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PROTECTION OF FOREST RESOURCES UNDER INTERNATIONAL LAW: A CASE OF MABIRA FOREST IN UGANDA

AMINA WAHAB*

Introduction

Mabira forest is a tropical high forest resource within Uganda. Forestry biodiversity is the total variety of living organisms that exist in a forested area and includes plants, animals, fungi, and microbes among others. Uganda is blessed with diversity of natural habitats, species and genetic resources in its forests and it is one of the most diverse countries in Africa, with 11% among others. Uganda is blessed with diversity of natural habitats, species and genetic resources in its forests and it is one of the most diverse countries in Africa, with 11% and 7% of the world's bird and mammal species respectively.¹ The importance of these forests goes beyond the national jurisdictions. It benefits the globe. This pushes emphasis on sustainable forest management and development.

In the bid to ensure the protection of forestry biodiversity, Uganda has participated, signed and ratified a number of treaties which have been generated from a variety of different sources. Most of these treaties/ conventions have been a result of the efforts of institutions like the United Nations (UN), African union (AU), European Union (EU), Organization of American states (OAS), the United Nations Educational, Scientific And Cultural Organization (UNESCO) and the International Union for the Conservation of Nature (IUCN) among others. These institutions have played a very important role in the formation, adoption and implementation of the most of the relevant instruments for the protection of forestry diversity.² As seen above, the instruments on protection of forestry biodiversity have created a number of principles with obligations for the sustainable management and utilization of biodiversity with binding force, though others are not binding. Most of the obligations require states to take certain steps at the national level and this can only be done by ensuring that the laws and policies are compatible with the international instruments. The Constitution being the supreme law of Uganda gives room for the ratification and adoption of international instruments relating to forestry protection and management³.

• Lecturer Islamic University in Uganda

¹ The National Forestry Policy 2001

² *ibid*

³ Article 152 of the 1995 Constitution of the Republic of Uganda

Non-Binding International Instruments

The major role of the non-binding agreements is to lay the foundation and provide the impetus for the individual countries to develop their own legal frame works in accordance with the deliberations in the conferences⁴. During the past half- century new legal norms have been shaped and promoted by a range of instruments that do not fall into traditional international law categories of treaties and conventional custom. The instruments are relevant to Uganda in shaping the development of new normative standards for appropriate and wise conduct in management of the forest resource although, the legal status of these of these instruments has been a major subject of discussion among international law scholars, one of whom has described soft law as –··· either not yet or not only law⁵. Soft law represents a blurring between what has been traditionally understood as –law|| and policy⁶. B. Twinomugisha notes that soft law instruments have been essential in the development of international customary law and international conventions.⁷ According to him, a number of rules of international law which are emerging or have emerged or have originated from the resolutions of international organizations. The Stockholm declaration contains rules of customary law that have been validated by state practice since 1972.

Principle 21 of the declaration has now become a well settled binding obligation based on treaty law beyond the customary international law which inspired it.⁸ Soft law principles are found in instruments such as declarations, resolutions, and codes of conduct. There is an array of soft law instruments that promote sustainable utilization and management of forest resources and they are discussed here below.

Stockholm Declaration, 1972

The 1972 Stockholm declaration resulted from 1972 UN conference on Human environment held in Stockholm.⁹ The conference was the first major international conference, held under the auspices of the United Nations and designed to deal with questions surrounding the management and protection of the environment and its relation to human. The declaration calls upon governments and people to exert

⁴ N. Salafsky, et al (2000) –linking livelihood and conservation: a conceptual frame work and sale for assessing the integration of human needs and bio diversity. || Vol. 28 no. 8 Washington dc: biodiversity support program. 1421-1438.

⁵ A. Jeffrey (1995) –conserving diversity in mountain environment: biological and cultural approaches. || invited paper presented at the international NGO consultation on the mountain agenda. Switzerland: the world conservation union programme.

⁶ M. Zerilli, et Al, (2008) –soft law practices, anthropologists and legal scholars. || EASA conference 2008 experiencing diversity and mutuality: United Kingdom; university of Bristol.

⁷ B.K Twinomugisha, (1996) –The Development Of The Law Relating To The Protection Of The Ozone Layer With Particular Reference To Position Of Developing Countries. || LLM dissertation; Uganda Makerere University.

⁸ Principle 1 of the Stockholm Declaration.

⁹ E. Kasimbazi, et al, (2005) –Report On The Review Of Policies Of The Mt Elgon Ecosystem Management. || In Mid Term review of Mount Elgon regional ecosystem conservation programme Switzerland: IUCN publication services Unit.

common efforts for the preservation and improvement of the human environment, for the benefit of all the people and for their posterity. To achieve this environmental goal, the declaration demands the acceptance of responsibility by citizens and communities, and by enterprises institutions at every level, all sharing equitably in common efforts therefore, individuals in all walks of life as well as organizations in many fields, by their values and the sum of their actions, will shape the world environment of the future.¹⁰

Principle 1 of declaration gives man the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and wellbeing, and he bears a solemn responsibility to protect and improve the environment for present and future generations.¹¹ It also stresses that human beings are entitled to healthy and productive life in harmony with nature. The declaration calls upon man to protect natural resources and preserve wild life so as to promote economic development¹² which is more crucial for sustainable utilization of Mabira forest resources.

