

# **GREENWATCH**

## **REPORT ON JUDICIAL TRAINING WORKSHOP IN ENVIRONMENTAL LAW 7<sup>TH</sup> – 10<sup>TH</sup> SEPTEMBER 2003, AT THE NILE RESORT HOTEL JINJA.**

### **POST COURSE EVALUATION**

This was the 4<sup>th</sup> in a series of Judicial Training workshops for Judicial Officers on Environmental Law in Uganda. The first having been conducted in 2001, then 2002, May 2003 and September 2003.

It was well attended with 28 out of 34 invited participants attending. Unlike in the past this time Judicial Officers were very eager to learn and participated in the discussions with a lot of emphasis and passion.

This seem to have been as a result of having some judges as resource persons but also because unlike in the past they were now discussing their own brother judges' decisions. It was the first time over twelve judicial decisions by Uganda High Court and Court of Appeal on Environmental matters was discussed. Most of which had been decided by judges who had attended the earlier courses.

The Honourable The Principal Judge observed that there is now an urgent need to train members of the Higher Bench i.e. The Court of Appeal and The Supreme Court as the decided cases at the High Court were now likely to come to them on appeal. And that if they did before the Judges are given the basic training the progress so far made may be reversed.

Since the workshop Mr. Kenneth Kakuru has been requested to assist the judiciary with Uganda's presentation at the Africa Chief Justices meeting in Nairobi.

### **INTRODUCTION**

This workshop was organized by Greenwatch in conjunction with the Judicial Training Committee of the Uganda Courts of Judicature and funded by Environmental Law Institute.

The objectives of the workshop include; enhancing their capacity as judicial officers in adjudication of environmental cases especially in civil and criminal aspects of environmental laws; to raise awareness of the judicial officers; and to generate a common understanding of the environmental litigation processes.

### **OPENING REMARKS**

Opening remarks were made by Mr. Adonyo – Registrar research and Training, Mr. Kenneth Kakuru - Director Greenwatch and Mr. John Pendergrass on behalf of Environmental Law Institute.

## **OPENING REMARKS**

*( By Hon. Mr. Justice Tsekooko, Chairperson Judicial Training Committee).*

In his speech read him by Hon. Justice Kania, His Lordship said for 3 years, the JTC has been in partnership with Greenwatch, organizing workshops and symposia for judicial officers. The workshops have shed light on the hazy ideas about environmental law, issues and trends in the field of environment. They also give wider implications that are of potential benefit to the judicial officers and at the same time widen areas of judicial education.

He pointed out that the current environmental law covers a very wide field, hence the importance of training judicial officers who constitute a critical component of the enforcement agencies. He thanked the his Lordship the principal Judge for agreeing to officiate and invited him to address the participants and officially open the workshop.

## **OFFICIAL OPENNING**

*(By The Hon. The Principal Judge, Hon. Mr. Justice J. H. Ntabgoba.)*

In his opening speech, the Guest of Honour directed the participants to note that environmental law is rapidly growing and expanding the field of law with unique principles and concepts which judicial officers will have to apply and give them meaning. He pointed out that some of the new concepts like *locus standi*, polluter pays principle, public Trust Doctrine, have been enshrined in the law and have received court's interpretation such as rulings made in the case of *TEAN Vs A.G and NEMA*.

He also emphasized the need for judicial officers to equip themselves with international law and principles. He sighted the East African Community Act which judicial officers need to get acquainted with to ensure that the law is applied harmoniously and to foster economic and political unity envisaged by the East African Corporate Treaty.

Commenting on the manner in which disputes over environmental matters are handled, the guest of honour noted that disputants, whether they are government or agencies, organizations or individuals tend to put political interests first and thereby scattering the efforts of the judiciary to preserve the environment. He sighted instances like; Relevant authorities have failed to demarcate the boundaries of wetlands; Failure to provide alternatives as sources of energy in cases of destruction to forests; and Failure to get rid of dangerous environmental pollutants like "Plastic bags"

The guest of honour suggested that NEMA should put in place a mechanism of informing members of the public, especially those likely to commit the common environmental crimes, about the prosecutions and outcome. He also suggested that if funds allow, Greenwatch should take measures to sensitize about environmental concerns to the general public as well as agencies entrusted with the protection of the environment.

