use of Criminal Law
- Community Service Orders

**(a) Performance Bonds**

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

**(b) Environmental Improvement Notice**

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

**(c) Environmental Restoration Orders**

Restoration Orders are issued under section 67 of Cap. 153 requiring a person to restore the environment, or to prevent a person from harming the environment. They may award compensation for harm done to the environment or/and levy a charge for restoration undertaken. Restoration Orders are issued by NEMA or a court giving the person a minimum of 21 days to restore what he has destroyed.

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

**(d) Record Keeping and Inspections**

Persons whose activities are likely to have a significant impact on the environment are required to keep records of the amount of wastes and by products generated by their activities and as to how far they are complying with the provision of the Act. Inspections are carried out by gazetted inspectors who have very wide powers under the Act e.g. to take samples, seize any plant equipment or substance and close any facility or issue improvement notices.

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

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

**7. CHALLENGES IN MONITORING AND ENFORCEMENT**

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

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

Where as it is a constitutional and legal requirement that areas such as wetlands, riverbanks, lakeshores are held in trust by Government and Local Government for the common good of all the citizens of Uganda, there are incidences where the

very institutions that are charged with this responsibility are the very ones who alienate these wetlands and even issued land titles.

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

- (iii). The “anonymous”, “holiday” and “awkward hour” dumping syndrome and noise pollution

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

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

- (iv). How to transfer management and enforcement responsibility to local authorities and to resource users level.

With the expansion of Central Government enforcement machinery not likely to happen in the foreseeable near future, it is plausible to believe that increased local authority and local community role on matters of wetland management, planning and enforcement, including stopping wetland abuse through community policing could be a more sustainable way to stem further degradation. However, there still remains a fundamental weakness in the sense that local authorities have not translated the authority vested under them for natural resources management into meaningful action as far as wetland resources are concerned. The approach

adopted by the Wetlands Inspection Division for community wetland management planning is worthy support in this regard. However, lessons learnt from this approach are yet to be popularized to other communities.

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

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

- (vi). Poverty and wetland resources use relationship

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

**PROTECTING OUR FORESTS: THE LAW AND POLICY, ACHIEVEMENTS AND CHALLENGES IN THE ENFORCEMENT PROCESS.**

*By Georgina Kugonza Musisi, Legal Counsel, National Forestry Authority (NFA)*

A forest is defined as any vegetation that is mostly composed of trees of any size. This includes statutory forests e.g. forest reserves, private forests, community forests, forests in wild life conservation areas, natural or plantation forests etc. it also includes any forest produce e.g honey, firewood, mushrooms, living organism.

A forest ecosystem refers to those things that live within a forest {see also section 3 of the national forestry and tree planting act, No.8/2003}

**Also note:** minerals are not considered to be forest produce even when found within a forest.

**WHY PROTECT FORESTS?**

- Provide employment in planting, harvesting, conversion and wood processing
- Provide charcoal and firewood
- Provide fodder for cattle
- Act as protective shield to bare hills so as to avoid soil conservation.
- Act as wind breakers especially in hilly places
- Home to earth's bio-diversity both unknown and know.
- Provide major ingredients that are used to make medicines to treat several ailments.
- Protection of underground streams.
- Provide construction materials like clay, sand, timber.
- Provide food
- Offer filtration services to run off into big water bodies especially forests along shorelines.
- Play a vital role in climate patterns by acting as sinks for carbon and hence protect the ozone layer for destruction.

**CONSTITUTIONAL JUSTIFICATION FOR PROTECTION OF FOREST RESERVES.**

- Right to clean and healthy environment

Central government and local government recognized as public trustees for forest reserves, the detail of the latter's role to be contained in a law made be parliament.

{articles 50,237(2) of the constitution of the republic of Uganda, 1995 and section 5 of the national forestry and tree planning act, 2003}

## HIGHLIGHTS OF THE NATIONAL FORESTRY POLICY, 2001.

It has 11 statements namely:

- Protection and sustainable management of the forest reserves
- Development and sustainable management of natural forest on private land
- Promotion of development of commercial plantations on a profitable and productive basis.
- Establish a well regulated and competitive forest product producing industry.
- Enhance development of collaborative partnerships in management of forests
- Promote agro forestry
- Conservation of bio-diversity in the forests
- Rehabilitate and establish and maintain watershed protection forests.
- Promote urban forestry e.g woodlots and planting trees on road reserves.
- Establish proper training, education curricular and research to support a sustainable forest sector.
- Supply of quality tree seed and improved planting stock.

### WHY MAKE A NEW FORESTRY LAW?

- Integration of new constitutional changes relating to the management of forest resources in forest reserves.
- Improvement of institutional capacity to manage forests
- Regulation of access to forest resources.
- Improvement in the quality and supply of forest and non-forest products.
- Enhance private sector involvement in forestry
- Enhance community participation in management of forest resources e.g community partnerships.
- Alleviation of poverty
- To counter alarming rate of loss of forest cover
- The **National Forestry and Tree Planning Act, 2003** enacted on 8<sup>th</sup> August 2003 and repealed the old forests act, saving all subsidiary legislation made there under provided its contents did not contradict the provisions of the new law.

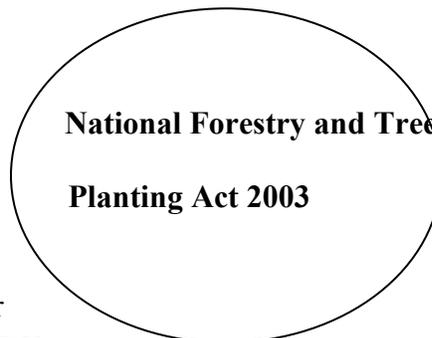
### INTENDED BENEFITS OF THE NEW LAW

Promote tree planting

Conservation of forest

Sustainable use of forest resources

Determine procedures for declaration of forest reserves



Promote agro forestry

Establish Forest Management institutions

Development of forests



designated by the minister responsible for forestry whether by office or by name. Their roles include:

- Enforcement of the national forestry and tree planting act.
- Powers to: arrest without warrant any person suspected to be committing or to have committed an offence; to search and person's baggage, package, vehicle, parcel, building under control of suspect; seize forest produce, livestock, tools, boats, conveyance, machinery or other implements provided they reasonably suspect they are liable to be forfeited; to see any item which has been seized and detained if it is subject to speedy and natural decay, or will entail avoidable expenses to the government.
- They also have the duty to ensure that due process of the law is followed by facilitating investigations and prosecution of suspected offenders
- Also refer to sections 88 and 51 of the act

## **OFFENCES UNDER THE NATIONAL FORESTRY AND TREE PLANTING ACT**

Other than the authorized persons, every forest management institution or any person can bring an action against a person whose actions or omissions have had or likely to have a significant impact on a forest or for the protection of the forest.

Under sections 45, 46, 50 of the national environmental act 153 forests. Conservation of energy, planting of woodlots, protection of the ozone layer is prioritized.

Under the constitution of the republic of Uganda 1995 and the land act cap 227, the right to own land is not absolute but is subject to laws like that regulating forests, water, environment, etc

Offences under the national forestry and tree planting act include: setting fires within a forest reserve, obstruction of an authorized person, breach of a license, giving false information while applying for a license, failure to sustainably manage and control a forest in line with its management plan, altering or defacing a forest boundary mark, disobeying an authorized person, forging hammers, entry into a forest reserve without a license, grazing, residing or conducting any activity within a forest reserve without a license, failure to conduct an environmental impact assessment, neglecting to plant trees.

## **ACHIEVEMENTS IN THE ENFORCEMENT OF THE LAW.**

- Some forest management institutions are up and running like the national forestry authority, district forest officers.
- Regulated forest produce market-clearance and movement of produce like timber
- Increase in revenue from forestry sector.
- Tree planting by private individuals, schools, institutions, companies, NGOs on the increase

- Competitive manner in issuance of licenses especially in central forest reserves.
- Emergence of “Green investors” and “Green customers” e.g emphasis on dealing with license saw millers, buying timber and other wood products from people who are promoting sustainable use of forest resources.
- Poverty alleviation through increased incomes from activities like the sale of carbon credits, employment opportunities in the harvesting of timber and the wood processing industry.
- Community participation in the management of forest resources especially in the central forest reserves.
- Development of forest management plans
- Alternative tree seed sources identified by NFA
- Forest cover being restored by forest management institutions like the NFA
- Technical assistance being offered to interested parties by NFA
- Linkages with enforcements partners being made
- Offenders are being prosecuted in courts of law
- Illegally obtained certificates of title within the forest reserves being challenged.

#### **CHALLENGES IN ENFORCEMENT OF THE NEW FORESTRY LAW.**

- Encroachment on forest reserves
- Conflicting government policies like investment policy vis-à-vis forestry policy and law
- Corruption has been reported at certain levels
- Issuance of certificates of title over areas known to be part of forest reserves by government e.g. by district land boards, Uganda land commission
- Insufficient or lack of technical knowledge on how to handle tree seedlings and seeds
- Poor distribution network for tree seed center, currently only one distribution source at Namanve county wide save some range offices of the NFA
- Political interference
- Ignorance of the law and sound forestry practices
- Not all forest management institutions are up and running.
- Absence of regulations under the new forestry law to provide for sound forestry practices- these are still in draft form and are pending finalization
- Costs of tree planting way too high for many people.
- Tree fund not yet operational.
- Poor institutional linkages.