Principle 2 is to the effect that though countries like Uganda have the sovereign right to exploit their own resources pursuant to their own environmental policies, they have the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction.¹³ The second limb of principle 21 reflects the decision of the tribunal in the *Trail Smelter Arbitration*¹⁴ and a number of decisions by the tribunal and courts which were decided later.

Cooperation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce, and eliminate adverse environmental effects resulting from activities conducted in all spheres: in such a way that due account taken of the sovereignty and interests of all states. It is also stipulated under the declaration, that environmental policies of all states should enhance and not adversely affect the present or future development potential of developing countries, nor should they hamper the attainment of better living conditions for all, and appropriate measures be taken by states and international organizations with a view to reaching an on meeting the possible nation and

¹⁰ C. Lue-Mbizvo, et al, (1993) –The Institutional and legal Framework for Natural Resource Management. | Local Level Natural Resource Management Project: Makoni District. Working Paper 3, Stockholm Environment Institution and Zero.

¹¹ Principle 1 of the Declaration. See also B. K Twinomugisha (2007) –Some Reflections on Judicial Protection of the right to a clean and healthy Environment In Uganda. | 3/3 Law, Environment And Development Journal, P. 248

¹² Principle 2 and 4 of Stockholm Declaration.

¹³ E. Kasimbazi, (1998) –The Environment as a Human Right: Lessons from Ugandan. | In Power of Human Rights International Standard and Domestic Norms. Cambridge: Cambridge University Press.

¹⁴ Trail Smelter Arbitration, (US V. Canada) United Nations 3 RIAA 1905, Reprinted In (1939)

international economic consequences resulting from the application of environmental measures.¹⁵

The Stockholm declaration is one of the most important initiatives taken towards the international environmental law in the past 30 years.¹⁶ It is clear that participants of the conference did not intend to create a legally binding document. Whilst the instrument has some of the characteristics of a treaty, notably, it does not seek to impose legally binding obligations upon the parties and further it excludes elements regarding state responsibility for the wellbeing of its citizens and for the harm caused by environment. It has acted as a catalyst for the development of further international law protecting the environment but failed to pay special sustainable management of forests. Nevertheless the results of the Stockholm conference¹⁷ are highly visionary, emphasizing the close relations between environmental problems and development.

This Declaration is relevant for the sustainable utilization of forest resources since it has provisions compelling government and the people to preserve and improve human developments for sustainable management. The declaration also calls international cooperation in raising resources to support the implementation of all preservation and exploitation of natural resources.¹⁸ With the available resources implementation of the policies intended to sustainably manage forest resources to quite easier. Uganda under this declaration has the obligation to make laws and policies that protect environment, which it has fully done though the implementation is still a great challenge.

The World Conservation Strategy (WCS) 1980

The world conservation strategy formulated by IUCN, UNEP and WWF (1980), attempted to establish a broadly based philosophical definition of conservation as a concept. The word –conservation|| is defined in the document as – the management of biosphere so that it may yield the greatest sustainable benefit to present generations while maintaining this potential to meet the needs and aspirations of future generations.¹⁹ Conservation is conceived in positive terms, embracing preservation, sustainable utilization, restoration, and enhancement of natural environment. It stated a new message: that conservation is not the opposite of development but includes both protection and the rational use of natural resources, and is essential if people are to achieve a life of dignity and if the welfare of present and future generations is to be

¹⁵ Principle 11 Stockholm Declaration

¹⁶ Ibid, Principle 1-2 and 6-8

¹⁷ Stockholm Declaration has been characterized as a watershed for global environmentalism. Over the past twenty years since the Stockholm conference, treaties and similar agreements and about nine hundred bilateral treaties and similar agreements have been concluded on the environment.

¹⁸ B. D. Ogolla, (1990), Environmental Management Policy and Law. Vol. 22 No. 3; Nairobi: Acts Press. P.166

¹⁹ Section 1 of the Startegy

assured²⁰ drawing attention to the almost limitless capacity of people and destroy. It called for globally coordinated efforts to increase human well-being and halt the destruction of earth's capacity to support life.²¹

This strategy is based on the conviction that people can change their behavior when they see that it will make things better, and can work together when they need to.²² It is aimed at change because values, economies, and societies different from most that prevail today are needed if we are to take care for the earth and build a better quality of life for all.

The World Conservation Strategy is divided into 3 parts. Part II, the principles for sustainable living²³, defines the principles of respect and care for the community of life. That is to improve the quality of human life, conserve the earth's vitality and diversity, minimize the depletion of non-renewable resources, keep within the earth's carrying capacity, change personal attitudes and practices, enable communities to care for their own environments, provide a national framework for integrating development and conservation, and forge a global alliance as guidelines to sustainable development.

Part II, additional actions for sustainable living²⁴, describes corresponding actions that are required in relation to the main areas of human activity and some of the major components of the biosphere. These chapters deal with energy; business, industry and commerce; human settlements; farm and range lands; fresh waters; and oceans and coastal areas. Each chapter begins with a brief survey of the issues with which it deals. This is followed by a series of recommended priority actions. The instrument further in part III further in dictates details on how the strategy can be implemented by different countries to meet their needs and capabilities and also sets out the proposed procedure for follow-up of the strategy which involves the community of users in its follow up. It also contains a listing of all the recommended priority actions and suggested targets.²⁵

²⁰ R.Hamilton, et al, (2000) –Indigenous Ecological Knowledge and Its Role in Fisheries Research Design: A case study from Roviana Lagoon. | Western province, Solomon Islands.SPC Traditional Marine Resource Management and Knowledge Information Bulletin, P.12-25

²¹ Ibid, Section 15-20

²² Ibid, Section 5

²³ Okoth-Ogendo, et al, (1999) –Governing the Environment: Political Change and Natural Resources Management in Eastern and Southern Africa. | Nairobi: Centre For Technological Studies

²⁴ Sections 8-15 of the Strategy

²⁵ J. Hamner, (1997) –Patterns in International Water Resource Treaties: The Transboundary Freshwater Dispute Database. | Colorado Journal of International Environmental Law and Policy, sup 157. See also section 20 of the Strategy.

