

# Evaluating the Effectiveness of the Existing Legal Provisions on Wetlands in Kampala

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## ABSTRACT

This article evaluates the effectiveness of the existing legal provisions on wetlands in Kampala city of Uganda. The article reviewed that the continued encroachment and degradation of Kampala's wetlands has taken place despite protective policies for several reasons. The lack of resources and political will have left them vulnerable to short-term development interests. The national wetland policy remains too large and inflexible to apply at the local government level. It is against this backdrop that the article calls for government organizations such as NEMA and the Wetland Management Department to make several changes in how wetland policies are executed. First, they need to work together to implement policy' in unison and make sure resources are not being overspent on one area but spread evenly. Second, they need to refine policy and make sure it can be applied to the community level instead of just the national level. More so, stakeholders and those who live on or near wetlands need to become aware of how to properly and sustainably use a wetland. They need to be briefed on wise use methods of wetland protection so that they can live safely near wetlands and also feel empowered by their conservation.

**Keywords:** Environmental protection, Government, Penalties, Residents, Wetland

## INTRODUCTION

Under the Ramsar International Wetland Conservation Treaty[1], wetlands are defined as areas of marsh, fen, peat-land or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six meters. Wetlands may incorporate riparian and coastal zones adjacent to the wetlands, and islands or bodies of marine water deeper than six meters at low tide lying within the wetlands[2]. The National Environment Act[3], defines "wetland" to mean areas permanently or seasonally flooded by water where plants and animals have become adapted. It is a land area that is saturated with water, either permanently or seasonally, such that it takes on the characteristics of a distinct ecosystem[4]. Environmental law is the law governing wetlands. This is the law that relates to the use, protection, and conservation of the environment environment refers to the physical factors that surround man and its activities which include the atmosphere, odor, climate, land, taste of water, sound, and the biological factors of animals, plants and the social factor of aesthetics and includes

both natural and the built environment[5]. Generally, people have rights to decent and healthy environments as provided for under section 3 of the Uganda National Environment Act and the duty to maintain and enhance the environment, including the duty to inform the authority or the local environment committee of all activities and phenomena that may affect the environment significantly. The relevant authority or local environment committee is entitled to bring an action against any person whose activities or omissions have or are likely to have a significant impact on the environment[6]. The constitution of Uganda emphasizes that the state shall protect important natural resources including land, water, wetlands, minerals, oil, fauna, and flora on behalf of the people of Uganda[7]. According to the Millennium Ecosystem Assessment, wetlands are the most affected habitats that have been mostly affected by development and are being lost more rapidly than any other habitat in the world[8]. Similarly to the above, numerous challenges undermine the sustainable utilization and management of wetlands in Uganda[9]. Article 245 of the 1995 Uganda

Constitution[7] provides for the protection and preservation of wetlands to the effect that Parliament shall, by law, provide for measures intended to protect and preserve the environment from abuse, pollution, and degradation. About the Constitution, the state shall promote sustainable development and public awareness of the need to manage land, air, and water resources in a balanced and sustainable manner for the present and future generations. The same is noted in Section 44 of the Constitution, which states that the government is to hold in trust for the people and protect natural resources, lakes, rivers, groundwater, natural ponds, natural streams, wetlands, forest reserves, national parks, and any

other land reserved for ecological and touristic purposes for the common good of the citizens of Uganda [10].

Despite the existence of the importance of wetlands, the laws and policies governing the wetlands that have been and are in place, have done little in trying to protect wetlands, causing widespread violations with encroachment being a threat to the ecological system. As a result, wetlands have been depleted due to weak enforcement mechanisms hence leading to floods in the city. This study evaluates the effectiveness of the existing legal provisions on wetlands in Uganda.