**THE CRIMINAL ASPECTS OF ENVIRONMENTAL LAW**

*By: Vincent Wagona, Ag. Senior Principal State Attorney, Directorate of Public Prosecutions.*

**INTRODUCTION**

Criminalizing certain acts or omissions is one of the methods for attaining environmental protection. Other methods include inspections, negotiations, compliance promotions and civil litigation.

This paper highlights the criminal aspects of environmental law, including the legal technicalities relevant to the prosecution of environmental cases.

Generally, an environmental crime is any deliberate act or omission leading to degradation of the environment and resulting into harmful effects on humans, flora, fauna and natural resources. Environmental crimes however include all violations of environmental laws attracting criminal sanctions.

Traditional criminal law did not seriously provide for environmental protection. Consequently, aggrieved citizens relied mainly on civil remedies under the common law of nuisance and trespass to abate environmentally offensive conduct.

However, there are a few provisions in our Penal Code Act relating to environmental protection in the sense of protecting the right to a clean and healthy environment.

*Parts XVII provides for nuisances and offences against health and convenience*

*Part XXI provides for offences endangering life or health.*

- S.160 - Common nuisance
- S.171 - Negligent act likely to spread infection of disease
- S.172 – Adulteration of food or drink
- S.173 – Sale of noxious food or drink
- S.174 – Adulteration of drugs
- S.175 – Sale of adulterated drugs
- S.176 – Fouling water
- S.177 – Fouling air

- Offensive trades
- See also S.230 – Dealing in poisonous substances in negligent manner.

The effectiveness of the above provisions on environment and/or public health protection is rather limited by number of factors, including:-

- While the National Environment Act (NEA) and regulations made under it are more effective in creating specific environmental offences, the offences under the Penal code are generalized and their interpretation may be difficult and controversial;
- While the offences both under the Penal Code and the NEA are misdemeanours, the NEA includes the option or addition of a substantial fine and is therefore likely to be more deterrent.

The NEA therefore provides a more comprehensive and effective legal frame work for environmental protection measures within the criminal justice system.

### **OFFENCES AND THE LAW APPLICABLE**

Environmental offences are created mainly under the National Environment Act Cap. 153 and also under subsidiary legislation made under the said Act, namely:-

1. The National Environment (Wetlands, River Banks and Lake Shores Management) Regulations – S.I 3 of 2000.
2. The Environment Impact Assessment Regulations S.I 13 of 1998.
3. The National Environment (Standards for Discharge of Effluent into water or on land) Regulations S.I 5 of 1999.
4. The National Environment (Hilly and Mountainous Areas Management) Regulations of 2000 Supplementary 1 – 2000.
5. The National Environment (Waster Management) Regulations of 1999.
6. The National Environment (Minimum Standards for Management of Soil Quality) Regulations S I 59 of 2001.

Environmental related offences are also created in Acts such as the Water Act (Cap. 103) and the Fish Act (Cap. 197)

There are various offences and penalties relating to:-

- Environment Impact assessment (SS. 19, 20 and 96)
- Environmental Standards relating to air, water, discharge of effluent, noxious smells, noise, vibrations and soil (Parts VI and VII and S.98)
- Hazardous waster, materials, chemicals and radioactive substances (SS.52, 53, 54, 55, 56 and 99)
- Pollution (Part VIII, SS.61 and 100)

- Environment restoration orders (SS. 67, 72 and 101)
- Environmental Inspectors (SS. 79, 80 and 95)
- Record keeping (SS 77 – 78 and 97)
- Wetlands, lake shores and river banks (The National Environment (Wetlands, River Banks and Lakeshores Management) Regulations, 2000). See also the main Act.

### **Environment Impact Assessment**

The Act defines what an Environmental Impact Assessment is.

The law requires every developer of a project of the type described in the Third Schedule to the Act to submit a project brief and if it is determined that the project may, is likely to or will affect the environment, the developer is required to undertake an EIA to determine the impacts of the proposed project on the environment. The burden is on the developer to conduct and submit an EIA report to NEMA.

After conduction an EIA, the developer is under a legal duty to ensure that the requirements of the EIA are complied with. This requirement arises both under the Act and the EIA regulations, 1998.

Failure to submit a project brief or to prepare an EIA when required to do so, or fraudulently making a false statement in the EIA is an offence punishable with imprisonment of up to 18 months or a fine of not less than shs. 180,000/= or both.

Having a project without an EIA is in itself an offence.

### **Environmental standards**

Activities and operations impacting on the environment must be within prescribed minimum standards, criteria and measurements relating to:-

- The discharge of effluent and waste waters;
- Soil quality, the ozone layer and solid waste;
- Air, noxious smells, pollution, noise and vibrations.

### **Waste management**

What amounts to ‘waste’ is defined in the Act. Wastes have to be classified and prescribed as such. This has been done under the National Environment (Waste Management) Regulations, 52, 1999.

Every person is under a duty to manage wastes generated by his or her activities in such a manner that does not cause ill health to any person or damage the environment. No person is allowed to dispose of toxic and hazardous wastes into the environment unless he or she follows the law and the guidelines.

It is an offence to import any waste which is toxic, extremely hazardous, corrosive, carcinogenic, flammable, explosive or radioactive.

It is an offence to discharge hazardous chemicals, substances or oil into water contrary to established guidelines. The offender may be ordered to pay the cost of removal (of oils) and restoration of the environment damaged and compensation

These offences are punishable by imprisonment for not less than 36 months or a fine of not less than 360,000/= and not more than 36,000,000/= or both.

### **Pollution**

“Pollution” is defined in the Act.

It is an offence to pollute or lead any other person to pollute the environment contrary to the set standards or guidelines or in excess of conditions set by a license. The offences attract imprisonment for not less than 18 months or a fine of not less than 180,000/= and not more than 18,000,000/= or both.

### **Environmental restoration orders**

NEMA has powers to issue environment restoration orders requiring a person who has damaged or is about to damage the environment, to restore it, not to do the act which may result in damage or to compensate for damage already done. See SS. 67 and 70. The same orders can be issued by court under S.71. There is a right of appeal to court against a restoration order issued by NEMA.

Nothing in the law stops NEMA from issuing a restoration order where criminal proceedings have been instituted and are still pending against the offender.

Failure to comply with a restoration order is an offence attracting a penalty of 12 months imprisonment or a fine of not less than 120,000/= and not more than 12,000,000/= or both.

### **Environmental Inspectors**

The Act creates the institution of environmental inspectors (S.79) with powers to enter on any land, premises or vehicle and inspect to determine whether the provisions of the Act are being complied with. The inspector has many other powers under S.80.

Hindering or obstructing an environmental inspector, or failing to comply with a lawful order such as an improvement order issued by an Environment Inspector is an offence

attracting a term of imprisonment of not less than 12 months or a fine of not less than 120,000/= and not more than 12,000,000/=.

### **Record keeping**

Those who engage in activities likely to have a significant impact on the environment are required to keep records of the amount of wastes, by- products, effects generated and how far they are complying with the provisions of the Act.

Failure to comply with the above and the fraudulent alteration of records are offences punishable with up to 12 months imprisonment or a fine not less than 120,000/= and not exceeding 12,000,000/= or both.

### **Wetlands, lake shores and river banks**

The law (S.37 of the regulations) prohibits any reclamation or drainage, depositing of any substance, damaging or destruction of any wetland without a permit from NEMA. River banks and lake shores are also protected.

A person convicted is liable to imprisonment of not less than three months or a fine not exceeding 3m/=.

*In addition, the person may be required to carry out community work that promotes the conservation of wetlands*

### **Permits and licences**

Certain activities having environmental impacts are prohibited except if permitted and regulated by permit or license. This is a very effective means of ensuring compliance with the law as the license can be revoked or stringent conditions included.

The very act of carrying out the activity without the permit or license is an offence regardless of whether or not any environmental damage has been done.

## **LEGAL TECHNICALITIES AND PRINCIPLES RELEVANT TO THE PROSECUTION OF ENVIRONMENTAL CASES**

- **Environmental law caters for anticipatory injury or damage.** Even where a violation of the law may not necessarily result in any direct or immediate injury to person or property, failure to comply with the law is an offence. In such cases, the law seeks to guard against the danger or probability of injury or damage and thereby minimize it.
- **Environmental laws punish violations of the law provisions as such.** Unlike the traditional criminal offences under the Penal Code Act which prohibit specific acts and impose penalties for those acts, environmental statutes tend to provide for criminal penalties for violation of any of the provisions of the statute. That is

why S. 102 of the Act creates a general penalty for breaching any provision for which no penalty is specifically provided.

