Mission of the Centre for Basic Research

To generate and disseminate knowledge by conducting basic and applied research of social, economic and political significance to Uganda in particular and Africa in general, so as to influence policy, raise consciousness and improve quality of life.

Regional Workshop on Public Interest Environment Law and Community-Based Initiatives for Sustainable Natural Resources Management in East Africa

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Public Interest Environment Law and Community-Based Initiatives for Sustainable Natural Resources Management in East Africa

Objectives of the workshop

This workshop was organized by Centre for Basic Research and World Resources Institute. The main objective was to bring a multi-disciplinary group of lawyers, other professionals and social scientists of focus discussion on issues and strategies for strengthening environmental NGOs, especially public interest groups. Specifically, it was meant to inquire into efforts initiated in Uganda, Tanzania and Kenya, as well as other neighbouring countries and Asia. It would also emphasise the use of national law as a tool for improving environmental management and promoting sustainable development. The following were outlined as specific objectives of the workshop:-

- To present and discuss strategy statements by environmental law NGOs;
- To identify, analyse and highlight the major components of effective strategies for promoting community-based management;
- To disseminate information about these strategies to other countries, taking into account differences in culture, political and legal systems, and environments;
- To continue the development of African and global networks of public interest to lawyers and supporters of community-based management; and
- To develop, an appropriate, criteria for measuring success.

Introductory Remarks – WRI

The Centre for Basic Research and the World Resources Institute invited a multi-disciplinary group of lawyers, social scientists, foresters and to the professional to discuss issues and strategies for promoting public interest environmental law. As such, the workshop provided a venue for a comparative inquiry into efforts and possibilities in Uganda, Tanzania, and Kenya, and to a lesser extent in other neighboring countries, to use national law as a tool for improving and ensuring environmental quality. Particular attention was given to the promotion of sustainable development by way of community-based natural resource management.

Since lawyers tend to focus on national laws and urban issues, especially in capital cities, the workshop was designed to generate creative tension and balance that tendency by emphasizing rural environmental issues. To that end, social scientists and other development specialists were also invited to the workshop. They were asked to share their insights on how existing national laws impact on rural populations and to help identify rural environmental problems that might be mitigated or resolved by legal actions.

For WRI, the workshop provided a means to expand its efforts to promote public interest environmental law and community-based natural resource management beyond Asia and the Pacific and into East. Participants were invited to share their thoughts on what would be an appropriate role for WRI to play, be it assisting groups to network, developing appropriate tools for participation, conducting joint policy research, supporting workshops, providing information from other regions, etc.

Introductory Remarks – CBR

The Chairman Centre for Basic Research (CBR) Policy Council, Dr. Jean John Barya welcomed participants to the regional workshop. He briefed them on the nationale for the establishment of CBR. He said CBR was set p in 1987 to carry out independent research for national interest. He said prior to this, research was increasingly becoming a non-national activity and centred around consultancy. Hence CBR sought to establish and institutionalize a process of critical and scientific research within Uganda and by Ugandans; create a national mechanism for the systematic documentation of the basis issues as identified by CBR for research; and to disseminate the results of research through seminars, workshops, newsletter etc.

Both CBR and the World Resources Institute (WRI) were hopeful that the regional workshop on "Public Interest Environmental Law and Community-Based Initiatives for Sustainable Natural Resources Management in East Africa" would go along way in contributing to the realization of some of the objectives of CBR and WRI. But, above all, it would help in ensuring that the interests of public and the peoples of East Africa were served and that laws were made for the achievement of sustainable natural resources management. This was why the participation of lawyers and social scientists was of particular significance to the workshop.

Uganda Presentation:

The Development and the Challenges of Public Interest Environment Law in Uganda – an Overview

Presenter: *Deo Rubumba Nkunzingoma*
Chairperson: *Mchael Ochieng Odhiambo*

The presentation traced the development of Environment Law from the colonial written rules/laws – first called Ordinances, Orders, Orders in Council, and later Acts of Parliament. It was pointed out that during this period, they were sectoral in nature concerning the management of soils, forests, animals and bird wildlife etc., for example The Soil Conservation (Non-African Land) Act Cap.245, Cap. 223, Laws of Uganda. Post-independence governments did not alter this trend. Instead, between 1970-79, there was near-to-total breakdown of law and order in the country resulting in National Parks being raided, swamps being drained, claimed and forest reserves cut down. In January 1986, the NRM government created the Ministry of Natural Resources. At the same time, it launched studies, consultations and seminars; with the effect that environmental matters had become a very major priority envisaged in the mushrooming of public interest groups eg. The Uganda Women Tree Planting Movement (UWTPM). The National Environment Statute No.4 of 1995 also became law as "a statute to provide for sustainable management of the environment…" which now formed the basis of Environmental Law in Uganda. The Constitution of Uganda had significant provisions of public interest nature: Article 62(1) of chapter 5: Protection and promotion of fundamental human rights and freedom said that, "Every Ugandan shall have the right to a clean and healthy environment".

Other public interest environmental law issues were, however, more clearly brought out in the National Environmental Management Statute Part Ii with important clauses which empowered members for the sustainable Natural Resources Management in their respective areas. In short, the paper showed that the issue was no longer lack of law. It was whether our society was sufficiently motivated and sensitized, hence the challenges and the need for very active and prominent environmental advocacy.

The Uganda Environmental Law Association, an NGO registered in Uganda as a non-profit making group, was among the Law NGOs crusading Environment Law initiatives. Other groups such as Greenwatch had also been formed, but the presenter pointed out that only with community participation in terms of their initiatives sensitization and decision-making could Environmental Law NGOs have an impact on environment protection. He concluded that there was a lot of opportunity for Environmental Law NGOs and Public Interest Groups – as long as they linked up, defined and co-ordinated their activities, as well as with the communities advocated for – in order to avoid duplication and surmount the challenges ahead of them.

Tanzania Presentation:

The Environmental and Community-Based Management of Natural Resources in Tanzania: a General Overview

By Lawyers Environmental Action Team (Leat) staff
Presenter: John Danile

The thrust of this paper hinged on the fact that if local people were not to be involved in managing natural resources of any kind, government effort to trickle down community grants to improve the life of the citizenry would be time-wasting. The paper extensively discussed the need for participatory approaches by the community in the management of natural resources and identified trans-boundary environment and natural resource problems which needed a regional effort; and hence called for local and regional co-operation. Major environmental problems and natural resources degradation in Tanzania included:

- Land degradation mainly caused by massive clearance for agriculture.
- Overstocking in places such as Shinyaga and Mbulu, demand for forest products like fuel, charcoal and timber, poor cultivation practices and bush fires.
- Pollution, industrial pollution, urban pollution, pollution related to agricultural activities, coastal and mining pollution, air pollution from bush fires, energy sector, transport system, burning of solid wastes and industrial production.
- Other environmental problems in Tanzania were those related to transportation, energy use and degradation associated with tourism. Tourism environmental problems emanated from poorly planned hotel construction which degraded natural environment, affected wildlife and conflict with local communities regarding land use and over-hunting which were not compatible with the population of the particular species.

It was also observed that there were constraints on Community-Based Management of Natural Resources in Tanzania. While traditional environment conservation practices existed – such as the Matenzo Pit System in Songea, Ukerewe Mixed Farming System, and Iraqw Intensive Farming System in Mbulu, they had been weakened historically. Colonial imposition of schemes for resource protection often conflicted with indigenous knowledge, and were enforced through forced labour and other sanctions as punishment for non-compliance. The situation was further worsened by the post-independence government which disturbed the local system used to protect the resource base, further weakening indigenous cultures. A good example was the villagisation which resettled about 80% of the entire Tanzania, population resulting into communities being resettled in infertile land which led to sudden decline of crop

production. Tanzania, for the first time in its history, started to import food todate. In all there had been a loss of local community conservation ethics.