Underlying the WCS was the need to integrate conservation objectives with development policies.²⁶ One of the major weaknesses is that it is a non-legal binding instrument. With increasing marginalization of the communities living around the forest, WCS emphasizes the improvement of human life by conserving the earth's vitality and diversity and the minimization of the depletion of non-renewable resources.²⁷ This should be pertinent in the national conservation strategy which must address the improved quality of life through preservation of Mabira forest resources.

World Charter for Nature 1982

The world charter for nature adopted by the United Nations General Assembly Resolution 37/7 on 28 October 1982 is based on the premise that mankind is a part of nature and life depends on the uninterrupted functioning of natural systems which ensure the supply of energy and nutrients, and also that civilization is rooted in nature, which has shaped human culture and influenced all artistic and scientific achievement, and living in harmony with nature gives man the best opportunities for the development of his creativity, and for rest and recreation.²⁸ It further asserts that every form of life is unique, warranting respect regardless of its worth to man, and, to accord other organisms such recognition; man must be guided by a moral code of action.²⁹

One of the provisions most relevant to Mabira forest is principle 3 which states that all areas of the earth both land and sea, shall be subject to these principles of conservation; special protection shall be given to unique areas, representative samples of all the different types of ecosystems and to the habitats of rare or endangered species.³⁰ In line with this, Mabira forest was gazetted as a forest reserve so as to preserve the uniqueness of its ecosystem.

The charter urged its member states including Uganda to include its essential elements in planning, the formulation of strategies for the conservation of nature, the establishment of inventories of ecosystems and assessments of the effects on nature of proposed policies and activities. All of these elements must be disclosed to the public by appropriate means in time to permit effective consultation and participation.³¹

The charter articulates the intrinsic value of nature, irrespective of its utility to humans. It emphasizes the link between human civilization and nature. The charter

²⁶ Okoth-Ogendo, et al (1999) –Governing the Environment: Political Change and Natural Resources Management in Eastern and Southern Africa. | Nairobi: Centre for Technological studies.

²⁷ Section 8 of the strategy

²⁸ Principle 1-5 of the Charter

²⁹ Ibid, principle 3

³⁰ The Convention On The Law Of Treaties Between States And International Organization, (1986:543)

³¹ Principle 11 of the World Charter for Nature (1982)

also reflects the beliefs of indigenous people because of their intimate relationship with nature, and the unique attributes of their regions might find support in the charter's recommendations in Article 3 that

All areas of earth both land and sea shall be subject to these principles of conservation; Special protection shall be given to unique areas, to representative samples of all the different types of ecosystems and to habitat of rare or endangered species

Emphasis is placed on community involvement in decision-making on matters directly affecting their environment and in the protection and preservation of the same environment.³²

To successfully implement the provisions of the charter, it calls for amalgamation of its principles into the laws and practices of Uganda, and also into the practices of the intergovernmental and non-government organizations and administrative structures should also be provided to give effect to the character. The gazetting of Mabira forest as a forest reserve in Uganda is a commendable decision which is in line with the charter. More attention however, still needs to be focused on ensuring continued monitoring and the protection of Mabira forest resources.

Nonetheless, the charter has setbacks as an international legal document. Unlike the Stockholm declaration, it is barely known outside the circles with international cooperation and the rules of international law on environmental protection. As a result, the principles enunciated by the Charter lack international favour. The instrument does not directly impose obligations on Uganda. However, since the Charter was adopted by the General Assembly, many of its principles have been developed further in other international legal instruments and are reflected widely in municipal law. Such development is consistent with Article III of the Charter which provides that the principles set forth in the present charter shall be reflected in the law and practice of each state, as well as at the international level.

Despite its non-binding nature, the Charter declares that each person has a duty to act in accordance with the provisions of the present Charter.³³ The Charter further provides that each provision acting individually, in association with others or through participation in the political progress should strive to ensure that the objectives and requirements of the present Charter are met.³⁴

³² Ibid, principle 12.

³³ Ibid, Principle 12

³⁴ Ibid, principle 14

The Brundtland Report (1987)

The Brundtland Commission, formally the World Commission and Development (WCED), known by the name of its chair *Gro Harlem brundt*, was convened by the United Nations in 1983. The commission was created to address growing concern –about the accelerating deterioration of the human environment and natural resources and the consequences of that deterioration for economic and social development. ||

The commission also researched into environmental and economic issues before publishing its final report³⁵, *Our Common Future*, in 1987 which promptly became known as the Brundtland Report. The main drive of Brundtland Report was sustainable development, although a lot of emphasis was put on how development that neglects the environment was short lived and self-destructive.³⁶

The Brundtland report was primarily concerned with securing a global equity, redistributing resources towards poorer nations whilst encouraging their economic growth.³⁷ To this end, it stipulates that equity, growth and environmental maintenance are simultaneously possible and that each country is capable of achieving its full economic potential whilst at the same time enhancing its resource base.³⁸ The report also recognized that achieving this equity and sustainable growth would require technological and social change.