- **Environmental offences tend to impose strict and vicarious liability.** Although the burden of proof lies with the prosecution, there is no need to prove *means rea* (Criminal intention). Also, the employer or proprietor of a facility can be held liable for acts of the employees. The strict liability nature can be seen from the wording of the provisions in the statute. Also, environmental statutes are regarded as ‘public welfare’ statutes (creating public welfare offences). The law is aimed at protecting human health and the environment. The offender (as a reasonable person) is deemed to know that his or her conduct is subject to stringent public regulation and may seriously threaten the community’s health or safety. In a real court prosecution, however, the question of strict and vicarious liability is likely to be controversial since the statutes themselves do not expressly provide for vicarious and strict liability.
- **Like for other criminal offences, causation must be established.** That is, that the prohibited event was caused by the accused’s acts or omissions.
- **No requirement for notice of violation before instituting criminal proceedings.** There are always attempts to handle environmental violations amicably. In this regard, in practice, the offender may be notified that they are violating the law. The notice however is not a legal requirement and is therefore not a legal pre-requisite for instituting criminal proceedings. Criminal proceedings can be commenced even without a prior notice of violation.
- **No requirement for prior civil proceedings.** There is no requirement to institute civil proceedings before commencing criminal proceedings.
- **Investigations.** Environmental inspectors play a key role to gather scientific evidence and make reports. They also serve as expert witnesses. Police need to involve them very early in investigations.
- **Trials.** These are characterized by specific evidence to prove ingredients and presentation of scientific evidence. The exhibits include – reports of the Environment Inspectors – laboratory reports – photographs – maps. Police Photographers are already being used to take photographs.
- **Jurisdiction and Bail.** The offences are triable and bailable by a Magistrate Grade I or Chief Magistrate.
- **Punishments.** Most offences are punishable with a fine, imprisonment or both. However, under S.105 of the Act, the court may in addition to any other orders, order:-

1. That the substance, equipment and appliance used in the commission of the offence be forfeited to the state;
2. That any license, permit or other authorization given under the statute and to which the offence relates be cancelled;
3. That the accused do community work which promotes the protection of the environment;
4. Issuance of an environmental restoration order against the accused.

As prosecutors, we should ask courts for deterrent sentences and high fines because of the high costs caused by degradation. For example, the degradation of a forest or wetland which has existed for many decades is not only a great loss to society, but very difficult and costly to replace.

Examples of punishments from other jurisdictions:

- In U.S versus FREZZO BROTHERS INC. – 602 F.2d 1123 (3<sup>rd</sup> Cir.1979), the two defendant corporation operators were convicted of illegally discharging pollutants (without a permit) and sentenced each to 30 days imprisonment and a fine of \$ 50,000.
- In U.S versus WEITZENHOFF. – 1 f.3D 1523 (9<sup>TH</sup> Cir. 1993), A manager and an assistant of a sewerage plant were convicted of illegally polluting the ocean by failing to treat waste water prior to discharging. They were sentenced to 21 months imprisonment.
- In U.S versus HOPKINS. – 53 G.3<sup>rd</sup> 533 (2d Cir. 1995) a case of discharging excessive amounts of toxic materials into a river, the defendant signed a consent order with the regulatory authority and agreed to pay a fine of \$30,000 for past discharge violations.
- **Effect of conviction.** Environmental offences are not committed by ‘**criminals**’ in the normal sense of the word. These are people like factory managers and proprietors, mayors of local authorities, etc. Conviction for an environmental offence does not create a criminal record as such.

## CONCLUSION

As we continue sharing experiences and through a coordinated and concerted effort by all concerned, we shall surely see a positive contribution to environment protection by our criminal justice system.

## **ENFORCING ENVIRONMENTAL LAWS.**

*By Mr. Kenneth Kakuru, Director, Greenwatch.*

### **1. INTRODUCTION**

Uganda like many other countries is taking action to protect the environment from degradation and to restore and protect its natural resources. The country has developed laws and regulations and management strategies to do this. Most environmental management strategies involve legal requirements that must be met by individuals and facilities that cause degradation or harm to the environment natural resources. These requirements are an essential foundation for environmental and natural resource protection, but they are only the first step. The second essential step is *compliance-getting* the groups that are regulated to fully implement the requirements. Without compliance, environmental requirements will not achieve the desired results. Compliance does not happen automatically once requirements are issued. Achieving compliance involves efforts to encourage and compel the behavior changes needed to achieve compliance.

Successful implementation of environmental requirements requires significant effort and forethought. Changes in behavior have always been difficult to accomplish on both a societal and personal level. There is no magic formula for achieving compliance. There is merely trial, evaluation, and response to what works and does not work in a particular setting. Nevertheless, a reliable framework for designing enforcement programs has emerged based on the experience of countries such as the United States, the Netherlands, Canada, Norway, Sweden, and others.

### **WHAT IS COMPLIANCE?**

Compliance is the full implementation of environmental legal requirements. Compliance occurs when legal requirements are met and desired changes are achieved, e.g., processes or raw materials are changed, work practices are changed so that, for example, encroachment on forest reserves is stopped, reclaiming forests ceases, reduction in pollution, good management of solid wastes and soil erosion control.

The legal requirements are well-designed, then compliance will achieve the desired environmental results. If the requirements are poorly designed, then achieving compliance and/or the desired results will likely be difficult.

### **ENFORCEMENT**

Enforcement is the set of actions that governments or its agencies and other stakeholders take to achieve compliance within the regulated community and to correct or halt situations that endanger the environment or public health. Enforcement by the

government usually includes:

- ❖ Inspections to determine the compliance status of the regulated community and to detect violations.
- ❖ Negotiations with individuals or facility managers who are out of compliance to develop mutually agreeable schedules and approaches for achieving compliance.
- ❖ Legal action, where necessary, to compel compliance and to impose some consequence for violating the law or posing a threat to public health or environmental quality.

Enforcement may also include:

- ❖ Compliance promotion (e.g., educational programs, technical assistance, subsidies) to encourage voluntary compliance.

Nongovernmental groups may also become involved in enforcement by detecting noncompliance, negotiating with violators, commenting on government enforcement actions, and where the law allows, taking legal action against a violator for noncompliance or against the government for not enforcing the requirements. In addition, certain industries such as the banking and insurance industries may be indirectly involved in enforcement by requiring assurance of compliance with environmental requirements before they will issue a loan or insurance policy to a facility.

In some countries, societal norms of compliance have been a powerful force compelling compliance with any form of legal requirement. A system that relies on social norms for enforcement may not be effective in every situation and may become vulnerable to abuse if societal norms break down over time. This possibility has stimulated new consideration internationally of the need for dedicated enforcement programs within government and nongovernmental organization. In Uganda, this is known as enforcing environmental law.

### **WHY ARE COMPLIANCE AND ENFORCEMENT IMPORTANT**

An effective compliance strategy and enforcement program brings many benefits to the public. First, and most important, is the improved environmental quality and public health that results when environmental requirements are complied with. Second, compliance with environmental requirements reinforces the credibility of environmental protection efforts and the legal systems that support them. Third, an effective enforcement program helps ensure fairness for those who willingly comply with environmental requirements. Finally, compliance can bring economic benefits to individual facilities and to the general public.

### **COMPONENTS OF A SUCCESSFUL ENFORCEMENT PROGRAM**

An effective enforcement legal program involves several components:

- Creating requirements that are enforceable.
- Knowing who is subject to the requirements and setting program priorities.
- Promoting compliance in the regulated community.
- Monitoring compliance.
- Responding to violations.
- Clarifying roles and responsibilities.

- Evaluating the success of the program and holding program personnel accountable for its success.
- Public participation
- Access to information
- Access to justice

These components form a framework within which to consider issues pertinent to any enforcement program, no matter what its stage of development. The response to these issues may differ depending on the nature and extent of the problem. Important to the success of all programs, however, is the need to address all elements of the framework. Each element is part of an interconnected whole and thus can influence the success of the whole program.

### **WHY ENVIRONMENTAL ENFORCEMENT PROGRAMS ARE IMPORTANT**

- ❖ To Protect Environmental Quality and Natural resources. Compliance is essential to achieving the goals of protecting the environmental natural resources envisioned by environmental laws. Natural resources and the environment will be protected only if environmental requirements get results. Enforcement programs are essential to get these results.
- ❖ To Build and Strengthen the Credibility of Environmental Requirements. To get results, environmental requirements and the government agencies that implement them must be taken seriously. Enforcement is essential to build credibility for environmental requirements and institutions. Once credibility is established, continued enforcement is essential to maintain credibility. Credibility means that society perceives its environmental legal requirements as necessary and meaningful and the institutions that implement them as strong and effective. Credibility encourages compliance by facilities that would be unlikely to comply if environmental requirements and institutions are perceived as weak. The more credible the law, the greater the likelihood of compliance, and the likelihood that other government efforts to protect the environment will be taken seriously. The greater the public participation in enforcement.
- ❖ To Ensure Fairness. Without enforcement, facilities that violate environmental requirements will benefit compared to facilities that voluntarily choose to comply. A consistent and effective enforcement program helps ensure that all parties affected by environmental requirements are treated fairly. The people will be more likely to comply if they perceive that they will not be economically disadvantaged by doing so. E.g. Solid waste disposal, noise and air pollution control and treatment of effluents.
- ❖ To Reduce Costs and Liability. Though compliance is often costly in the short-term, it can have significant long-term economic benefits to both society and the complying facility. The healthier environment created by compliance reduces public health and medical costs, as well as the long-term cost to society of

cleaning up the environment. Compliance benefits industry by reducing its liability and long-term clean up costs. Industry may also realize immediate economic benefits if compliance involves recycling valuable materials or increasing the efficiency of its processes. A strong enforcement program may also encourage facilities to comply by preventing pollution and minimizing waste, rather than installing expensive pollution control and monitoring equipment.

- ❖ Create a culture of compliance through public participation.
- ❖ Enhance environmental democracy.

