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# Partnerships for enhancing regional enforcement of laws against environmental crimes



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Compiled by Rose Mwebaza and Edited by Wilson K Kipkore  
30-31 July 2008, Entebbe, Uganda



The  
Federal Government



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# Introduction

This report is a synthesis of the proceedings of the first stakeholders' workshop on enforcement of laws against environmental crimes in Eastern Africa. The workshop was organised by the Environmental Security Programme (ESP) of the Institute for Security Studies (ISS), Nairobi, and was held on 30 and 31 July 2008 in Entebbe, Uganda. The theme of the workshop was 'Building partnerships for enhancing law enforcement against environmental crimes in Eastern Africa'. This theme was chosen to reflect one of the key objectives of the Environmental Crime Project (ECP), namely to foster collaborative national, regional and international processes to combat environmental crimes.

The Environment Crime Project postulates that in order to effectively enforce laws on environmental crimes in Eastern Africa, there must be collaborative efforts between the countries in the region and between the different organisations responsible for enforcement of environmental crime laws in the individual countries. Accordingly, the workshop sought to bring together government officials responsible for the enforcement of environmental crime laws from the eight countries in which the project will be implemented, namely Burundi, Ethiopia, Kenya, Rwanda, Seychelles, Sudan, Tanzania and Uganda. Among them were officials from the police, National Central Bureaux (NCBs), national environmental management authorities, national forestry authorities and national wildlife authorities.

The workshop included participants from development partners such as the United Nations Environmental Programme (UNEP) and International Development Research Centre, national law society organisations, the East African Law Society, Lake Victoria Basin Commission of the East African Community, regional and national civil society organisations and environmental organisations such as the East African Wildlife Society, the World Conservation Union, the International Union for Conservation of Nature and the Nile Basin Initiative.

The ESP intended the workshop to provide an opportunity for building and strengthening partnerships and relations between and amongst key actors responsible for the enforcement of environmental crime laws at the national and regional levels. The workshop had five objectives:

- Introduction of the ECP to the stakeholders
- Obtaining views and feedback from stakeholders in the sector

- Identification of key players in the environmental crime sector
- Development of strategies for collaboration
- Obtaining buy-in from stakeholders

It was expected that the key outputs of the two days of deliberations would be:

- A report on the stakeholders' meeting, to be distributed to all participants and partners
- The publication of at least two ISS occasional papers flowing from the papers presented
- Incorporation of emerging issues into the ESP of the Institute for Security Studies
- Creating and maintaining a stakeholder e-network for continued participation in annual stakeholders' meetings

This report, which is divided into five parts, is the first output of the workshop. Part 1 consists of presentations that seek to contextualise environmental crime. The presentations focus on the concept and nature of environmental crime, enforcement of environmental crime laws and the link between environmental security and organised crime. Part 2 contains presentations on the nature and range of environmental crimes currently occurring in Eastern Africa. It includes case study presentations from the Kenya Wildlife Authority, Uganda National Forestry Authority and the Kenya National Cleaner Production Centre, an organisation that focuses mainly on pollution as a crime. Part 3 of the report deals with the use of environmental public interest litigation as a tool for enforcing environmental crime laws. It consists of presentations by the President of the East African Law Society and two environmental public interest litigation organisations in Kenya and Uganda. Part 4 relates to the enforcement of environmental crime laws in Eastern Africa with presentations by representatives from the Eastern Africa Police Chiefs Cooperation Organisation (EAPCCO) and Seychelles Police Force, as well as a civil society perspective from OSIENALA (Friends of Lake Victoria). The final part of the report deals with the issues emerging from the presentations as raised by the participants in the workshop. The report also contains two attachments, namely a workshop programme and a list of participants.

# Official opening of the workshop

The Director of the Nairobi ISS Office, Mr Peter Edopu, together with Ms Doris Murimi, ISS Deputy Director, welcomed the participants to the workshop and thanked them for their attendance.

Mr Edopu pointed out that the decision to hold the first stakeholders' workshop of the Environmental Crime Project in Uganda was intended to honour Uganda's Minister for Internal Affairs and the head of the Uganda Police Force, who approved the ECP project during their tenure of office as chair of the EAPCCO Council of Ministers and EAPCCO respectively. It was therefore fitting that Uganda should host this first stakeholders' workshop and provide the venue for the official launch of the project.

Ms Murimi expressed the Institute's profound gratitude to the government of Uganda and the Minister for Internal Affairs for agreeing to officiate at the opening of the workshop. She noted that the ISS was an applied policy research institution with the mission to conceptualise, inform and enhance the debate on human security in Africa and as such the ISS was proud to partner with EAPCCO on the Environmental Crime Project. She thanked the German government for funding the project. Ms Murimi noted that the environment is an important public asset, but one that is prone to contestation because of the negative effects of globalisation. Unfortunately the African continent has suffered greatly because of these conflicts.

The workshop was officially opened by the head of the Uganda Police Force, Major General Kale Kahihura, on behalf of the Ugandan Minister for Internal Affairs, Dr Ruhakana Rugunda. Major General Kahihura read a speech on behalf of the Minister in which he welcomed the participants and noted with concern that information from Interpol shows that environmental crime is a serious and growing international problem, with criminals violating national and international laws put in place to protect the environment.

He observed that information available on international illicit trade on flora and fauna currently confirms that environmental crime is second to drug trafficking worldwide. According to estimates from the US Justice Department, international crime syndicates worldwide earn between \$22 and \$31 billion annually from the

dumping of hazardous waste, smuggling of proscribed materials and exploitation of and trafficking in protected natural resources. Illegal logging and trade of forest products alone is estimated to generate earnings of between \$5 and \$8 billion per year, while dumping of trash and hazardous waste materials generate \$10 billion per year.

Major General Kahihura noted that although the threat is exacerbated by organised environmental criminal groups, there are clear strategies that can reduce environmental crime. These strategies have been captured in the joint EAPCCO-ISS project on environmental crime and include committing over €4 million over a period of 36 months to support eight sub-Saharan African countries to strengthen their capacity to enforce laws against environmental crimes.

He emphasised that the project is important because it recognises the transboundary nature of environmental crimes and thus the need to take a concerted regional partnership approach to dealing with the problem. Major General Kahihura concluded by observing that by bringing eight Eastern African countries most affected by environmental crimes in the region together, the project is not only promoting the spirit of partnership among African states but also goes a long way towards creating an information and knowledge network that will contribute to the eventual eradication of environmental crimes.

Next Dr Wilson Kipkore, the head of the Environmental Security Programme under which the Environmental Crime Project is being implemented, introduced members to the project. He started by placing the project as an ISS initiative implemented in partnership with EAPCCO. The purpose of the project is to develop mechanisms to enhance regional law enforcement and policies against environmental crimes to improve protection of the Eastern Africa environment. The project focuses on those countries that are most affected by illegal exploitation of wildlife, forest and mineral resources. It strives to enhance regional capacity to combat different forms of environmental crimes such as illegal logging, dumping and transportation/transit of hazardous waste and trade in wildlife species as well as the bush meat trade.

The project was conceptualised and developed as part of an overall ISS initiative on issues relating to the environment and human security in sub-Saharan

Africa. In this respect environmental security therefore is considered to form a component of human security. The Environmental Security Programme is geared towards addressing a wide range of issues including environmental crimes, climate change, energy security, food security, natural resource conflict, pollution, gender related issues in environmental and human security, and sustainable livelihoods.

Dr Wilson Kipkore spelled out the following objectives of the project:

- Collection, collation, analysis, documentation and publication of information on environmentally related crimes
- Monitoring, tracking and contributing to the prevention of environmentally related crimes
- Enhancement of institutional and legislative capacity of law enforcement agencies to address environmentally related crimes
- Undertaking of public education, awareness and community outreach programmes
- Facilitation of and participation in collaborative national, regional and international processes to combat environmental crimes

In order to meet its objectives, the project will mainly engage with members of EAPCCO who have significant experience in dealing with environmental crime. Programmes will be implemented in Burundi, Ethiopia, Kenya, Rwanda, Seychelles, Sudan, Tanzania and Uganda. It will also seek to engage with the Democratic Republic of Congo (DRC). While the DRC is not an EAPCCO member, EAPCCO agreed to include the DRC during its

ninth general meeting held in Bujumbura in August 2007 as the DRC is linked to illegal trade with its EAPCCO neighbours to the east.

The project activities can be summarised as follows:

- Stakeholder consultations and roundtable meetings of experts
- National research to establish the typology, perpetrators and victims of environmental crime
- Collection, collation and consolidation of data on environmental crime in each country
- Assessment of capacity gaps in addressing environmental crime in the region
- Monitoring of proceedings of specific environmental cases in the courts in each country and engaging in strategic environmental litigation
- Support for the establishment of community networks to monitor and report on environmental crime
- Establishment of an information-sharing system to enhance regional cooperation in addressing environmental crime
- Participation in law reform activities based on the research findings by preparation of draft bills and advocating for their enactment
- Engaging in capacity-building among national agencies to enforce interventions against environmental crimes
- Facilitation of community co-management arrangements of natural resources and the co-ordination of various environmentally related committees
- Conducting of civic education on environmental crimes
- Facilitation of the operationalisation of the existing regional initiatives and participate in regional and international environmental processes





## Part I

# Environmental crime and security

## THE NATURE AND ENFORCEMENT OF ENVIRONMENTAL CRIME LAW: A JURISPRUDENTIAL AND EMPIRICAL PERSPECTIVE

KEYNOTE ADDRESS BY PROFESSOR ALBERT MUMMA  
University of Nairobi

### The nature of crime

A crime (also known as offence) is an act or omission that is punishable by law. Crime involves injury to the collective or community as represented by the state and differs from tort which is injury to the individual. However, the same act or omission may constitute both a crime and a tort. All constitutions in the world require crime to be prescribed by written law (with the exception of customary offences).

Typically a crime comprises two elements: *actus reus* and *mens rea*. *Actus reus* means a 'guilty act', in other words a wrongful act which the law prohibits, whereas *mens rea* means the 'guilty mind', and refers to the state of mind with which the guilty act was committed. In order to prove a crime, it is necessary to establish both *actus reus* and *mens rea*.

### The concept of environmental crime

Generally, in traditional crime (murder, theft, etc) both *actus reus* and *mens rea* are present. However, environmental crime is unique in that there is often an *actus reus* but no *mens rea*. Thus, the environmentally damaging act or omission is not committed with the intention of causing damage to the environment. It should nevertheless be noted that environmental offences are described in legislation; this means that if it cannot be found in any law, then it does not constitute an offence.

From this it follows that environmental crime can be defined as an act or omission causing or likely to cause damage to the environment. The damaging act often arises from day-to-day productive and consumption activities not intended to harm the environment but to sustain life, such as hunting and farming, and thus could arise without a guilty mind.

The lack of *mens rea* makes environmental crime a problematic concept which has made conviction an often impossible task. To circumvent the problem of *mens rea*, a main ingredient in criminal law, environmental laws have eliminated the requirement for it and provide that *actus reus* alone comprises environmental crime. Because they comprise *actus reus* only, environmental crimes are 'strict liability offences'.

Strict liability offences are easier to prove, as it is only necessary to prove that the act was committed or the omission occurred. The lack of *mens rea* eliminates moral culpability (or blameworthiness) as an element of the offence. Moral culpability is associated with the more serious offences, and it is a principle in law that the more morally blameworthy an offence the higher the penalty imposed (which is why murder generally carries a higher penalty than for example robbery). Similarly, less morally blameworthy offences, such as jumping a traffic light, attract lighter penalties. This means that eliminating moral culpability in environmental offences leads to the belief that they are not serious crimes and that their vigorous pursuit is not justified.

### Enforcement of crime

Enforcement is the process of bringing about compliance with legal requirements. Enforcement requires deployment of resources (technical, administrative, financial

and time) and enforcement agencies prioritise resources to focus on ‘serious crimes’ (such as robbery) as opposed to ‘technical breaches’ of the law. Again, because environmental crimes are often viewed as not serious, they receive less priority and are rarely pursued.

Penalties serve a punitive and a deterrent function. Therefore the more morally culpable the offence, the more likely the chance of prosecution and the higher the penalty on conviction. Serious offences are punished by imprisonment while technical breaches are punished by fines and only in rare circumstances is a sentence of forfeiture of property handed down.

Imprisonment, being the act of confining a person in a prison as a punishment, is available only against a natural person. It is worth noting that crimes are committed by both natural and legal persons (such as corporations). However, corporations cannot be imprisoned and can only be fined, which is usually a penalty for less serious crimes.

In today’s world corporations commit many of the more serious environmental crimes (for example industrial pollution). The law has therefore erased the corporate division, to avail imprisonment as a penalty against corporations, in effect making directors and senior officers of corporations criminally liable (by means of vicarious liability) for the environmental crimes committed by corporations even where the criminal act or omission is committed by an employee of the corporation with the knowledge of the executive. However, corporations circumvent liability by instituting environmental management systems.

## Conclusion

To enhance the prospects of enforcing environmental crime it is necessary to advocate for a change in attitude towards the trivialisation of environmental crimes and to infuse environmental crime with moral culpability. Through capacity-building, especially of the law enforcement officers and institutions, participants would be able to acquire the technical and management capacity to enforce compliance with environmental requirements. There is also a need for legal and institutional reform to ensure that enforcement of environmental crime is prioritised.

## ENVIRONMENTAL SECURITY AND ORGANISED CRIME

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Sustainable development is a compelling moral and humanitarian issue, but it is also a security imperative. Poverty, environmental degradation and despair are

destroyers of people, of societies, of nations. This unholy trinity can destabilize countries, even entire regions.

*Colin Powell, 1999*

## Environmental security

Environmental security can be simply described as the process of establishing the security of those environmental factors, such as water, soil, vegetation and climate, that are prime components of a nation’s environmental foundation and that ultimately underpin all our socio-economic activities and hence our political stability.<sup>2</sup> Once these environmental resources are degraded or depleted, security declines too. While there are a number of other factors that undermine security, like faulty economic policies, inflexible political structures, oligarchic regimes and oppressive governments, that have nothing to do with the environment, these deficiencies often aggravate environmental problems and are aggravated by environmental problems in return. Therefore, environmental deficiencies provide the conditions which render conflict all the more likely. They can serve to determine the source of conflict. Moreover, they can also contribute to conflict; they can stimulate it and contribute to the growing use of force to repress disaffection among those who suffer the consequences of environmental decline or depletion.<sup>3</sup>

Despite the pervasive threat of international terrorism and the terrifying prospect of nuclear war in the 21st century, the reality is that security in the new millennium is not just about protection from aggression but also from environmental degradation and resource scarcity,<sup>4</sup> of which the current global fuel and energy crisis is a good illustration. National security is no longer just about fighting forces and weaponry alone. It relates increasingly to watersheds, forests and soil cover, cropland, genetic resources, climate change and other environmental factors rarely considered by military experts and political leaders.

The importance of environmental security was aptly captured by the Brutland Report, in the following words:

Few threats to peace and survival of the human community are greater than those posed by the prospect of cumulative and irreversible degradation of the bio-sphere on which human life depends. True security cannot be achieved by [a] mounting buildup of weapons (defense in a narrow sense), but only by providing basic conditions for solving non-military problems which threaten them. Our survival depends not only on military balance, but on good global cooperation to ensure a sustainable environment.<sup>5</sup>

Environmental security therefore is also about assessing the ways in which the quality of environmental systems

relate to or impact the overall health and well-being of a state or society. It frames environmental degradation as a genuine threat to human, national and international security and stability. While the concept of environmental security remains challenged as opposed to traditional security to the state because it lacks a well-defined antagonist that triggers security threats, it nevertheless is relevant in the security discourse because the key consideration remains: to what extent does destruction of the environment, whether caused by natural or manmade means, imperil or endanger the national security of a state? The accompanying question is what level of consideration should policymakers give to environmental threats or disasters that pose serious dangers to a state's fundamental national security and socio-economic health? These questions help guide the discussion on the relevance of environmental security to the general security discourse.

There are two critical considerations inherent in environmental dimensions of security, namely the need to maintain the ecological balance on a national scale and the commitment to prevent and manage conflicts that originate from environmental deterioration. Accordingly, environmental security is central to national security, comprising the dynamics and interconnections among the natural resource base, the social fabric of the state and the economic enterprise for local stability.