Insecure land tenure systems further compounded the problem. The less secure the individual's title to the land or resources thereon, the less likely the land was put to sustainable long-term use. The result had been the mismanagement of the environment and land use conflicts especially between the agricultural communities with more defined tenure rights and the pastoralists with subtle tenure rights. It was by this conflict of interests and the executive attitude of seeing that the pastorialists were misusing the land and that this rendered it vulnerable to degradation that had led to the disruption of good land management techniques possessed by the pastoralists. This scenario highlighted government neglect of local community role in the management of the environment. It was LEAT's position that local community approval was essential for the acceptance and success of ventures locate don community land. What was lacking, it was argued, were incentives to local communities without which, community respect for natural resources could not arise. As it were, government still used a top-down approach. There was little or no incentive for the local population to get involved, and this perpetuated the process of environment degradation in Tanzania.

Tanzania had a considerable number of laws pertaining to environmental management; but the degradation of the environment and natural resources continued because the existing legislation was fragmented and sectoral in nature. Ministries devised own strategies for management normally without proper co-ordination. Policy goals were conflicting, enforcement mechanisms were weak and inefficient, and penalties imposed on environmental abusers were minimal and did act as an `incentive' to the defaulters to continue to destroy the natural resources and frustrate environmental policy. This lacuna, it was pointed out, needed quick action from both government and legislature.

The following legal changes were required in order to ameliorate the situation. The suggested changes included those in substantive legislation, institutional ones and sometimes societal changes. These were in the context of national and trans-boundary approaches:

1) In order to have an effective legal framework for environmental law in Tanzania, the existing framework should be studied extensively. For instance, legislation related to the rights of pastoralists should be implemented and reviewed with the aim of strengthening it and streamlining the pastoral society's rights.
2) Legislation related to land tenure and land use be harmonized; for without good land tenure system, the rural community rights of use and occupation could be easily trampled on by administrative fiat.
3) Environmental Statues must contain sufficient enforceable deadline on government officers who were empowered to make the same. This would enhance compliance with a reasonable time.

4) In order for people to sustainably manage the environment, legal steps should be taken as an inventive to allow them to share the direct and indirect benefits of natural resources. These could include:

- To develop joint revenue collection systems which would benefit local people in surrounding areas and property rights might also be granted to minimize depletion
- In wildlife it was important that programmes be initiated whereby wildlife conservation contributed to local development by using community-based approaches like the provision of social services to the local people in the immediate surrounding and granting some limited farming and hunting.

5) Provision of fishing gear to fishermen, subsidies to farmers for promotion of economic incentives and alternative sources of energy other than wood and charcoal should be explored. Energy sources could include use of biogas, solar power, gas stoves, coal, natural gas and hydro-electricity. Incentives might include pricing, subsidies, and tax relief to those environment-friendly communities.

6) Security of tenure – a system that would develop a sense of ownership and common responsibility for self-management was important with regard to resource tenure/use.

7) Other incentives should be developed and provided to groups and individuals, like writers, publishers, researchers, groups of women/you, NGO's and private sector generally that assisted in public awareness on environment conservation.

Development of a strong institutional structure to meet these new challenges was necessary to replace the current one which was weak. Considering the transboundary aspects of environmental crisis, the following were suggested:

i) Regional water ecosystem like Lake Victoria, industries and agriculture, each of these bordering countries should contribute in a coordinated manner to arrest the situation.

ii) East African regional co-operation was required in the preservation of cross-boundary wildlife and biodiversity issues. This included freely migrating wildlife across national borders.

iii) East African coastal pollution emanating from ocean liners and oil spills should also be addressed through regional co-operation.

iv) Information, education, experience and other environmental aspects should be addressed co-operatively.

On community-based natural resources problem, LAET believed that this idea should be revived, nurtured and developed given its deserving role in projects that affected the rural people; for the reality was that the government could not on its own manage the natural resources sustainably. LEAT was set to employ the following strategies to achieve this;

1) Hold local meetings in selected villages with the aim of educating sensitizing village people on their role and rights in protecting available natural resources in their respective places.
2) Organise and conduct seminars for rural-based school teachers interested in environmental issues with a view of encouraging them continue to volunteer in educating rural communities.
3) Collaborate with local authorities, in initiative projects in rural areas such as tree planting.
4) Participate in drafting community-based natural resources management by-laws and other regulations as required by various environmental legislation.
5) Translate various environmental and land laws that affected the day-to-day life of rural people in the national language (Kiswahili).
6) Disseminate to the general public information pertaining to the environmental protection and community-based management of the natural resources through radio programmes and newsletters.
7) Initiate a national debate on community-based management of natural resources through seminars, workshop articles and radio programmes.
8) Lobby the donor community to support projects that keenly addressed the issue of community-based natural resource management.

In conclusion, the presenter contended that the immense task was on how to promote local participation in activities that affected the welfare of the people for whom such activities were being carried out. It was important to understand that NGO staff could easily work closely with the local people while identifying specific local issues and interests that could ultimately help the development planners. As such, the issue of educating and training in environment and natural resources issues should not be confined to the local people only. Even the staff of environmental NGOs required thorough training on environmental issues so as to ably replicate the same to local people. With this capacity in terms of incentives to stimulate, support, and sustain their activities, environmental NGOs such as LEAT would deliver.

Ethiopian Overview

Overview of the Ethiopian Environmental Law Situation

By Dr. Fecadu Gadamu

In his presentation, Dr. Gadamu revealed that until twenty years ago there was no environmental awareness of sufficient degree which would have been the basis of public law and action. This was to be understood he said against the backdrop of the nature of previous Ethiopian governments which were undemocratic (absolute feudal order or Marxist-military regimes).

Environment became a crucial issue after drought and famine occurred in the early 70s as a result of man-made and natural disasters, land degradation as a result of poor methods of use and the encroachment of desertification. In the Dengue's constitution only one article (Proclamation No.1 o, Proclamation of the Constitution of the Peoples Democratic Republic of Ethiopia) concerned the environment. Only in the last four years had the Transitional Government under taken concerted efforts on the environment. To this end, the Transitional Government of Ethiopia (TGE) has taken the following measures:

1. Promulgated all the necessary laws; and
2. Established a ministry of Environment and Natural resources.

He extensively discussed the Constitution of the Federal Democratic, Article 42). The constitution under chapter 10, National Policy Directives on Environment Objectives, underscores the following in its four sub-articles: the need to ensure healthy environment in the development process, the participation of the people, duty of the government and citizens protect the environment.

Important references in the new constitution were as follows:

1. Government would have the duty to ensure that al Ethiopians live in clean and a healthy environment. People had the right to full consultation and to the expression of views in the planning and implementation of environmental policies and projects that affected them directly.
2. The new Economic Policy during the Transitional period issued earlier (November 1991) gave priority to the conservation and development of natural resources. It planned to issue policies for the conservation and development of forest resources, prevent deforestation land use and wildlife preservation. Other issues in the plan of action included the proper use of livestock, minimizing the effects of recurrent drought issue soil and water conservation policies and preventing land degradation in participation with the peasantry while establishing the basis for sustained economic development.

3. The newly established Ministry of Environment was empowered to;

   - Prepare laws, policies and supervise natural resources development and environmental protection especially water, forest and wildlife resources,
   - Survey and prepare master plan of natural resources, especially rivers and valleys,
   - Demarcate and administer game resources, national parks and protected areas,
   - Establish and direct research, training centres and provide metrological services,
   - Co-operate with international bodies.