## **HOW PROGRAMS MAY EVOLVE IN DIFFERENT CULTURES AND COUNTRIES**

Anyone involved in designing an enforcement program will face certain issues: How should a program begin? What elements are most important? How can the full range of responsibilities be handled with limited program resources? How should the program evolve over time as the program moves to new stages, as policymakers evaluate the success of previous strategies, and as technological and economic developments suggest new solutions? There are no standard answers. Each program must answer these questions for itself based on program resources and culture. This text provides a broad range of possibilities for the different elements of an enforcement program. Policymakers can select from these possibilities to design or modify a program so that it best serves the desired goals within the available resources.

Resources often limit choices. For example, ideally inspectors would be well-trained before they start to inspect. Due to limited resources and/or program priorities, many programs rely initially, if not predominantly, on on-the-job training. The challenge for every program is to make the most effective use of the resources that are available. This text presents many ideas for leveraging program resources to achieve broad results.

Finally, the effectiveness of an enforcement program will depend in part on the degree to which environmental quality is a national, regional, and local priority. Achieving compliance sometimes requires hard economic choices. Public and government concern for environmental quality provide an important foundation for enforcement programs.

## **CLARIFYING ROLES AND RESPONSIBILITIES**

As already noted above, enforcement frequently involves many different groups, including government agencies, citizens groups and non-government organizations, and industry associations. A key element in any enforcement strategy is defining the roles and responsibilities of the various groups involved.

- How should responsibilities for enforcement be divided among the various levels of government (national, regional, provincial, and local)? To what extent should a program be centralized (i.e., run at a national government level) versus decentralized (i.e., run at local government levels)?

- Which government agencies will be involved, e.g., environmental agencies, health agencies?
- Should there be separate enforcement programs for different environmental media (e.g., air, water, land) or one or more integrated programs covering several media?
- To what extent should a program make use of citizens and other nongovernment resources?
- To what extent should technical program staff and lawyers be integrated within a single organization?

## **DIVIDING RESPONSIBILITIES AMONG GOVERNMENT LEVELS**

A basic issue in developing enforcement programs is to what extent to centralize responsibilities for enforcement at the national level or decentralize them at more local levels. There are advantages and disadvantages to both centralization and decentralization. A national presence in enforcement helps ensure that at least minimum standards for environmental requirements are met; that the program is consistent and fair throughout the country; and that national resources are available to support enforcement programs. Involvement of provincial and local governments in enforcement is important because these levels are closest to the actual environmental problems and best able to efficiently identify and correct them.

Most environmental enforcement programs in different countries are decentralized to take advantage of (1) local knowledge of facilities and their operations, and (2) the greater information and knowledge about the problem available at the local level. Despite this bias toward decentralization, some programs are centralized because of a clear need for national involvement, e.g., to handle transboundary pollution problems, or where local competition to create favorable conditions for industry may lead to lax enforcement at the local level or where unique expertise concentrated at the national level is needed to implement the program. E.g. forest resources.

Roles and relationships between the central government and local governments can develop in many different ways, ranging from decentralization to centralization to various combinations of both approaches.

### **Parallel Responsibility with the Primary Role Delegated**

Most environmental programs in Uganda establish a relationship between the central and local governments. Usually, the central government formally approves the local environmental laws as meeting established standards for implementation. From this point on, the local government has the primary role for implementing the enforcement program, but the central government retains parallel authority and responsibility and can intervene if the state program is not meeting certain criteria, laws do not allow the national government to delegate responsibility to the states.

## **Advantages of parallel system**

This system of parallel responsibility with the primary role delegated has several advantages:

- Program Quality. The system maintains a continuous national presence. This helps ensure that certain minimum program standards are met across the country regardless of the resources and capabilities of the individual districts.
- Technical Capabilities. Because it is a national government agency, NEMA can often provide districts with technical capabilities that are not available at the district level.
- National Consistency. Involvement at the national level helps ensure that enforcement is practiced fairly and consistently across the country.
- Deterrence. Knowledge that the central government can and does become involved in certain enforcement actions helps contribute to deterrence.
- Fostering Competition. The central government routinely monitors and reports on progress and success in individual districts through State of Environment Reports published every two years. Results in individual states can easily be compared. This has resulted in a healthy sense of competition among some districts that has improved program success. Improved Program Effectiveness. Those closest to a problem are most likely to spot the problem and correct it in a timely manner. Shifting the primary responsibility for compliance monitoring and enforcement from the central to a more local district level helps improve program effectiveness. Sharing the Financial Burden. Delegating to district and local governments also relieves the government of substantial financial burden for enforcement programs.

## **Disadvantages**

- ❖ Parallel authority may lead to duplication of effort and confusion of roles.

## **Clarifying Roles and Responsibilities**

In order to avoid this, NEMA has to have a clear criteria for evaluating performance of its own and districts.

Most programs must:

- Clearly identify the regulated community and establish priorities for enforcement.
- Have clear enforceable requirements.
- Monitor compliance accurately and reliably.
- Maintain high or improving rates of compliance.
- Respond in a timely and appropriate way to violations.
- Use penalties and other sanctions appropriately to create deterrence.
- Maintain accurate records and provide accurate reports.

- Have sound overall program management.

## **ROLE OF OTHER GOVERNMENT INSTITUTIONS**

Several government institutions can have significant impact on the design and operation of enforcement programs. Most significant are the legislative (lawmaking), executive (management and budget), and judicial (legal) institutions, as well as any agencies that have programs in areas related to the environment. The particular institutions and the nature of their impact will depend on the governmental infrastructure of each country.

Institutions with an impact will be those that:

- Identify the need for legislation.
- Create environmental laws.
- Determine budgets.
- Track program progress and success.
- Bring legal action.
- Oversee activities related to environmental management.
- Identify violators of the laws.

### **Legislative Institutions**

The legislative institutions probably have the greatest impact on program development. They create the laws that define the environmental goals to be met, the authority and flexibility to meet those goals, and the level of funding. Legislative institutions can become involved in policy and implementation decisions by issuing amendments to laws that impose certain duties on the executive institutions. The legislative institution can impose deadlines that executive institution must meet.

### **Executive Institutions**

The executive institutions are often responsible for identifying the need for legislation and for enforcing the legislation once it has been enacted. The executive institution is usually the environmental agency of the country or region. This agency may have its own administrative law judges. They provide an internal mechanism for enforcing administrative orders and appealing agency actions.

An executive institution may also supply the lawyers responsible for taking legal action against violators. If this institution is not the environmental agency itself, an interagency agreement can be important to define the conditions for services between the two executive institutions.

### **Judicial Institutions**

The judiciary is the institution responsible for interpreting the laws. They may also impose requirements on the executive, for example, by requiring that it use certain rulemaking procedures if it wants those rules to be upheld in court. Courts provide a forum for taking enforcement action, for prosecution, and for enforcing administrative orders (if the court is so authorized). Courts can also play a significant role in assessing

sanctions.

### **Agencies with jurisdiction in Areas Related to Environmental Management**

Many government agencies may have authority in areas that affect or will be affected by environmental management. These include:

- Health-related agencies responsible for food safety, occupational health and safety, consumer products, pesticide use, etc.
- Natural resource management agencies, responsible for water, energy, minerals, forests, etc. Development of these resources can significantly effect pollution abatement.
- Land use planning agencies, responsible for community development, industrial siting, transportation, etc.
- Agencies that regulate industry and commerce.
- Agricultural agencies.
- Criminal investigation and enforcement agencies.
- Customs. (For example, in the Netherlands, Rwanda, the Customs Department is helping the Environmental Inspectorate by watching for and taking samples from imported materials that may violate the law such as prohibiting use of cadmium as a pigment or stabilizing agent in plastic.

Competition or conflict between two government agencies because of overlapping authorities can dilute the impact of both programs. Conversely, constructive cooperation can strengthen both programs through increased efficiency and by identifying gaps in regulatory programs. Approaches to achieving integration among related agencies include;

- Ad hoc joint efforts such as joint research programs.
- Formal review of each agency's proposals by the other.
- Review of proposals by reference.
- Establishing special councils that are independent of each agency.
- Establish an independent government entity or commission.

### **Police**

The police and other government personnel involved in identifying and apprehending criminals can be a valuable resource for detecting violations of environmental laws. The local police are serving as the inspection and enforcement arm of enforcement programs. To serve in this role, the police must be appropriately trained, provided with the necessary sampling equipment and have the technical support of environmental specialists as needed. The police should be responsible for surveillance and, in the case of simple environmental crimes, investigation. They can also play an important role in containing and fighting more serious environmental crimes, including organized environmental crime. Use of local police as inspectors has been very successful: the number of prosecutions has increased substantially in recent years, and the public image of the police has substantially improved.

## **ROLE OF NON GOVERNMENT GROUPS**

Several private organizations can have a critical influence on program success and efficiency. These groups may directly or indirectly influence enforcement. These groups can be valuable allies in efforts to improve environmental quality. Government enforcement programs will benefit by working with these groups wherever possible and appropriate.

### **Industry Associations**

Industry or trade associations such as UMA and National Chamber of Commerce and small scale industries track and publicize developments that may affect their members. They may try to influence environmental legislation or programs as they are being developed. They may also serve as valuable channels for disseminating information on requirements, methods of complying, and compliance activities. Their dissemination channels include newsletters, journals, databases, and conferences. Associations of firms that make pollution monitoring equipment or control devices have strong economic incentives to disseminate information about environmental requirements.