The environment is the most transnational of transnational issues, and just how an important dimension of peace, national security, and human rights its security is, is only now being realised. It is predicted that over the next hundred years, one third of the current global land cover will be transformed, and that the world will make increasingly difficult choices on consumption, ecosystem services, restoration, and conservation and management. Use of an environmental security framework based on regional and international legal instruments provides the means to confront environmental challenges arising from global climate change, biodiversity loss and rapid deforestation. In this regard environmental security provides an opportunity for fostering dialogue and a common understanding of security challenges, highlighting as it does the need for regional and international instruments to address environmental challenges. Thus adoption of environmental security in the planning framework can contribute to future multilateral dialogue and conflict resolution as well as promote effective security analysis and enhance development of environmental legal norms.

In most parts of the world security tensions centre less on boundaries and external might and more on internal conflict that stems from poverty, social exclusion, dispossession and marginalisation, as well as economic instability and competition for shared resources, such as water and arable land.<sup>6</sup> While the possible presence of

weapons of mass destruction is a source of acute concern, so should be the absence of human rights and institutions necessary for economic and social development, as well as environmental protection. Unfortunately, most of the world's leaders continue to be blind to the fact that environmental, economic and cultural stresses are just as critical as political and military factors in the maintenance of internal peace and security.<sup>7</sup>

This situation continues today, although the concept of environmental security has been around now since the 1970s<sup>8</sup> and the international legal basis for establishing environmental security as a guiding principle was established in the World Charter for Nature. This principle states, amongst others, that:

- Nature shall be respected and its essential processes not impaired (article 1)
- Living resources shall not be utilised in excess of their natural capacity for regeneration, the productivity of soils shall be maintained or enhanced, and non-renewable resources shall be exploited with restraint (articles 10(a), (b) and (d))
- Nature shall be secured against degradation caused by warfare and other hostile activities (article 5)
- Military activities damaging to nature shall be avoided (article 20)

Following on the Charter, environmental security was given credence by the 1994 Human Development Report of the United Nations Development Programme, which included existence (including environmental) threats at different levels in its description of human security. The concept of human security and its linkage to the environment has since taken on greater recognition and many governments have since then investigated aspects of environmental security through the use of new technologies such as remote sensing, satellite imagery and other forms of mapping.

Recognition of environmental security has also occurred as a result of globalisation. As Renner observed:

In many crucial respects, nations are no longer the sole masters of their destinies. What happens practically in one part of the world can affect remote areas elsewhere. This interdependence in economic, military and environmental affairs has already begun to erode traditional notions of security and even national sovereignty itself.<sup>9</sup>

## Linking the environment to security

In linking the environment to security, the question to ask is why should the world leaders shift their focus from the more pressing needs of an imminent nuclear threat from

countries like Iran and Korea to a more subtle but equally serious threat like environmental security? The answer lies in the recognition that the world's life-supporting ecosystems that generate water, food, medicinal substances and air for current and future generations will be subject to increasingly severe changes. Such changes will test our traditional concepts, boundaries and understanding of national security and alliance politics and if taken for granted, may lead to conflict, including violent conflict, ranging from a global to a regional, national and local level and affect humans at all these levels. In already impoverished states, environmental degradation can weaken a government's capacity and legitimacy, as financial and political demands increase while economic capacity declines.

Environmental degradation thus contributes to insecurity in various ways. It can threaten traditionally defined national security in terms of human security, health conditions or economic development. It also affects humankind and its institutions and organisations everywhere. Environmental changes resulting in scarcity will pose a great threat in terms of human movement. Typically, when people are faced with a severely degraded environment, the behaviour strategy of choice is migration.<sup>10</sup> In 1995 there were 25 million environmental refugees<sup>11</sup> compared to 27 million traditional refugees (people fleeing political oppression, religious persecution and ethnic troubles). This number is projected to double by 2010. It is projected that when global warming takes hold, as many as 200 million people could be subject to disruptions of monsoon systems and other rainfall regimes, by droughts of unprecedented severity and duration and by sea level rise and coastal flooding.<sup>12</sup> It is projected that up to 80 million people may be considered to be in a state of semi-starvation primarily due to environmental factors, and that seven million of them have been forced to migrate to obtain food. The Horn of Africa and Sudan are projected to have about four million environmental refugees.<sup>13</sup> With half the world's traditional refugees and at least a similar proportion of environmental refugees, sub-Saharan Africa is set to remain the primary locus of environmental refugees in the world. This raises several issues of concern with regard to environmental security in the region. While the causes of environmental migration are environmental problems, these refugees are bound to give rise to a myriad of political, social and economic issues. Immigrant aliens present abundant scope for popular resentment as has already been experienced in many countries in the region with regard to the Ethiopian and Somali refugees. In a region that is already struggling with threats to perceived social cohesion and national identity, refugees can become an excuse for outbreaks of ethnic violence and civil disorder.<sup>14</sup>

Environmental changes resulting from population growth, depletion and degradation, for example because of pollution and global warming, of resources such as fresh water supplies, biodiversity, agricultural lands and even the stratosphere will not only contribute to the growing inequity between nations but also between individuals. This will affect human security primarily because it will affect the ability of entire communities to support themselves, exacerbating such phenomena as environmental refugees. While environmental scarcity alone is usually not enough to generate conflict, its interaction with other political, economic and social conditions may foster political or military conflict.<sup>15</sup> The challenge therefore lies in the ability of governments in Eastern Africa to make innovative institutional arrangements and use technological advances to manage the challenges posed by decreased environmental security.

However, it is not just environmental scarcity that poses environmental security challenges. Resource abundance is just as likely to cause environmental insecurity as is scarcity. The Millennium Ecosystem Assessment which examines all the functions of ecosystems and the services they offer to people and nature provides an apt illustration of this. Abundance of environmental resources such as oil, minerals and gas may and very often do lead to conflicts. It can also lead to severe environmental degradation through pollution and infrastructural development. Thus economic, political and environmental effects flowing from environmental resource abundance could also decrease environmental and human security.

In addition to the environmental insecurity caused by scarcity or abundance of resources, conflict also contributes to environmental security problems in any given country. Violent conflict, war and displacement of people may lead to a decrease of environmental security and initiate a vicious circle of scarcity, poverty and further conflict. Conversely, the sustainable use of natural resources and joint efforts to protect the environment across national borders and social divisions can contribute to conflict prevention and peace building. For example, various forms of cross-border water cooperation schemes are contributing to stability and peace in regions of latent conflict.<sup>16</sup> The potential for conflicts over water could be illustrated at the hand of these facts: At least 261 of the world's major rivers flow through more than one country, with at least 176 flowing through two countries, 48 through three countries and 37 through four or more countries. River basins account for more than 40 per cent of the earth's land surface, provide 60 per cent of the world's fresh water and supply some 40 per cent of the world's population with water for amongst others domestic and agricultural use and hydroelectric power.<sup>17</sup>

However, it should be noted that environmental security is not just about relative security from environmental dangers caused by natural phenomena but also from dangers caused by humans. Environmental security also refers to risks from biological, chemical and nuclear materials and those individuals who use them as weapons of mass destruction. The imperative to implement environment security measures for industry and infrastructure provides a new lens through which to view the next generation of environmental legislation. The emphasis must be on facilitating the widespread deployment of the most strategic and efficient approaches to minimise environmental risks and thus environmental insecurity. Even with modern advances in environmental management systems, few facilities have given sufficient attention to the integration of security monitoring and defences into such frameworks, or adequately addressed the risk of sabotage from outside or inside organisations. Despite advances in technology with regard to security systems, most companies fail to adequately address threats from chemical or biological agents.

The search for safety from a newly apparent array of threats has created new incentives for sustainable and secure environmental management practices. The threat of eco-terror can take many shapes as the eco-terrorist basically seeks to turn the forces of nature to a hostile purpose either by targeting the environment itself (for example by contaminating drinking water) or by using it as a means to cause loss of life and property (for example by destroying a dam and releasing a large flood of water). It could also take the form of acts of sabotage, such as those directed at oil production and refinery operations or pipelines in Nigeria and Iraq or industrial facilities such as threats reported in the United States.<sup>18</sup>

While acts of terror involving biological or chemical agents and other weapons of mass destruction are not new,<sup>19</sup> recent technological developments have made it possible to produce and deliver agents that can cause catastrophic harm.<sup>20</sup> Accordingly, international environmental agreements such as the Montreal Protocol and the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and Their Disposal are intended to address – amongst others – the black market that has emerged in ozone-depleting substances and other harmful materials that are potentially weapons of green destruction and could be used for eco-terror activities.

It is clear from the foregoing that despite the pervasive threat of international terrorism and the terrifying prospect of regional nuclear wars in the 21st century, the reality is that security in this new millennium is not just about protection from external aggression, but also from threats such as disease, poverty, social exclusion, dispossession, economic shocks, failed states and environmental

degradation and resource scarcity. Accordingly, conventional approaches to security based on national sovereignty cannot adequately deal with transboundary conflicts related to exploitation of natural resources, migration, terrorism, disease or crime.

## Environmental security and organised environmental crime

Crime, especially environmental crime,<sup>21</sup> has escalated over the last two decades in spite of efforts taken by governments to protect the environment.<sup>22</sup> The question therefore is, why is environmental crime on the increase despite the efforts by governments to control it? Where the gaps and what are can be done to ensure that environmental crime is taken under control?

The answer lies in the nature of environment crimes themselves. In order to effectively deal with the problem of environmental crime, it is important to understand the nature and extent of environmental crime and how it differs from other crimes, the people who commit these crimes, how they organise themselves and the manner in which they commit these crimes. In addition, it is important to thoroughly examine the legal and policy regime as well as the institutional frameworks that have been established to fight environmental crime to determine whether they have sufficient resources to achieve this objective. Accordingly, in order to deal adequately with the problem of environmental crime in a manner that contributes to environmental security, there is a need to look inwards – to the legal, policy and institutional frameworks in place and their adequacy or otherwise – and to look outwards – to the nature of and people involved in environmental crimes and how they conduct their unlawful activities.

Organised crime has long been in the sights of policymakers but generally from the perspective of traditional organised crime groups, and especially those involved in drug trafficking. Little attention has been given to organised environmental crime although the manner in which it is committed is similar in many ways to traditional organised crime.<sup>23</sup> The present situation is that environmental crime is not only organised crime but has become internationalised and is reportedly the most profitable and fastest-growing area of international criminal activity. Criminal organisations from around the world, most notably in Italy, Russia, China and Japan, are taking advantage of the significant costs of waste disposal as well as the increased value of rare or precious natural resource commodities that are subject to trade and sale restrictions, and are earning substantial illicit income from circumventing environmental law and regulations.<sup>24</sup>

These groups of organised criminals have set up networks that extend to Eastern Africa and have used them

to penetrate the region and skim off some of its most precious natural resource commodities. The US government estimates that local and international crime syndicates worldwide earn between \$22 and \$31 billion annually from dumping hazardous waste, smuggling proscribed hazardous materials, and exploiting and trafficking in protected natural resources.<sup>25</sup>

Organised crime groups are mingling illegal products or toxic wastes with recyclable materials, misusing the multibillion-dollar legal trade to conceal their activities. Most of these wastes are shipped in 'trash-for-cash' schemes to countries in Eastern and Central Europe, Asia and Africa where disposal costs and enforcement of environmental regulations are lower. The lack of specific legislation governing such crimes in many countries and poor enforcement or limited legal penalties in many others (often only fines that are insignificant in comparison to the millions in profits that can be made from this activity) reduce the risks for international crime groups involved in dumping hazardous waste.<sup>26</sup>

Italian criminal organisations are the most involved in illegal waste disposal. In 1997 at least 53 Italian crime groups were trafficking in and disposing of hazardous waste, which was shipped to sites in Albania, Eastern Europe, and Africa, according to European law enforcement officials.<sup>27</sup>

Criminal groups also smuggle environmentally harmful products, particularly ozone-depleting chlorofluorocarbons (CFCs) whose legal trade is subject to stringent international restrictions. The illegal trade of these substances into the US and other markets is often accomplished through false labelling, counterfeit paperwork and bogus export/import corporations.<sup>28</sup>

The theft and illicit trade of natural resources also generates significant income for criminal organisations, amounting to \$5–8 billion per year. Well-organised criminal groups in Africa, Eastern Europe, Latin America, China, and Southeast and Southwest Asia are heavily involved in illegal logging and trade of forest timber. Illegal logging threatens biodiversity and has contributed to the significant decline in forest areas worldwide. Russian and Chinese crime groups earn substantial income from illegal fishing which not only depletes seafood stocks, but also deprives seafood industries of legitimate earnings and government authorities of import and export revenues.<sup>29</sup>

The illegal trade in animal parts – in particular elephant, whale, and hawksbill turtle parts – and endangered animal species has also become a lucrative business, particularly for Chinese and other Asian criminal groups. The illegal trade in exotic birds, ivory and rhino horn, reptiles and insects, rare tigers, and wild game is estimated to earn criminal groups \$6–10 billion per year.<sup>30</sup>

The increase in international environmental crime is of particular concern and has led to the formulation of a variety of multilateral conventions to control pollutants that are health or environmental hazards, to prevent wanton exploitation of scarce natural resources, and to protect endangered plant and animal species. The following are the key conventions:

- Convention on International Trade in Endangered Species of Fauna and Flora (CITES), regulating the illegal trade in wildlife
- The Montreal Protocol on the Illegal Trade in Ozone Depleting Substances, controlling the illegal trade in substances that deplete the ozone layer
- The Basel Convention on the Transboundary Movements of Hazardous Wastes and other Wastes and Their Disposal, which controls dumping and illegal transportation of various kinds of hazardous waste
- The 2000 Cartagena Protocol on Bio-safety to the Biodiversity Convention, dealing with bio-piracy and the transport of controlled biological or genetically modified materials
- The 1973 International Convention on the Prevention of Pollution from Ships and the 1972 London Convention on Dumping, which control illegal dumping of oil and other wastes in oceans
- The 1998 Rotterdam Convention on Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, which restricts trade in certain materials
- The 2001 Stockholm Convention on Persistent Organic Pollutants and Fuel, which deals with the trade in and smuggling of chemicals to avoid taxes or future controls on carbon emissions<sup>31</sup>

There are also various other organisations that work together to control environmental crime, such as regional fisheries management organisations that impose controls on the illegal, unregulated and unreported fishing and the illegal logging and trade in timber, when timber is harvested, transported, bought and sold, is also under the control of CITES.

The international community has also responded to the problem of environmental crime in several other ways. The eighth UN Congress on the Prevention of Crime and Treatment of Offenders pointed out the relevance of imposing strict controls on organised crime activities affecting the natural environment. In a resolution on the Role of Criminal Law in the Protection of Nature and the Environment (endorsed by the General Assembly in Resolution 45/121), states were urged to update criminal law in order to create efficient responses to environmental threats. Both ECOSOC Resolution 1993/28 and ECOSOC

Resolution 1994/15 further underlined and highlighted the importance of the role of criminal law in the protection of the environment. ECOSOC Resolution 1995/27 demanded that the resolutions and recommendations of the ninth UN Congress on the Prevention of Crime and Treatment of Offenders be incorporated into national laws.<sup>32</sup>

## The challenge of enforcing environmental crime law and achieving environmental security

Environmental crime, being a broad and diverse area of offence whose gravity is not always evident or appreciated, presents many challenges to those authorities that are tasked with dealing with it. From detection to prosecution to sentencing, enforcing environmental crime law is a challenge that many jurisdictions are yet able to deal with effectively.

Environmental crimes, especially the more grievous ones, are by their nature clandestine activities carried out by highly organised criminals and groups of criminals who use their sophisticated networks to establish sources and routes that are almost always impossible to detect or penetrate by government authorities. This is compounded by the inadequacy of the resources and training of many government officials to detect and follow up leads on the environmental criminal activities of gangs. The fact that most criminal activities are carried out far from the public domain present an even greater challenge for environmental authorities, as far as catching up with the criminals and bringing them to justice are concerned.