4. Regional bureaux of the Federal Government were responsible for the inspection and implementation of government policies. They were also to administer regional game reserves and protect forest, as well as provide technical services.
5. The Action Program of the ruling party, EPDF, focused on rural development; and environmental concerns were part and parcel of the rural development programme.

Pertinent action programme on the environment in population areas and "affirmative action" for women had been launched. Key elements were

i) The Transitional Government of Ethiopia in acknowledgment of the threat posed by high population growth rates, increased demand for natural resources, and the gap between technology and demands for productivity leading people to resort to environmentally harmful and economically counter-productive methods of exploiting land and associated resources, was tackling affirmative steps to implement a population policy. The TGE had provided the necessary legal and institutional framework for carrying out population programmes; The National Office supervised and co-ordinated policy implementation at regional, zonal and district level throughout the country. It carried out awareness and sensitization programmes and targeted women and other special groups through mass media – TV, Radio and newspapers. Short and long-term training programmes were going on in the field of demography and population communication to meet the needs of skilled manpower.

ii) In Ethiopia, the legacy of the unfavourable economic, technological and patriarchal socio-cultural systems that

reduced women's political, economic and social roles was being tackled. An organization was set up to ensure equality between men and women. Women were no longer barred from ownership of land and participation in rural development. Through such affirmative action, it was expected women would play a full role in environmental protection and development.

UNEP Overview

An Overview of UNEP/UNDP Joint Project and Environment Law and Institutions in Africa and the Place of the East African Sub-regional Project

Presenter: Prof. C.O. Okidi

In his presentation, Okidi noted that the focus of the workshop was on the issues and strategies for strengthening environmental non-governmental organizations, especially public interest groups in their efforts to ensure rational and sustainable management of the environment and natural resources within the East African region. The UNEP/UNDP Joint Project and Environmental Law and Institutions in Africa had as its component an East African sub-regional project involving the governments of Kenya, Tanzania and Uganda. The UNEP/UNDP Projects in Uganda, Tanzania and Kenya were in their formative stages. In the East African setting, the focus of the project was to be on sub-regional environmental issues or problems rather than national matters exclusively. The decision to group the three countries together was based on three main factors. First they face similar environmental problems, both with respect to resources within their common borders as well as the resource they shared. Under this category would fall the waters of Lake Victoria. A sub-regional initiative offered an opportunity for legislation which focused on the problem-shed rather than exclusively on the imperatives of territorial jurisdiction.

Secondly, they faced similar or comparable challenges in terms of building legal and institutional capacity to deal with the environmental problems. Thirdly, the three countries, in many respects, shared a common legal heritage. The presupposition here was that the lessons learnt in East Africa may assist in similar efforts elsewhere. After all, every effort should be made to deal with environmental problems at least on a regional scale because the problems had no respects for limits of territorial jurisdiction. Even though the focus of the project was sub-regional, the essentially national aspects were not to be ignored for national framework legislation leveled the playground for the three countries.

The initiatives to evolve the East African Sub-Regional Project started during the second half of 1994 when scooping missions by UNEP/ELIPC were mounted in Kenya, Tanzania and Uganda to ascertain the areas of common interest. A preliminary workshop was completed in October 1995, distributed to the three governments and discussed by

representatives of the three governments between 30 and 31 January 1995 in Kampala. The views of the meeting were submitted to the Steering Committee which discussed them in Nairobi from 11 to 12 May 1995 and which presented them to a second meeting of government representatives held at UNEP Headquarters, Nairobi from 23 to 24 May 1995. The latter meeting identified five broad areas which should be the subject of the sub-regional activities outlined below:

1. Shared resources – namely water resources; marine and coastal resources (coastal zone) and forest resources. The activities envisaged under this category included identification of gaps in the laws pertaining to the three East African countries by reviewing the legislative component of the Lake Victoria Environment Management Programme. Thereafter, the three countries would develop and harmonise the relevant laws and regulations. The second activity was the harmonization of national legislation for the implementation of the 1985 Nairobi Convention for the protection of marine and coastal environmental in the Eastern African Region as well as the harmonization of laws for the implementation of the 1982 Montego Bay Convention. On forests, it was to harmonise legislation on forest resources including the control of illegal trade.
2. National Resources with Direct Trans-boundary Effects with reference to wildlife and industries. On wildlife the three countries sought to review and harmonise the respective laws especially incorporation of the provisions in the Lusaka Agreement on Cooperative Enforcement Operations Directed at Illegal Trade in Wild Fauna and Flora of 8 September 1994 and the Convention on International trade on Endangered Species (CIRE) of 1993. On industries, focus was on development and harmonization of environmental health standards for gaseous, liquid and solid wastes which would particularly control trans-boundary air pollution.
3. Trans-boundary Environmental concerns such as movement or transportation of hazardous wastes. The three countries would seek the development and harmonization of the statues and standards implementing Basel and Bamako Conventions. Emerging issues: Climatic change, Ozone depletion and biological diversity with a view to initiating development and harmonizing of the national laws especially within and across sectors.
4. Common concerns in two broad categories: The promotion of implementation of environmental conventions and training or the development of human resources. On the former, the governments included the review and harmonization of national procedures for implementation. Desertification convention was also cited as in need of detailed work.

The training component included training of legal experts on environmental conservation and such matters as enforcement and litigation. Fundamentally, the project would encourage and, as appropriate, support the development of environmental law

into curricula of the universities. Other activities included the provision of texts of environmental statutes and agreements to the local institutions.

In conclusion, Okidi said the development of strategies for the effective participation of NGOs was at the level of public participation, one of the fundamental requirements in modern-day environmental legislation. Effective participation by NGOs and the public in general would depend on the level of t heir professional competence in environmental law. The East African sub-regional project was an important step towards the harmonization of the normative standard at the regional level. In sum, it would harmonise the rules of the environmental game in the three countries and thus promote effectiveness of the public interest groups in the region.

Day Two: 24 August 1995

Review of Day One by Mr. Peter Viet

Veit summarized the proceedings of the previous day into three issues:

1. He noted that participants had recognized that resources needed management. Management of natural resources today was historically shaped by common historical experience in East Africa. As such, the states in the sub-region were pursuing the above objectives and tenure policies were under review.
2. On Economic/Market incentive, he noted that despite the socio-cultural attributes, the issue of natural resource management remained essential economic in nature. Importance and relevance of a constitutional/legislative support structure was emphasized. An environmental policy for this matter should be superior to economic policy.
3. He observed that the Ethiopian mobilization drive had come out distinctly as a unique approach that could be emulated elsewhere for resource management in environmental conservation.

Kenyan Presentation

Presenter: Dr. Albert Muuma

According to Dr. Muuma, the centrality of environmental law in resource management sprang out of the observation that whereas resource management could successfully be non-legally approached, law concretized and legitimized the particular resource management, hence reinforcing the other structures. The role of the legal mechanism included:

1. Identifying problems;
2. Instituting legal mechanisms; and
3. Assisting in enforcement

Kenya had a well recognized structure built on a presidential directive – the extra-legal aspects had serious impact on whether it was benign or oppressive. Dr. Muuma proceeded to discuss these aspects:

1. Legal incentives: Are they necessary?

The priority of effective incentives were economic fees and payment: Others were social-cultural taboos or welfare sanctions. On the other hand, communal sanctions were legal incentives. His argument was that what was important was to identify good incentives. Law should give significance and legitimacy to them. Until the late 80s, communities and their resources were perceived to be antithetical to one another and the remedy was to keep the community out of designated parks, and presumably end the degradation. Today, the emphasis should appreciate the symbiosis of man and nature. Law should reorient this fact and capture the new mode of thought. The challenge should be how to leave communities within their habitats while enforcing conservation at the same time.