### **Associations of Government Officials**

These associations are non-government entities that provide a forum for government officials (e.g., mayors, governors) to work together in solving issues of mutual concern. Like industry associations, these groups track and publicize developments that may affect their members. These associations provide a resource for disseminating information and a forum for comment and recommendations concerning environmental management programs.

### **Professional and Technical Societies**

Specialized professionals advise both government officials and the regulated communities on compliance issues. Their societies therefore have a strong incentive to track and disseminate information on regulatory developments. They may also try to influence regulatory decisions and compliance strategies they disagree with. In the United States, some of these societies independently develop industry standards.

### **Trade Unions and Workers' Councils**

Enforcement programs can have substantial impact on workers. For example, workers are generally members of the local community and would benefit by the improved environmental quality that may result from enforcement actions. Conversely, enforcement actions that result in substantial process changes or shut down of an operation may result in some unemployment. Consequently, workers will have strong feelings and opinions in some enforcement situations. Most countries have associations or groups that represent the interests of workers. The participation of Workers' Councils or other groups that represent workers at a particular facility will be important to success of enforcement actions at that facility. Trade unions or other organizations that represent workers at a regional or national level may become involved in development of requirements and policy for enforcement. Individual workers may also report violations by their facilities to authorities.

### **Universities**

Some universities are important centers for environmental professionals and may function much like the professional societies described above in supporting and influencing enforcement programs.

### **Insurance Companies**

In many countries, private citizens can sue industry for personal injury or property damage caused by certain types of environmentally related activities. In theory, insurance companies that end up paying the cost of the suit should have an incentive to educate their clients about environmental requirements and assist them in compliance. These companies are therefore a potential ally for government agencies running enforcement programs.

### **Public Interest Groups**

Citizens can play a major role in shaping and implementing environmental enforcement programs. With a stake in environmental quality, citizens may seek to influence environmental legislation and enforcement programs through lobbying efforts. Usually these efforts are coordinated by public interest groups. These groups may collect and publicize data on environmental quality and compliance levels in an effort to influence program priorities. If monitoring data collected by the program are made publicly available, these groups may track the data and, if the law allows, file citizen suits against the environmental agency for not doing its job, and/or against individual violators for violating the law.

Public interest groups also play an important role in disseminating information to regulated communities and to citizens who are concerned about environmental quality. Citizens may also play an important role as environmental watchdogs, spotting violations occurring on a local level that may escape notice by enforcement officials. Public interest groups can be an important means of enlisting citizen involvement.

### **Use of Independent Contractors to Supplement Government Personnel**

Private firms may be able to provide more faster and cost-effective services than government agencies. Enforcement officials may therefore contract some of their responsibilities to private firms. One issue in using contractors is ensuring the quality of their work.

Private companies have proven to be a valuable resource for inspection in the Netherlands during personnel shortages and work backlogs. Clear agreements are made about how the activities are to be carried out and how violations will be reported and responded to. Any official action in response to a violation is taken by authorized government inspectors. This combined public/private approach has often been effective, and efficient, and can produce faster results than a solely public approach. Dutch government officials have been careful to provide adequate, competent leadership and to clearly define the "private" inspectors' authority. This approach is also used in many U.S. programs.

## THE BASIS FOR COMPLIANCE AND ENFORCEMENT

One of the primary goals of an environmental enforcement program is to change human behavior so that environmental requirements are complied with. Achieving this goal involves motivating the regulated community to comply, removing barriers that prevent compliance, and overcoming existing factors that encourage noncompliance.

Many factors listed and described below, affect compliance. Which factors are operating in any particular regulatory situation will vary substantially depending on the economic circumstances of the regulated community, on cultural norms within the community and nation as a whole, and sometimes on the individual personalities and values of managers within the regulated community.

In any environmental situation several of the factors described below will influence the behavior of the regulated community. For this reason, environmental enforcement programs generally will be most effective if they include a range of approaches to changing human behavior. The approaches described in this text fall into two categories: (1) promoting compliance through education and incentives, and (2) identifying and taking action to bring violators into compliance. In some cultures, these two approaches are referred to as "carrot" and "stick." Different programs will place different emphasis on these two approaches depending on the culture and the particular regulatory situation. However, experience with enforcement programs does suggest that some form of enforcement response may ultimately be essential to achieve widespread compliance.

## FACTORS AFFECTING COMPLIANCE

### **Deterrence**

In any regulatory situation some people will comply voluntarily, some will not comply, and some will comply only if they see that others receive a sanction for noncompliance. This phenomenon - that people will change their behavior to avoid a sanction - is called *deterrence*. Enforcement deters detected violators from violating again, and it deters other potential violators by sending a message that they too may experience adverse consequences for noncompliance. This multiplier or leverage effect makes enforcement a powerful tool for achieving widespread compliance. Studies of and experience with enforcement show that four factors are critical to deterrence:

- There is a good chance violations will be detected.
- The response to violations will be swift and predictable.
- The response will include an appropriate sanction.
- Those subject to requirements perceive that the first three factors are present.

These factors are interrelated. For example, to create an appropriate level of deterrence, a more severe sanction may be needed for violations that are unlikely to be detected. Conversely, a less severe sanction may be sufficient if violations are likely to be detected and response can therefore be relatively swift.

Because perception is so important in creating deterrence, *how* enforcement actions are taken is just as important as the fact that they are taken. History has many stories of small armies that successfully beat larger forces by giving the impression that they were a formidable fighting force. Similarly, enforcement actions can have significant effects far beyond bringing a single violator into compliance if they are well placed and well publicized.

## **BARRIERS TO COMPLIANCE AND FACTORS ENCOURAGING NONCOMPLIANCE**

### **Economic**

- Desire to avoid a penalty.
- Desire to avoid future liability.
- Desire to save money by using more cost-efficient and environmentally sound practices.
- Lack of funds.
- Greed/desire to achieve competitive advantage.
- Competing demands for resources.

### **Social/moral**

- Moral and social values for environmental quality.
- Societal respect for the law.
- Clear government will to enforce environmental laws.
- Lack of social respect for the law.
- Lack of public support for environmental concerns.
- Lack of government willingness to enforce.

### **Personal**

- .Positive personal relationships between program personnel and facility managers.
- Desire, on the part of the facility manager, to avoid legal process.
- Desire to avoid jail, the stigma of enforcement, and adverse publicity.
- Fear of change.
- Inertia.
- Ignorance about requirements.
- Ignorance about how to meet requirements.

- **Management**

- Jobs and training dedicated to compliance.
- Bonuses or salary increases based on environmental compliance.
- .Lack of internal accountability for compliance.
- Lack of management systems for compliance.
- Lack of compliance training for personnel.

## **Technological**

- Availability of affordable technologies.
- Political will and commitment
- Inability to meet requirements due to lack of appropriate technology.
- Lack of political will.
- Technologies that are unreliable or
- Political interference.

Change may also be motivated by economic considerations. The regulated community may be more likely to comply in cases where enforcement officials can demonstrate that compliance will save money (e.g., achieving compliance by recycling valuable materials instead of discharging them to the environment may yield a net profit), or when the government provides some form of subsidy for compliance. Conversely, the higher the cost of compliance, the greater may be the resistance to compliance in the regulated community. Some facility managers that may want to comply might not do so if they feel that the cost of compliance would be an economic burden to their operations.

To remove economic incentives to violate the law, the monetary penalty for a violation would, ideally, at least equal the amount a facility would save by not complying. This deters deliberate economic decisions not to comply, and it helps treat compliers and noncompliers equally.

## **Institutional Credibility**

Each country has its own social norms concerning compliance. These norms derive largely from the credibility of the laws and the institutions responsible for implementing those laws. For example, the social norm may be noncompliance in countries where laws have historically not been enforced, either because the law is unenforceable or because the institutions responsible for enforcement have lacked the political power or resources to enforce. There may also be a resistance to enforcement in countries where recent regimes have imposed laws against the will of the citizens. It may take longer for enforcement programs to build credibility in these countries.

Strategies to build credibility will vary. In some cultures, aggressive enforcement will provide credibility. In others, it may be important to have an initial period of promotion and encouragement to create a spirit of cooperation, followed by a well-publicized shift to more aggressive enforcement to signal that there will be consequences for noncompliance. In other cultures, a mixed approach at the outset may be most successful.

The government's will to enforce environmental laws - that is, to affirmatively promote voluntary compliance and identify and impose legal consequences on those who do not comply voluntarily - indicates and influences social values. Not enforcing a law tends to express a value that compliance is not important. A goal on the part of the government to bring a majority of the regulated community into compliance sends a message that compliance is important and helps build a social norm of compliance.

## **Social Factors**

Personal and social relationships also influence behavior. Moral and social values may inspire or inhibit compliance. For example, in some situations, facilities may voluntarily comply with requirements out of a genuine desire to improve environmental quality. They may also comply out of a desire to be a "good citizen" and maintain the good will of their local communities or their clients. Facility managers may also fear a loss of prestige that can result if information about noncompliance is made public. Conversely, compliance will likely be low in countries where there has been little or no social disapproval associated with breaking laws and/or damaging the environment.