Concluding his speech he said that the workshop presented the judiciary an opportunity to learn and discuss new legal principles and concepts. It would also allow judicial

officers to reflect on recent judicial decisions with a view of harmonizing the different positions and understanding of the law. He thanked the organizers and facilitators and declared the workshop open.

## **PRESENTATIONS**

### **OVERVIEW OF ENVIRONMENTAL PROBLEMS IN UGANDA;**

*(By Mr. Charles Akol National District Support Coordinator, NEMA)*

Mr. Akol in his paper illustrated the underlying concerns of environmental management in Uganda. These he said include; population growth, lack of participation of local community, poverty, lack of environmental awareness, poor planning of urban and rural settlements, lack of technical capacity and local level, inadequate enforcement regulations and lack of participation by the private sector noting that they reflect on the loss of quality, stability diversity and productivity of environmental resources.

The above factors cause issues including soil and land degradation due to deforestation and poor farming methods, water contamination, wetland degradation, loss of Biodiversity, air and noise pollution and poor waste management. Although NEMA has strategies to address these problems by integrating environmental issues in the PEAP, PMA and other development programmes a lot stands to be desired by other key players.

### **HISTORY AND THE GENERAL PRINCIPLES OF ENVIRONMENTAL LAW**

*(By. Mr. Kenneth Kakuru, Mr. John Pendergrass and Professor Okidi)*

Mr. Kakuru, Mr. John Pendergrass and Professor Okidi discussed the General principles of environmental Law jointly presented this paper in absence of Mr. John Ntambirweki.

The presenters illustrated the history of environmental law and identified the principles that have critical impact on environmental protection. They specified the principles to include; sustainable development, inter-generational equity, public participation, precautionary principle, polluter pays, and user pays principle and access to environmental information and Justice.

### **TOWARDS HARMONIZING ENVIRONMENTAL LAW AND PROCEDURE IN EAST AFRICA.(BY Professor Charles .O. Okidi)**

Professor Okidi ably took the participants through the mechanisms of environmental law. He emphasized that with the developments in the East African region, the institutional framework has been designed to empower the public to directly go to court to demand actions through the Attorney General and supervised directly or indirectly by NEMA.

### **ACCESS TO ENVIRONMENTAL JUSTICE, THE ROLE OF THE JUDICIARY AND LEGAL PRACTITIONERS By; Justice Opio Aweri, Judge of The High Court.**

In his paper, Justice Opio illustrated how the High Court has responded to environmental issues and the level of development of environmental jurisprudence. He said that

limitations to access to environmental justice are attributed to high cost of litigation, security for costs, limited adjudicating capacity, delays, poor public participation, poor government policy, corruption among enforcement agencies, and general fear of litigation.

In a lively discussion that followed his paper, participants observed that to address the issues identified, there is need to open up the legal system to allow advocates speak freely on legal and constitutional matters such as the environment. The courts need to be persuaded into disregarding costs in matters of public interest or public importance and that proximity of harm in environmental cases should be precautionary. There is need to polish pleadings so as to make them result oriented and this could be enhanced through constant training for the bench and the bar in environmental matters.

### **ADMINISTERING JUSTICE WITHOUT UNDUE REGARD TO TECHNICALITIES** *(By. Hon. Lady Justice C. Byamugisha J.C.A)*

In her paper Lady Justice said that the court system in Uganda has become subject to scrutiny by both the court users and media. She noted that there has been new legislation in areas of human rights, environmental law, class actions, tax and corporate-commercial law, presenting judicial officers with many controversial issues.