The relevance of this report to Mabira forest biodiversity is the fact that it highlights three fundamental components of sustainable development: environmental protection, economic growth and social equity.³⁹ The environment should be concerned and our resource base enhanced, by gradually changing the ways in which we develop and use technologies. If this is to be done in a sustainable manner, then there is a definite need for a sustainable level of population.⁴⁰

Under the report, sustainable development is defined as:

–... development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:

- the concept of needs, in particular the essential needs of the world's poor, to which overriding priority should be given; and

³⁵ G. Brundtland (Ed) (1987) *Our Common Future: The World Commission On Environment And Development* Oxford: Oxford University Press

³⁶ Chapter 10, Principle 258.

³⁷ E. Kasimbazi, (1998) –*The Environment as a Human Right: Lessons from Ugandan.* | *In Power of Human Rights International Standard and Domestic Norms.* Cambridge: Cambridge University Press

³⁸ Chapter 2, principle 54

³⁹ *Ibid*, principle 56

⁴⁰ Chapter 4, principle 100

- The idea of limitations imposed by the state of technology and social organization on the environment's ability to meet present and future needs. ||

The Report contains proposals for legal principles on environmental protection and sustainable development and the need to integrate development as an important step towards sustainable development. The legal principles emphasize conservation and sustainable use of natural resources.⁴¹ An interesting provision under this Report is Article 3 which specifies that –states shall maintain ecosystem and ecological processes essential for functioning of the biosphere, to preserve biological diversity and observe the principles of optimum sustainability yield in the use of living natural resources and ecosystems ||.⁴²

One of the major weaknesses of the Report is the need to support a global perspective and yet maintain the individual state uniqueness that establishes jurisdiction or political identity.⁴³ In addition, the interpretation of the proposal differs from one state to another with independent priorities at national level. Therefore, for it to have a global impact; the Report has to be developed into international rules that bind all members.

The Hague Declaration (1989)

This Declaration was as a result of a two day conference convened at The Hague in March 1989; initiated in France, Netherlands and Norway but attended by 21 states.⁴⁴ The first section outlines the range of principles which the states acknowledge and agree to promote and there were five agreed upon which expressly refers to the need to develop necessary legal instruments. The second part outlines four additional principles which the state agrees to promote to foster further international cooperation in environmental matters.

The relevance of the declaration to Mabira forest is that it obligates the government of Uganda to develop legal instruments intended to promote sustainable utilization of the forest resources. Uganda has enacted various laws inter alia is the National Forestry and Tree Planting Act, the National Environment Act. It is due to that Declaration, Mabira Forest was declared a central forest reserve.

The Rio Declaration, 1992

⁴¹ Ibid, Principle 339.

⁴² E Kasimbazi, Et Al, (2005) –Report on The Review Of The Policies Relevant To Theme. Elgon Ecosystem Management. || In Mid Term Review Of Mount Elgon Ecosystem Conservation Programme. Switzerland: IUCN Publication Services Unit.

⁴³ Ibid

⁴⁴ The states that attended were, Canada, Brazil, Cote d'Ivoire, Egypt, France, Germany, Hungary, India, Indonesia, Italy, Japan, New Zealand, The Netherlands, Senegal, Spain, Sweden, Tunisia, Venezuela, Zimbabwe and Australia

The Rio Declaration on Environment and Development was passed by the United Nations Conference on Environment and Development, which met at Rio de Janeiro from 3rd to 14th June 1992. It reaffirms the Declaration of the United Nations Conference on Human Environment, adopted at Stockholm on the 16th June 1972. It seeks to establish a new and equitable global partnership through the creation of new levels of cooperation among states, key sectors of societies and people.⁴⁵ Its overall objective is working towards international agreements which respect the interests of all and protect the integrity of the global environmental and developmental system, at the same time recognizing the integral and interdependent nature of the Earth, our home.

The declaration emphasized that environmental issues are best handled with the participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision making processes. States shall facilitate and encourage public awareness and participation by making information widely available. Effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.⁴⁶

The first principle points out sustainable development which revolves around human beings who are entitled to a healthy and productive life in harmony with nature.⁴⁷ As much as the citizens are guaranteed the right to healthy life, the same has to be realized with responsibilities attached to avoid over exploitation and/ or utilization of the ecosystem. The second principle gives the state the sovereign right to exploit their own resources as long as it does not infringe on the rights of other states with consideration of the environmental needs of both present and future generations as provided under principle 21 of the Stockholm Declaration.⁴⁸

Mabira forest is partly inhabited by different communities and indigenous people thus principle 10 proves to be very vital in its sustainable management, as it indicates that environmental issues are best handled with participation of all concerned citizens, at the relevant level. Uganda should ensure that at all levels ; citizens shall have appropriate access to relevant information on hazardous materials and activities in their communities, and given the opportunity in decision-making processes.⁴⁹

⁴⁵ Principle 7 of the Rio Declaration on Environment and Development, done at Rio de Janeiro, (1992).

⁴⁶ *Ibid*, Principle 10.

⁴⁷ *Ibid*, Principle 2.

⁴⁸ *Ibid*, Principle 2

⁴⁹ *Ibid*, Principle 10.