2. Community – What is it?

While the conception of a community traditionally assumed a well-defined relation of man and resources – there had been disintegration, commercialization and fluidity within communities of late. As such, the conception of man-nature relations became debatable and dynamic. Communities should then be defined in relation to specific resources; given an urban community – talk of a recreation park – the community would then be the ones who recreate. Communities revealed internal contradictions along class, ethnic and gender dimensions. How these differentiations defined their interest had ramifications for incentives and policy.

3. Resource Management

On resource management, Dr. Muuma pointed out the two issues of ownership and control. One line of management of natural resources emphasized ownership – community/state ownership debates. The other aspect was control. To highlight the contradictions inherent in these two concepts, he argued that while communities owned resources, management depended largely on access and control defined in cultural terms. In terms of gender, while the men may actually own land, access was open to women – not as ownership but culturally defined usufruct rights. As such, the rule of the game was culturally defined in specific communities. Control, he emphasized, was dynamic. In Kenya, it was no longer under traditional elders/councils but with the state. The state had ceded rights of control to its legionaries – DCs, chiefs, etc. So where did community come in? Community integration became unclear – the range of options in the state-people/community relations became intricately significant – was it government or the community in control?

4. Sustainability of management

In the past, society's stability was ensured because; (i) utilization was essentially subsistence (ii) population stability and size kept the demand on nature in check. Today, commercialization and global factors had outpaced this norm. Exploitation was purely for profit, not subsistence with the tendency to focus on short-run gains.

5. Public interest: Who articulates it?

Citing the "Omyeri" (a python revered by the Luo) saga of the late o 1980s Dr. Muuma revealed that there could arise a complete conflict on the terms of management – state versus local interest even when sharing a management goal. The significance attached to resources differed and its articulation became problematic. The entry point for articulating public interest was a legal matter – the forum for such articulation mattered; whether it was local, parliament, resistance councils, other councils – how did one enter, who entered there, whose views were taken or dropped in the process? In Kenya, he pointed out the judicial rules on the above issue were very hostile and suffocated the bottom.

Secondly, there was tension between representation of a specifically environmental interest and state interest – mobilization whatsoever was construed as political – and any activism was, therefore, punishable by the state. The Yaya complex scandal was a case in point in which construction of a complex on the park was questioned and public outcry registered but the political magnet carried the day.

Open Discussion

Ochieng Odhiambo (CEPLA) pointed out that the relationship between policy and law was that law should reinforce policy, legitimize, standardize and enforce the compliance instituted. Issues of collaboration between nations and NGOs should be addressed before a bigger impact can be achieved and duplication deterred at all levels. He outlined the Kenya strategy as follows:

1. To identify the strength of environmental law NGOs
2. Utilise their comparative advantage to manage resources – via legal problematisation
3. Move from all tiers of civil society in the process
4. Move away from emotive procurements and act objectively
5. Decision-making should be reinforced strongly in the process

On the other hand, Patrick Lumumba said the relevance of environmental lawyers and "*ipso facto*" NGOs was in the legal domain and should act as sources of policy. Incentives should be enshrined in law, legitimized and strengthened. Secondly, for public

interest litigation, in spite of rigidities of the legal bureaucracy, NGOs should sensitise the law itself by putting environment concerns in the forefront.

Dr. Naomi Kipuri argued that there was a contradiction involved as to whether absence or presence of law endangered environmental resources. For example, the Kenya Government's ownership of forest led communities to feel that they were not parties to their maintenance. This feeling of alienation was, therefore, legally borne and disastrous for the protection of resources. On the other hand, where communities had for long owned a forest, and pleaded for rights of its management, this was not legally provided for in Kenya. At best, the community council held it in trust for them – and this was still a legal debate in parliament. She argued that communities be compensated for environment management since the separation of such resources from the people should not be encouraged. She suggested the following:

- Law should enshrine community interest;
- Conflicting interest in conservation be clearly outline and resolved – these should be clearly defined whether state, local or foreign;
- Gender interests should be emphasized especially women's access and control of land. As real custodians of these resources they were better managers than men who controlled them.

On conceptualization of sustainability, she pointed out that subsistence or commercial interest be approached cautiously. She wondered to what extent certain practices like charcoal burning or beer brewing were commercial and not subsistence or both? In consideration of differentiation in their application it was important to avoid negative application. Poor conception of activities as commercial might lead to poor incentive application or affirmative action.

Sheila Mwanundu centred her contribution on policy:

- Policy should be community-sensitive at both macro and micro levels. Emphasis should be at roots of the socio-economic and socio-cultural attributes of the community.
- Policy should be monitored and evaluated.
- Follow-ups-their perception needed improvements and omissions.
- Community participation in goal definition and strategies was inevitable and should be enshrined.
- Training on policy/legality was very essential because some communities were ignorant of them for local or national levels, urban/rural, gender, just as all differed significantly.
- Incentives and policy should be tailored strongly on these specific aspects.

Dr. Okidi saw a contradiction even among the scientists themselves – whether to preserve "in sutu" or "ex sutu". The negation of the community was very evident in "ex

sutu" issues. In interface between Environmental Impact Assessment and Policy and Community "in sutu" prior knowledge should be maintained in a manner that did not harm this delicate balance. He said so in reference to Dr. Muuma's presentation, in which he revealed that "Omyeri" (python) was removed from her natural habitat where the local Luo community had conserved her "in sutu" by government which preferred to put her in the zoo "ex sutu".

Finally, Julie Koinange stressed that the role of women in environment conservation be recognized. Areas she pointed out included control of land, education and mobilization targeting women. Benefits should actually reach women as domestic managers.

Discussion of Kenyan Paper

Frank Turyatunga commenting on the Kenyan presentation argued that the problem faced was how to indulge participatory approaches especially, given the different conceptions of grassroots. To him, law was complicated and he wondered it should be simplified to suit grassroots sensitization. How would one understand and articulate law to the grassroots?

What media could animate community expression of local environmental concerns, he wondered. Another issue raised by Jacob Olanya was who the enemy of the environment was? How did environmental NGOs come in? Given the problem of sustainability versus ownership in non-streamlined tenure systems – how did this impact on the conservation question? Should intervention feature on effects or impacts? On the other hand, he wondered whether the concept "community" refers to an acepholous political economy and not, a communal mode or ownership. Tushabe felt community systems were responsive not anticipatory and hence legal mechanisms were needed. Senkumba questioned the vision, constitution, and ideology of environmental NGOs. He suggested common concern should be education and awareness, advocacy in terms of mobilizing/organizing opinion on policy issue implementation and research. Research should centre on indigenous knowledge of nature and protection as well as policy postulation within a sustainability approach.

Overview of Uganda's Environmental Action Plan – UNEAP

Presenter: Frank Turyatunga

The Uganda Environmental Action Plan came into existence about late 1991 as a result of government realizing the urgency to deal with issues of environmental degradation. UNEAP was created as a secretariat outside the ministry to establish adequate institutional financial/legal mechanisms to ensure environmental management took place from a multifaceted point of view specifically, UNEAP was set up to:

- Raise environmental issues from which issue papers would be developed and presented at local and national levels.
- Hold consultations at district levels, and workshops with members of parliament and relevant institutions resulting in the creation of a National Statute and National Environment Authority with the objective of phasing out the department of Environment Protection.

UNEAP only supervises and monitors. Specific sectors are contacted to deal with specific environmental problems, particularly, those that require professional views. Implementation is still vested under the Ministry of Natural Resources. UNEAP only recommends – on the basis of research – what should be done, and the most appropriate institution to implement. At the moment, UNEAP is still grappling with organizational problems being in its formative state.