Successful personal relationships between enforcement program personnel and managers of regulated facilities may also provide an incentive to comply. On the other hand, a desire to avoid confrontation may prevent program personnel from pursuing the full range of enforcement actions they may need to take to ensure compliance. Also, an enforcement official's objectivity may be compromised if he or she becomes too familiar with the facility's personnel and operations. Oversight visits by an independent enforcement official can help monitor for and prevent this potential problem. The relationship factor can be incorporated into a compliance strategy through such means as providing technical support to regulated groups and enhancing the interpersonal skills of compliance personnel. Social respect for environmental requirements can be improved by finding industry leaders who agree to set a well-publicized example of compliance, and by firm and visible enforcement of environmental requirements (particularly if the initial focus is to correct noncompliance that is posing significant and clear risks to the environment and/or public health).

## **Psychological Factors**

Several psychological factors, common to human nature, may affect compliance rates. One of these is fear of change - the belief that familiar ways of operating are safe and new ways are risky. Closely related to this is inertia. Many people tend to naturally resist change because of the perceived effort it will require to enact the change. Both promotional efforts to publicize the benefits of compliance and the perception and reality of consequence for noncompliance play an important role in overcoming inertia.

## **Knowledge and Technical Feasibility**

Besides being motivated to comply, regulated groups must have the *ability* to comply. This means they must know they are subject to requirements, they must understand what steps to take to create compliance, they must have access to the necessary technology to prevent, monitor, control, or clean up pollution, and they must know how to operate it correctly. A lack of knowledge or technology can be a significant barrier to compliance. This barrier can be removed by providing education, outreach, and technical assistance.

## **IMPACT ON PROGRAM DESIGN**

As mentioned earlier, which of the factors described above will influence behavior in a particular environmental situation will depend on the culture and situation. An environmental enforcement program will be most effective if its design is based on an understanding of the factors that are operating. Such understanding will enable policymakers to determine the optimal strategy to motivate and enable compliance, and to discourage noncompliance. For example, in cultures where there is a tendency to ignore both requirements and requests for voluntary behavior changes, creating deterrence may be the most important component of program design. Conversely, in countries where there is a social norm of compliance, activities to promote voluntary compliance may be very effective. In situations where financial constraints are the main barrier to compliance, some form of economic support or advantage to the regulated community would likely have great impact.

Whatever factors are influencing behavior, they will almost certainly change over time. Thus, flexibility to review and revise the program design is key to long-term effectiveness.

**THE CONDUCT OF INVESTIGATIONS / CRIMINAL PROCEDURE**

*By Doris Akol, Environmental Law Resources centre.*

**A: Introduction**

In order to successfully prosecute an environmental criminal case, the government has to prove, beyond a reasonable doubt, that a corporation or person knowingly violated an environmental Act containing criminal sanctions.

The objective of this paper is to give general guidance on criminal investigations. For purposes of this discussion, we will consider the following definitions.

“Criminal investigation” means the deliberate examination or inquiry of available evidence aimed at a finding of whether or not and by whom a crime has been committed.

“Evidence” denotes the means by which any alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved and includes statements by accused persons, admissions, judicial notices, presumptions of law, and ocular observations by the court in its judicial capacity.

**B: Conduct of Investigations**

An investigation, in the context of these guidelines, is a means to establish the correctness of suspected abuses of environmental laws. If the evidence warrants, an investigation can also lead to entering into compliance agreements or a possible prosecution. The conduct, management and control of investigations must be in compliance with policies regulating criminal investigations, keeping in mind the duty to act fairly, the public interest and the promotion of the integrity of the environment.

Investigators at all levels, whether in NEMA, Local Councils, the Uganda Police, or other lead agencies are responsible for conducting investigations seeking assistance or guidance where necessary, and reporting findings of such investigations within the policy regulating criminal investigations.

In investigating environmental crimes, the environmental inspector plays a key role gathering scientific and technical evidence and also in making the necessary reports. Environmental inspectors and other competent personnel play the role of expert witnesses in court proceedings. Even when the Police handle the investigations, environmental inspectors still play a crucial role in the chain of evidence. The experience, wisdom, and concerns of both legal and technical staff involved in enforcement are important. Since environmental matters are sometimes a question of visual impression, the use of proper photographs can be used in proving a case of violation.

### **Investigative steps**

The investigation of a suspected environmental crime is initiated with the reporting or discovery of a possible offence. It proceeds through the data-gathering and evaluative steps of:

- acquiring the initial report and all relevant data from eye witnesses or observers;
- surveying the site, evidence gathering and collecting data and samples;
- the storage/forwarding of samples for analysis;
- Analysis and interpretation of data and the results of sample analysis;
- Reporting the results of the analysis; and
- Follow-up investigations and initiating other actions.

### **Reporting the Crime**

The Police or environmental inspector may act on his or her own initiative or may act on information received from the public, a district environment officer, any lead agency, NEMA, or any government official.

### **Receipt of initial reports/information**

On receipt of the initial report or information regarding a suspected environmental crime, the investigation officer shall file the case and give it a police reference number or a designated form. The investigation officer is expected to obtain the following key information:

- Physical location of scene of the alleged crime/environmental incident(s)
- Date and time of the incident(s).
- Details regarding notification of the incident(s)
- Parties involved.
- Noticeable impact on the environment/ecosystem

The investigator must also document information encompassing his or her observations and actions at the crime scene. Information includes locations, appearances, and conditions of all persons and items noted, and should communicate scene conditions, statements and comments made by victims, suspects and statements and comments made by witnesses and the actions of other personnel.

### **Dealing with the Suspected Offender.**

A statement should be recorded from the suspected offender as soon as he is in the custody of the investigator, if he has been intercepted or from any person reporting the offence. Statements should be taken quickly because for environmental offences, evidence may dissipate very quickly.

All environmental offenders are arrestable by virtue of the fact that breach of environmental laws means commission of an offence. However, discretion would be allowed to arresting officers depending on the nature of the offence committed. The gravity of the offence committed will determine whether or not the suspected offender

shall be detained or released, and if he is released, the conditions for his release. A suspect may be released unconditionally, on caution or on Police Bond.

**NB:** While criminal procedures would normally apply to environmental offences, by their very nature and depending on the gravity of the offence committed or its impact on the environment, environmental offenders need not be handled as criminal suspects particularly in terms of questioning techniques and incarceration.

### **C: Evidence**

Evidence gathering and preservation is a critical step in prosecuting any case and environmental cases are no exception. It is the burden of the government to prove that any evidence presented in court is authentic.

These steps include where necessary sampling, exhibit identification, transportation, physical and chemical analysis, and exhibit storage. If care is not taken to properly preserve evidence and maintain the chain of custody in every step of the investigative process, then the evidence may be inadmissible at trial.

#### **Gathering Evidence**

There are three types of evidence: physical, human, (obtained through witness statements or interviews) and documentary (including photographic media). Physical evidence may include solids, liquids, or gases. Documentary evidence includes all documentation developed by the investigator. Evidence gathered at a crime site will typically involve interviews, visual observations, measurements, samples, paper documents and records.

The investigative file should contain records of interviews, photographs, video-recordings, sketches, correspondence, field notes, chain-of-custody records and other pertinent records such as calibration records and laboratory test reports.

#### **Witnesses**

- i. Ascertain and obtain valid identification from potential witnesses and separate identified witnesses from each other and from others present.
- ii. Document witness identification(s).

#### **Preservation of Evidence**

Preserving and controlling evidence are essential to the integrity and credibility of the investigation. Security and custody of evidence are necessary to prevent its alteration or loss and to establish the accuracy and validity of all evidence collected. The point of contact is responsible for assuring that a chain of custody is established for all evidence.

For physical evidence to be truly useful its integrity needs to be preserved and the investigator, before moving anything should record the exact location of the evidence at the scene, its time of collection and its status using measurements, sketches, photographs or videography where appropriate.

Collected evidence needs to be stored and to maintain its integrity after collection.

## **Search Warrants**

Search warrants allow investigators to go onto private property to investigate further suspected illegal activity and to obtain samples of evidence of the degraded environment. However, before a search warrant can be issued, probable cause that a crime has been committed and that evidence exists in the place to be searched must be shown. Investigators should show probable cause through information they have developed during the investigation, as well as other supporting exhibits, such as photographs and public complaints.

## **D: Conclusion.**

### **Managing the Investigation - Points to Note**

1. When established procedures are used to collect evidence, it is often easier to defend the scientific reliability and legal acceptability of the procedures.
2. Witness interviews should be recorded along with other field activities such as sampling and environmental measurements.
3. When assisting in the execution of a search warrant, the investigative team should ensure that the evidence collected is authorized by that warrant. Each person collecting evidence could ultimately be called as a witness later.
4. Marking, labeling, preservation (if appropriate) of exhibits should all be part of the permanent record of the crime scene visit.
5. Chain-of-custody records should include a standard form documenting the delivery and the receipt of each exhibit. Personnel handling the exhibits are recorded from the initial contact at the crime scene through each exhibit transfer until the exhibits are received in the laboratory. Under chain-of-custody procedures, exhibits are to be under the control of the investigative team at all times. The location of each exhibits from the time of collection through the time of laboratory analysis, should be documented.