Full, accurate and up to date information is considered to be at the heart of sound environmental protection and sustainable development.⁵⁰ Therefore, should facilitate and encourage public awareness and participation by making information widely available and effective access to judicial and administrative proceedings, including redress and remedy, shall be provided.⁵¹ In that vein, Uganda has enacted a framework of environmental legislation in line with Principle 11. However, there is need for effective implementation especially in cases of sensitive ecosystem such as that of Mabira Forest.

The Declaration constitutes a departure from the Stockholm Declaration in the sense that it emphasizes world partnership and further recognizes need for sustainable development and joint management but differentiating responsibility of the developed and developing countries.⁵² On that note principle 7 is relevant to Mabira Forest ecosystem because it will provide a basis for harmonization of the national laws of Uganda on the basis of sustainable management of the ecosystem. Besides that, the declaration lacks a clear definition of sustainable development as compared to Brundtland Report, although it strikes a balance between developmental and environmental considerations.

Uganda has joined World Partnerships such as the World Bank's Forest Carbon Partnership Fund. The Forest Carbon Partnership Facility (FCPF) is a partnership of donors and developing countries which has a goal of reducing greenhouse gas emissions from deforestation and forest degradation, forest stock conservation, sustainable forest management and the enhancement of forest stock (REDD+). The partnership will pilot performance-based incentive payments for forest conservation. REDD+ is an international climate change mitigation mechanism under negotiation at the United Nations Framework Convention on Climate Change (UNFCCC). Uganda is one of REDD country participants in the FCPF, with in Africa. Thus Uganda has complied with the obligation of joining world partnerships to promote sustainable development of the Mabira ecosystem by submitting the Ugandas REDD- plus Readiness Proposal (R-PP) prepared by REDD National Focal Point and approved by Government of Uganda to the Forest Carbon Partnership Fund.⁵³

Forest principles 2006

These principles emanated from the UNITED Nations Conference on Environment and Development which took place in Rio de Janeiro in June 1992. In particular, the

⁵⁰ B. Twinomugisha, (2007) –Some Reflection on Judicial Protection of the Right To a clean and healthy environment in Uganda. | 3/3 Law, Environment and Development Journal.3.

⁵¹ M. Keating, (1993), Genda for change: A plain Language Version of Agenda 21 and othe Rio Agreements. | Switzerland: Centre for our common future. See also Principle 10 of the Rio Declaration.

⁵² Ibid, Principle 7.

⁵³ www.forestcarbonpartnership.org, accessed on the 4/7/2014 at 11:03 am

principles recognize that national forest policies should recognize and duly report the identity, culture and rights of indigenous people, their communities and other communities and forest dwellers. These are non-legally binding authoritative statements of principles for a global consensus on the management, conservation and sustainable development of all types of forests. The guiding objective of these principles is to contribute to the management, conservation and sustainable of forests and to provide for their multiple and complementary functions and uses reflecting a first global consensus on forests.⁵⁴

In addition, it was recommended that appropriate conditions should be promoted for these groups to enable them to have an economic stake in forest use, perform economic activities, and achieve and maintain cultural identity and social organization, as well as adequate levels of livelihood and well-being inter alia; those land tenure arrangements which serve as incentives for the sustainable management of forests. The principles is further sensitive to gender issues which will give women opportunity to participate in the sustainable management of Mabira Forest ecosystem and recognizes the full participation of women in all aspects of management, conservation and sustainable development of forests should be actively promoted.⁵⁵

The significant role of all types of forests in maintaining the ecological processes and balance at the local, national, regional and global levels through, inter alia, their role in protecting fragile ecosystems, watersheds and freshwater resources and as rich storehouses of biodiversity and biological resources and sources of genetic material for biotechnology products, as well as photosynthesis, should be recognized.⁵⁶ Consequently, decisions taken on the management, conservation and sustainable development of forest resources like Mabira forest should involve the maximum participation of the communities around the ecosystem and facilities the sharing of benefits accrued form the ecosystem which can be promoted through joint tourism hence creating a balance between human development and economic growth.

Bali Declaration, 2011

The Bali Declaration on transitioning to low Global Warming Potential Alternatives to Ozone Depleting Substances was held by the parties to the Vienna Convention on Protection of the Ozone Layer and its Montreal Protocol on Substances that Deplete the Ozone Layer. Parties met at Bali, Indonesia from 21st to 25th November 2011. The parties recognize the fact that certain Ozone Depleting substances could contribute to the greenhouse gas emissions. The major objective of the declaration is to call upon

⁵⁴ Preamble of the Forest Principle/CONF, 151/126 (Vol III)

⁵⁵ Ibid, Principle 5(b).

⁵⁶ S.H.Brandon, (1994) –National Sovereignty and Global Environment Responsibility; Can Tension Be Reconciled For the Conservation of Biodiversity?| Vol; 33. Switzerland: IUNN.P.384

members to carry out studies that will help reduce depletion of the Ozone layer and minimize its impact and its feasibility, technical feasibility, market availability and impact on human health and safety of such alternatives in PARTICULAR with enhanced engagement with stakeholders, particularly the industry. Article 3 invites parties and others in a position to do so, to provide suitable and sustainable financial as well as technical assistance, including technology transfer and capacity building needed by parties, in particular parties operating under paragraph 1 of Article 5 for transforming to low global warming potential alternatives to Ozone depleting substances that minimize environmental impacts.

The Declaration provides a foundation for protection of the forest in Uganda on the basis of sustainable management of the ecosystem. The forest will be used to absorb the gaseous toxic in the atmosphere thereby reducing ozone layer depletion and its effects on the environment.