So far, a lot of data has been gathered, photocopied, catalogued and opened to the public. Data is received from local as well as foreign sources particularly, the World Bank and World Resource Institute. Lately, UNEAP has introduced a user query system and referral service, Info- Mail connected with international experts and hopes to move to the Internet soon. Finally, in the interest of achieving uniform action, UNEAP has established a forum for sharing natural resources information with non-governmental organizations (NGOs), projects, and individual members, based on information divulgence.

Roles and Best Practice of Central Government in Environmental Management

Presenters: Brian Rohan and Anne Ziebarth

This paper summarized the findings in a report they authored bearing the same title. The presentation focused on the primary role of the Central Government in environmental management currently defined by two governmental initiatives. Forests – the on-going decentralization process was "devolving" many aspects of natural resources management to local governments. Second, the central government mandate for environmental management and institutional arrangement recently had been substantially revised by the National Environment Statute enacted in April 1995. The statute created the National Environment Management Authority (NEMA), which would oversee and co-ordinate environmental management efforts in the country. The report suggested alternative approaches by which NEMA and the line ministry might best accomplish their objectives. Among the issues it raised included, the need for NEMA and ministry staff to adapt the statutes' provisions to Uganda's financial and social realities since, it contained many provisions borrowed from developed countries that possessed far greater resources. In addition, the report acknowledged NEMA would have limited staff and resources available to it in the mid to long term so it would most likely not be able to perform all the tasks assigned to it under the statute. The goal of environmental management, they recommended, must be to encourage sensible and sustainable development and not impose onerous restricts that impeded development. The reason

this was so was because Uganda's development was heavily dependent on the natural resources base. While the primary focus of the statute was on "brown" environmental issues such as industrial pollution rather than "green" issues, like soil conservation and sustainable farming practices, the report recommended that NEMA and the ministries must not neglect environmental problems in the rural areas, of "green" nature, such as soil erosion and deforestation as they posed more immediate threats to the majority of the country's people. These issues should be addressed in implementing the statute. In developing the capacity and the role of NGOs the report pointed out that in the past, central government power and decision-making occurred virtually without any input from the public. As a result, despite changes due to recent political reforms, this history had resulted into few viable environmental NGOs with the capacity to debate environmental policy or participate in the national environmental agenda. They recommended that since sophisticated NGOs could offer valuable expertise to NEMA's Technical committees and Board of Directors, NEMA and donor communities also should work to develop new NGOs, possibly using universities as support centres. In Indonesia, they pointed out, environmental studies centre had been established at universities throughout the provinces which provided technical, research, training and policy advice to environmental authorities. In Uganda, such centres could work with the District Environmental committees, offer courses on environmental issues, and thereby help to develop knowledgeable environmental professionals throughout the country.

Finally, they observed that NEMA may not always agree with the NGO's position. However, open debate on the issue would foster a democratic tradition in environmental management, which would ultimately benefit the NEMA decision-making process. In addition, future legislation should adhere to the principles set forth in the statute. Laws directly affecting the environment as well as economic and social legislation, must be reviewed prior to passage to ensure that they did not thwart principles of sustainable development. Lawyers, they emphasized, should have the right to legislate on education and information freedom, and evaluate tax policies and their impact on environmental behaviour or agricultural practices. On the other hand, financial and other incentives based on the level of threat to pollution should be light for those who did not pollute and punitive for those who did. Land incentives, for example fees, could be paid to industrialists locating industries here they deemed most appropriate while punitive fines should be imposed on those who did the reverse.

The Masai Experience

Presenter: Dr. Roffin

In a brief and interesting discussion, Dr. Roffin narrated the crisis in Masailand arising from government neglect of community knowledge and practice in environmental responsive management. As early as 1904, the colonial government alienated the Masai by allocating the best areas to white settlers a process which was to continue up to 1911. The Masai, after the 1911 treaty, sued government but lost. Through the 1920s, there was

repressed silence. The 1920 Carter Land Commission recommended that the Masai be reettled in the demarcated group ranches. So rangeland was demarcated and sub-divided into smaller plots for the above purpose. The process continued into the 1980s on the assumption that this would lead the Masai to sell cattle and become permanent settlers. In 1989, it became a presidential decree that all group ranches be sub-divided leading to further sub-division. In the process, between 60 to 65% of rangeland of Masailand was lost in mortgages and sales constituting about 11% of t he total land. According to Roffin, most of the money earned went into luxurious consumption such as purchase of vehicles, houses etc. Others purchased more livestock – although in general per capita cattle population declined – and was continuing to go down. Very little investment was made in water which constituted the biggest problem of the Masai. As a result of the above, the majority of Masai had been driven into wage labour. Those who still remained in the rangeland were further being marginalized and impoverished. Two government projects showed the Masai's resentment of government's intervention: a water project in which boreholes were dug in several ranches was neglected. According to his research, one of the reasons they did so was because no environmental assessment was made for the project which proved inimical to the environment. The same applied to a similarly poorly conceived hydro-electricity project government had in plan. Generally, the Masai had been banished into the Amboselli and other reserves. Dr. Roffin concluded with a question as to what the role of environmental lawyers would be in the above context?

Dr. Galaty

On his part, Dr. Galary argued that there was declining per capita food production as well as the quality of resource preservation in Africa unlike Asia. He pointed out that what should be discussed were the strategies to stem this trend because although the theme of the seminar was primarily legal, extra-legal aspects in the process of resource management such as social aspects called for social analysis. Most were culturally embedded, and therefore, law operated on the margin, and cultural and local communities at the centre of management. The role of the state and legal institutions should not be exaggerated. He pointed out that the notion of customary rights/law was extremely important in environment resource management as it provided the basis on which modern law sat; hence law should be resilient and internally accepted at the community level. Law rested under the auspices of the community legitimacy. Therefore, on the question of the appropriate mixture of rights between state and community and who should be at the helm of resource management, we should realize that it was primarily the state which created the opportunity for open domain; otherwise states everywhere were weak and not able to monitor and defend the environment. In fact state-managed resources often deteriorated.

Second, community management should not be romanticized but conceptualized as specific groups of people sharing resources that were not claimed by anyone. The concepts became problematic as a model of extension and research on privatized forms of tenure, depending on density and differentiation. Citing the case of Titling, he pointed out

that once titling was enforced effectively it was highly expensive, and a way of rendering of individual resources creating insecurity of resources instead of consolidating them. For example, why did one need a title other than for rights of transfer of resources. In other words, it is market oriented and hence for protection of resources does not make sense. Titling or individualized resource rights was one major precursor to degradation. On this note, he suggested some research areas that needed attention:

- Research on appropriate forms of formal or customary rights to land that secured security of tenure.
- On what residual rights to resources were maintained by individuals, and whether government realized residual right over areas occupied by communities.
- The extent to which customary land rights should be translated into title. To what extent did titling recognize women and other marginalized characters and whose name appeared on titles? The gender roles in age and ownership of land should factually persist in all analysis.
- In what ways could litigation be part of the process of defining resource use? This brought into question the practicality of public interest advocacy in a community largely ignorant of the procedures of the law for intending litigants.
- What was the relationship between class, gender, and regional environmental issues?

Discussion

Senkumba submitted that lawyers themselves needed incentive so as to tackle public interests. Frank Turyatunga pointed out that titling was not always negative since customary tenure system led to land fragmentation. Secondly, titling was financially advantageous. Ochieng noted that because of colonial and capitalist hegemony on law in East Africa, legal protection mainly defended capital and public litigation was new. He said this issue should be addressed in capacity-building. Fecadu pointed out some incentives to lawyers. Among others, he said the judiciary should be kept independent and democratic, civil responsibilities should be expanded, and advocacy for resources should also benefit lawyers.