## **EVIDENTIAL DIFFICULTIES IN PROSECUTION OF ENVIRONMENTAL CRIMES**

*By Doris Akol, Environmental Law Resources Centre*

### **Introduction:**

Evidence gathering and preservation is a critical step in prosecuting any case and environmental cases are no exception. It is the burden of the government to prove that any evidence presented in court is authentic.

However, it is not always easy to gather evidence in the investigation of Environmental crimes. Sometimes, the evidence is not always obvious. This is because by their nature, the evidence in environmental crimes is not always typical.

Hereunder is an enumeration of the common difficulties that may be experienced in the process of evidence gathering in investigating environmental crimes which the investigator should be aware of and prepare for.

#### **1. Delicate nature of the evidence,**

Evidence required to prove environmental crimes is often delicate and hard to preserve or store. e.g. noise pollution offences.

#### **2. Transient nature of the offence**

Most environmental crimes are of a continuous nature and therefore the difficulty comes in identifying at which particular point in time that evidence applies?

#### **3. Defining the ingredients of the offences**

On account of the transient nature of the offence, identifying the ingredients may be cumbersome. In addition, determining whether the degree of destruction is a factor in the commission of the offence may present difficulty in that in the event that there is no apparent destruction, it may be hard to conclude that an environmental crime has been committed.

#### **4. Socio- economic / socio cultural aspects of environmental offences and thus “what is the public interest?”**

Most environmental offences are committed in the pursuit of “daily bread”. The difficulty here is considering the public interest, is it worthwhile investigating and prosecuting the offence? In addition, the exhibits required in the proof if the crime may actually be the source of livelihood of the offender, e.g., the papyrus mats, firewood, etc.

#### **5. Chain of custody issues**

The rudimentary nature of our systems ensures that the most probable way that the evidence will be stored will compromise the chain of custody. The threat posed by lack of integrity cannot be underscored.

## **6. Unavailability of technology to analyse environmental evidence**

The unavailability of up to date and complex equipment that is required in the analysis of environmental evidence seriously compromises our ability to gather, preserve and use some evidence in prosecution of environmental crimes. E.g. level of air pollution.

7. Proving intention and wilfulness for non strict liability offences e.g. S 99(g) of the NEA
8. Dearth of experts to testify as to the commission of an environmental offence vis a vis accepted levels e.g. for air / noise pollution

Many of the concepts in environmental enforcement are new to us. As a result we still suffer form a serious shortage or presence of experts who can make conclusions on evidence gathered or who can present expert evidence in courts.

9. Relatively low knowledge base in enforcement agencies and JLOS institutions of environmental laws and offences created thereunder in addition to the relatively low priority attached to environmental offences as opposed to e.g. crimes such as theft, rape, obtaining money by false pretences, embezzlement etc
10. Standard of proof of beyond reasonable doubt is difficult to meet to obtain a conviction.

## **11. Inadequate evidence laws.**

The existing version of the Evidence Act is seriously deficient in allowing the submission of certain types of evidence. E.g. Amendment of Evidence Act is crucial to allow certain evidence e.g. electronic evidence that shows certain pollution limits have been exceeded may currently be inadmissible.

### **Recommended Strategies**

The conduct of a needs assessment and enhancement for targeted persons in investigations and prosecutions of environmental crimes on the following issues;

1. frequent exposure to the different sectoral environmental laws and offences created by those laws
2. various environmental sectoral standards to improve recognition of when an offence has been committed
3. Analysis of evidence for those in the laboratories
4. Sampling techniques for the crime scene
5. Evidence gathering and preservation technologies

6. Improving the availability of photographic equipment to facilitate photography and videography in evidence gathering
7. Inclusion of environmental law and offences in the Uganda Police Training Syllabus

### **THE MOOT.**

On 4<sup>th</sup> January 2006, Mr. Joshua Obonyo, the Eco-World learnt from the New Vision, that Mr. Viran Patel plans to develop Lutembe beach on the shores of Lake Victoria. He is a director of a Kenyan based Multi-national company that is preparing to construct a hotel on the beach. A US \$150 million project. Where as the New vision had reported the government had passed the project but no EIA has been carried out at all, and that the company is already reclaiming the wetland by filling it with murrum. It intends to create a big hotel garden.

The Uganda Investment Authority had already granted the investment license and construction was to start immediately. The government had granted the company a 99 year lease title although part of the land is in a forest reserve and wetland, and which is a habitat for migratory birds.

NEMA is not happy with the project and sent two inspectors who were chased and threatened by the company officers. Nevertheless, the DEO has issued a compliance notice requiring the company to stop construction and restore the wetland.

The company has ignored the order.

The company has brought on the site several drums of chemicals labeled **“PETROLEUM PRODUCTS: DANGER”**

The company has refused to disclose information as to what the drums contain, but said they are for use in the construction process.

On 15<sup>th</sup> February, 2006 Eco-World visited the project site and carried out interviews with the local people. The community was not happy with the project. They feared they would lose access to firewood, honey, medicinal plants etc.

A women’s group called **Twekambe** headed by one **Mrs. Jovah Musoke** as chair person with its 150 registered members, that had started selling tree seedlings feared they would lose the business. Other women groups that had started sell of handicraft goods from materials obtained from the wetland area in the forest had the same fears. However, others were happy with the project especially the men as they hope to obtain employment from the project.

Tourists had started coming to the area to watch birds, butterflies and were buying fruits, vegetables and handicrafts. The forest reserve is the only one where migratory birds rest on there way from Europe to the south and is their only breeding place in East Africa. The fence of the site is at the shore itself.

Nevertheless, Mr. Patel insists he has an investment license, land title, approved building plans and a letter from the minister of lands and environment authorizing him to construct the hotel.

The government spokesperson has said the hotel is required urgently. And has to be ready before the 2007 commonwealth heads of state summit to be held here in Uganda.

Joshua Obonyo has come to your office to report this case.

Advise on what practical steps you may have to take to protect the environment  
What advise would you give to Mr. Obonyo?

**CLOSING REMARKS BY MRS. MARGARET LWANGA AT THE TRAINING WORKSHOP TO STRENGTHEN THE CAPACITY OF DISTRICT ENVIRONMENTAL OFFICERS AND ENVIRONMENTAL INSPECTORS IN ENFORCEMENT OF ENVIRONMENTAL LAWS IN UGANDA.**

Environment Officers/Inspectors and Monitors  
Facilitators from Green Watch  
Ladies and Gentlemen.

The main purpose of this training was to equip District Environment Officers and Environment Inspectors with the legal mechanism and technicalities of enforcement and compliance. You have now attained a thorough understanding of the existing environmental legislation and also acquired knowledge and skills in enforcing environmental laws.

It is expected that you have had sufficient time to first of all share experiences and learn a lot from each other. You have therefore learnt new approaches to enforcement.

Like any other training drive therefore, I am optimistic that this exercise has further sharpened your practical knowledge and skill, enhanced your technical proficiency and will in effect enhance your performance once you return to your stations. However, this will be possible only if you are ready and able to do three important things, namely:

1. **Benchmarking:** You should be able to emulate the best practices in enforcement that you have learnt in the process.
2. **Adaptation:** You must be able to customize and adjust the approaches and practices that you have copied elsewhere to your local realities and conditions in order to be relevant and feasible.
3. **Self-improvement:** You should also as individuals be ready to ask yourself whether the way you have been going about your work as environmental officers/inspectors is efficient and effectiveness compared to the experiences you have shared with your colleagues and the activities you have seen elsewhere. It should be a value adding experience for you even in terms of performance at an individual level.

I therefore hope that the way forward you have paved for your self as a result of this exposure will go a long way to generate greater impact in environment management. To this end, I do urge you to take this way-forward as both individual and collective commitment to the improvement of sustainable environmental management in your respective areas of jurisdiction.

In particular, I do expect in the near future to see the following to see the following major indicators of improved environmental performance.

- Improved waste management and better sanitation levels in urban centers.
- Protection of existing wetlands, forests, river-banks, lake-shores, hills and mountains.
- Restoration of degraded wetlands, forests, river-banks, lake-shores, hills and mountains.
- Protection of water systems and water supply sources.
- Improved land use and better soil conservation.
- Increased tree planting and forest development and last but not least
- Integration of environmental concerns and adequate environments screening of all projects be they private, public, local or central.

I must emphasize that, the best measure of your performance as environmental managers will not be the reports and claims you make about the workshops and inspections you have conducted. The measure will be the tangible improvement that can be seen and felt in the physical environment, and this should be the ultimate focus of all your plans and efforts.

I also pledge that NEMA will carefully study all the recommendations you have made, and make effort to implement them as much as practically possible.

I thank you for making it a point to turn up for this important activity and to have participated actively and productively up to the end. Please keep up the good spirit.

I must also thank Green Watch who planned and coordinated this program successfully. I must also commend John D and T MacArthur Foundation for their contribution to this work shop.

Please go and put what you have seen, learnt, agreed and resolved together into practice.

I take this honor to declare the training closed.

Thank you for listening to me.