Copenhagen Declaration, 2012

The Declaration arose from the members of the committee of the regions at Copenhagen from 22-23 march 2012. The members recognized that 20 years on from the third earth summit in the Rio de Janeiro, the goals of sustainable development and reducing poverty have yet to be achieved and the Rio+20 summit will be an opportunity to review political commitment to global and joined up action to achieve sustainable development.

The relevance of the Declaration to Mabira forest is that it confirms the members' commitment to climate –neutral cities that are economical in their consumption and efficient in production and the same time preserving and enhancing natural areas and cultural heritage.

The declaration further points out that in promoting sustainable development it must be done by means of housing policy, urban renewal policy, resource management policy (including renewable energies, water and waste) and urban transport policies that give priority to public transport and –soft transport measures. This is all intended to promote developing towns in an orderly manner that is proper building plans and roads which will not interfere with the natural resources.

Johannesburg Declaration, 2002

The Johannesburg Declaration on sustainable development 2002, the representatives of the peoples of the world assembled at the world summit on sustainable development in Johannesburg South Africa from 2-4 September 2002 to reaffirm their commitment to sustainable development.⁵⁷ The Declaration states that the

⁵⁷ Article 1 of the Johannesburg Declaration on Sustainable Development, 2002.

children of the world challenged the representatives to ensure that the world is free of environmental degradation and pattern of unsustainable development.

The Declaration is relevant to Mabira forest since it recognizes the importance of building human solidarity by promotion of dialogue and cooperation among the world's civilizations and peoples irrespective of race, disabilities, religion, language or culture.⁵⁸ Articles 17 and 18 show the determination of promoting sustainable development and they respectively provide as hereunder;

Recognizing the importance of building human solidarity, we urge the promotion of dialogue and cooperation among the world's civilizations and peoples, irrespective of race, disabilities, religion, language, culture or tradition.

We welcome the focus of the Johannesburg summit on the indivisibility of human dignity and are resolved, through decisions on targets, timetables and partnerships, to speedily increase access to such basic requirements as clean water, sanitation, adequate shelter, energy, healthcare, food security and the protection of biodiversity. At the same time, we will work together to help one another gain access to financial resources, benefit from the opening of markets, ensure capacity-building, use modern technology to bring about development and make sure that there is technology transfer, human resource development, education and training to banish underdevelopment forever.

The declaration therefore aims at protecting the natural resources to establish sustainable development using the indigenous peoples and human solidarity. This will create a positive attitude of human race towards natural resources hence sustainable utilization of forest resources.

Rio Declaration, 2012

The Rio+20 United Nations conference on sustainable development which is considered as a new international milestone was held by the heads of state and government and high-level representatives who met at Rio de Janeiro was held from 20th to 22nd June 2012 with full participation of civil society. They met with the aim to renew their commitment to sustainable development and to ensure the promotion of an economically, socially and environmentally sustainable future for the planet for the present and future generations.

The parties recognized that poverty is the greatest global challenge and that sustainable development is an indispensable requirement. Further still, the parties recognized that people are at the centre of sustainable development and in this regard

⁵⁸ Article 17

they strived for a world that is just, equitable and inclusive, and they committed to work together to promote sustained and inclusive economic growth, social development and environmental protection and thereby to benefit all.

The Rio+20 Declaration establishes green economy goals⁵⁹ focusing on eradicating poverty and promoting sustainable development. They also focus the millennium development goals using it as a useful tool in focusing achievement of specific development gains.

The Rio+20 Declaration is relevant to Mabira Forest. The parties highlight the social, economic and environmental benefits of forests to people and the contributions of sustainable forest management. They also support cross-sectoral and cross-institutional policies promoting sustainable forest management. The parties reaffirm that the wide range of products and services that forests provide create opportunities to address many of the most pressing sustainable development challenges and call for enhanced efforts to achieve the sustainable management of forests, reforestation, restoration and afforestation. The parties also call for increased efforts to strengthen forest governance frameworks and means of implementation, in accordance with the non-legally binding instruments on all types of forests, in order to achieve sustainable forest management. To this end, they commit themselves to improving the livelihoods of people and communities by creating the conditions needed for them to sustainably manage forests, including through strengthening cooperation arrangements in the areas of finance, trade, transfer of environmentally sound technologies, capacity-building and governance, as well as by promoting secure land tenure, particularly decision making and benefit-sharing, in accordance with national legislation and priorities.⁶⁰

This declaration thus aims at eradicating poverty in not only the communities surrounding the forests but also the entire communities in the third world countries. This will reduce over dependency of communities on the forests hence sustainable management of the forests. Uganda is obligated under the Millennium Development Goals which is referred to as a tool for sustainable development under the Rio Declaration 2012 to eradicate poverty. Uganda has achieved the goal of eradicating extreme poverty and hunger. Absolute poverty has declined from 56% in 1992/93 to 24.5% in 2009/2010.⁶¹ However, despite this achievement it is reported by one of the respondents that communities around Mabira forest entirely depend on the forest for their livelihood.

⁵⁹ Article 3 of the Rio+ Declaration 2012

⁶⁰ Article 63 *ibid*

⁶¹ Millennium Development Goals Report for Uganda, (2013), –Divers of MDG progress in Uganda and implications for the post-2015 development Agenda |, Ministry of Finance, Planning and Economic Development.