#### Causes of Wetland Depletion in Kampala

**Wetlands in Kampala district continue to face serious threats of destruction.** According to Warsame, Luyiga and Akiyode[11], high population density (approx. 3,974 persons per km<sup>2</sup>) is one of the main causes of wetland resource degradation in the district. It is estimated that about three-quarters of the wetland area has been significantly affected by human activity. In 2005 it was noted that 13 % of the wetland area was severely degraded. Wetlands are also under extreme pressure due to uncontrolled development activities. The most detrimental activity is industrial development, which has destroyed the Kinawataka wetland, between Nakawa and Kireka, and part of Nalukolongo. Second is residential development, which is affecting several wetlands, notably Nsooba, Bulyera, Kiyanja, Kansanga, Kyetinda, Mayanja and Nakivubo[12]. The encroachment on the City's wetlands happens for various reasons, to wit:

**Lack of coordination and planning in the allocation and development of plots:** Various players, like KCCA, UIA, UMA, and individuals allocate or develop plots in wetlands in disregard of any infrastructure plan, including drainage works. In cases where wetlands get blocked, stormwater will spill over onto roads and other corridors, causing road foundations to collapse, and culverts and underground sewage systems to get blocked[13].

**Lack of Enforcement Mechanisms:** According to KCCA officials, some of the various laws and regulations in place to plan the City and manage the wetlands may be contradictory, vague, and lack the necessary statutory instruments for implementation. As a consequence, it is often impossible to charge developers without running the risk of losing the case and paying damage to the developer. Many officials, therefore, do not pursue such cases[14].

#### Legal Framework on the Protection of Wetlands in Uganda

##### The 1995 Constitution of the Republic of Uganda

The 1995 Constitution of Uganda is the supreme law in Uganda as prescribed under Article 2, and it sets out the norms, standards, rights, and obligations at national levels[7]. This implies, that it also sets out the national objective and directive principles of state policy including that which provides for environmental protection and conservation. There is availability of a rich legal framework on wetland conservation whereby emphasis has been put on a healthy environment and the wellbeing of the people. In Uganda, It has been embedded as a right to a clean and healthy environment under Article 39 of the constitution[7]. Furthermore, in *Oposa v. Factorian*[15], it was said that "as a matter of fact, these basic rights need not even be written under the constitution for they are assumed to exist from the inception of humankind...." implying that even if they are not coded in our constitution, the rights accrue for being human beings, however, our law has emphasized by providing the legal framework even in its policy guidelines under objective xxvii

since the common fact is that for any act to be regulated, the law ought to be in place and its absence gives man and his activities a holiday for damage which impacts negatively on the wellbeing of the people. Furthermore, Article 245[7] of the 1995 Constitution of Uganda provides for the protection and preservation of wetlands to the effect that Parliament shall, by law, provide for measures intended to protect and preserve the environment from abuse, pollution, and degradation. Therefore, parliament under its cardinal role of making laws as provided for under Article 79 of the 1995 Constitution of Uganda, is vested with powers to make laws that ensure that the environment is protected and preserved to the extent of the literal meaning of the words "protect and preserve". Analysis of these provisions lays a very good foundation for the protection of wetlands being part of the environment whereby persons are to ensure that while development is part of man's activity, it should be sustainable development that emphasizes

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the needs of the current generation without compromising the rights of the future generations. This implies that even future generations have a right to a healthy and clean environment. It is important to note that these wetlands act as catchment areas for the wastes generated by man's activities that involve dumping wastes like garbage indiscriminately and factory wastes that include chemicals that have toxins that are harmful to people, plant species, and animal species[16]. The

#### **The National Environment Act Cap 153**

It should be noted that under this Act, section 2 provides for the principles of environmental management. It provides that the authority should ensure that people of Uganda use and conserve the environment and natural resources of Uganda equitably and for the benefit of both present and future generations, taking into account the rate of population growth and the productivity of the available resources[3]. Furthermore, Section 36 provides for restrictions on the use of wetlands, whereby no person shall reclaim or drain the wetland, erect, construct, place, alter, extend, remove, or demolish any structure that is fixed in, under, or over any wetland; disturb any wetland by drilling or tunneling in a manner that has or is likely to hurt the

#### **The Land Act Cap 227 as amended**

The Land Act[18], though section 2 vests for land into the citizens of Uganda and provides for its ownership, it provides under section 43, that a person who owns or occupies land shall manage and utilize the land in accordance with the Forests Act, Mining Act, National Environment Act, Water Act, Uganda Wildlife Act and any other law. This implies that, whereas a person owns or occupies land, it should be utilized with due regard to other legislations in a place where Environment Act provides for the wetlands, and section 44(1) provides that the Government or Local Government shall hold in trust for the people and protect natural lakes, rivers, groundwater, national ponds, natural streams, wetlands forest reserves, national parks and any other land reserved for ecological and touristic purposes for the common good of the citizens of Uganda. This further emphasizes that natural

