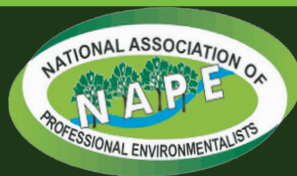


ASSESSMENT OF NAPE'S STRATEGIC INTEREST LITIGATION IN THE ENFORCEMENT OF HUMAN AND ENVIRONMENTAL LAWS IN UGANDA

1999 - 2024



**NATIONAL ASSOCIATION OF
PROFESSIONAL ENVIRONMENTALISTS**

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"Summary account of NAPE and Her Vision

National Association of Professional Environmentalists (NAPE) is a national environmental advocacy and lobby Nongovernmental Organization (NGO) that was formed in 1997, registered in 2003 and works on a series of environmental and human rights challenges that negatively impact on communities' social economic development in a number of ways. The organization employs "a rights Based Approach" and her National lobby efforts are anchored on lobbying government to re-think and re-consider its approach towards Uganda's sustainable development.

The government for the past 20 years has fronted Foreign direct Investment and industrialization as an engine of growth for propelling Uganda into social economic transformation but this has come along with challenges of gross environmental and human rights abuse, food insecurity, climate change disasters, forced community displacements and land evictions, Sexual and Gender Based Violence (SGBV), degradation of key ecosystem resources such as forests, wetlands, wildlife reserves, Lake and riveline ecosystems, accelerated natural resources conflicts and its these that guide NAPE litigation actions against violating corporate companies and collaborating individuals and government agencies.

Our Vision

A Ugandan society where women and youth take centre stage and effectively participate in the sustainable use and management of natural resources.

Our Mission

A national environmental organization that lobbies and advocates for the sustainable management of natural resources for the benefit of all.

Our Goal

Improved management of natural resources in Uganda.

Strategic Focus 2023-2027

Building knowledgeable, well co-ordinated, resilient communities against human and environmental injustices.

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Executive Summary

This report assesses the Public/Strategic interest litigation (PIL) carried out by the National Association of Professional Environmentalists (NAPE) in Uganda from 1999 to 2024. It documents processes, achievements, challenges, and lessons from PIL carried out by NAPE in collaboration with other entities in Uganda. The study sought to answer the question of whether strategic impact litigation has been an effective tool in protecting the environment in Uganda.

PIL is a major approach that civil society organizations (CSOs) and private citizens have used to enforce human rights worldwide. In Uganda, PIL is provided for under Article 50 of the Constitution of the Republic of Uganda, 1995, which allows an individual or organization to petition the court for an order where a right has been violated or is about to be violated. It also provides that such a person or group need not be victims of the violations or the potential consequences.

This study used a multi-pronged methodology using both qualitative and quantitative methods. Desk review and interviews were conducted. Desk review focused on a review of different court decisions by NAPE and other like-minded entities and a review of related literature. Interviews were conducted among public interest lawyers, NGO leaders, and government officials, among others. Key findings of the report include;

1. PIL has been effective in pushing entities that violate environmental rights. In some cases, there have been immediate results, while in others; it takes a while for PIL results to be noticed. From the reviewed Litigation cases spearheaded by NAPE, the highly noticeable wins over the years include the following: NAPE led environmental cases proving the possibility of environmental litigation against government or her regulatory entity in which NAPE won a case against NEMA, government adopting a mandatory practice of making Power purchase agreements public thus increasing citizen scrutiny and participation, cases compelling private sector companies such as French Lafarge group of companies to adopt best practices such as filter technology to trap limestone dust and to devise means of minimizing ecological foot print in operational parks and communities, the cases against French oil giant in French courts triggering local, national, regional and international scrutiny into the company's operations forcing 11 EU based financing banks, 3 inter-