Perspectives on law and Community-Based Management from Ugandan NGOs working on Wildlife and Human Right Issues

Presenters: *Sewanyana – Human Right Activist, and*
Mutekanga – Wildlife Club of Uganda

Sewanyana pointed out that environmental law advocacy like human rights advocacy depended on the existing political environment. These put in question the

mandate and standpoint, and whether the state was the target. Since public interest had been state-articulated what context were environmental lawyers in to articulate the contrary? If environmental law initiatives and advocacy were to be accepted depended on their competence, legitimacy, popularity in terms of whether the views favoured majority or minority, whether their objectives were impartial, or whether they were just jumping on the bandwagon. To him, success could only be achieved if environmental law was inclusive, transparent and ready to persevere through thick and thin. These NGOs should be able to create a common platform, be credible, have reliable data and avoid duplication. All stake holders should participate in the dialogue and confrontation should be avoided. The dialogue should be local as well as global, and education of communities on definite environmental issues affecting them should be the best weapon to be used. Other weapons included public campaigns such as petition, delegation, vigil and conscientisation. On litigation, he suggested that not until lawyers developed a new culture of working for people as a human duty, in non-materialistic spirit, notwithstanding some little amelioration, will the cause succeed.

According to Mutekanga Wildlife NGOs contributed towards conservation of natural resources mainly by way of advocacy and projects. He pointed out that any meaningful advocacy needed good data, transparency and objectivity. Data and ideas should be exchanged among stake holders. He called upon environmental NGOs government, and local interest to safeguard the environment. Incentives in form of logistics, should be given to environmental advocates to facilitate their work.

Comments

Dr. Muuma citing examples of environmental movements in Britain and USA argued that in the latter, they were benign while in the former, they are volatile and expensive. He argued that, this is because the two countries had different cultures. As such, he advised the environmental law NGOs to be wary of models within which our cultures may not work. On litigation, Ochieng cautioned against NGOs despairing after losing their first case because success was relative and even failure would have sensitized the public. Lumumba pointed out that activism was context-specific and could not be overstretched because sobriety may be lost. Finally, Owen Lynch pointed out that human rights movements were central to environmental law initiatives because in Indonesia, the human rights movement was at the forefront of the environmental problem and advocacy.

25 August 1995

Review of Day Two by John Ssenkumba

Ssenkumba highlighted the following as the key conclusion from the previous day:

1. Role of environmental management was to concretize and legitimize both modern and traditional structures dealing with resource management. Law was

conceptualized as both the non-codified traditional and normative regulations concerning resources management

2. The role of environmental NGOs in resources management had been defined as education and awareness building, activism, defence, and research. He pointed out that research should be eclectic and the relationship between policy and agency needed to focus on tenure and tenure security. Multiple rights within families' socio-cultural set-up needed to be internalized.

Promoting Public Interest Environmental Law and Community-Based Natural Resource Management

Presenter: Owen Lynch - WRI

Colonial Legacies and National Law:

The conditions required for sustainable development cannot be said to be in place when hundreds of millions of people in developing countries who are directly dependent on environmentally important and threatened natural resources have no nationally authorized legal incentives for sustainably managing those resources. Sustainable development is even less likely when national laws actually serve as disincentives for long-term management. Yet it East Africa and in many other, it not most, developing countries, national laws and policies still fail to provide and promote local incentives for sustainable management. Perhaps most troubling, few efforts are currently underway to address this shortcoming.

The transition from colonies to nation states in Asia, Africa, and Latin America resulted in little change in state laws, policies and practices for allocating power and wealth among the national citizenries, most of which are still overwhelmingly rural. Instead, the new republics still continue to largely miffor the policies and designs of the former colonial governments, especially in their laws concerning the management of and rights to natural resources. Indeed, as was documented in Balancing Acts: Community-Based Forest Management and National Law in Asia and the Pacific (WRI, 1995), despite new official rhetoric and a plethora of community forestry programs, national laws concerning the use and management of forest resources in at least six Asian countries have actually become more hostile toward forest-dependent people than was the case during the colonial era!

Political and economic elites who profited under the auspices of the colonial states continue to profit under the auspices of the successor republics, and rural majorities continue to be politically and economically marginalized. Ironically, legally sanctioned usurpation and profiteering by domestic elites are often times rationalized in the name of nationalism; an unstated premise being that rampant exploitation by co-citizens is a desirable alternative to rampant exploitation by foreigners.

After decades, and in the case of Latin America well-over-a century, of political independence, substantive continuity between the colonial and politically independent

nation states – especially in terms of natural resources laws and policies – raises a host of questions. Perhaps foremost is the question of when, if ever, was there any substantive national democratic commitment to reflect the aspirations, rights, and potential of the rural citizenry.

Legal Elites and Rural Peoples

Lawyers are a dominant policy-making group within nation states. Yet many lawyers manifest disdain and indifference towards rural cultures and people. Few lawyers in developing countries have yet to produce any in-depth critiques of laws and policies which pertain to natural resource rights or other important legal issues related to sustainable development. Similar studies by political scientists, historians, and other social scientists, have been largely ignored or prevented from being incorporated into the prevailing ideology of national legal systems I n Asia, Africa, Latin America

An inevitable outcome of this inaction and inertia is that the undemocratic origins, evolution, and effects of many contemporary laws and legal concepts are neither known nor understood by lawyers and many other policy maker,. It is no exaggeration, therefore, to characterize the legal profession in most developing countries as permeated by a political economy of ignorance which enables the profession to overlook the conservative and elitist nature of national legal systems, as well as the local disincentives for sustainable management of natural recourses that these systems perpetrate.

This "ignorance" tends to preclude serious debate as to why many laws emanating from the colonial era endure and have become even more undemocratic since political independence. In a more profound sense, ignorance blinds otherwise well intentioned policy-makers to the need for a broad-based inquiry as to how colonially constructed nations can develop the conceptual and structural capacities, as well as the grandness of vision, to encompass their indigenous heritages as well as the values, rights, and aspirations of their materially impoverished majorities. Simply stated, legal professions – as currently constitute in most developing countries – are more often than not an obstacle in the path to sustainability.

Lawyers tend to focus (often for good reasons) on national laws and urban issues, especially in capital cities where wealth and power are concentrated. There is little thought and even less research devoted to rural issues, particularly as it relates to local incentives for sustainable development.

From an environmental perspective, the challenge is t identify ways to surmount these obstacles and to actively promote the implementation viable solutions. Most specifically, the challenge is to develop and promote legal, regulatory, and economic relationships that support incentives for sustainable development. These relationships may be between local communities, formal governmental institutions, and in some instances business enterprises, on local, state, national, regional, and international levels that support local incentives for sustainable management of natural resources.

Community-Based Management

Legal rights to resources are the key to community-based natural resource management, which is why lawyers must be involved. Human rights issues play an important part in the overall effort to help communities become empowered. But involving local communities, especially long-term residents, in natural resources management also just makes good sense. It provides those most dependent on and knowledgeable about the local resource base with official incentives for sustainable use. It likewise empowers them to police the forest and prevent outsiders and members of their own communities from over exploiting forest resources. National legal systems that embrace community-based forest management policies, therefore, are more likely to achieve better stewardship of the resource base.

In legal terms, the most significant characteristic of community-based forest management – particularly in terms local peoples' relations with external actors – pertains to tenurial rights. Community-based tenurial rights are often distinguishable from Western property concepts, which are based largely on state-created, private individual rights, or socialist concepts that theoretically vest the state with ownership of all natural resources. Community-based tenurial rights are also not the equivalent of "open access" regimes. Rather, they include often overlapping individual and group rights (including common property), and typically derive from long-term relationships established between local peoples and the natural resources that sustain them.