#### **The Water Act Cap 152**

This Act[19] provides for any water body found on land. It has gone a long way in providing for the environment, in this case, wetlands protection plays a big role in cleaning waste that would impact directly on the water. It is important to note that the major reason given by the National Water and Sewerage Corporation to justify the water tariff increase was that the treatment of water has drastically increased due to a lot of waste that finds its way into the lake. The Water Act under section 2[19] provides for waste to mean and include sewage

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environment not only has the role of purification of pollutants but also provides beautiful scenery for tourism and is an income earner to the government which holds the environment in trust for the people as prescribed under Article 237(2)(b) of the 1995 Constitution of Uganda. It should then be noted that the a forementioned provisions regulate and provide for preservation and protection of wetlands a body forming part of the entire environment.

wetland; deposit in, on or under any wetland any substance in a manner that has or is likely to hurt the wetland; destroy, damage or disturb any wetland in a manner that has or is likely to hurt any plant or animal or its inhabitants, or introduce or plant any exotic or introduced plant or animal in a wetland. However, the exception is unless a person has written approval from the authority given in consultation with the lead agency[17]. In relation, before one is permitted to use the wetland for any activity, the authority may consult the lead agency to make an investigation it considers necessary, including the environmental impact assessment to determine the effect of the activity on the wetland and the environment in general.

resources are protected by the government and therefore prosecution is done by the state for any violation of such provision[18]. As further emphasis is put on the common good of the citizens, it is worthy to note that wetlands are a vital resource in our environment and section 45 indicates that as much as such actions are geared towards development whereby man is likely to encroach on and degrade wetlands, such use should conform to the provisions of the Town and Country Planning Act and any other law. This therefore indicates that there is a limit to man's development activities. And looking at the section, the implication is that right from the top government body, there are other controls in towns regulating land use to the benefit of all citizens. The Land Act therefore provides for a legal framework which is geared towards conservation of wetlands.

and any other matter or thing whether wholly or partially in a solid, liquid, or gaseous state which if added to any water may cause pollution. Section 29[19] provides that any person wishing to discharge waste may apply to the director for a waste discharge certificate and the application must be made in the prescribed manner, and the director on receipt of the application, shall give public notice of the application made in the prescribed manner so that any person with interest to the likely impact of the certificate so given may give an objection to the

director within a prescribed time. This is seen to be in tandem with the provisions allowing the public to participate in matters concerning the environment in their respective areas. Section 31[19] prohibits pollution and therefore outlines that; any person who then under the Act causes or allows waste to come into contact with any water or any waste to directly and indirectly be discharged into water and cause water to be polluted commits an offence. Section 31(5) further provides that the court may on application by the minister of water, require that a person or authority pay into Court a sum not less than 80% of the cost estimated by the minister in

#### **The Local Government Act Cap 243**

Under principle (ii) of the National Policy for the Conservation and Management of Wetlands 1995[21], it is noted that wetland conservation can only be achieved through a coordinated and cooperative approach involving all the concerned people and organizations in the country including local communities. Therefore, it is important to note that, local councils are provided for under Section 3 (2) - (5), whereby a lower local government includes a municipality and these Local Councils (LCs). Local Councils have a provision for a member of the executive who is directly in charge of the environment and therefore with a cardinal role in the environment whereby the Local Government Act further provides for planning[22]. Section 36 of the Local Government Act[23] empowers local governments to originate plans for the good of the people to the extent that the district technical planning committee shall coordinate and integrate all the sectorial plans of the lower local governments for presentation as under section 36(2). Furthermore, Section 35 [23] provides that the planning should be done according to the