national insurance companies, the UK Export credit Agency among others to pull out from financing Oil and gas projects in Uganda including the EACOP hence further delaying its development plans, Total Energies executing Human Rights Impact Assessments and putting in place Community grievance handling mechanisms, suspending plans to degazette forest ecosystems such as Mabira out of court orders, court rulings for establishments and conservation of off sets such as Kalagala and Itanda falls preservation, introducing new chapters in the National environmental Laws specifically to guarantee the rights of nature, blocking the amendment of article 26 of the Uganda constitution that guarantees exclusive rights of communities over their land, conservation of bugala island wetlands and buffer zones, forcing the abandonment of establishing a mini oil refinery in kabwoya wildlife reserve, interesting and triggering actions of the Compliance Advisor –the ombudsman (CAO) to intervene in land grabbing and compensation issues of BIDCO against Kalangala and Buvuma island palm oil affected communities and lastly Ugandan court systems in July 2024 approving NAPE in a court ruling to be An Amicus-curie (friend of court) on cases of environmental degradation in Uganda.

2. Despite the above positives from NAPE led Public interest litigation, We further found out that for PIL to be effective in the promotion of environmental laws there is a need to have administrative remedies that are achieved through negotiation and discussion with different stakeholders. NAPE adopted this approach and was able to cause impact in several cases

3. Research and documentation are important aspects of PIL. Research before the conduct of PIL helps gather the necessary data and evidence that can be used in court; it also guides advocacy to convince policy reforms at government and institutional levels.

4. Knowledge of environmental laws, rights, and obligations among judicial officers is key as this shapes the possible response to PIL and the general outcome of the decisions they make.

5. The report finds an increase in safety and security incidents among environmen-

tal actors, especially those involved in PIL. An increased investment in their safety and security is necessary for them to continue with environmental protection and advocacy.

The report provides recommendations to NAPE and other NGOs, development partners, the judiciary, and Government of Uganda agencies. Some of the recommendations include;

1. There is a need for increased focus on strategic litigation for the environment. This should focus on emerging issues such as climate change, wetland encroachment, and others.
2. There is a need to invest in research and documentation. This should cover pre-litigation activities such as gathering evidence that can be used in litigation, litigation activities and processes, and post-litigation after a decision has been made to document the impacts and outcomes of the litigation.
3. There is a need for continued training for judicial officers, lawyers, prosecutors, and CSO members involved in environmental law litigation. The training and capacity building should consider new trends and understanding of environmental rights and issues across the world and how these can be applied to Uganda's context.
4. There is a need for support and investment in the safety and security of environmental activists in Uganda, especially those involved in litigation. They have increasingly become targets for those not happy with the work they do. Such support should be extended to individuals and organizations.
5. There is a need to invest in scientific systems such as laboratories and other mechanisms that can gather scientific data and provide concrete evidence that can be used in court for environmental litigation.
6. Increased collaboration between the different actors has proved to be an effective way of going about litigation and other aspects of environmental protection. This should be promoted for better and sustained results.
7. Development Partners need to focus on the long-term impact of PIL. In many cases, PIL impact and outcomes tend to outlive the projects that are funded. This calls for a long-term focus and sustained funding to enable sustained follow ups, keeping the cases alive and avoid getting violating

corporates and their agents off the hook.

8. The judiciary in Uganda should adopt a less intimidating court system and approach that would enable civil society, ordinary citizens, especially the poor, the illiterate, or other vulnerable persons, to be able to access courts and file interest litigation cases. This would ease access to justice for society's poor and vulnerable.

9. Implement court orders when issued for the protection of the environment and human rights. These orders may require continued evaluation and follow-up since a number of them focus on recurring events.

10. Government agencies such as NEMA and NFA should focus on enforcing reforms for the protection of the environment and human rights and not wait to be sued or for court orders.

11. Government agencies like NEMA, NFA, PAU, UNOC, UPF, and others should engage their staff and control the intimidation of environmental actors. The entities should understand that impact litigation is aimed at improving their work and providing a better understanding of the law generally.