Community-based rights tend to be rooted in a belief that the present generation has a duty to manage natural resources, including forests, in trust for future generations. The privileges of the individual are thus generally subservient to the rights of the greater community (a situation that likewise prevails even in terms of private, individual, state-sanctioned property rights which can be subordinated in the public interest, e.g. zoning, eminent domain, etc.). In addition, an individual's freedom is predicated upon the productive use of natural resources. By ensuring that they are carefully managed and the rights to them are equitably allocated, community-based tenurial rights contribute both to cultural and national continuity.

Community-based management systems and the property rights that they establish and support draw their fundamental legitimacy from the community in which they operate rather than from the nation-state in which they are located. Regardless of whether the system covers private or public land, community members – not government officials or employees of non-governmental organization or development institutions – are the primary (but not necessarily the sole) allocators and enforcers of community-based rights. The concept of community-based management should be applied in reference to initiatives that are primarily controlled and legitimated from within a community. Externally initiated activities with varying degrees of community participation should not be referred to as community-based, at least not until the community exercises primary decision making authority.

Other issues related to community-based tenurial rights are also important. They include" access to information; right to organize and participate; transparency in

governmental decisions to allocate natural resource rights and duties; the regulatory framework for – and impacts of – resource extractive private enterprises; the availability of credit and other financing, etc.

The Tenure Project

For the past six years, WRI has been addressing these legal issues and promoting community-based natural resource management through its Tenure Project. The project focus has been on conducting collaborative research on the legal aspects of government-community relationships and on helping to building long-term domestic capacities within governments and NGOs to examine and address related issues. WRI partners can be found in the Philippines, Indonesia, India, Sri Lanka, Nepal, Bangladesh, and Papa New Guinea.

Under the Tenure Project, WRI has also striven to inspire and mentor young lawyers and social scientists, and to challenge them to create and strengthen public interest environmental institutions, particularly those that are sensitive to an supportive of community-based natural resource management. This workshop reflects our effort to establish new partnerships in Tanzania, Uganda, and Kenya, and preparations are underway to expand our efforts into southern and central Africa. We are also working hard to support the development of regional and international networks of lawyers and others who support public interest environmental law and community-base natural resource management. This workshop is a manifestation of our commitment. Thank you.

Local People and the Protected Areas: A Case of Mt. Elgon National Park; Uganda

Presenter: Levand Turyomurugyendo

In his presentation, Turyomurugyendo brought to the attention of the seminar issues, attitudes and problems faced by local communities surrounding the protected Mt. Elgon National Park. The thrust of paper was that the people around Mt. Elgon had got some values to which they were extricably bound with the environment. Laws or actions that deprived them of the needed values would not work but would rather lead to the destruction of the mountain's natural resources. Legislation for management of natural resources in his view must be broad-based in approach and should recognize interactions and interdependence characterizing the life support system (ecosystem). The attention should be on: local people, government policy, increased productivity, local competence, sustainable use and efficient utilization of the resources concerned. Action plans (policies) that could check degradation of natural resources must be socially responsive and not repressive. The local people must have courage to support and participate in the implementation of policy decisions.

Mt. Elgon reaches a height of 4320m and is shared between Kenya and Uganda. Most of the Ugandan side is under government protection in the form of a National Park.

The protected area covers an area of 1145 square km covered by a wide range of varied vegetation types which are broadly classified into four categories:

(i) The Montane forest covering 48% of the area and found not beyond the 2500m line.
(ii) The bamboo and low canopy Montane that covers 21% and occurs between2400m and 3000m.
(iii) The high Montane health which covers 7% and occurs between 3000m and 35m, and;
(iv) The moorland which covers 24% and occurs beyond the 3500m contour line

In each of these vegetation types, local communities have specific values. Locally, the most important vegetation types that are outstanding donot go beyond 300m and these constitute 69% of the while protected area. On top of the above resources, Mt. Elgon is an important water catchment area with many streams running from it to serve extensive population in the surrounding districts and beyond on either sides of the border. The management of the forest area has recently been changed from a forest reserve, forest part to a National Park. Notwithstanding these changes, the protected area suffers the affliction of the panga, saw and hoe as result of the activities of the local community.

On the Uganda side the mountain is shared by the districts of Kapchorwa and Mbale having 23 and 35 parishes respectively and adjacent to the park. In each, the human population is very high ranging from 3.5 to 5.6 people per household on average, with a population density averaging 350 and 500 people per square kilometer. The majority are agriculturalist especially in Mbale while those in Kapchorwa are predominantly pastoralist. Other major activities engaged in are forest-based; honey collection, hunting, bamboo shoot collection and basketry products. Generally, these communities have lived, used, protected and cared for the resources since time immemorial. The smooth interaction was antagonized by government gazetting the forest area.

One of the greatest management problems has been agricultural encroachment. This increased considerably during political upheavals and during the management crises of the early 1990s. Despite eviction, most people remained attached to the forest as the only means of survival as illustrated by observation in Bufumbo sub-county.

Bufumbo sub-county has over 7000 households located in Banyangu and Jewa parishes. Each household is made of 5 people on average and a population density of over 450 people per square kilometre living in conditions of abject poverty. Total land holdings for the majority of households lie between ½ and 1 ha. Land is very scarce and not enough for agricultural production to sustain the population. As such, all products from firewood, medicine, building materials and grazing fields come from Mt. Elgon forests.

Policing activities have not succeeded in stamping out uncontrolled exploitation of timber for commercial purposes. Because of policing, pitsawyers no longer go for highly valuable or mature trees. Such species as Trema and Harungana are also being converted

into timber and also rarely allowed to reach a height of 40 cm at the time of conversion. This urge for commercial timber has not spared other species like Cordia, Eatandrophragma and even Eucalyptus. The latter was planted on the reserve's temporary boundary in 1990/1 period. Along with commercial timber exploitation, no matter how vigorous the policing will be, building poles collection will also continue whether the forest is fully recovered or not.

From a small survey carried by the author in the month of July and August 1993 on people carrying firewood passing at one kilometer and seven kilometers range from the Namatale Forest Reserve, 141 people per day and 979 people per week ferry firewood away. Both dead dry wood and live trees are cut for fuel wood. Other resources plundered include over 10 species of mushrooms collected from the National Park. And although insignificant due to the reduction of large animals, hunting is still regarded as an invaluable activity for bush meat. In the absence of the animals, both large and small birds have fallen victims to hunters from Namatale Forest Research Reserve. Methods use range from using ground snares which grab most seed eaters irrespective of size to bird hunting by climbing trees. The field survey revealed that bird catchers claimed food catches from three climbing as well.

Grazing is less important in Mbale district than in Kapchorwa; and large herds of cattle are kept in the Ntional Parks grassland coming from the nearby forest reserve. There is also browsing by domestic goats.

Medicines prescribed by the local medicinal specialist come from the very thick of the forest reserves. People around respect the medicine men who regard the forest especially the very thick parts as important sources of their medicines. Unfortunately, the collection of the medicines is not restricted to one particular are but extends even to the high altitudes.

Before actual eviction of people from Namatale forest reserve, they had converted the whole reserve into banana plantation. After eviction given the scarcity of cultivable land on public land, people still go and cultivate in the forest. Perhaps the most important resource exploited in the forest is bamboo.

Bamboo vegetation is one of the most important resources to all communities having adjacent to the forest National Park, Stems of bamboo are used for housing, basketry and granary construction, as well as, in the traditional significant "imbalu" (circumcision) ceremonies. But they also provide one of the most delicious and cherished dishes of Bagisu and other tribes close to the mountain. The "Marehwa" (bamboo shoots) dish is considered very important and is held high at many ceremonies such as wedding, circumcision, child birth and the other public functions. Although the vegetation is formed in one of the areas susceptible to destruction, can you stop or legislate against their exploitation?