Environmental crimes are also difficult to prosecute for a number of reasons and this presents a real challenge in enforcing environmental criminal law. First of all, the sentences available and imposed for environmental crimes take the form of fines or, in exceptional cases, imprisonment. It has been suggested that regardless of the severity of fines, financial penalties are a blunt instrument and often inappropriate both for the type of crimes which fall within this category and the type of offenders who commit them. As a result, the sentences or punishments are seldom appropriate or adequate. Moreover, there is generally no differentiation in punishment for corporate and individual environmental criminals. In fact, corporate criminals whose environmental crimes are often of a bigger magnitude than individuals tend to receive fines, which do nothing to either deter or penalise them in the real sense of the word.

In many jurisdictions the nature of the law is partly to blame for this as it is largely based on a system in which the criminality of environmental crimes does not carry the same weight as traditional crimes. Environmental

laws are also on the whole narrow in scope as far as both their definition of the offence and prescription of the sentence are concerned and do not have much scope for tailoring sentences to offenders. For example, most fines for dumping are so low that even when enforced to the maximum extent intended by the law, they have no impact whatsoever on corporate or commercial entities. The organisations often have a monthly turnover that dwarfs the size of the maximum possible fine. Even where cases are brought in higher courts with unlimited jurisdictions over the size of the fines, this happens very seldom as the responsible prosecuting state authorities rarely if ever have the capacity to prosecute the larger corporations or commercial interests. They therefore tend to focus on individuals but their overall impact in terms of deterrence for environmental crimes is often minimal. Such individuals are usually small cogs in a large organisation, consisting of a ring of organised criminal gangs, and are replaced as soon as they are apprehended by the authorities.

The problem of enforcement of environmental crime is even worse in pollution cases, where the polluter rarely pays enough either to deter him or to repair the damage he caused. Many big polluters claim to have insufficient means to pay a reasonable and appropriate fine and yet they go on to profit from their crimes. Clearly, claims of insufficient funds or insolvency by corporate polluters are problems that need to be addressed. A way should be found by which courts can take into account the profits made from crimes in determining the size of the fine or sentence. Unless polluters pay substantially more than the profit they derive, there is unlikely to be a real deterrent or punishment value for the sentences given in cases of environmental crimes involving pollution.

In addition to the inadequate fines, court rules allow magistrates and judges to take into account mitigating and aggravating circumstances in determining the severity of the sentence. For example, inability to pay by an environmental criminal is often considered a mitigating factor. Because environmental offences are generally strict liability offences and do not require intent, courts more often than not consider mitigating factors in sentencing environmental criminals. It would improve matters if prosecuting officials were able to bring aggravating factors to the attention of the judges, and so secure harsher fines and punishments for environmental crimes. Prosecuting officials should also not restrict themselves to just presenting the environmental crime but look into the *mens rea* as a means of securing tougher sentences for environmental criminals. Prosecuting officials should determine the intention, thus whether an environmental crime was committed maliciously or whether it was committed purely for financial gain. However, both these factors require more

resources and time from prosecuting agencies, which they do not necessarily have.

Corporate environmental offenders should actually be subject to special provisions in the law for although many environmental crimes are caused by lazy, negligent or malicious individuals, some of the worst environmental offences are committed deliberately by companies. Again, it would help if their turnover and profitability are taken into account when prosecuting and sentencing these corporate environmental criminals, so that the fines that are imposed act as deterrents. Here environmental laws should follow the example of penalties for economic crimes, where there is now a general consensus that custodial sentences be imposed for the more severe crimes.

Another challenge in combating environmental crime is that unlike other organised crimes, there is no international legal regime which serves as the basis for the extradition and prosecution of environmental criminal gangs who operate cartels across the globe. In view of the fact that environmental crime has been internationalised, the possibility of making certain environmental crimes extraditable offences or offences that can be tried under international law needs to be investigated.

Enforcement of environmental crime laws is also challenged by the absence of specialised environmental courts. The establishment of specialised environmental courts would allow for growth in the practice of special environmental crime prosecutors and would result in better and more prosecutions and convictions. It would also enable specialising prosecutors to bring more environmental cases to court. As matters stand now, environmental crimes have to compete for space and time in regular criminal courts and vie for the attention of prosecutors and judges who regard them as less serious in terms of criminal culpability than the traditional criminal offences that they are accustomed to prosecuting and hearing.

Insufficient resources to detect, prosecute and try environmental crimes are a serious challenge. Apprehending and then successfully prosecuting offenders involved in illegal dumping or pollution, or tracing the movements of criminals trading in illegal fauna and flora, require expensive and extensive surveillance and investigative work. Enforcement of environment crime relies on allocation of resources from central governments and has to compete with other priorities. It is therefore common that the environment sector and especially enforcement is often underfunded and rarely has the resources it needs to ensure effective and efficient enforcement of environmental laws.

These challenges are exacerbated by a shortage of skills and experienced professionals both in the public and private sectors. Most law enforcement agencies lack specialised staff to deal with environmental crimes. This has a negative effect on the level and quality of prosecutions, especially when they involve large corporations or organised gangs of criminals who do have the necessary resources to devote to escaping the law. There are very few lawyers trained in the prosecution and enforcement of environmental crimes. In fact, many of the current prosecutors, magistrates and judges received their training long before environmental crimes were enshrined in law and very few of them have had adequate training to deal with them.

Several other factors present challenges in the enforcement of environmental crime laws. Corruption, lack of prioritisation of environmental enforcement by many governments and the general lack of awareness of and appreciation for environmental issues generally and environmental crimes specifically make it difficult to enforce environment crime laws. Corruption is particularly significant because gangs – both those dealing in illegal transportation and disposal of hazardous waste and in illegal trading in endangered flora and fauna – have a network of corrupt officials who facilitate their activities.



## Part II

# The range of environmental crimes in eastern Africa

### EXAMPLES OF ENVIRONMENTAL CRIMES IN EASTERN AFRICA

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The concept of the environment is expressed by various words all over the world: *milieu* or *environnement* in French, *Umwelt* in German, *medio ambiente* in Spanish, *meio ambiente* in Portuguese, *Al'biah* in Arabic and *okruzhauchhaia sreda* in Russian. However, in all languages the current definition of 'environment' encompasses both abiotic components (non-living chemical, geological and physical factors such as the temperature and weather) and biotic components (natural material that originated from living organisms, for example wood and bone), as well as the interaction between them. It also includes property which forms part of the cultural heritage, monuments and the landscape, buildings and structures on the land.

The emergence of environmental awareness can be traced back to the Stockholm Declaration of 1972, in which the issue of the human environment was first addressed. The idea was included in the World Charter for Nature in 1982, which reiterated that man is part of nature and that life depends on the uninterrupted functioning of natural systems. In its Declaration on Environment and Development, the Rio Summit of 1992 noted that in order to achieve sustainable development, environmental protection constitutes an integral part of the development process and cannot be considered in isolation. In 1995 the Symposium of the Ecumenical Patriarchs observed that respect for nature and the sanctity of all creation are one of the fountains of morality.

Environmental crime is an emerging crime. People are profiting from the destruction of our environment by dumping hazardous waste, carrying out illegal activities

(such as logging) and stealing bio-assets. Environmental crime not only damages the ecosystem but also impoverishes countries where deforestation, pollution and displacement of people trigger conflict and prevent social and economic development.

The current environmental crimes that are being reported in the Eastern Africa region range from improper transportation and dumping of waste, pollution, improper quarrying and mining activities to poaching and illegal trade in biodiversity products, particularly flora and fauna.

To tackle environmental crimes, there is primarily a need for political will, availability of adequate resources and an enthusiastic and effective transboundary enforcement cooperation mechanism. A step in the right direction is that the UN Commission on Crime Prevention and Justice agreed on a resolution on international cooperation to combat trafficking in forest products such as timber and wildlife. There is a need for the ECP Project to build its activities in the Eastern Africa region around this resolution in the future.

As with most environmental crimes, demand is a major driver. Therefore it is not the responsibility of the countries where most of the remaining forests and wildlife in the region are situated to tackle the trafficking in biodiversity resources, but rather the responsibility of the consumer states. The latter that should take steps to exclude illegally obtained products from their markets. Then there will be no incentive for the traffickers to engage in these crimes.

### POLLUTION AND DISPOSAL OF WASTE AS AN ENVIRONMENTAL CRIME

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An environmental crime is typically the intentional, knowing, reckless or criminally negligent violation of

environmental laws and regulations. Criminal liability for environmental violations can occur at any stage during the generation, treatment, transportation and disposal of pollution products.

Pollution may be defined as the introduction by man, directly or indirectly, of substances or energy into the environment, which endangers human health, harm living resources and ecosystems, and impair or interfere with the legitimate use of the environment.<sup>33</sup> Pollution is generally motivated by greed and the desire to save money, resulting in improper storage or disposal. As the treatment and disposal of hazardous waste can be expensive, unscrupulous businessmen often pollute the environment by not following accepted non-polluting procedures. For example, the cost of legal disposal of hazardous waste in Kenya ranges from Kshs30 to Kshs50 per tonne. Some waste transporters often collect fees but choose to dispose of the material illegally and so increase their profits. Damaged goods can also sometimes lead to waste and pollution.

Apart from ordinary households who produce an enormous amount of garbage, the biggest potential polluters are large manufacturing and service industries, and companies that produce solid waste and medical waste products.

Industrial waste management is a specialised aspect of chemical management which can be supplementary to government efforts for the disposal of chemicals and, if handled properly, can contribute to the reduction in pollution and illegal dumping of hazardous waste. Industrial management is a cradle-to-cradle issue in which all aspects of the generation, handling, storage, transportation, treatment and disposal of waste is taken into consideration.

The principle of waste prevention – by implication acting as a counter to environmental crime – is to undertake root cause analysis and life-cycle evaluation. In a well-executed root cause analysis answers would be sought to the following key questions:

- What types and quantities of wastes and emissions are being generated?
- What are the cost accounting implications – thus how much do these wastes and emissions cost / what are the impacts and liabilities?
- Where and why are these wastes and emissions being generated?
- How can they be prevented, minimised, treated?
- How well are processes, products and services designed from an environment and safety perspective?

The emphasis should be on sustainable consumption and production plans and also (where possible) negotiated compliance. The ideal waste management strategies include dilution, treatment, recycling, cleaner production

techniques and sustainable consumption. These, coupled with environmental laws, will lead to sustainable development, a reduction in pollution and a concomitant reduction in this form of environmental crime.

## Opportunities for environmental crime reduction

- The African ten-year Framework of Action on Sustainable Consumption and Production adopted by the African Ministerial Conference on the Environment and the African Union
- The African Roundtable on Sustainable Consumption and Production
- The National Cleaner Production Centre's Green Industry Initiative
- Greater recognition of cleaner production or more holistically sustainable consumption and production that incorporates extended producer responsibility and integrated product management

## Recommendations

- Capacity-building is required by industry to prevent or minimise the generation of waste
- National laws should contain meaningful provisions for prevention and win-win scenarios for sustainable consumption and production
- Multilateral environmental agreements are not self-executing and need to be moved from signature to ratification. There is a need, therefore, to incorporate international laws that provide for the prevention and enforcement of environmental crimes into domestic legislation
- Continuous training and education should be provided to the public, local police, lawyers and judges about matters affecting environmental sustainability
- Improved knowledge about the safe handling of hazardous materials and infrastructure for waste management
- Well-communicated national risk/disaster management systems with clear institutional arrangements should be put in place in each African country

## ILLEGAL LOGGING AS AN ENVIRONMENTAL CRIME

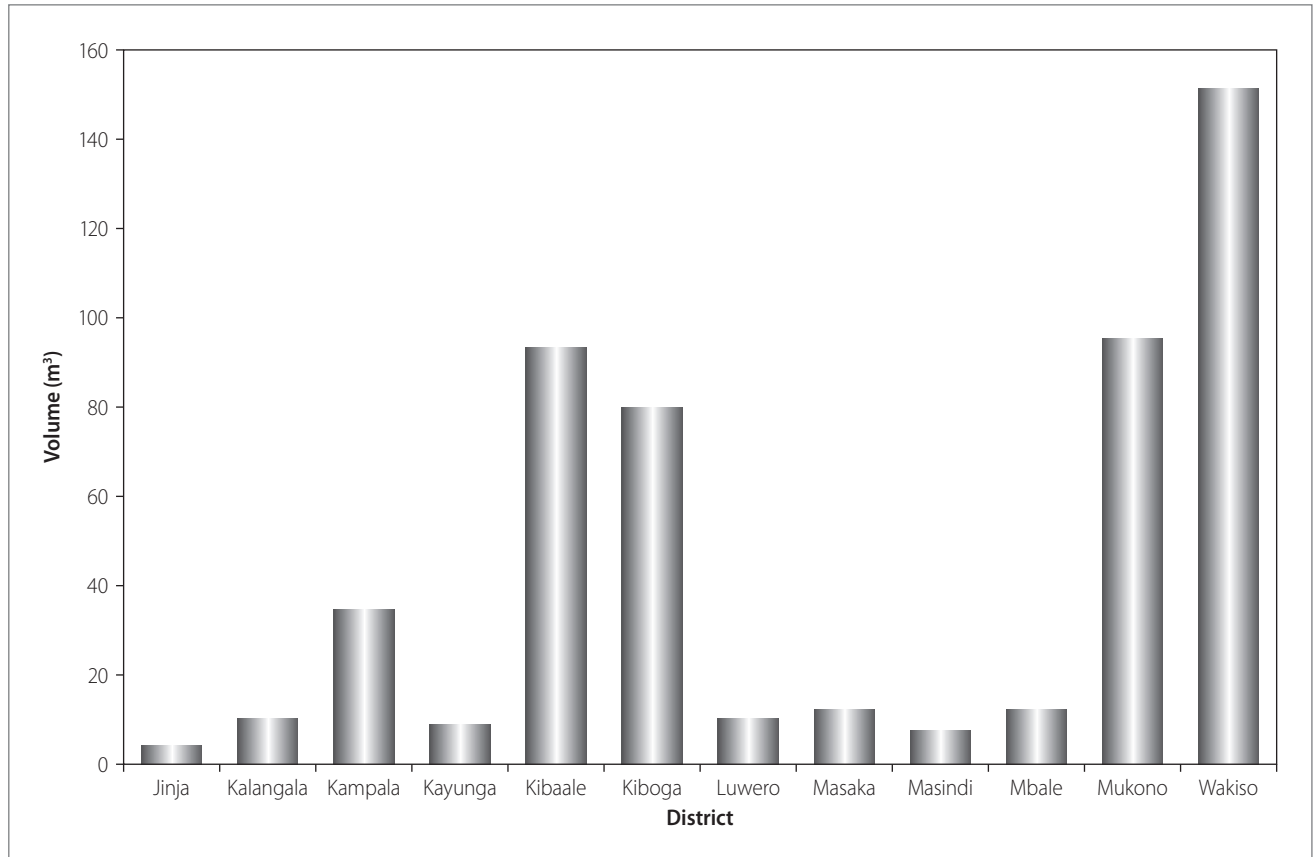
**DAMIAN B AKANKWASA**

Executive Director, National Forestry Authority, Uganda

### Manifestations of illegal logging

- Cutting down trees for their wood
- Harvesting, transporting, processing or trading in timber in violation of national laws (such as the

**Figure 1 Impounded timber**



Source: National Forestry Authority, Uganda

Forestry Act, Environment Statute and Wildlife Statute of Uganda)

Owing to inadequate tracking mechanisms it is difficult to quantify the volume of round wood that is removed illegally. However, the table below gives some indication of the seriousness of the problem.

### Causes of the practice

- Poverty of the surrounding communities
- The need for expanding land to farm (forests are cleared for crop and livestock production)
- The need to meet energy demands
- There are few substitutes for timber/wood
- Other land use demands
- Population increase

### Impact of illegal logging

- Distortion of market forces
- Tax evasion leads to loss of revenue
- Loss of biodiversity
- Loss of habitats for fauna
- Changes in local microclimates
- Desertification/climate change

- Detrimental effect on overall forestry development

### Constraints to combating of illegal logging

- High demand for timber products
- Poor culture regarding the rule of law
- Different, often contradictory policies, laws and regulations on logging
- Poorly implemented trade rules
- Changes in land use
- Local politics
- Intimidation of enforcement officers

The best option for combating the practice is to use a combination of strategies.

### CHALLENGES AND CONSTRAINTS OF COMBATING WILDLIFE CRIME IN EASTERN AFRICA

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### Introduction

The East African region is rich in natural resources, including a wide variety of wildlife. The region's wildlife

resources constitute a unique natural heritage that is of great ecological importance globally. Some of the national parks, forest reserves and wetlands in the region are internationally recognised as World Heritage Sites, Ramsar sites and Man and Biosphere Reserves.