Conclusion

Overall, NAPE's approach, which includes direct court engagement, negotiation, advocacy, and seeking non judicial remedies, has had a big impact on the protection of the environment and preservation of human rights in Uganda. The study finds that even where cases were lost in court, the cases not only provided important lessons and guidance on the development of precedents in understanding environmental laws but also there have been numerous reforms that have tended to follow the court cases, and these have had a positive impact on the enforcement of environmental laws.

Yours,

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List of abbreviations

EACOP	East African Crude Oil Pipeline
BFA	Bugala Farmers' Association
CAO	Compliance Advisory Ombudsman
CRED	Civic Response of Environment and Development
EIA	Environment Impact Assessment
EP	Emergency Preparedness Plan
ERA	Electricity Regulatory Authority
GOU	Government of Uganda
HRIA	Human Rights Impact Assessments
NAPE	National Association of Professional Environmentalists
AFIEGO	Africa Institute for Energy Governance
NAVODA	Navigators for Development Association
NEMA	National Environment Management Authority
NGOs	Nongovernmental Organizations
PAP	Project Affected Person
PAU	Petroleum Authority of Uganda
PIL	Public Impact Litigation
PPA	Power Purchase Agreement
QENP	Queen Elizabeth National Park
SBC	Save Bugoma Crusade
SCOUL	Sugar Corporation of Uganda Ltd
SMC	Save Mabira Crusade
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNOC	Uganda National Oil Company
UPF	Uganda Police Force
UWA	Uganda Wild Life Authority

Grocery of terms

Degazette: The process of removing official government protection of a conservation area. It includes making the conservation area available for other activities that may not necessarily focus on conservation.

Gazette: Making an official government statement. In this publication, it means the process of creating protected forests and other environmental conservation areas.

Public Interest Litigation: Is a process through which legal action is brought against an entity or individual with the purpose of protecting or advancing the rights of the general public.

Strategic Interest Litigation: Is a legal strategy that involves bringing a case to court to create broader social change.

Chapter One

Background

1.0 Introduction

This report documents processes, achievements, challenges, and lessons from Public Impact Litigation carried out by the National Association of Professional Environmentalists (NAPE) in collaboration with other entities in Uganda. It assesses the direct and indirect impact of PIL on protecting the environment and environmental issues, considering the different cases that NAPE has supported through its partners and other engagements.

This chapter covers the introductory part of the report. It covers the background, objectives, methodology, and basic literature review. The study sought to answer the question of whether strategic impact litigation has been an effective tool in protecting the environment in Uganda.

1.2 Background

Public Interest Litigation (PIL) is a major approach that civil society organizations (CSOs) and private citizens have used to enforce human rights worldwide. This has been mainly through advocacy and bringing cases before courts of law. PIL tends to concern itself with cases of a public nature or cases with an impact on the general public. Several environmental cases tend to fall under this category.

In Uganda, PIL is provided for under Article 50 of the constitution, which provides that an individual or organization can peti-

tion the court for an order where a right has been violated or is about to be violated. It also provides that such a person or group need not be victims of the violations or the potential violations. Uganda's constitution also provides that a person can petition the court where he/she sees that a law or an act of parliament is violating or is likely to violate the Constitution of Uganda.

Over the years, several NGOs and individuals in Uganda have applied PIL to enforce environmental rights. The cases cover a wide range of subjects, and the litigants have faced different experiences from winning the cases, losing the cases, and situations of failure to enforce the outcomes of the cases. There have also been situations where entities that have brought up cases have faced attacks either from individuals or state and state actors.

NAPE has been at the core front of PIL in environmental cases in Uganda. This has been done in collaboration with different lawyers, NGOs, and working with government agencies. Like the rest of the players in PIL in Uganda, NAPE, and its partners have received mixed responses both from courts and state agencies as far as decisions on environmental issues as well as enforcement of these issues are concerned. There have been several direct and indirect "wins" from several PIL cases that NAPE has brought up over time.