#### **Effectiveness of the law on conservation of wetlands**

The law intends to regulate activities on wetlands with a view of preserving them for the benefit of the present and future generation. However, the National Environment Regulation provides for conservation that brings in improvement and use of natural resources in a way that ensures the highest social as well as economic benefits, which eventually brings in the concept of sustainable development that addresses the operational relationships between numerous wastes brought by every kind of present-day strategy of economic prosperity and the concern for the future availability of such resources whereby the notion of development is associated with growth and enhancement of people's access to goods, services, and values that provide what is seen as a better life[24]. It is also worth noting that sustainable development implies that development is ecologically viable since it is a process of change

remediating the damage caused on the water body including the cost of re-instating the environment. It should be noted that for a wetland to exist, there has to be a connection with water in which a wetland is defined to mean areas permanently or seasonally flooded by water. It is worth noting that, when the water is protected, then even wetlands are protected since the biggest threat to the wetlands is man's activities[20]. Therefore, the mere fact that water is protected from contamination significantly creates a good atmosphere for the well-being of the common good for man, plants, and animals hence conserving wetlands.

established guidelines of the national planning authority where comprehensive plans are prepared integrating plans from lower local government. It should therefore be noted that environment and especially wetlands provided for under the constitutional National Objectives and guidelines, formulate a basis for planning. It is sufficing to note that these local councils are too close to the people grass root support whose plan on wetlands creates a very good impact both on awareness and the attitude towards wetlands; planning and a budgetary line for the activity that creates a good linkage from the grassroots to the national plans and hence environmental activities increasing awareness on the values of wetlands in communities.

It is therefore important to note that the provisions in the local government act providing for inclusion of lower planning units into the main district plan, helps to capture issues on wetland conservation and management as laid down under the National Wetlands and Management Policy 1995, principles. Hence, this provides a legal foundation or an avenue for the conservation of wetlands.

in which the exploitation of resources, the direction of investments, the orientation of technological development, and institutional change are all to be in harmony enhancing both current and future potential to meet human needs and aspiration which needs and aspirations ought to conform to the laid down legislation[25]. As provided earlier, a legal framework was put in place to regulate man's activities towards the attainment of sustainable development. However, it is interesting to note that for every law to be effective, it must provide for sanctions and enforcement. Otherwise, the common saying that work without pay makes Tom a dull boy comes into effect and the analysis in this respect is that having laws, however good they may be, without penal sanctions, makes the law itself dull. There is no doubt that Uganda has a comprehensive legal and policy framework for the protection and

preservation of wetlands, however, the wording in the Constitution and the choice of the words protection and preservation seem to emphasize that these wetlands should be left intact (original) or in a good condition and therefore making very strong and effective in protecting wetlands. However, the wording managing the environment for sustainable development seems to give a blanket cover that has a very wide discretion and has created loopholes that are basically used by developers to reclaim the wetlands in the guise of sustainable development which has led to reclamation or draining of wetlands and erection, construction and alternation of these wetlands[26].

Wetland protection is a priority the government has lost sight of in the past few years, leading to the continued degradation of a valuable natural resource. The continued encroachment and degradation of Kampala's wetlands has taken place despite protective policies for several reasons. The lack of resources and political will have left them vulnerable to short-term development interests. The national wetland policy remains too large and inflexible to apply at the local government level. It is against this backdrop that the article calls for the government organizations such as NEMA and the Wetland Management Department to make several changes in how wetland policies are executed. First, they need to work together to implement policy' in unison and make sure resources are not being overspent on one area but spread evenly. Second, they need to

This is viewed as geared towards economic growth which is seen as a primary agenda, whereas this activity contravenes legal provisions and this therefore should attract a penalty. This therefore makes it difficult for the law to be effective since the law created is between preservation or conservation against sustainable development where the executive director provides permits and the question is how they shall be kept relevant for the future generation since the law is restraining on one hand and also giving out on the other hand. Therefore, it should be noted though the legislation is good, the penal sanctions and contradictions in the law have given the law a dismal effectiveness

### CONCLUSION AND RECOMMENDATIONS

refine policy and make sure it can be applied to the community level instead of just the national level. More so, stakeholders and those who live on or near wetlands need to become aware of how to properly and sustainably use a wetland. They need to be briefed on wise use methods of wetland protection so that they can live safely near wetlands and also feel empowered by their conservation. Furthermore, the government should fund these government agencies and authorities with enough resources to enable them to execute the duties they are mandated to carry out without corruption. Similarly, the government should involve the police to help in monitoring the environmental protection of communities and towns. Finally, the school curriculums should be adjusted to enable people to understand the importance of conserving the environment.

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