Binding international legal instruments

There are binding international legal instruments governing sustainable management of natural resources and environmental issues at large. Uganda is signatory to most of them. They are international in nature and have legal implications in the management of forest resources. These include; the conservation on Biodiversity (CBD), Rio de Janeiro 1992, the UN Convention to combat desertification in countries experiencing serious drought UNCCD, 1994, Convention on international trade in endangered species of Wild fauna and Flora, Washington, 1973 (CITES), Convention on the conservation of migratory species of wild animals 1979, among others. These are hard law instruments with a very important role in efforts to ensure the conservation and sustainable development of ecosystems including Mabira Forest. Most of the conventions lay out the rights, responsibilities and obligations of the state parties and general parameters on environmental issues. Specific conventions and how they affect Mabira forest ecosystem are discussed here below;

The Convention on Biological Diversity (CBD) 1992

The drafting of the CBD was initiated in the late 1980s and finalized, at the 1992 Rio Earth Summit where it was signed by 150 government leaders dedicated to promoting sustainable development. It recognizes that biological diversity is about more than plants, animals, and micro organisms and their ecosystems- it is about people and our need for food security, medicines, fresh air and water, shelter and a clean and healthy environment in which we live.⁶² It was the first global agreement on the conservation and sustainable use of biodiversity and serves as a blueprint for national action. The objectives of this convention, to be pursued in accordance with its relevant provisions, are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.⁶³

This convention is a practical tool for translating the principles of Agenda 21 into reality because it deals with the conservation and sustainable use of biodiversity, and with access to biological diversity and sharing of the benefits arising from this access.⁶⁴ In addition, it sets out the obligations of states to protect and sustainably utilize their biological diversity but makes explicitly clear that states have full

⁶² The Preamble of CBD

⁶³ Ibid, Preamble and Article 1 and 2

⁶⁴ The Convention defines 'biological diversity' to include the variability among living organisms from all sources including among other things, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystem' (Art 2)

sovereignty over such resources.⁶⁵ It encourages the development of national policies, plans and legal regimes designed to protect a country's genetic heritage as well as the exploitation of biotechnologies.

Significantly, the government of Uganda has recognized the importance of biological diversity and reaffirmed its commitment to conservation and sustainable utilization of biological diversity. Uganda has put in place environmental measures to cover the above mentioned provision in the CBD which include the National Environmental Action Plan (NEAP) which involves a continuous review of existing institutional and legal frameworks so as to make them more effective in the conservation of the country's biodiversity.⁶⁶ The convention has led to the formulation of biodiversity plans and strategies, especially in countries where the depletion of tropical rain forests and the rapid disappearance of some animal species have attracted national and international attention.

The key criticism that has been leveled against the Convention on Biological Diversity is that its work has been dominated by a tendency to generate text rather than action.⁶⁷ Nevertheless, it promotes global cooperation for the conservation of biodiversity without forcing any given state to participate in this process. Like other international agreements, the convention does not specifically address the rights of communities apart from a cursory mention of indigenous and local communities in its preamble thus neglecting community level actors by adopting a state centered approach.⁶⁸ However, existing decision mechanisms provide important potential opportunities through which indigenous peoples and local communities may seek to secure respect for their rights and contribute towards sustainable management of Mabira forest.

It is important to recall that the convention on Biological Diversity is a legally binding instrument and its decisions are also binding. As such parties are obligated to comply with decisions under the convention. It affirms the right of states to natural resources within their jurisdictions and effectively debunks the common heritage concept, introducing the notion of common concern, which implies recognition of the global importance of biological diversity but does not diminish the ambit of the principle of permanent sovereignty over natural resources.⁶⁹ Uganda's obligation under this convention is to uphold its sovereignty over natural resources but letting the indigenous community contribute towards the resources sustainable development. Uganda fulfills this obligation. It has made Mabira forest a central reserve forest

⁶⁵ Ibid, Article 4

⁶⁶ Ibid

⁶⁷ Ibid

⁶⁸ The Preamble of the Biodiversity Convention

⁶⁹ ibid

regulated by NFA. Mabira forest is protected by the government but still there is failure in involving the community in the conservation of the forest resources. The only community based organization in Mabira forest is the MAFICO as was reported by a respondent.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, 1973 (CITES)

CITES was signed in March 1972 and entered into force in 1975 with the objective to protect endangered species from extinction through over-exploitation⁷⁰ by putting in a number of checks and balances in terms of strict import and export permits, which severely limit the export of endangered species unless their export is deemed to be harmless to their survival. A list of what species should be considered was compiled by the conference of the parties placing the species in different categories according to the degree to which their existence is endangered.⁷¹

Appendix I includes all species threatened with extinction which are or may be affected by trade. Trade in specimens of these species must be subject to particularly strict regulation in order not to endanger further their survival and must only be authorized in exceptional circumstances. Appendix II include all species which through not necessarily threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and other species which must be subject to regulation in order that trade in specimens of certain species referred to above may be brought under effective control.

Appendix III includes all species which any party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, as needing the co-operation of other parties in the control of trade.⁷² However, the convention does not address other factors that are equally threatening to the survival of species, which include local harvesting for domestic use.

The relevance of CITES to Mabira forest ecosystem is that it is the only global convention which aims at controlling international trade in endangered species of wild fauna and flora which is very necessary since international trade is the second major threat to the survival of species of wild animals and plants which are also part of Mabira forest.⁷³ Additionally, CITES secretariat provides permanent technical

⁷⁰ P.Kameri-Mbote, (2002) Property Rights and Biodiversity Management in Kenya: The Case of the Land Tenure System Wildlife Nairobi: Acts Press.