Turyomurugyendo concluded that although for long, local peoples' needs and aspirations had been ignored in the absolute legislation or inadequately legislated for during management initiatives of natural resources; it was his prayer that current legislation be realistic and progressive. The policies must be people oriented not only on paper but in the field as well. There was need for proper economic valuation of all forest

products obtained locally. Local people should be allowed to manage, under guided technocrats' hand, the areas they exploit for their survival. This would keep the interrelations and interdependence that is part of a ecosystem to protect.

Discussion

Dr. Aluma from the National Agricultural Research Organisation (NARO), appreciated that without people's participation, government could not succeed in efficiently managing natural resources management. All the same, he pointed out that the joint management idea being introduced lacked methodology. How should people be involved? If a management regime barred a local community from using a forest such as Mabira, how would a joint management system come in place and what would the community's expectations be? He generally felt such issues as relationship between peasants and technocrats defining clearly their roles in resource management needed to be resolved and clearly spelt out if the strategy was to work. In Mabira, Dr. Aluma said, communities were sensitised and yet there still existed mobilization problems. Defining non-touchable products was still a problem especially as to what rights communities would retain and which would be surrendered.

Field Trip to Mabira Forest Reserve

In the afternoon of August 25, Dr. Aluma led seminar participants to a field trip to Mabira Forest to met forest communities and share their perception of the joint management policies being mentioned. At Mabira Forest he informed the participants that the forest currently occupies about 30 ha surrounded by farming people posing problems of enforcing borders and monitoring natural resources degradation. Some communities are gazetted within the forest reserve. The forest has suffered large-scale commercial logging with local people hardly benefiting from the accruals. He pointed out that between 1974-1990, 10,000ha of forest were reduced to agricultural land. Forest evictions failed and the 1975 Land Reform Decree allowed people to move in by government order with permits, regulating and prescribing their limitations.

Not all the resources in the forest are the domain of foresters. While foresters manage trees and vegetation, the game department controls game. The forest has been divided into a core zone strictly for conservation – a buffer zone allowing regulated access by the community, and the outer zone.

On their part, the community raised several issues about the forest. The community castigated foreign elements for commercial logging and denied any role in it. They asked to be integrated into forest management to allow them assist foresters fight forest depletion. They suggested co-operation with forest and local leaders provided the roles, rights and responsibilities of each agent in the alliance was clearly specified. They considered cash payments, rights to use the forest, and revenue sharing as good incentives for environmental resource management.

Closing Session on 15 August 1995

Presentation of Country-Specific Research and Advocacy Agendas/Open Discussion

Uganda – Jacob Olanya

a) Policy Research Issues:

- There is need for research into the attitudes, willingness and direct awareness approaches in natural resource management
- The role of local communities/authorities and how to harmonise them
- Impact of government policies i.e. licensing on resource management
- Local capacity and competence to conserve
- Peoples' physical needs

b) Direct Action

- Direct action is needed to link up community/individual and the state network for environment concern
- There is need to facilitate local communities
- There is need to develop a management plan – what will it be like? Given intra and inter local/regional state difference. Perhaps legal rights legislation should be developed spelling out what should not be done
- Procedures for conflict resolution/arbitration, litigation or alternative dispute management are needed
- Capacity building hitherto narrow and limited in scope should be broadened especially via networking among NGOs both local and foreign. Probably these groups need to establish are source centre or data bank.

c) Co-ordination of NGOs/community groups is needed

- NGOs should clearly conceptualise what they intend to do, coordinate and animate, research and develop environment law initiatives

Tanzania - Nzalo

1. Policy Research, LEAT experience

a) Legal and non-legal incentives in co-management framework – each group user will require different incentives calling for research
b) Determine stages of community integration in face of constraints and duplication

c) Observe current patterns of natural resource management in view of assessing benefit of top-down-up-down methods
d) Analyse tenure regimes and women's rights on environment
e) How environmental law initiatives can be used to secure environmental management

2. Direct action

a) Initiate and conduct public litigation over community rights
b) Co-drafting bye-laws and legislation's governing environmental resources
c) Establish regular contact meeting with local communities to sensitise on right/roles in managing resources
d) Educate via seminars/workshops with teachers to stimulate outreach information
e) Simplify and reinterpret, environment law to suit communities' best understanding
f) Lobbying and influencing policy changes where need arises

Capacity

Leat will strive to pursue its objectives mostly via activism and voluntary basis. Seeking assistance to develop capacity building in raining ELATE will redress the following gaps in the capacity building drive:

- ensure membership fees are paid up;
- solicit and seek voluntary finances;
- contribute 10% of members' funds;
- change nominal fees for service;
- see and consult for government and private sector;
- undertake voluntary work;
- get involved in legislation to ensure integration of ELI objectives; networking – on top of existing local and foreign networks, organize a schedule of meetings perhaps annually to share situation of common interest.

Kenya - Odhiambo

1. Research Issues (Policy)

- Land tenure/use viz resources
- Land use availability of water resources given acidity – specifically viability of water harvesting and other forms of water availability.

- Information dissemination – availability of good information, access to public and transfer of such information to relevant government authorities and how legislation can assist.
- Institutional capacity – structure, nature, powers and coordination.
- Energy policy – an interface between energy policy and forest usage.

2. Direct Action

- What are the policy issues? Research will be done into the policy issues at hand followed by action to integrate collective measures.

Capacity

- There is need for additional capacity. Training-long and short-term-as-well as further funding, fine tuning and more infrastructure
- Gaps, in capacity were identified as the need to link community concerns with policy interventions – the capacity of existing legal organizations exists.
- Finally, opportunities for communities promotion.
- Existing communities will be reinforced via networking
- Strong need for coordinating NGO approach. These should be vertical on one hand and horizontal at the local and transborder levels.

Discussion on Common and Trans-Boundary Challenges and Opportunities for Future Collaboration

The NGO's agreed to collaborate on the following issues:

ONE: Exchange of information. Due to constraints of local resources, local capacity building should be emphasized to deter reliance on foreign organization.

TWO: The NGOs agree that the proceedings be published and distributed. They agree on follow-ups of issues and progress to sustain action and not to shelve issues.

THREE: NGOs in the region will emphasise co-ordination – local and foreign.

FOUR: They resolved to collect inventory of literature available with different parties to the seminar

FIVE: It was decided that for easier and direct contact between the NGOs in the region, contact persons representing each nation be selected. The following were selected:

1. Peter Otim - CBR, Uganda
2. Ochieng Odhiambo - CEPLA, Kenya
3. John Daniel - LEAT, Tanzania

Concluding Remarks

Perter Veit - WRI

In his concluding remarks, Peter Veit expressed his deepening appreciation of the importance of environmental law and community-based natural resource management. He thanked the participants for their superb individual and institutional participation and said that WRI was pleased to have been able to co-host the event with CBR. In that regard, Veit expressed WRI's thanks and appreciation to CBR and its staff who worked long and hard to make the workshop productive and successful. He emphasized the need to educate governments, businesses, and other institutions. He expressed the hope that the workshop would help foster further activities and cooperation in East Africa, and said that WRI would help as much as it could be assist local organizations.

Peter Otim – CBR

On behalf of Centre for Basic Research, Otim congratulated all participants for having attended and contributed tremendously to the success of the seminar. He especially thanked WRI for their financial, academic and organizational contributions in making the seminar a success. He observed that the most impressive aspect was that social scientists and lawyers could understand one another and he encouraged the two groups to co-ordinate in pursuing environmental conservation concerns.

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