Kenya's wildlife resources are managed by the Kenya Wildlife Service, a uniformed and disciplined organisation, whose mandate it is to conserve and manage wildlife in Kenya and enforce the relevant laws and regulations.

Wildlife conservation areas in Kenya cover approximately 8 per cent of the country's landmass and comprises

- 22 national parks (30 348 km<sup>2</sup>)
- 28 national reserves (16 478 km<sup>2</sup>)
- 4 national sanctuaries (71 km<sup>2</sup>)
- 6 marine national reserves (706 000 km<sup>2</sup>)
- 4 marine national parks (70 km<sup>2</sup>)
- 125 wildlife stations outside the protected areas

## Wildlife crimes

The following are some of the common crimes related to wildlife:

- Poaching of wildlife (for subsistence and commercial purposes)
- Destruction of water catchment areas (logging, illegal human settlements, charcoal burning, etc)
- Illegal livestock grazing in national parks and reserves
- Illegal live animal and trophy trade
- Dumping of hazardous wastes (gases, fluids and solids) in the air, into rivers, lakes, ocean, swamps and open land, and burying it in the soil

## Constraints and challenges

- Demographic changes (rapid human population increase)

- Weak policies and legislations
- Conflicting policies governing related sectors – land, water, agriculture, livestock development, etc
- Insecurity, especially bandit activities in several remote areas and access roads to wildlife areas
- Proliferation of small arms in the region (which increases poaching and bandit activities)
- Availability of markets (local and global) for trophies and live wildlife species
- Conflicting policies and legislation of neighbouring states regarding the conservation and management of shared wildlife resources
- Acts of terrorism (which have adverse effects on tourism)
- Inadequate budgetary allocations for law enforcement
- Limited law enforcement capacity

## Enhancing wildlife security

- Strengthening wildlife law enforcement capacity with regard to training, equipment, prosecution of offenders, etc
- Government support and goodwill which is required to increase resource allocation
- Enhanced regional collaboration, cross-border liaisons and partnerships. These include the Lusaka Agreement Task Force, Interpol, cross-border wildlife security forums and CITES
- Enhanced monitoring of and surveillance over criminal elements
- Securing additional space for wildlife (particularly migratory corridors and dispersal areas)

## Conclusion

Networking and collaboration among law enforcement agencies at the local, regional and international level are critical factors for ensuring successful law enforcement against environmental crimes.

# Using public interest environmental litigation to enforce environmental crime law

## INCORPORATION OF PUBLIC INTEREST LITIGATION IN ENVIRONMENTAL CRIMES IN EASTERN AFRICA

TOM OJIENDA  
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### Introduction

Defend the poor and the fatherless  
Do justice to the poor and afflicted and needy  
Deliver the poor and needy. Free them  
from the hand of the wicked.<sup>34</sup>

Public interest litigation describes legal actions brought to protect or enforce rights enjoyed by all or most members of the public. It is the process whereby organisations and individuals use litigation in the courts to enforce collective rights or to influence social change. In the words of Justice Bhagwati, it is not in the nature of adversary litigation, but is a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice.<sup>35</sup> A Tanzanian court defined the concept as follows:<sup>36</sup>

It is not the type of litigation which is meant to satisfy the curiosity of the people, but it is a litigation which is instituted with a desire that the Court would be able to give effective relief to the whole or a section of the society ... the condition which must be fulfilled before public interest litigation is entertained by the Court is that the court should be in a position to give effective and complete relief. If no effective relief can be granted, the court should not entertain public interest litigation.

Thus, a public interest case:

- Affects a significant number of people, not just one individual
- Raises matters of broad public concern
- Impacts on a disadvantaged or marginalised group
- Must be a legal matter which requires that it be *pro bono publico* (for the common good).<sup>37</sup>

Environmental crime is the deliberate evasion of environmental laws and regulations by individuals and companies in the pursuit of personal financial benefit.<sup>38</sup> It is a deliberate act or omission leading to degradation of the environment and resulting in harmful effects on human beings, the environment and natural resources. Where these activities involve movements across national boundaries, or impacts upon the world as a whole, they can be called an ‘international environmental crime’. For purposes of this paper, environmental crime may be classified into the following four main categories:<sup>39</sup>

- *In the area of biodiversity*: This occurs in the form of illegal trade in endangered species of wild flora and fauna and their products, illegal whaling, illegal use of genetic resources or information, development and commercialisation as pharmaceutical products of material removed from indigenous habitats without permission or licensing, and illegal trade in genetically modified products
- *Natural resources related crime*: This includes illegal fishing, for instance banned driftnet catches or exceeding fishing quotas, as well as illegal logging and trade in timber and timber products
- *In the area of wastes*: This includes the illegal disposal and movement of hazardous wastes<sup>40</sup>

- *Banned substances*: This includes the illegal production of and trade in ozone depleting substances such as illegal chemicals, pesticides and persistent organic pollutants

The occurrence of environmental crime in any country is usually the result of:

- *Differential costs or values*: Regulations which create cost differentials between legal and illegal products because of different compliance costs or different consumer prices facilitate environmental crime
- *Regulatory failure*: Lack of appropriate regulation, including failure to determine and/or protect property rights exacerbates environmental crime
- *Enforcement failure*: In cases of problems with enforcement of environmental law, including suitability of regulation/enforcement methodology and cost of compliance, regulatory capture, lack of resources and infrastructure, political will and/or expertise, corruption, prevalence of political and economic disruption, environmental crime will surface
- *Trade liberation and deregulation*: This makes border controls more difficult to implement or enforce, thereby providing leeway for the commission of environmental crime
- *Growth of transnational corporations*: Owing to inadequate resources in many countries, it has become almost impossible to enforce environmental law on the large and transnational corporations

Environmental crime is not only a threat to biodiversity, but also results in a major loss of revenue to many developing economies. According to Interpol,

The illegal taking, trafficking and trading in wild animals, plants and their parts and derivatives is a global phenomenon that has serious implications for biodiversity, ecosystems and national economies. It devalues the global community of which mankind is a part.<sup>41</sup>

Pollution crime not only damages the environment, but also results in unjust profits for criminals.<sup>42</sup> A business which ignores the law has an unfair economic advantage over a law-abiding one. The illegal disposal of waste into waterways, the air and the ground significantly damages a community's livelihood, destroys jobs and lowers property values. The illegal actions of one company or even one individual can have consequences stretching far beyond the damage caused by the initial act.

Aware of these realities, efforts have been made in the Eastern African region to eliminate environmental crime. The underlying assumption of this necessary task has been that as in the case of conventional 'street crime'

which requires a great deal more than the police, courts and prisons to control, effective control of environmental crime should harness a wide variety of institutions, jurisprudence and influences to improve environmental performance. If the jurisprudence of public interest litigation of judicial organs is regularly used, this could significantly reduce the need for environmental enforcement. Therefore the aim of this paper is to evaluate, examine and explore the place of public interest litigation in East African Judicial organs.

The first section provides a jurisprudential analysis of the experiences of the East African courts in environmental litigation and evaluates how responsive such courts have been to the interests of the public in environmental cases appearing before them. This analysis is based on different countries in the region. The second section identifies some of those who have stood in the way of the use of public interest litigation in environmental cases in East Africa. The last section seeks to present an ideal legal framework premised on public interests as the prime instrument for litigation in environmental matters.

## The place of public interest litigation in environmental litigation in Eastern Africa

Access to justice in environmental decisions is secured by the incorporation of environmental procedural rights into international and regional instruments. These provisions are then taken up in national legislations to give them effect at that level.<sup>43</sup> In the quest for a template for procedural rights in the environmental realm, public interests have proved to be particularly useful.<sup>44</sup> The most succinct statement on procedural rights is the Rio Declaration on Environment and Development, which states in principle 10:

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.<sup>45</sup>

The declaration thus lays out the basic tenets of procedural rights, namely public participation, access to information, and access to justice.

Increasingly, these rights have been adopted in other international treaties on the environment such as the Convention on Biological Diversity<sup>46</sup> and its Cartagena

Protocol<sup>47</sup> and also in domestic legislation. Article 23 of the Cartagena Protocol on Biosafety affirms that

The Parties shall, in accordance with their respective laws and regulations, consult the public in the decision making process regarding living modified organisms and shall make the results of such decisions available to the public, while respecting confidential information in accordance with article 21.

The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention)<sup>48</sup> is the most exhaustive international instrument on environmental rights. In addition to the general right to a clean environment, the Aarhus Convention spells out three substantive sets of citizens' rights:

- The right to have access to environmental information
- The right to participate in environmental policy-making
- The right to environmental justice

In view of the wide acceptance of these rights globally and the fact that they are part of the national laws, the endeavours of Eastern African states to guarantee such rights, both in their legislations and their judicial and quasi-judicial organs, are examined next.

## Kenya

Kenya has signed, acceded to or ratified many international instruments that provide for access to justice for its citizens generally and with regard to the environment specifically. As in most other countries, environmental litigation in Kenya takes the form of civil actions, for in Kenya, too, it is largely private parties that resort to judicial intervention in environmental issues.<sup>49</sup> Currently the context for promotion of access to justice and participation in the resolution of environmental disputes in Kenya is intrinsically intertwined with the public interest implementation context. These can be explained by the legal framework on environmental rights in Kenya, as well as the experiences of the judicial and quasi-judicial institutions in environmental litigation:

### *Legal framework*

#### *The Constitution of Kenya*

Whereas the Kenyan constitution does not expressly provide for environmental rights, it does place importance on the right to life, and experts have argued that the right to life encompasses the right to a clean and healthy environment.<sup>50</sup> Where the right is violated, the Constitution

provides for redress to the High Court of Kenya. Because access to information is an essential component of public interest litigation in environmental matters, the constitutional provisions on the freedom of expression, assembly and association are intricately linked to the right to information.<sup>51</sup>

It is however a glaring weakness that whereas some constitutional provisions lay the basis for access to information, they also contain exceptions that abrogate or limit the right to access the information. There is seemingly an adversarial relationship between citizens who seek information and government officials who use legal argument to restrict the flow of information. This impedes access to justice where information is critical to the prosecution of environmental claims.

#### *The draft Constitution of Kenya, 2004*

The defunct 'Wako draft' envisaged that public interests should form part of environmental decision-making. The chapter on national values, principles and goals included principles on the promotion of public participation in public affairs, sharing and devolution of power and access of the people to independent, impartial, competent, timely and affordable institutions of justice.<sup>52</sup> The Bill of Rights further reinforces these rights and states explicitly that '[e]very citizen has the right of access to information held by the state'.<sup>53</sup>

It was therefore a requirement that the Parliament to enact legislation that provides for access to information.<sup>54</sup> It also explicitly provided for the right to a healthy environment and free information about the environment<sup>55</sup> and access to courts.<sup>56</sup> The provision on access to courts also made room for access to justice through other non-state justice systems such as councils of elders and other local community institutions.<sup>57</sup>

The draft constitution contained intricate provisions for public interest in the administration of justice, particularly in environmental matters. The alternatives for ensuring that a person has access to justice in a forum other than the regular court system, acknowledged that many people are not necessarily able to afford the regular court processes, or that such processes may be secret and protracted, or such persons may be ignorant of the complex court procedures. This concept, if imported in environmental management and conservation, can help improve the efficacy of the justice systems, considering that environmental matters do call for urgent attention lest the final court decision be too late and therefore irrelevant.

#### *Environmental Management and Co-ordination Act<sup>58</sup>*

The Environmental Management and Co-ordination Act (EMCA) creates an overall and all-embracing agency for

the management of the environment as opposed to the legislation that had up to then set up sectoral agencies, which often led to regulatory competition. It also provides for public participation and access to justice. The Act established the National Environmental Council (NEC), the National Environmental Management Authority (NEMA), the National Environmental Tribunal (NET), the Public Complaints Committee, and provincial and district environment committees. The mandate of all these administrative structures is to ensure that justice is accessible to all members of the public.

Outstanding provisions of EMCA related to public interests include:

- *The right to a healthy environment:* The EMCA provides for the right of every person to a clean and healthy environment and obliges every person to protect and manage the environment.<sup>59</sup> Any person may bring an action in the High Court to enforce the right to a clean and healthy environment. In determining the dispute, the Court is guided by the principles of sustainable development as well as the principle of public participation in the development policies, plans and processes for management of the environment.
- *Locus standi:* A great innovation of the EMCA is that it overcomes most of the limitations on standing to sue. It explicitly provides that an aggrieved party need not show special damage or peculiar injury beyond that which is suffered by other affected people. Effectively, this provision grants to every person the right to protect the environment.<sup>60</sup> The provision in the EMCA that state of the environment reports be published annually<sup>61</sup> and that these reports should inform the budget, enhances the right and requirement to protect the environment through the provision of information and the requisite financial resources. These resources empower the citizenry to carry out the duty placed on them in article 3 of the Act.
- *Environmental impact assessment (EIA):* This is a further mechanism for fostering access to justice. Section 58(1) of the Act states the following in this regard:

Notwithstanding any approval, permit or licence granted under this Act or any other law in force in Kenya, any person, being a proponent of a project, shall, before financing, commencing, proceeding with, carrying out, executing or conducting or causing to be financed, commenced, proceeded with, carried out, executed or conducted by another person any undertaking specified in the second schedule to this Act, submit a project report to the Authority, in prescribed form, giving prescribed information and which shall be accompanied by the prescribed fee.

If, after studying the report, it becomes clear to the Authority that the proposal will result in or is likely to result in significant impact on the environment, an EIA must be undertaken. The Act requires that the public not only participate in the assessment process<sup>62</sup> but also in the review of the EIA. In effect, therefore, the EIA is a matter of public good.<sup>63</sup>

### *Judicial and quasi-judicial tribunals*

#### *Courts of law*

The judiciary is a critical component of government. It is one of the arms of government and is integral to the doctrine of separation of powers between the ruling arm (the executive) and the law-making arm (the legislature). The court structure in Kenya comprises the High Court from which appeals can be lodged with the Court of Appeal at the apex. The latter is the highest court of appellate jurisdiction in Kenya.

Judicial pronouncements on environmental decisions have not served to remedy the absence of explicit provisions on the environment in the Constitution. For instance, Kenyan courts have not established a clear jurisprudence on matters of *locus standi*. In the public interest case of *Maina Kamanda v Nairobi City Council*,<sup>64</sup> the High Court adopted a fairly liberal position on *locus standi* and granted the plaintiff the right to be heard. In contrast, in a previous case, *Waangari Maathai v Kenya Times Media Trust*,<sup>65</sup> an environmental case brought before the court as a public interest matter, *locus standi* was denied. The plaintiff was a resident and co-ordinator of the Greenbelt Movement, a non-governmental organisation working in environmental conservation. She filed suit on her own behalf, seeking a temporary injunction to restrain the defendant from building a complex in a recreational park in Nairobi. According to the court:

... it is not alleged that the defendant company is in breach of any rights, public or private in relation to the plaintiff nor has the company caused damage to her nor does she anticipate any damage or injury.<sup>66</sup>

Further, in *Law Society of Kenya v Commissioner of Lands and Others*, Justice Ombija adopted a highly restrictive construction. With regard to a matter involving public land that had been improperly allocated, the judge was of the opinion that matters of public interest are the domain of the Attorney General:

If the interest issue is a public one, then the litigant must show that the matter complained of has injured him over and above injury, loss or prejudice suffered by the rest of the public in order to have a right to appear



in court and to be heard in the matter. Otherwise, public interest issues are litigated upon by the Attorney General or such other body as the law sets out.<sup>67</sup>

More recently, opportunities have presented themselves to make pronouncements on environmental impact assessments as instruments for ensuring access to justice in cases involving titanium mining in Kwale, forestry excisions and the Sondu Miriu power project. In the *Titanium case* a Canadian company, Tiomin, sought to mine titanium in the Kwale district. Environmental lobby groups disputed the legitimacy of the project on the basis that no EIA report had been provided as required by the EMCA.<sup>68</sup> They were supported by the Kwale District Mining Forum. The lobby group commissioned an independent EIA on the project, and local consultants from Kenyatta University prepared another assessment. The High Court granted an injunction to the Nguluku Squatters Welfare Group which restrained the company from carrying out acts of mining in any part of the Kwale district and a declaratory order that the mining being carried in Kwale was illegal, and awarded general damages. Among the principles that the court relied on in granting these orders was the principle of public participation in the development of policies, plans and other processes for the management of the environment.<sup>69</sup>

In granting the injunction, the judge noted that although the defendants had obtained the required licences under the Mining Act,<sup>70</sup> they still had to comply with the provisions of section 58 of the EMCA. The case was later resolved extra-judicially with allegations that some of the parties had been bought off. Whereas NEMA had a basis for pursuing the issue, the Minister for Environment proceeded to deal with the issue directly. This denied the regulatory body and the courts an opportunity to determine a very critical issue relating environmental impact assessments as a tool for facilitating public access to justice in development projects.