⁷¹ Article II Para 3 and Art VIII of CITES

⁷² Ibid, Appendix I

⁷³ E Kasimbazi, Et al, (2005) – Report On The Review Of The Policies Relevant To The Mt.Elgon Ecosystem Management. | In Mid Term Review of mount Elgon Regional Ecosystem Conservation Proramme. Switzerland:IUCN Publication Services Unit

support to the parties which include advice on numerous matters, such as the drafting of national legislation for the implementation of the conservation or the validity of a permit. It further, offers training for personnel in the implementation and enforcement of the convention. Uganda has an opportunity to request for technical assistance from the secretariat of the CITES on capacity building programme on sustainable management of Mabira forest.

To this end, Uganda is a contracting party.⁷⁴ Although the Wildlife Act of Uganda has provisions that relate to preservation of rare, endemic, and endangered species, and CITES standard forms for permits and certificates are being used, however, no specific subsidiary legislation provides for implementation in Uganda. Relevant statutes such as the Fisheries Act and the Forests Act do not specifically mention CITES. Despite the fact that Uganda protects Mabira forest through the CITES it totally fails where permits and certificates are granted to wrong persons due to vices like corruption which is very rampant in the country.

United Nations Framework Convention on Climate Change (UNFCCC) 1992 and the Kyoto protocol

Uganda signed this convention on 13th June 1992 and ratified it on 18th September 1993. The major objective of the UNFCCC is to stabilize greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and enable economic development to proceed in a sustainable manner.

The convention emphasizes the precautionary principle. The convention imposes an obligation on state parties to take measures to prevent and minimize the causes of climate change and mitigate its adverse effects. This convention is relevant to Mabira forest, in that Uganda in its efforts to reduce dangerous emissions into the climate must protect forests that help to absorb poisonous emissions into the environment. Mabira is one of the largest forests in Uganda and plays a big role in the reduction of dangerous emissions into the climate. However, the rate of deforestation in Mabira is too high that the objective of reducing dangerous emissions is bound to fail. The convention has also been criticized for being too general and not specific as far as emission reduction targets are concerned.

Uganda ratified the Kyoto protocol on the 25th March 2002. This protocol sets binding numerical targets for the limitation and reduction of greenhouse gas emissions i.e. carbon dioxide, methane, and nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulphur hexafluoride for the industrialized and transition

⁷⁴ Part V of Uganda Wildlife Act of 1996

countries during the period 2008-2012.⁷⁵ However, no numerical targets for the reduction of emissions were set for the developing countries though they are required to report on their emissions.

International Tropical Timber Agreement, 2006

The International Tropical Timber Agreement , 2006 is a commodity agreement designed to promote the expansion and diversification of international trade in tropical timber from sustainably managed and legally harvested forests and to promote the sustainable management of tropical timber producing forests by contributing inter alia to sustainable development and to poverty alleviation.⁷⁶ The agreement seeks to promote and support research⁷⁷ and development with a view of improving forest management and efficiency of wood utilization as well as increasing the capacity to conserve and enhance other forest values in timber producing tropical forests. The agreement encourages members to develop national policies aimed at sustainable utilization and conservation of timber producing forests and their genetic resources and at maintaining the ecological balance in the regions concerned, in the context of tropical timber trade.⁷⁸

It is from this agreement, that the forestry department was made a fully fledged department within the ministry of lands and environment and later the creation of the National Forestry Authority. The agreement is relevant to Mabira forest because timber is harvested from Mabira thus the need of promoting and supporting research with the view of improving forest management and efficient utilization. The second objective of the convention is relevant to the study so as to provide an effective framework for consultation, international cooperation and policy development of all members with regard to all relevant aspects of the world timber economy.

Uganda is obligated to ensure that all people dealing in timber business carryout their business legally or to totally eliminate illegal timber harvesting. Uganda has gone ahead to mandate the NFA to issue licenses to persons dealing in the timber production business. Uganda's forest cover remains at risk since some timber harvesters use outlawed machines. Available statistics indicate that 90% of timber in Uganda is illegal, meaning it is harvested, transported and traded without licenses from government agencies as reported by the respondent. The national forest authority has been slow in granting timber licenses, meaning that most timber and charcoal entering Kampala is illegal.

⁷⁵ Article 3 and Annex A to the protocol

⁷⁶ Article 1 (c) of the International Tropical Timber Agreement, (2006)

⁷⁷ Ibid, Article 1 (f)

⁷⁸ Ibid, Article 1 (a)

It is important to note the NFA is also restricting pit swaing and has piloted the use of chainsaw sawmill in Mabira forest. Pitsawyers are selective in trees and species cut, and

Conclusion

The lack of sustainable management of forest resources is increasingly becoming a global concern since these activities have resulted in to a negative impact on the forests and the climate. As such, the international legal framework comprising of both binding and non-binding instruments have a role to play in the achievement of an effective legal framework for sustainable management of Mabira forest. The non-binding instruments are vital guidelines in the formulation of policies in Uganda. Although being a signatory to international conventions does not guarantee that a country will implement the legal provisions of such instruments still legal authority rests largely with nation states. The fundamental aspects of these international Legal framework is creation of an increased understanding on the need to strike a balance between the national laws of Uganda and the international conventions for equitable and sound use of the forest resources. Although one of the major drawbacks of international legal framework that impact on the environment directly is that many states are not party to them, thereby limiting the extent to which these instruments are being applied.