*ANNEXTURE 12*

**LIST OF PARTICIPANTS**

No	Name(s)	Designation & address
1.	Alex Winyi	DEO/ Inspector Kabarole
2.	Mugyenyi Cyril	Environment Inspector, Bushenyi
3.	Mugisha Peter	DEO/Inspector Mubende
4.	Muziimbwe Richard	DEO/ Inspector Rukungiri
5.	Tusuubira Justus	DEO/ Inspector Ntungamo
6.	Agaba John Bosco	DEO Kanugu
7.	Nsiimire William	DEO/ Inspector Masindi
8.	Rose Nakyejjwe	DEO Masaka
9.	Musingwire Jeconious	DEO/ Inspector Mbarara
10.	Kanyike Meddie	Ag. DEO Rakai
11.	Kashemeire Animate	DEO/ Inspector Kibale
12.	Perez P. Kakumu	Asst.DEO Bushenyi
13.	Gateese Teopista	DEO/ Inspector Luwero
14.	Nyangoma Joseline	DEO/ Inspector Hoima
15.	Lwanga B. Athanasius	DEO/ Inspector Sembabule
16.	Bigabwa Julius Amooti	DEO/ Inspector Kyenjojo
17.	Nsereko Patience Serunkuma	DEO/ Inspector Mpigi
18.	Magara Nicholas	DEO/ Inspector Kamwenge
19.	Kooli Augustine	Asst. DEO Kasese
20.	Tiishekwa A. Rukundo	Mediator/Advocate

**Resource persons/ Facilitators**

1.	Kenneth Kakuru	Director, Greenwatch
2.	Waiswa Ayazika	EIA coordinator NEMA
3.	Georgina Kugonza Musisi	Legal Counsel , NFA
4.	Eugene Muramira	Director of Policy Planning and Information, NEMA.
5.	Doris Akol	Environmental Law Resources Centre
6.	Margaret Lwanga	District Support Coordinator, NEMA
7.	Vincent Wagona	Ag. Principal Sen. State Attorney Directorate of Public Prosecutions
8.	Asa Mugenyi	Lecturer, Uganda Christian University, Mukono.

**Secretariat :**

- |                        |   |                                  |
|------------------------|---|----------------------------------|
| 1. Irene Ssekyaana     | - | National Coordinator, Greenwatch |
| 2. Harriet Kezaabu     |   | Research Officer, Greenwatch     |
| 3. Ivan Twebembere     |   | Research Assistant, Greenwatch   |
| 4. Harriet Bibangambah |   | Research Assistant, Greenwatch   |

**TRAINING WORKSHOP TO ENHANCE THE CAPACITY OF DISTRICT  
ENVIRONMENT OFFICERS, ENVIRONMENTAL INSPECTORS TO  
ENFORCE ENVIRONMENTAL LAWS IN UGANDA.**

**9<sup>th</sup>- 10<sup>th</sup> April, 2006.  
Ridar Hotel- Seeta.**

**PROVISIONAL PROGRAMME**

<b>TIME</b>	<b>ACTIVITY</b>	<b>DESCRIPTION</b>	<b>FACILITATION/ RESOURCE PERSON</b>
<b>DAY 1: Sunday 9<sup>th</sup> April, 2006</b>			
3:00p.m- onwards	Arrival of participants at Hotel		<i>Greenwatch</i>
7:00 pm	<b>Dinner</b>		<b>Hotel Management</b>
8:00 p.m	Opening remarks	Opening remarks from Director, Greenwatch	<i>Mr. Kenneth Kakuru Director, Greenwatch,</i>
9:00 pm.	Official opening ceremony	Official Opening by Deputy Executive Director, NEMA	<i>Dr. Gerald Sawula Musoke, Deputy Executive Director, NEMA.</i>
<b>DAY 2</b>			
<b>Monday : 10<sup>th</sup> April, 2006</b>			
<b>8.00-8:20a.m</b> <b>8:20- 8:30.</b>	<b>Registration</b> <b>Workshop overview and</b> <b>expectations</b>	<i>Handouts and materials</i>	<b>Greenwatch Secretariat</b>  <b>Mr. Kenneth Kakuru</b>
8:30- 9:00 a.m.	Current State of Environment in Uganda : Achievements and challenges.	<i>Overview of environmental problems in Uganda Conservation against sustainable development Achievements made Challenges</i>	<b>Presenter:</b> <i>Ms. Margaret Lwanga, District Support Coordinator- NEMA</i> <b>Chair:</b>
<b>9:00 -9: 30</b>	<b>Discussions</b>		
9:30-10:00 a.m	Brief Introduction to Environmental Law:	<i>History of environmental law Sources of environmental law Environmental law as a distinct discipline from Tort law Locus standi</i>	<i>Presenter: Mr. Kenneth Kakuru- Greenwatch Chair: Asa Mugenyi</i>

<b>TIME</b>	<b>ACTIVITY</b>	<b>DESCRIPTION</b>	<b>FACILITATION/ RESOURCE PERSON</b>
<b>10:00-10:30</b>	<b>Discussions</b>		
<b>10:30-10:50</b>	<b>TEA BREAK</b>		
10.50 – 11: 20 0a.m.	Applying the Principles of Environmental Law in the Enforcement Process	<i>How environmental law principles i.e. Polluter and User Pays Precautionary Principle Inter&amp; Intra generational Equity Public Participation Public Trust Doctrine Sustainable Development can be used in the Enforcement process.</i>	<b>Presenter:</b> Asa Mugenyi, Lecturer, Faculty of Law, Uganda Christian University, Mukono  <b>Chair:</b> Mr. Kenneth Kakuru
<b>11:20-11:50</b>	<b>Discussions</b>		
11.50 - 12.30a.m.	Challenges in Monitoring and Enforcement of Environmental laws in Uganda  Issues: Wetlands, wildlife, water resources, land, livestock management	<i>Monitoring tools Enforcement mechanisms and tools Components of a good enforcement programme Importance of enforcement programme Framework of enforcement Challenges in enforcement Responding to violations of environmental laws Compliance, monitoring, inspections, self monitoring, methods of enforcement</i>	<b>Presenter:</b> Mr. Waiswa Ayazika Monitoring Officer, NEMA.  <b>Chair:</b>
12:30 – 1:00	<b>Discussions</b>		
<b>1:00- 2:00</b>	<b>LUNCH BREAK</b>		
2.00 – 2:30 pm	Protecting our Forests	<i>The Law and Policy  Achievements and Challenges in enforcement process in the protection of forests</i>	<b>Presenter:</b> Georgina Kugonza, Legal Counsel, NFA.  <b>Chair:</b>
2:30- 3:00	<b>Discussions</b>		

<b>TIME</b>	<b>ACTIVITY</b>	<b>DESCRIPTION</b>	<b>FACILITATION/ RESOURCE PERSON</b>
3:00 – 3:40pm	Criminal aspects of environmental law	<i>What are criminal aspects of environmental law Legal technicalities relevant to criminal prosecution under environmental law Overview of environmental offences Effective enforcement through prosecution.</i>	<b>Presenter:</b> Mr. Wagona Vincent, Ag. Principal State Attorney Directorate of Public Prosecution  <b>Chair:</b> Mr. Kenneth Kakuru
3:40-4:10	<b>Discussions</b>		
4:10- 4:30	<b>AFTERNOON TEA BREAK</b>		
4:30 –5:00	Enforcing Environmental Laws	<i>Importance of enforcement and compliance Components of a successful enforcement programme Roles by different actors, CSOs, Police, Courts, government, judiciary</i>	<b>Presenter:</b> Mr. Kenneth Kakuru  <b>Chair:</b>
5:00 – 5:20pm	<b>Discussions</b>		
<b>5:30 p.m.</b>	<b>Field Excursion</b>		
<b>END OF DAY TWO</b>			
<b>DAY 3</b>			
Tuesday 11 <sup>th</sup> April, 2006.			
8.30- 9:00a.m.	The Conduct of Investigations/ Criminal Procedure	<i>Key Principles for presenting evidence: Is evidence relevant, prejudicial? Types of evidence Practicalities of gathering and adducing evidence Conduct, management and control of investigations of criminal environmental offences Nature of offences Preparation of investigation reports Gathering and</i>	<b>Presenter:</b> Ms. Doris Akol, Environmental Law Resources Centre  <b>Chair:</b> Mr. Kenneth Kakuru

<b>TIME</b>	<b>ACTIVITY</b>	<b>DESCRIPTION</b>	<b>FACILITATION/ RESOURCE PERSON</b>
		<i>documenting evidence Dealing with offenders Evidential difficulties involved in Prosecution of environmental offences</i>	
9:00-9.30a.m	<b>Discussions</b>		
9:30-10:00am	<b>Practical Exercise: Initiating the investigation</b>		<i>Presenter: Mr. Kenneth Kakuru</i>
10:00-10:30	<b>Discussions on practical exercise</b>	<i>Participants break into groups</i>	
10:30-11:00	Presentations from Group Discussions	All Participants	<i>Chair: Mr. Cyril Mugenyi</i>
<b>11:00- 11:20</b>	<b>TEA BREAK</b>		
11:20-12:00.	Plenary of group discussions		<b>chair :</b> <b>Mr. Kenneth Kakuru</b>
12:00-12:20pm	<b>Wrap up and Recommendations</b>	<i>Way Forward</i>	<i>All Participants</i>
12:20-1:20pm	<b>Official Closing Ceremony</b>	<b>Presentation of Certificates Closing remarks by Mr. Ronald Kaggwa</b>	<i>Mr. Ronald Kaggwa, Environmental Economist NEMA.</i>
<b>1:20-2:30pm</b>	<b>LUNCH</b>		
<b>3:00 pm</b>	<b>Departure</b>		All