In the case of the forest excisions, a judicial review application was lodged with the High Court which sought various orders, among them writs of *certiorari* to quash gazette notices seeking to de-gazette forests, and a prohibition to stop the government from dealing with the forest areas in a manner detrimental to Kenya's environmental health.<sup>71</sup> The court granted the orders, and so stopped the government from proceeding with the exercise until the matter was fully heard and determined.

### *Quasi-judicial tribunals*

Two tribunals are relevant here:

- *National Environmental Tribunal (NET)*: NET was created in terms of section 125 of the EMCA. It seeks to offer expeditious and cheaper justice than the ordinary

courts of law. By their nature, tribunals are designed to be more accessible, informal and free from legal technicalities. However, NET lacks original jurisdiction and must await appeals from administrative organs under EMCA. This denies the public a chance to go directly to the Tribunal with regard to environmental issues to be resolved. The result is that the Tribunal has not had much work, despite the fact that many people would have used it to lodge issues, because of its cheaper, simpler and more user friendly procedures. Lack of autonomy of NET from the Ministry and inadequate financial resources have hampered the Tribunal's effectiveness. NET is based in Nairobi, though it can hear cases anywhere in Kenya. There is a need to devolve the Tribunal's roles to district and provincial levels.

- *Public Complaints Committee (PCC)*: The PCC was established in terms of article 31 of the EMCA, and has the duty to investigate any allegations or complaints brought in terms of NEMA regarding the environment in Kenya. It may also investigate any suspected case of environmental degradation in Kenya. It must report findings and also send reports of its activities to the NEC. Such reports form part of the annual report on the state of the environment. However the effectiveness of the PCC in enabling citizens to gain access justice is doubtful since the NEC is not required to act on the PCC's reports. Consequently, there may be no follow-up after the reports are presented.

In a nutshell, Kenya has made some effort to ensure that public interests are incorporated in the environmental litigation in Kenya. However, there are still grey areas which need to be addressed.

## Tanzania

It must be noted at the outset that Tanzania lacks a comprehensive legal regime that expressly provides for environmental conservation in general and inclusion of the public in environmental interests in particular. Nevertheless, efforts have been made in the statutes and by the judicial organs to provide for the rights of public participation in environmental matters, access to information on environmental issues, which ultimately preserves public interests, and access to justice. The Tanzanian legal regime in environmental litigation is based on this legal framework and the jurisprudence of various courts.

### *Legal framework and the jurisprudence of the courts*

#### *Constitution of the United Republic of Tanzania*<sup>72</sup>

Article 14 of chapter III of the Constitution establishes the right to life and its protection by society. The High

Court of Tanzania has on two occasions ruled that this right includes the right to live in a clean and healthy environment.<sup>73</sup> In one of the cases the presiding Justice criticised the Dar es Salaam City Council for applying for a stay of execution of a High Court decision that stopped the Council from dumping waste in a suburb of the city of Dar es Salaam. The justice stated:<sup>74</sup>

I will say at once that I have never heard it anywhere for a public authority, or even an individual, to go to court and confidently seek for permission to pollute the environment and endanger people's lives, regardless of their number. Such wonders appear to be peculiarly Tanzanian, but I regret to say that it is not given to any court to grant such a prayer. Article 14 of our Constitution provides that every person has a right to life and protection of his life by the society. It is therefore a contradiction in terms and denial of this basic right to deliberately expose anybody's life to danger or what is eminently monstrous, to enlist the assistance of the Court in this infringement.

In an earlier case, *Sandhu Construction Co Ltd v Peter M. Shayo*,<sup>75</sup> the High Court ruled that:

Matters of public health are clearly more compelling than financial considerations. Unlike financial loss, damage occasioned to health cannot possibly be quantified. The position becomes even more serious when it is considered that in ordering the crusher to re-open such order would thereby not only be precipitating a health hazard to the entire neighborhood, but also subjecting the victims to nuisance in the form of noise and dust.

As a precursor for the enjoyment of the right to a healthy and a clean environment by every Tanzanian, the Constitution guarantees the right of access to information,<sup>76</sup> freedom of association,<sup>77</sup> public participation in matters of governance,<sup>78</sup> and the right to judicial remedy.<sup>79</sup> In terms of article 26 every Tanzanian has the duty to ensure that the country's Constitution is respected and upheld by everyone. In effect, this article gives citizens the right to institute public interest litigation in fulfilment of that duty. In *Christopher Mtikila v Attorney General*<sup>80</sup> the High Court of Tanzania held that public interest litigation is allowed by that article, and that it is not necessary to prove injury to institute a case vindicating public interest rights. The court stated as follows in this regard:

... I hold Article 26(2) to be an independent and additional source of standing which can be invoked by a litigant depending on the nature of his claim. Under this provision, too having regard to the objective

thereof, that is, the protection of the Constitution and legality, a proceeding may be instituted to challenge either the validity of a law which appears to be inconsistent with the Constitution or the legality of a decision or action that appears to be contrary to the Constitution or the rule of the law. It occurs to me, therefore that Art. 26(2) enact into our Constitution the doctrine of public interest litigation.

Based on the foregoing, there are solid constitutional grounds for environmental rights in the Tanzanian Constitution, but the enforcement of these rights is circumscribed by other Tanzanian legislation.

### *National Environment Management Act*

Tanzania's National Environment Management Council (NEMC) was established in terms of the National Environment Management Act, 1983 (Act 19 of 1983). The main function of the NEMC is to advise the government on all matters relating to the environment. In particular, the council is enjoined to formulate policy on environmental management, coordinate the activities of all institutions concerned with environmental matters, evaluate existing and proposed policies and activities on pollution control and enhancement of environmental quality, and recommend measures to ensure that government policies take adequate account of environmental impacts. The Act also gives the NEMC the power to formulate proposals for legislation on environmental matters and recommend their implementation by the government.

Section 7(a) of the Act empowers the director general of the NEMC to consider means and initiate steps for the protection of the environment and for preventing, controlling, abating or mitigating pollution. This provision confers considerable powers on the director general, which could be used to curtail many forms of environmental degradation in Tanzania.

Although the Act does not provide for an environmental impact assessment, the NEMC has over the years promoted the use of EIAs as a means of controlling pollution in Tanzania. In 1997 the NEMC developed a set of environmental impact assessment guidelines and procedures, which, though not legally binding, were primarily designed to guide developers in the initiation and implementation of development projects that would not degrade the environment. The guidelines require that a preliminary assessment report be prepared on whether a proposed project will have a significant adverse environmental impact. As in other jurisdictions this report is used to help the NEMC to determine whether or not an environmental impact statement should be prepared. If the project is found to be likely to have a negative environmental impact, the developer must submit an

environmental impact statement to the NEMC.<sup>81</sup> To ensure that members of the public are fully involved in the process, the project proponent must initiate a public information campaign in the area likely to be affected by the proposed project, and to record any concerns raised by the members of the public and address such concerns in the EIA.<sup>82</sup>

In effect, therefore, the public is directly involved in the EIA process, without the complexities of moral or legal authority to participate in the process. This ensures that the concerns of the members of the public that may be affected by the project are addressed, or at least heard. It should be stated, however, that the EIA processes in Tanzania rest on shaky legal grounds.

### ***Other statutes and government policies on environmental litigation***

Other acts and policies dealing with environmental matters in Tanzania include the National Forest Policy, 1998; National Human Settlements Development Policy, 2000; Marine Parks and Reserves Act, 1994; Mining Act, 1998; Environmental Management for Sustainable Development Act, 1996 and the Village Act, 1999.

In a nutshell, Tanzanian Law and practice on environmental assessment and its attendant attributes envisage public participation, access to information and access to justice. These rights have firm constitutional foundations, as both the Constitution and the jurisprudence that has developed around the Bill of Rights have expanded the scope of the rights to include environmental matters. Whereas policy documents acknowledge the need to foster public participation, no implementation mechanisms have been articulated and, as a result, public participation has not been institutionalised. Furthermore, the development of Tanzania's legal regime for EIAs leaves much to be desired. There is no comprehensive legislative requirement for EIAs across all sectors, although sectoral legislation requiring assessments is slowly emerging.

The result is that there are many gaps and loopholes in the law, which are exploited to the detriment of the environment and local communities. For instance, there are no EIA requirements for development in protected areas, such as national parks and forest reserves, or for foreign investment generally. Even sectoral legislation requiring EIAs does not spell out procedures and guidelines for implementation. Moreover, the legal regime for EIA does not incorporate the rights to participation and access to information and justice as central tenets. Whereas legislation defines mandatory requirements for EIAs, the requirements for public participation and access to information are missing in most cases. Where they do exist, they are implemented as a matter of administrative policy rather than as a legal requirement. Even when

the law provides opportunities for redress, it has been weakened by provisions that prevent full access to courts of law, because it relies on administrative tribunals or requires foreign arbitration of disputes. These avenues for redress are thus dominated by either the executive branch, whose impartiality is questionable, or by foreign arbitration panels, whose accountability is doubtful. These issues all hamper the incorporation of public interests in environmental litigation in Tanzania.

## **The East African Court of Justice**

East African Court of Justice has been established in terms of article 9 of the Treaty for the Establishment of the East African Community, and is an organ of the Community. The court has jurisdiction over the interpretation and application of the treaty and such jurisdiction as may be determined by the council.<sup>83</sup> Chapter 19 obliges state parties to take measures necessary for the conservation and management of natural resources, while article 111 demonstrates the willingness of the state parties to take concerted measures regarding the joint management and sustainable utilisation of natural resources within the community. In terms of article 113 state parties have a mutual obligation to prevent illegal trade in and movement of toxic chemicals, substances and hazardous wastes. States are obliged to harmonise their legal and regulatory frameworks for the management, movement, utilisation and disposal of toxic substances. Because the court allows private individuals to appear before it,<sup>84</sup> individuals could appear before the court in matters against an environmental degradation affecting the entire public. Such a private prosecution occurred in *Professor Anyang' Nyong'o v The Attorney General of Kenya*, in which the applicant opposed the Kenyan government list of representatives to the East African Legislative Assembly.

The treaty therefore lays a basis for enforcement of environmental rights of the public by any member of the society. Unfortunately the applicability of the treaty in national jurisdictions is subject to the provision that it be incorporated in national legislation, which may take a long period of time to effect.

## **Uganda**

The main act on environmental legislation in Uganda is the National Environmental Statutes, 17 May 1995.

In terms of section 4 of the Act every person has the right to a healthy environment. To guarantee this right, section 5 provided for the establishment of the National Environmental Management Authority as the principal agency in Uganda for the management of the environment.<sup>85</sup> In cases where the executive agency of

the Authority and the lead agency are of the opinion that a project will impact negatively on the environment, an environmental impact assessment must be undertaken. The Act makes provision for the establishment of district environmental committees for every district in the country to ensure compliance with environmental management policies and coordinate the management of the environment and natural resources.<sup>86</sup> In terms of part XIII of the Act, environmental crimes include pollution, disposal of hazardous wastes and failure to conduct an environmental impact assessment for an intended project. The Authority can enforce compliance by means of environmental orders in terms of part IX, and parties aggrieved by decisions of the Authority may appeal to the High Court.

The Act does have public interest as its centre mandate, as is clear from its emphasis on dissemination of information on environmental conservation and public participation in environmental matters as well as its tenet that commercial interest of a project developer is subservient to the public interest of a healthy environment, but it does have grey areas. The requirement that an international instrument be included in national legislation before such an instrument can apply in Uganda, inhibits expeditious applicability of instruments which may contain more effective provisions on environmental conservation and management.<sup>87</sup>

## Barriers to incorporation of public interest in environmental crime litigation in Eastern Africa

The barriers to incorporation of public interests in environmental litigation in the region include the following:

### *Lack of awareness*

Information on environmental rights under environmental laws in the region is lacking not only among the public at large, but also legal professionals. In cases where sectoral environmental laws have been either repealed or are held to be subservient to new environmental laws, as in Kenya and Uganda, a lack of knowledge about such new laws by the courts may lead the courts to rely on old and outdated legislation which does not necessarily take cognisance of the concept of public interest in environment litigation.

### *Bad precedents*

Court precedents on environmental law have on the whole been very reductionistic in their interpretations of concepts such as *locus standi*. This has inhibited public participation in environmental management and conservation measures, stemming from the assumption that they lack the legal standing to advocate for such measures.

### *Existence of sectoral laws*

Multiple sectoral laws, even in jurisdictions where the laws have been held to be subservient to a parent environmental act as is the case in Kenya and Uganda, add to the obstacles to the incorporation of public interest in the environmental litigation. These laws provide for access to formal courts as the dispute resolution mechanism, despite the fact that such mechanisms are complex, protracted and expensive. They do make provision for alternative environmental dispute resolution mechanisms such as tribunals, which are cheaper and not subject to rigorous court processes.

### *Non-recognition of traditional judicial systems*

It will be appreciated that traditional justice systems can foster sustainable environmental management. These institutions are very close to the people and can be linked to the formal institutions. Their non-inclusion in environmental policy and measures in effect creates parallel structures, in which national systems receive token recognition and powers, while authority typically still resides in traditional institutions. However, these traditional governance institutions continue to lack power and authority and can in fact become a further barrier to public interest litigation in environmental disputes.

## Conclusion

Public interest litigation generally, and environmental litigation in particular, are relatively new phenomena in the Eastern African region. The legal and institutional frameworks that have existed in the region since colonial times are not conducive to the effective use of public interest environmental litigation as a means of securing environmental and natural resource rights. The limited scope of common law remedies available for environmental degradation and the personal nature of those remedies are a major legal constraint to the widespread use of public interest litigation to enforce environmental rights. The absence of constitutional provisions that guarantee a healthy environment in the legal frameworks of some member countries creates a serious gap in the enforcement mechanism.

Furthermore, there is a lack of capacity within the legal profession and the judicial system with regard to the use of public interest litigation, and an absence of organised civil society institutions to pursue environmental rights through the courts. However, the situation is changing rapidly in line with the increased awareness both in- and outside governments of the need for environmental stewardship of the development process. Reforms in the legal framework and the governance system are beginning to translate into opportunities for increased use of public interest litigation to advance environmental and natural resource rights.

However, there is still a critical need for capacity-building initiatives to ensure that these opportunities are translated into benefits for environmental and natural resource governance. Such capacity-building should aim at providing resources and ideas, sharing and using experiences from the rest of the world and creating institutional frameworks for public interest litigation within civil society, the government and the entire legal profession in Eastern Africa.

## Recommendations

In an attempt to address the issues that stand in the way of the inclusion of public interest in environmental litigation, the following measures should be considered:

### *Public education and awareness campaigns*

There is a need to raise the awareness among judges, magistrates, lawyers and the general public on the provisions of environmental laws in the region through training and public education and awareness campaigns. This will ensure that all the stakeholders in environmental litigation are knowledgeable about the provisions of environmental laws and able to use these provisions effectively. The training should extend to the staff of the different institutions established in terms of the environmental laws of Eastern African countries.

### *Enhanced environmental law reporting*

Whereas Kenya has jump-started environmental law reporting, the endeavour is yet to be embraced by other Eastern African states and the East African Court. There is a need for environmental law reporting by national and regional law reporting agencies, as this will serve to centralise environmental decisions reached by the judicial and quasi-judicial tribunals established in terms of various national and regional environmental laws. In Tanzania, particularly, there is an urgent need to enact a comprehensive environmental law or framework legislation that not only mandates the undertaking of an EIA for any project likely to have a significant environmental impact, but also requires public participation and access to information as a matter of right. This is the only way in which EIAs will gain a firm legal standing.