Addressing the topic the presenter said that there are rules which contain provisions to promote the concept of administering substantive justice. The provisions include; enlargement of time, amendment of pleadings, misjoinder and non-joinder of parties, payment of deficiency fees. She noted that the rules of procedure present technical tools, which militate against the administration of substantive justice.

She emphasized that Art.126 of the Constitution in practical terms meant that rules of procedure should help courts expedite court business and not to be ironclad obstacles to all causes of action in all circumstances. This article is supported by other Articles of the Constitution including; 41, 50, 273, and 137.

### **ACCESS TO ENVIRONMENTAL INFORMATION** *(By Mr. John Pendergrass, Senior Attorney ELI)*

Mr. Pendergrass indicated that this could be done through readily availing records of environmental information to the public. Environmental information records include, permits, E.I.A, reports on environmental status and Audits. He emphasized the need for classification of accessible information and this may call legislation.

### **REMEDIES IN ENVIRONMENTAL LAW** *(By Mr. John Pendergrass, Senior Attorney ELI)*

Mr. Pendergrass presented this paper in absence of Judge David Coar said that remedies range from technical decisions basing on the level of harm and measure of deterrence. He said these include; cease and desist, where the act harming the environment is stopped

indefinitely, Costs, he said that there is a rule of practice for each party to bear its own costs unless the degree of vixiation is high, Restoration orders, but where this is impossible, the cost of restoration is used to restore areas that have been degraded such as wetlands.

### **ENVIRONMENTAL LAW AS A TOOL IN PEACEFUL RESOLUTION OF CONFLICT** *(By Mr. Kenneth Kakuru, Director Greenwatch.)*

Mr. Kakuru in his paper said that conflicts mainly emanate from the limited access to resources. He said environmental law if effectively enforced will go along way in resolving these conflicts.

### **CRIMINAL ASPECTS OF ENVIRONMENTAL LAW** *(By Mr. Robert Wabunoha, Senior Legal Counsel, Nema)*

Mr. Wabunoha in his paper said that the criminal aspects are mainly theoretical and have not been effectively applied because majority of the cases are settled out of court. He said that commonly, the magistrates issue criminal summons but the use of arrest warrants seems inapplicable. During the discussions the participants emphasized the need for sentencing guidelines to address the fact that cases are never the same and also to avoid mandatory sentences which may not grade the level of harm.

### **PUBLIC INTEREST LITIGATION IN UGANDA, PRACTICE AND PROCEDURE, PITFALLS AND LANDMARKS** *By Mr. Phillip Karugaba, TEAN*

In his paper Mr. Karugaba said that the basis of PIL lies in Art. 50(2), 41, 39 and 137(2) of the constitution. The common issues in PIL which generate objections include; locus standi, common interest, statutory notice, Res Judicata, defective affidavits in support, time barred suits, alternative remedies and costs. He emphasized the need for the judiciary to take up the challenges so as to give life and vibrance to the constitution. There is also need for judicial creativity to bring new thinking to old problems and seek new solutions as well as continued education of the bench and bar in advancing the cause of observance and protection of fundamental Human rights.

### **SIMULATION EXERCISE**

This was a moot that encompassed all topics that had been discussed during the workshop. It was well received by all participants.

### **OFFICIAL CLOSING**

The workshop was closed by Hon. Mr. Justice Lugayizi. He thanked all participants for attending and giving lively inputs. He also thanked the presenters for being so resourceful. He pointed out that many participants were green on the subject but had greatly benefited from the enlightenment. He also thanked the organizers and assured them of continued support and corporation in these matters. He then declared the workshop closed.

## **EVALUATION**

- Materials; Materials and handouts were valuable for future reference.
- Topics; The topics chosen were found very relevant and a good eye opener.
- Presenters; They were knowledgeable and well prepared.
- Discussions; They helped clarify unclear points.

## **RECOMMENDATIONS**

- Emphasize the role of courts in environmental matters
- Encourage others to bring actions especially in magistrates courts
- Intensify education in environment to cover all cadres of judiciary and the justice system.

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