### *Creation of specialised environmental courts*

An environmental division of a high court is not a specialised court. There is a need for specialised environmental court to deal with environmental disputes. To ensure access to justice, these courts should be manned by qualified personnel that are competent to deal with environmental matters. If they are expedient in dealing with cases and competent in environmental matters,

such specialised environmental courts will go a long way towards achieving success in public interest litigation in environmental matters.

### *Commissioning studies on traditional governance institutions*

There is an urgent need for studies on the role of traditional governance institutions in environmental matters and incorporation of these institutions into dispute settlement fora. This will take cognisance of the fact that the various communities in the Eastern African region have institutions for environmental management and for adjudication of disputes. The formal institutions under the environmental laws should seek to harmonise the environmental conservation strategies of such traditional institutions with their policies. Village assemblies and other representative and transparent organs of local communities should be involved in the EIA process. Since they usually comprise all adult persons in a village and are the supreme local policies-making bodies, their involvement will ensure awareness of and participation by villagers on decisions on proposed projects and allow them to voice their views in public. It would also prevent those village leaders susceptible to manipulation from entering into deals with project proponents or government agencies. This will enhance the perception that environmental issues are a matter of common good in which everyone has a role to play and in which everyone's contribution is appreciated.

## USING PUBLIC INTEREST LITIGATION TO FIGHT ENVIRONMENTAL CRIMES IN KENYA: CHALLENGES AND OPPORTUNITIES

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### Revisiting the nature of public interest environmental litigation

Public interest environmental litigation (PIEL) in Kenya ranges from the traditional common law position to the modern wide interpretation of *locus standi*. Some courts have insisted that applicants show a personal/proprietary nature of interest, with the decision on whether there is in fact a public interest being the preserve of the Attorney General (as in *Gouriet v Union of Post Office Workers*) but in other more recent judicial decisions the courts have adopted a wider interpretation of *locus standi* with regard to environmental rights.

For a long period of time, public rights could only be enforced by a public body, namely the courts.<sup>88</sup> In *Wangari Maathai and 2 others v City Council of Nairobi and 2 Others*,<sup>89</sup> the judgment by Ole Keiwua illustrates this:

In the present case, the transgression of those limits inflicts no private wrong upon these plaintiffs and although the plaintiffs, in common with the rest of the public might be interested in the larger view of the question yet the constitution of the country has wisely entrusted the privilege with a public officer, and has not allowed it to be usurped by private individuals. That it is the exclusive right of the Attorney General to represent the public interest even where individuals might be interested in the larger view of the matter. It is not technical, not procedural, and not fictional. It is constitutional.

However, new laws are expanding the interpretation of *locus standi* and particularly the Environmental Management and Co-ordination Act, 1999 (Act 8 of 1999) (EMCA) and The Forests Act, 2005 have sought to change this position. Section 3 of EMCA confers on every Kenyan the right to a clean and healthy environment. Section 3(3) gives any aggrieved person the right to apply to the High Court for redress, while section 3(4) provides that such a person has the capacity to bring an action notwithstanding that such a person cannot show that the defendant's act or omission has caused or is likely to cause him any personal loss or injury, provided that such action is not frivolous or vexatious or an abuse of the court process.

A greater number of lawyers are taking an interest in public interest environmental litigation. PIEL differs from pro bono/pauper briefs: a primary distinguishing characteristic of the latter is the lack of means on the part of the litigant whereas in public interest litigation the primary characteristic is the nature of the rights being litigated (private or public?).

## Constraints to public interest environmental litigation in Kenya

- *Locus standi* ('sufficient/personal' injury)
- Costs
- Diffuse/conflicting legal provisions
- Difficulties in dealing with the technicalities of environmental principles by lawyers, judges/magistrates/prosecutors, and the public
- Choice of parties
- Choice of *fora* – including transboundary challenges
- Legal technicalities and procedural hurdles
- Politics

## Cases in PIEL

- **Wangari Maathai v Kenya Times Media Trust** (HCCC 5403 of 1989). Here the issue was the *locus standi*, and the judgment by Dugdale J was that

the plaintiff has no *locus standi*. Only the Attorney General has the *locus* to sue on behalf of public

- **Paul Nderitu Ndungu and 2 Others v Pashito Holdings Limited and Another** (HCCC 3063 of 1996). This case was an attempt to stop the allocation of land that had been set aside for a police station to a private developer. The claim of a lack of *locus standi* by private individuals was rejected by the court
- **Law Society of Kenya v Commissioner of Lands and Others** (HCCC 464 of 2000). This case involved public land which the Law Society argued had been improperly allocated. The judge held that only the Attorney General could bring action in this case: 'If the interest in issue is a public one, then the litigant must show that the matter complained of has injured him over and above injury, loss or prejudice suffered by the rest of the public in order to have a right to appear in court and to be heard on the matter. Otherwise public interest is litigated upon by the Attorney-General or such other body as the law sets out'
- **Rodgers Muema Nzioka & others v Tiomin Kenya Limited** (HCCC 97 of 2001) In this case the right to a clean and healthy environment and relaxation of the rule on *locus standi* was discussed

## Opportunities

- Increasing awareness of environmental issues, particularly the right to *locus standi*, by the
  - Judiciary
  - Public institutions – environmental inspectors
  - The public
  - Lawyers
- Increasing regional integration (EACJ, COMESA Court of Justice)
- Increasing networking of PIEL advocates/institutions such as the East African Law Society
- Increasing the profile of environmental sustainability in development agenda

## Required

- Removing bottlenecks to PIEL
  - Costs
  - *Locus standi*
  - Borders
  - Standardisation
- Harmonisation of laws and institutions – offences and penalties
- Networking/collaboration of law enforcement and professional organisations – EAPCCO and East African Law Society
- Training, especially for judiciary, local communities, public institutions

## ENVIRONMENTAL LAW: A TOOL IN THE PEACEFUL RESOLUTION OF CONFLICT

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### The principle of sustainable development

There is no doubt that conflict escalates with scarcity of food and/or resources. There is therefore less likelihood of conflict where these are abundant or even sufficient. However, natural resources are not inexhaustible, not even such vast resources as in the high seas. An increase in population numbers has inevitably led to increased competition for less and less resources, even in areas which previously had an abundance. The notion of sustainable development requires that resources are used in a manner that is equitable and will not exhaust them, and that they are managed in such a way that the needs of the present and future generations will be met.

In terms of section xxvii of the national objectives and directive principles of state policy set out in the 1995 Constitution with regard to the environment:

- (i) the State shall promote sustainable development and public awareness of the need to manage land, air, water resources in a balanced manner for the present and future generations
- (ii) The utilization of natural resources of Uganda shall be managed in such a way to meet the development and environmental needs of the present and future generations of Ugandans; and in particular, the State shall take all possible measures to prevent or minimize damage and destruction to land, air and water resources resulting from population pressures and other causes

However, these principles are not contained in the body of the Constitution and are therefore not enforceable, which means that it is up to the government or other authorities to decide, subjectively, how they are to be applied. The same principles are repeated even in more detail in section 3(2) of the National Environment Act, 1995 (chapter 153) (NEA).

Whereas article 39 of the Constitution recognises a right to a clean and healthy environment and section 4(1) of the NEA does the same, the authority to ensure that these principles are observed is vested in the National Environment Management Authority (NEMA) in terms of section 3(1) of the NEA. And whereas the duty to maintain and enhance the environment is imposed upon every person, the specific right to enforce compliance is expressly given only to NEMA (in section 4(2) of the

NEA) and the local environment court (section 4(4) of the NEA).

It is submitted that whereas the Constitution and the law recognise the fundamental importance of sustainable development, both fail to provide the necessary legal mechanism to ensure it is enforced. The people themselves should be given express authority to ensure the observance of the principle of sustainable development. This would have provided a peaceful instrument, such as for example a court of law, for resolving conflicts relating to natural resources. Leaving resolution of conflicts in the hands of the executive is more likely to lead to an escalation of conflicts, because decision making by the executive is influenced by politics rather than reason. This was clearly illustrated in for example the Butamira Forest Reserve conflict and Kibaale settlers conflict as well as developments in Kampala's wetlands.

### Inter-generational and intra-generational equity

Intra-generational equity is a principle in environmental law that ensures sustainable development. In simple terms, intra-generational equity requires that exploitation of natural resources must take place in such a way that it meets the requirements of the user and others. In other words, resources may not be depleted by one group to the detriment of others and must be used sparingly if they are exhaustible or, if it is possible to replenish them, this must be done.

Intergenerational equity requires that the present generations exploit or use natural resources in a way that will enable the next/future generations to use the same resources. This is reiterated in the Preamble to the Constitution of Uganda (1995).<sup>90</sup> However, there is no provision in the law to enforce this. Furthermore, the present rules of *locus standi* are seen as too narrow to allow this option to be used to ensure enforcement for without a *locus standi* interpretation that will enable individuals or communities to ask courts for environmental orders, the people – those individuals, families, communities or ethnic groups who are affected or concerned – still has no option but to exploit what they can and try to preserve something for their own future generations. This is in total contrast to the principles which the Constitution sets out to promote and has led to numerous conflicts over scarce resources. Examples of these conflicts are include clashes over fishing in Lake Victoria, epletion of forest cover, landslides in Mbale and Sebei and raining of wetlands.

### The doctrine of public trust

The basis of this doctrine is that the state or another authority holds in trust natural resources for all the people. It

gives recognition to the fact that natural resources are not owned by individuals, yet are used directly or indirectly by individuals. Air, light, warmth, wind, energy and the sea cannot be owned by individuals. Furthermore, in the case of resources such as rivers and forests which are capable of private ownership by individuals, groups or companies, it is not desirable to allow such ownership because of its impact on the greater public interest. This principle is set out in article 237(b) of the Constitution of Uganda which provides:

... the government or a local government as determined by Parliament by law 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 of the common good of all citizens.

This provision is re-enacted in section 45 of the Land Act, 1998. However, in this respect the state still finds it difficult to escape the colonial precedent of plundering of natural resources, and instead act as a trustee for its people. The government still sees all natural resources as a source of income and wealth for the state and therefore has been unable to fulfil its role as a trustee.

The use of the doctrine of public trust has led to conflicts between the people and the state because of the way in which it has been applied. The government has applied the doctrine of public trust to remove people from certain areas or stop people from using or exploiting natural resources, as was the case in evictions from Mabira, the Kibaale Forest Reserve and Mountain Elgon, but ignored the doctrine when it wanted to exploit the resources itself, as in the case of de-gazetting the Namanve, Butamira and Bugala Forest Reserve.

Therefore the trusteeship over resources should rather be vested in other representatives of the people such as traditional or cultural leaders. In fact, then the past conflicts in Uganda which mostly related to land would have been averted. For example, the conflict over the Butamira Forest Reserve could have been prevented if trusteeship over land in Buganda had vested in Kabaka.

## The principle of public participation

It is an important principle in environmental law that the public must participate in decision making at all levels. Again, in our colonial past the state did not even conceive of allowing participation of the people in decision making. The policies of colonial states were in almost all cases that the interests of the colonised people were subordinate to that of the coloniser, and as such did not involve the former in decision making. This colonial legacy persists and to this date African governments tend not to involve its people in decision making, or do so at a limited level.

It is submitted that the majority of conflicts involving natural resources could be solved by encouraging public participation in decision making. Examples of projects and schemes that would benefit from such participation are the proposed hydro-electric power station at Bujagali, Kibaale Forest Reserve, Namanve, the Ankole-Masaka ranch restructuring scheme, fishing rights on Lake Victoria and land tenure systems.

Even in cases where the government does consult the people or allow them to participate, the state does not in the end consider these opinions but takes decisions that are in conflict with the views and aspirations of the people. Not surprisingly, the end result is often conflict or an escalation in an existing conflict situation.

Public participation should not be a mere formality; opinions should be sought with the express purpose and understanding that the views of the people will be incorporated in the final decision.

## Access to information

Access to information is another fundamental principle of environmental law and information regarding the management and use of natural resources ought to be freely accessible. If this is not so, it would be futile to apply any of the other principles set out above. Indeed, public participation in decision making would be a mockery without access to information. Again conflicts go hand in hand with misinformation, inadequate information or a complete lack of information. The Bujagali hydroelectric power project is a case in point.<sup>91</sup>

## The precautionary principle

This principle requires that decisions regarding the use and management of natural resources not be taken in haste. Decisions must only be made after all the necessary information has been received and evaluated and if found wanting, caution must be exercised. This principle has also been expressed in section 72 of the National Environmental Statute, 1995 (Act 4 of 1995) and was applied in the case of the water hyacinth and Bujagali hydroelectric power project.

Decisions hastily made are not only detrimental to the environment but also encourage conflict, as occurred in the Butamira case and the degazetting of Lake Mburo. On the other hand, decisions made after applying this principle are a sure way of resolving conflict.

## Access to justice

This is by far the most important principle in conflict resolution, namely that an avenue must always be available for peaceful resolution of conflicts. People resort to



violence if the law provides no recourse for them for the resolution of their conflicts. One purpose of the laws that are in place is specifically to resolve conflicts over private property or public property, that is, public in the sense that it is not owned by private individuals but by the government on behalf of all people.

However, with regard to the conflicts that involve natural resources in Uganda no such legal avenue is available for their resolution. It is precisely because of this lack that the disputes between the Bakiga and the Banyoro in Kibaale and between the Karamajong and the Iteso or even between the government of Uganda and Baganda over land have not yet been resolved. Expanding

the traditional rules of standing would go a very long way towards solving this problem.<sup>92</sup>

There are other impediments to access to justice, such as prohibitive legal costs, lack of information on the court process and simply the fear of confronting the state. These barriers to justice promote conflict as the parties seek to resolve the issues through other, usually violent, means.

If all the above principles were applied as envisaged, if they were complied with as required, if they were given the effect as desired, it is submitted that environmental law would be the most appropriate method for resolving conflicts and so enhancing sustainable development.

## Part IV

# Enforcement of and compliance with environmental crime law

## ENHANCING REGIONAL ENFORCEMENT AGAINST ENVIRONMENTAL CRIMES

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### Introduction

Most environmental crimes are provided for in various pieces of legislation. Environmental crimes on the whole are similar to conventional crimes, but they generally have a wider impact on people. Furthermore, the inter- and intra-generational equity and the ripple effect of adverse environmental impacts may not be fully understood yet.

### Key principles of environmental crimes

- *Strict liability*: In the majority of cases, environmental offences are strict liability crimes
- *Corporate liability*: Many environmental offenders are corporate bodies
- *Vicarious liability*: The general rule is that criminal liability is personal. However, vicarious liability is usually imposed in the case of strict liability offences

### Procedures for criminal proceedings

All criminal proceedings begin in the magistrate's courts. Most constitutions confer on the state the duty to care for and protect its citizens and the concomitant duty to enact laws to protect the citizens and prosecute any person who contravenes these laws on behalf of wronged party. However, private individuals do have the right to institute private proceedings. The burden to prove the case beyond reasonable doubt rests with the prosecution.

The aspects that need to be taken into consideration in any environmental proceedings are:

- The immediate and direct impact of the environmental crime (environmental, social and economic)
- The wider effect in terms of environmental, social and economic impact (one should thus look at the bigger picture, and determine whether the impact is diffuse, cumulative and long term)
- Human fatality, serious injury or ill health
- Impact on biodiversity
- Potential and actual risks of the environmental crime (whether it resulted from negligence or an accident, the characteristics of the pollutant)
- State of mind of the offender
- Relationship with the regulatory authority and the attitude of the latter to regulation
- Licensing (whether there was a breach of regulations, whether the party had a license, or had fraudulent papers)
- Economic gain for the accused (profit, evasion, cost saving)
- Offence pattern (repeat offender, isolated incident)
- Abatement and reparation (restoration and compensation)
- Factors in mitigation

### Transnational environmental crimes

One of the main problems with transnational environmental crimes is that it raises issues of territorial jurisdiction. The application of multilateral environmental agreements, the role of intergovernmental law enforcement agencies (such as Interpol and the Lusaka Task Force) and the jurisdiction of the regional courts such as East African Court

of Justice and COMESA become very critical issues when seeking redress for crimes committed against transboundary resources.

## The way forward

- Mainstream environmental law in the curriculum of law enforcers and lawyers
- Build the capacity of investigators, prosecutors, magistrates and judges in environmental law enforcement
- Ensure that law enforcers, judicial officials and advocates have access to relevant environmental and natural resource law statutes as well as multilateral environmental agreements
- Enhance synergy between science and law enforcement
- Enhance public education and awareness
- Enhance networking, particularly with regard to the sharing of information on environmental crimes

## THE ROLE OF CIVIL SOCIETY ORGANISATIONS IN COMBATING ENVIRONMENTAL CRIME

GILBERT ANGIENDA  
OSIENALA

Civil society should be considered pivotal not only in combating environmental crimes but building the capacity of its members in espousing acceptable norms for the management of issues that affect them in their everyday lives. This means then that civil society organisations should act as agents of change and are in the forefront in promoting positive environmental agendas within their countries and regions.

In order for it to be effective, a civil society organisation is expected to be proactive rather than reactive. In the past, such organisations were noted for their reactive approaches, stemming from the preconceived notion of many communities that the role of these organisations is to fight the establishment, especially the law enforcement agencies. This misguided concept presented them as scarecrows and not meaningful proponents of positive change.

The result of such an approach was more conflict and antagonism, which complicated issues and increased the chances for conflict. In many instances the real issues were lost in the process and new issues, which were often irrelevant, that cropped up eventually left the target groups and issues behind. My position is that the civil society organisations should play a complementary rather than provocative role. In doing this it must be well versed with the problem and have adequate preparations on the issue.

The position of civil society organisations within the community should be encouraged because in many cases it:

- Is closer to the community members

- Is tailored to addresses specific interests of the members
- Is reachable by members
- Operates without force but requires (voluntary) compliance
- Is a central operator and therefore in a position to resolve conflicts amicably and without coercion

The ideal situation would therefore be one in which law enforcement personnel are in a position to work with civil society organisations when dealing with issues that could be regarded as controversial. In some instances law enforcers have been subject to undue pressure simply because they were not able to consult and seek advice from professional organisations.

Obviously, when a law has been enacted compliance is expected from citizens, and any attempt to go against it constitutes a crime. However, law enforcers need to act as role models in building the knowledge base of the community. It is in this area that proactive approaches are required and in which civil society organisations are strategically placed for the provision of acceptable approaches to preventing possible (environmental) crimes from being committed.

## Civil society organisations and environmental crime

The saying is that knowledge is power, and any community which has a well-developed knowledge base operates effectively in the management of its resources. It is therefore imperative that civil society organisations be at the forefront in advancing the knowledge of its members on different environmental issues. In doing this it will be able to develop in them attitudes and values that will prevent them from breaking the law.

The position of these organisations is not to prevent law enforcement agencies from conducting their business as required by the law, but to inform the community members about what constitutes environmental crimes and prevent them from committing such crimes, and also provide information on the pitfalls of environmental mismanagement. It is better for a person not to commit an environmental crime because he understands the repercussions than because the law may catch up with him.

The following recommendations are therefore made from a civil society organisation perspective in an attempt to provide counsel that could be helpful in combating environmental crimes

- Build the capacity of community members through training, so that they understand why they should comply with environmental regulations
- Develop regulations for combating crimes (policies and guidelines) together. This approach calls for

involvement of stakeholders in drawing up regulations that are intended to guide operations and compliance

- Law enforcement agencies should work with civil society organisations in building the capacity of community members. This will ensure professional approaches are used that may not be within the expertise of law enforcers
- Participate with community members in their efforts to conserve the environment. In many cases law enforcement agencies do not participate in such undertakings, and only appear during confrontations and enforcement of compliance. In such situations law enforcement agencies appear insensitive, a perception that is not correct
- Conduct periodic workshops and training programmes for law enforcers, provincial administrative personnel, legislators and the legal fraternity to enhance their understanding of environmental issues. This approach will help each sector to address issues logically and play their part in the equation professionally
- Institute, as a voluntary arrangement, supplementary environmentally beneficial projects (a form of 'environmental community service') that which violators can join as part of their sentence.

It will only be possible to implement these recommendations if all parties work together and it should be the privilege of all civil society organisations to be involved in such noble undertakings. OSIENALA (Friends of Lake Victoria) is one of the organisations within the Lake Victoria Basin which is interested in and concerned about environmental conservation and wishes to reiterate its commitment to co-operating with likeminded organisations in combating environmental crime.

## SEYCHELLES LAW ENFORCEMENT AGAINST POLLUTION AND WASTE DISPOSAL

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### Background

Seychelles is an archipelago of 115 islands spread over an area of approximately 1,3 million km<sup>2</sup>, with a land area of some 447 km<sup>2</sup>, in the Indian Ocean. It is situated 4° south of the equator and 55° east of Greenwich Meridian. The environment of these islands is considered to a certain extent to be unique worldwide. Furthermore, the natural state of the environment attracts visitors, and tourism is an important source of income for the country. It is therefore imperative that there is a mechanism on hand to preserve this uniqueness and legislation and other means have been put in place to ensure that this country's natural beauty remains intact.

## Environment Protection Act, 1994

The principal objective of this Act is to provide for the protection, improvement and preservation of the environment and for the prevention, control and abatement of environmental pollution, which includes the following: standards for emissions of air pollutants from mobile and stationary sources; control of noise emission from various sources such as construction sites, plants, machinery, industrial and commercial activities; carrying out activities necessary to prevent control or abate water pollution from natural causes or from abandoned works or projects or activities; and preservation of fishing areas, aquatic area drinking water sources and reservoir, recreational and other areas where water may need special protection. It is contrary to this Act, without an authorisation from the authorities, to discharge an effluent or throw, deposit or place any polluting or hazardous substance or waste or any obstructing matter into any watercourse or in the territorial waters, or to import any hazardous waste into Seychelles or transport hazardous waste within or through Seychelles or to export hazardous waste to any country.

This Act requires an agency to:

- designate, monitor and regulate waste disposal
- monitor the contamination and degradation of the environment arising from the operation of any waste disposal site
- monitor the safety and health of workers at waste disposal sites
- maintain the statistical data on the nature of waste generated, and on sites and waste processing where waste disposal is taking or has taken place
- do all such things as appear to be reasonably necessary for the monitoring and control of waste

## Environment impact assessments

Environmental impact assessments (EIAs) must be conducted before anyone commences, proceeds with, carries out, executes or conducts or causes to commence, proceed with, carry out, execute or conduct any proscribed project or activity or any project or activity in a protected or ecologically sensitive area as may be prescribed under this Act or under any other Act.

The EIA must be a true statement and contain a description of the location and size of an activity. It must also describe the direct or indirect effects that the activity is likely to have on the population, soil, air, water, landscape, and other physical assets whether these are historical, artistic or archaeological in nature. These EIAs are open for public inspection.

## Non-legal sphere

As stipulated in the objective of the Environment Protection Act, the preservation and prevention of degradation of the environment is of vital importance. The aim is to preserve the environment so that it remains unspoiled for generations to come. However, the Seychelles realises that legislations alone is not adequate to preserve the environment. Seychellois are serious about this matter and one of the steps it has taken is to include the younger generation in the protection of the environment through environmental clubs at the different schools. Youngsters are sensitised on why and how they should protect the environment. They are involved in activities such as sightseeing expeditions, visits to wetlands, bird sanctuaries and national parks and essay competitions on the environment.

## Conclusion

The environment is our natural heritage. It is our natural home. Therefore it is incumbent upon us to protect and preserve this natural heritage. To this end, we should be proactive in our endeavours and realise that legislation alone is not sufficient. Only if humans are involved in the process as well, would protection become a two-way process and would a sound environment, promoting good health and prolonging life, become a viable proposition.

## CHALLENGES AND CONSTRAINTS OF ENFORCING ENVIRONMENTAL CRIME LAWS IN EAST AFRICA

**GOODLUCK MONGI**

Environmental Crime Desk Officer, EAPCCO

### Background on Interpol and EAPCCO

Interpol was established in 1923 with 186 members and is now the largest police organisation in the world. It facilitates cooperation between different police forces and assists organisations, authorities and services whose mission is to combat and fight transnational crime. It operates in the spirit of the Universal Declaration of Human Rights.

Interpol's constitution prohibits it from intervening in activities of a political, military, religious or racial character. It is comprised of a general assembly, executive committee, general secretariat, national central bureaux and advisors. The core functions of Interpol are:

- To secure global police communication services
- Provision of operational data services and data bases for police

- Operational police support services
- Police training and development

Interpol has six crime priority areas:

- Public safety and terrorism
- Drugs and criminal organisations
- Human trafficking offences
- Financial and high-tech crimes
- Fugitives
- Criminal analysis

The regional bureau of Interpol in Eastern Africa also provides the secretariat for EAPCCO. EAPCCO was formed in 1998 with the overall objective of fighting border crimes. It has 11 member countries.

## Challenges of enforcing environmental law

The late Jomo Kenyatta, a former president of Kenya, once noted that 'man is an owner of his land but not in so far as there are other people who depend on that land for their daily bread, he is not the owner but the partner, or at the most a trustee for others. The land is held in the trust of the unborn as well as the living.'

Enforcing environmental crime law is an imperative because the biosphere could under unregulated human activity gradually deteriorate to such an extent that it will not be able to sustain life any more. There is massive land, air and sea pollution as a result of industrial and mining activities as well as fumes from motor vehicles and other machinery. The earth is also being polluted by dumping of toxic waste. Wars are contributing to the destruction of flora and fauna as are unregulated economic activities.

Key among the challenges in enforcing environmental crime law is the lack of specific enforcement laws that should flow from the conventions and agreements made at the international level. For example, while the principle of 'polluter pays' is recognised in international environmental law, very few countries have enacted laws at national level to domesticate it. There is also growing corruption and little professionalism among the agencies responsible for enforcing environmental crime laws at national levels. Finally, there is a problem with interagency cooperation within the same country and also among different countries. The result is that environmental criminals go undetected and unpunished because of a lack of or poor information-sharing.

The EAPCCO-ISS environmental crime project is very important because it will mobilise and encourage individual countries and people in Eastern Africa to play their part in the quest for ensuring protection of our environment.

## Part V

# Emerging issues

Environmental crusades, especially in Africa, have isolated people from the resources they once loved and nurtured. These resources are in protected areas that are managed by law enforcement officers who have little interaction with the communities. Because of this alienation, people no longer feel the moral duty to protect and manage such resources. There is a need, therefore, for a method that will change attitudes and build people's involvement and participation in the management of environmental resources.

On many occasions governments have been found to be among the greatest environmental offenders. However, despite the fact that in law governments are not exempt from liability for environmental crimes, agencies very rarely enforce environmental laws against governments. The best way to handle this problem is to mobilise societal support for this cause. Such civil society action can be highly effective as was evidenced in Uganda by the Butamira and Mabira forest uprisings which resulted in government rescinding its decision to degazette the forests for sugar cane farming.

The need to find a balance between development and environmental protection is a challenge, because Africa has been inundated with import products that grossly degrade the environment. This creates a dilemma for every government on the continent. The problems are in many cases exacerbated by the fact that barriers to foreign investment which relate to environmental protection are eliminated to make investment possibilities more attractive. There is also the need for political will to prevent and prosecute investment activities that have adverse effects on the environment.

The region is awash with policies which were not designed with a view to engendering sustainability. There is a need to move towards environmental socio-economic

impact assessments and take-back schemes in terms of which manufacturers take back the products when they are obsolete.

Furthermore, many countries in the region have enacted laws for protection of the environment, but without any regulations and guidelines to enable them to be enforced. Some countries in the region do not have adequate environmental laws and this makes the problem of preventing and combating environmental crime even more challenging.

The penalties handed down for environmental crimes are very often so insignificant that they are demoralising to those involved in litigation. Negotiated compliance could be one of the solutions to litigated environmental crimes that end up with ineffective penalties as well community service for those who commit minor environmental crimes.

The lack of adequate scientific and forensic evidence many times makes the process of enforcing environmental crimes through the courts difficult, as there may be no sufficient substantive evidence. Forensic evidence is critical to the prosecution of environmental crime because issues of measurement and extent of the damage come into play. It should be added, however, that where concerns arise relating to the transboundary movement of hazardous waste, UNEP takes charge by means of the Basel Convention and the Bamako Protocol.

It is challenging to prevent and combat the transboundary movement and dumping of toxic and hazardous waste in the Eastern Africa region and especially along the East African coastline. Involving the public in the detection and reporting of such crimes might go a long way towards its prevention and eventual eradication. The region should also enact laws banning the importation of products containing dangerous materials. For example,

there should be a ban on the importation of non-CFC refrigerators and computers and other electronic equipment.

There is a need to have regional networks on environmental issues to foster an exchange of information and best practices on enforcement of environmental crimes laws. Furthermore, there is a need for harmonisation of laws in the region relating to enforcement of environmental crimes.

The East African Community Treaty contains several restrictions on the environment which, if domesticated by the member states, would go a long way towards contributing to the combating of environmental crime in the region. There is also a need to work with the East African Legislative Assembly to give more authority to the East African Court of Justice, especially as far as addressing transboundary environmental issues are concerned. COMESA and the East African Court of Justice require that local remedies must be exhausted before these regional instruments can be approached, which can be a problem especially in prosecuting transboundary environmental crimes. There is accordingly a need to develop a whole jurisprudence of choice of law to provide avenues for locus, especially in transboundary environmental cases.

It is important to work with both government and opposition in matters of environment because environmental concerns should be placed above matters involving political, economic and social issues. If the dilemma faced

by governments, of choosing between economic gain and environmental conservation, is removed, governments will be able to deal more objectively with environmental issues. Environmental crimes should not be subjected to partisan politics, but rather to a rights-based approach which could then be adopted by governments.

There is a need to develop standards for compliance that cut across the region. In considering this environmental audits should not only be self-audits, but transboundary audits that are undertaken by environmental authorities in all the countries. However, such an undertaking will be a huge capacity challenge.

The pressure placed on the police force in dealing with environmental crime could be eased if countries set up environmental prosecutors. This would go a long way towards dispelling fears that the police force will act on the instructions of their superiors despite the clear constitutional provisions relating to litigation that exist in all the countries.

The gender dimension of environmental crime prevention needs to be fostered and enhanced because men and women play different roles in environmental protection and compliance and also as offenders.

Finally, these recommendations should be backed up by the necessary funds, not only for enforcement and prosecution of environmental crimes, but in particular for budgetary allocations towards raising awareness among the public of the need to protect the environment.

# Notes

- 1 Quoted in Norman Myers, *Environmental security: what's new and different?* Policy background paper for the University of Peace, 2002, 1.
- 2 There is no universally accepted definition of environmental security. The term has been used in at least three ways. One refers to the protection of an area's resource availability within the context of an ecosystem or natural resource to ensure it is free from pollution, depletion, contamination or any other external deprivation. Another refers to assessments made about responsibilities of the national security community to incorporate environmental standards of behaviour into the management of bases for military operations. It has been argued in this regard that military operations divert resources from environmental operations, and yet they are destructive of the environment and often cause severe forms of land-based pollution and degradation. The third description of environmental security relates to how manmade stress on the environment can exacerbate the likelihood of conflict between individuals as well as between states. This paper seeks to combine all three forms of environmental security but goes further to include the quality of protection of the environment, scrutiny of the military in planning operations of their policies potential impacts on the environment, and the means through which a government's use of natural resources and environmental conditions can give rise to conflict between states.
- 3 Myers, *Environmental security: what's new and different?* 4.
- 4 Johanna Bernstein, Discussion paper presented at The Hague Conference on Environment, Security and Sustainable Development, May 2004, 2.
- 5 Quoted by Myers, *Environmental security: what's new and different?* 1.
- 6 *Ibid.*
- 7 Bernstein, Discussion paper, 4.
- 8 In 1977 Lester Brown, an environmental pioneer from the World Watch Institute, wrote an article entitled 'Rethinking national security' which used a long-term perspective to argue for the inclusion of environmental problems in national security planning. A dozen years later, writing from a perspective of foreign policy, analyst Jessica Mathews wrote an influential article in *Foreign Affairs* which highlighted the link between environment and security. Focusing on the degradation of land, water, forests and marine and coastal resources, writers such as Thomas Homer-Dixon and Robert Kaplan warned of the need for policy responses to forestall potential environmental threats to security and stability, especially in the developing world. This debate intensified with the end of the Cold War where analysts began questioning what the components of a post-Cold War security agenda should be. It was in this context that environmental problems received increased attention from security analysts who further elaborated the potential threats to environmental degradation.
- 9 M Renner, *National security: the economic and environmental dimensions*, World Watch Paper 89, Washington, DC: World Watch Institute, 1989, 9.
- 10 Speech by the Director General of UNEP at a Symposium on Environmental Security, Stable Social Order and Culture, <http://www.unep.org> (accessed 23 July 2008).
- 11 These are people who can no longer find a secure livelihood in their homelands because of draught, soil erosion, desertification and other environmental causes, together with associated problems of population pressure and profound poverty.
- 12 Norman Myers, *Environmental refugees: a growing phenomenon of the 21st century*, Paper presented at the Hague Conference on Environment, Security and Sustainable Development, May 2004.
- 13 *Ibid.*, 2.
- 14 *Ibid.*, 6.
- 15 In a NATO report on environment and security in an international context, the argument is made that consequences of environmental stress such as poverty, food insecurity, poor health conditions, displacement and disruption of the social and political institutions are regarded as the most important consequences, and that they can contribute to conflict if they occur together with a certain set of unfavourable contextual factors.
- 16 Water is an excellent illustrator of the concept of environmental security. The global water supply per person has fallen by 60 per cent since 1950 as the world population has swelled by over 150 per cent. The world's water consumption has increased by 180 per cent and is expected to increase by another 40 per cent in the next two decades. During the past century, there were more than 450 water-related disputes and on 37 occasions rival countries have fired shots, blown up a dam or undertaken some other form of violent action.
- 17 Norman Myers, *Environmental security: what is new and what is different?* 2.
- 18 Among the stories to emerge after 11 September 2001 is that of Danny Whitner, a Tennessee salvage car dealer. According to Whitner, a man calling himself Mo landed in a small plane at a Copperhill airport in March 2001 and begun asking questions about a nearby chemical plant. As Whitner recounted to federal investigators, the stranger wanted to know 'what kind of chemicals are in those massive storage tanks' and Whitner informed him that he thought the tanks were empty. In fact, the tanks actually contained some 250 tons of sulfur dioxide,



- and if released that would be sufficient to harm up to 60 000 people, according to worst-case estimates of the plant. Whitner and two other witnesses believe the stranger was no other than Mohamed Atta, a key suspect in the strikes that felled the World Trade Center. Michael J Panders and William L Thomas, *Ecoterror: rethinking environmental security after September 11*, *Natural Resources and Environment Journal*, Winter 2002, 159–164, 207.
- 19 For example, in 1777 British Major Robert Donkin proposed to use arrows dipped in smallpox matter against the Americans and so conquer them by the disorder that would result from the spread of that disease. Panders and Thomas, *Ecoterror*, 160.
  - 20 Panders and Thomas, *Ecoterror*, 160.
  - 21 Environmental crime is amongst others described as the deliberate evasion of environmental laws and regulations by individual and companies in pursuit of personal financial benefit.
  - 22 Steps so far taken by countries in the region include formulation of environmental policies, enactment of environmental laws including those that criminalise certain environmental acts and establishing environmental bodies such as national environmental management authorities to co-ordinate the management of environmental issues. With the exception of Burundi, all the countries of the East African Community have national environmental policies. They also have several sectoral laws that criminalise environmental activities, ranging from laws relating to flora and fauna to laws regulating and criminalising pollution. These countries are also signatories to several international agreements that provide for environment crime and promote environmental security.
  - 23 Organised environmental crime refers first to those markets in which the natural environment play a role in the supply and demand mechanisms and which are controlled through the use of administrative and criminal legal mechanisms.
  - 24 US Government International Crime Threat Assessment, December 2000.
  - 25 Ibid.
  - 26 Ibid.
  - 27 Ibid.
  - 28 Ibid.
  - 29 Ibid.
  - 30 Ibid.
  - 31 Gavin Hayman and Duncan Brack, International environmental crime: the nature and control of environmental black markets, Background paper for Royal Institute of International Affairs Workshop held on 22–28 May 2002, 2, <http://www.riia.org> (accessed 7/23/2008).
  - 32 Hans-Jorg Albrecht, The extent of environmental crime in environmental crime in Europe, in Françoise Comte and Ludwig Kramer (eds), *Environmental crime In Europe: rules of sanctions*, Groningen: Europa Law Publishing, 2004, 7–8.
  - 33 Definition from the Organisation for Economic Cooperation and Development (OECD).
  - 34 Psalm 82:3-4.
  - 35 *Bandhua Mukti Morcha v Union of India* (1984) AIR. See also Black's Law Dictionary which defines public interest litigation as 'a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have pecuniary interest or some interest by which their legal rights or liabilities are affected'.
  - 36 *Christopher Mtikila versus the Attorney General High Court of Tanzania at Dodoma*, Civil Suit No 5 of 1993.
  - 37 Penny Martin, Defining and refining the concept of practicing in the public interest, *Alternative Law Journal*, 28 (2003), 4. See also C R Odhiambo, Public interest law in the Kenyan legal system, 2005, 256, <http://www.pdfcomplete/1002/2001/upgrade.htm> (accessed 23 July 2008).
  - 38 Duncan Brack and Gavin Hayman, International environmental crime: the nature and control of environmental black markets, Background paper for the Royal Institute of International Affairs Workshop held on 22–28 May 2002, 2, <http://www.riia.org> (accessed 22 July 2008), and K Kakuru, Criminal aspects of environmental law and technicalities of environmental crimes, Paper presented at the University of Nairobi, Faculty of Law and Institute of Development Studies' Symposium for Lawyers on Environmental Law held on 3–7 February 2004, in which the author defines environmental crime as follows: 'Environmental crime includes all violations of environmental laws attracting criminal sanctions.'
  - 39 Charles W Schmidt, Environmental crime: profiting at the earth's expense, 2004, 2, [http://www.ehponline.org/members/2004/112\\_2/EHP112pa96PDF.PDF](http://www.ehponline.org/members/2004/112_2/EHP112pa96PDF.PDF) (accessed 19 July 2008) states: 'Criminal groups are making billions by trading in environmental contraband, including banned chemicals, certain types of waste, and endangered species of plants and animals. Others profit by dumping hazardous waste in the ocean or in developing countries, sometimes on behalf of companies eschewing high disposal costs at home ...'
  - 40 According to Brack and Hayman, International environmental crime, 4, rising standards of waste disposal in many industrialised countries have led to rising costs and hence a growing incentive for illegal disposal.
  - 41 See Interpol, Wildlife Crime, July 2008, <http://www.interpol.int/default.asp> (accessed 19 July 2008).
  - 42 Ibid.
  - 43 See Patricia Kameri Mbote, Towards greater access to justice in environmental disputes in Kenya: opportunities for intervention, International Environmental Law Research Centre Working Paper, 2005, <http://www.ielrc.org/content/w0501.pdf> (accessed 24 July 2008). The author states: 'The issue of the status of international instruments that a state has signed and ratified but not domesticated remains. Jurists point to the Vienna Convention's Article 26 which provides that "every treaty in force is binding upon the parties to it and must be performed by them in good faith".'
  - 44 See A Boyle and M Anderson (eds), *Human rights approaches to environmental protection*, Oxford: Clarendon Press, 1996, 27. According to the authors, human rights in environmental rights should be recognised for the following reasons:
    - Environmental legislation and regulatory regimes often vaguely and inadequately provide for these rights. Human rights steps in to provide a broad conceptual framework within which environmental concerns may be contextualised

- Human rights claims, having been articulated for a much longer time than environmental rights as such, have stronger persuasion and surpass political whim
  - A human rights approach is often highly emotive and therefore appeals to authorities
  - Human rights have a universal character having territorial, international and global links and thus include the right of international enforcement
  - Human rights are pragmatic and dynamic and hence can be applicable to different issues in changing contexts
- 45 United Nations Environment Programme (UNEP), Rio Declaration on Environment and Development, adopted at the United Nations Conference on Environment and Development held in Rio de Janeiro, Brazil, from 3 to 14 June 1992.
- 46 UNEP, Convention on Biological Diversity, adopted at the United Nations Conference on Environment and Development held in Rio de Janeiro, Brazil, from 3 to 14 June 1992.
- 47 Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Montreal: Secretariat of the Convention on Biological Diversity, 2000.
- 48 United Nations Economic Commission for Europe, Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, adopted on 25 June 1998 in Aarhus, Denmark, at the fourth Ministerial Conference in the Environment for Europe.
- 49 It is noteworthy that criminal action is not the preserve of public authorities, although the issue of *locus standi* often impedes private prosecution in practice.
- 50 J B Ojwang, *Environmental law and the constitutional order*, ACTS Press, African Centre for Technology Studies, School of Environmental Studies, Moi University, 1993.
- 51 Constitution of Kenya, chapter V.
- 52 The draft constitution of Kenya (Wako Draft), 2004.
- 53 Ibid, article 51(1).
- 54 Ibid, article 51(4).
- 55 Ibid, articles 67 (a) & (b).
- 56 Ibid, article 72.
- 57 It provides as follows in this regard: 'Every person has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent tribunal or forum.'
- 58 Environmental Management and Co-ordination Act, 1999 (Act 8 of 1999).
- 59 Ibid, section 3.
- 60 Ibid.
- 61 Ibid, section 9.
- 62 Ibid, section 52 provides a basis for public participation.
- 63 Ibid, section 59.
- 64 *Maina Kamanda v Nairobi City Council* (1992) eKLR.
- 65 *Waangari Maathai v Kenya Times Media Trust* (1989) eKLR.
- 66 Ibid, 24.
- 67 *Law Society of Kenya v Commissioner of Lands and Others* (2000) eKLR.
- 68 *Rodgers Muema Nzioka et al v Tiomin Kenya Ltd* (2001) eKLR.
- 69 EMCA, section 3(5).
- 70 *Mining Act* (cap 306), Laws of Kenya.
- 71 *Republic v Minister for Environment and Natural Resources and other ex parte Kenya Alliance of Residents Association and Others* (2002) eKLR.
- 72 *Constitution of the United Republic of Tanzania*, 1977.
- 73 See *Joseph Kessy & Ors v Dar es Salaam City Council and Festo Balegele and 794 Ors v Dar es Salaam City Council*.
- 74 By Justice Rukangira in Tanzania Civil Suit No 5 of 1993.
- 75 *Sandhu Construction Co Ltd v Peter M Shayo*, Misc Civil Application No 28 of 1983 High Court of Tanzania at Arusha (unreported).
- 76 Constitution of the United Republic of Tanzania, 1977, article 18.
- 77 Ibid, article 20
- 78 Ibid, article 21.
- 79 Ibid, articles 26 and 27.
- 80 *Christopher Mtikila v Attorney General* (1995) TLR.
- 81 See T A Lissu, *Environmental impact assessments of foreign investment projects: a study in law, policy and governmental decision-making in Tanzania*, Lawyers' Environmental Action Team, 2000, 14.
- 82 Ibid.
- 83 Article 27 of the Treaty for the Establishment of the East African Community, adopted in Arusha, Tanzania, on 30 November 1999, 27 states:  
'(1) The Court shall initially have jurisdiction over the interpretation and application of this Treaty.  
(2) The Court shall have such other original, appellate, human rights and other jurisdictions as will be determined by the Council at a suitable subsequent date. To this end, the partner states shall conclude a protocol to operationalise the extended jurisdiction.'
- 84 Ibid, article 37, provides: '(1) Every party to a dispute or reference before the court may be represented by an advocate entitled to appear before a superior court of any of the Partner States appointed by that party ...'
- 85 National Environmental Statutes, 17 May 1995, section 6, states: 'The Authority shall be the principal agency in Uganda for the management of the environment and shall co-ordinate, monitor and supervise all activities in the field of the environment.'
- 86 Ibid, section 15(2)(a), states: 'When established, the functions of the District Environment Committee may include:- a) to coordinate the activities of District Resistance Council to the management of the environment and natural resources ...'
- 87 Ibid, section 107(1), states: 'Where Uganda is a party to any convention or treaty concerning the environment after the convention or treaty has been ratified under article 76 of the Constitution where such ratification is required, the Minister may, by statutory order with the approval of the Legislature by resolution ... (b) give the force of law in Uganda to the convention or treaty or any part of the convention or treaty required to be given the force of law in Uganda.'
- 88 *Gouriet v Union of Post Office Workers* (1978) AC 435.

- 89 HCCC No 72 of 1994, Reported in UNEP, Compendium of judicial decisions on matters related to environment, National Decisions 1998, 19–21.
- 90 See also the Preamble to the Constitution of Uganda (1995); see also Miscellaneous Cause 3 of 2002, arising from Constitution Petition 7 of 2002, *Attorney General v Dr James Rwanyarare & 9 Others*.
- 91 See the case of *Greenwatch v UEDCL and the Attorney General* HC Uganda Misc Civil Application Number 139 of 2001.
- 92 See *Tean v Batu and Attorney General (Miscellaneous Application No 39 of 2001)*, see also *Mtikila v Attorney General* (Tanzania Civil Suit No 5 of 1993).

# Appendix I

## Workshop programme

DAY 1: 30 JULY 2008		
08:30–09:00	<b>Registration of participants</b>	
09:00–10:30	<b>Opening of the meeting</b> <b>Remarks by</b> Mr Peter Edopu, Director, ISS Nairobi Ms Doris Murimi, Group Deputy Director, ISS Dr Wilson Kapyas Kipkore, Programme Head, ESP, ISS  Official opening by Major General Kale Kahihura, head of the Uganda Police Force, on behalf of the Dr Ruhakana Rugunda, the Minister for Internal Affairs	Chair: Uganda
10:30–11:00	<b>Refreshment break</b>	
11:00–11:30	<b>Keynote address: The nature and enforcement of environmental crime law: a jurisprudential and empirical perspective</b> Professor Albert Mumma, University of Nairobi	Chair: Tanzania
11:30–12:00	<b>Discussion</b>	
12:00–12:15	<b>Examples of Environmental Crimes in Eastern Africa</b> Dr Wilson Kapyas Kipkore, Head Environmental Security Programme, ISS Nairobi	
12:15–12:35	<b>Incorporation of public interest litigation in environmental crimes in Eastern Africa</b> Mr Tom Ojienda, President, East African Law Society  <b>Using public interest litigation to fight environmental crimes in Kenya: challenges and opportunities</b> Mr Benson Ochieng, Director, Institute for Law and Environmental Governance  <b>Environmental law: a tool in the peaceful resolution of conflict</b> Mr Kenneth Kakuru, Greenwatch, Uganda	Chair: Tanzania
12:35–13:15	<b>Discussion</b>	
13:15–14:15	<b>Lunch break</b>	
14:15–14:30	<b>Challenges and constraints of combating wildlife crime in Eastern Africa</b> Mr John Ringera, Head of Intelligence, Kenya Wildlife Service	Chair: Kenya
14:30–14:45	<b>Illegal logging as an environmental crime</b> Mr Damien Akankwatsa, Executive Director, National Forestry Authority, Uganda	
14:45–15:00	<b>The role of civil society organisations in combating environmental crime</b> Mr Gilbert Angienda, OSIENALA	
15:00–16:00	<b>Discussion</b>	
DAY 2: 31 July 2008		
09:00–09:15	<b>Pollution and disposal of industrial waste as an environmental crime</b> Ms Jane Nyakang'o, Centre for Cleaner Production	Chair: Rwanda
09:15–09:30	<b>Law enforcement against pollution and waste disposal: Case study of the Seychelles,</b> Mr Benjamin Zab, Seychelles Police	
09:30–09:45	<b>Challenges and constraints of enforcing environmental crime laws in East Africa</b> Mr Goodluck Mongi, Environmental Crime Desk Officer, EAPCCO	
09:45–10:30	Discussion	
10:30–11:00	Refreshment break	

11:00–11:15	<b>Environmental security and organised crime</b> Dr Rose Mwebaza, Senior Legal Advisor, ESP, ISS	Chair: Burundi
11:15–11:30	<b>Enhancing regional enforcement against environmental crimes</b> Dr George Wamukoya	
11:30–12:30	<b>Discussion</b>	
12:30–12:45	<b>Closing remarks</b> Dr Wilson Kapyas Kipkore	
13:00	<b>Lunch</b>	

## Appendix 2

# List of participants

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