The direct wins can be said to be directives from courts of law that direct the nature and way environmental law can be implemented. These could range from orders such as restoration orders and injunctions to halt the implementation of some activities with an impact on the environment, among others. Indirect benefits have tended to be actions taken by different actors to address environmental concerns, whether there was a direct court order or not. Some of these were implemented by parties in the case, while others were implemented by other players on realizing that the actions they took could result in environmental damage and potential litigation.

NAPE has also adopted another form of engagement where it has, over the years, filed cases with different administrative entities, such as filing complaints to the Ombudsman office of the World Bank and the European Investment Bank.

In some cases, there have been decisions that could be considered to take away some environmental rights, while in others, there are cases that add to the existing body of knowledge of environmental rights and their enforcement. There have also been situations where court decisions are implemented, and at times, state agencies ignore the decisions. In some cases, there have been direct and indirect attacks on people involved in the cases through threats and intimidation. In other situations, recommendations from administrative entities have been implemented, and in some cases, they go hand in hand with court orders. The different approaches adopted by NAPE have had different responses and impacts, and so have been the cases. There was a need to study the approaches, the cases, and the outcomes to be able to determine which of them have been effective.

1.3 Problem Statement

Public Interest Litigation has been a bed-rock of promoting democracy and respect for human rights. It has been used as a tool to check government excesses, promote human rights, and prevent abuse, which have the potential to affect the community as a whole. The ability of PIL to protect the interest of the public at large is what makes PIL ideal for environmental protection. PIL is often seen as a special form of litigation that does not seek to identify wrongs but rather to determine the challenges and opportunities for the benefit of the general good. Justice Bhagwati of the Supreme Court of India noted that Public interest litigation is not like adversary litigation, but it is a challenge and an opportunity for the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them of social and economic justice, which is the signature tune of the Constitution and the rule of law.

Indeed, PIL is often used for the benefit of the general good and the general public. For a matter to be considered under PIL, it must be of public concern or one that is likely to benefit a significant number of people, not just the individual. NAPE's support of different PIL cases through its partners has sought to achieve the above. Due to the nature of environmental litigation and PIL in Uganda, some benefits may be immediate and can be seen the moment the court makes a decision, while some take longer to come. For example, results for cases for the protection of a

forest or a wetland could be immediate, while results for restitution of a degraded may take long to come.

No matter the nature of the cases, there has not been a deliberate assessment of the cases that NAPE has supported over the years and the impact the cases have had on the protection of the environment. There has not been a review of the impact of PIL as adopted by NAPE in promoting environmental law and environmental protection in Uganda. It is against the above background that this assessment will be conducted. It will seek to answer the key question of what has been the impact of NAPE's strategic impact litigation in Uganda and how effective PIL is in protecting and promoting the environment.

4.0 Objectives

The overall objective of the assignment is to assess the effectiveness of PIL in protecting the environment, taking cases filed or supported by NAPE in collaboration with other agencies as a case study. Specifically, the assessment sought to;

1. To assess the impact and outcomes of NAPE's public interest litigation in promoting and upholding environmental laws and environmental rights
2. To document the trends, challenges, and general approaches adopted by NAPE and the different players in public interest litigation for the enforcement of environmental rights
3. To draw and recommend strategies on approaches that can be adopted in enforcing environmental rights drawing from lessons of Strategic Interest and Public Interest Litigation

1.5 Scope of the work

The study covered and documented different cases of PIL relating to the enforcement of environ-

mental laws and rights. This covered a period between 1999, the period when NAPE filed the first PIL case, and 2024. Specifically, the study identified cases filed by NAPE and its partners or those supported by the organization. The study also sought the views of persons involved in PIL and enforcement of environmental laws, including lawyers, CSO actors, government agencies, and private companies. The study also involved persons affected by the different projects and activities that violate human rights.

1.6 Methodology

A multi-pronged methodology was used for the data collection and analysis. This covered quantitative data that was mainly on desk review and review of available data, court cases, and related materials, and qualitative data that focused on key informant interviews for persons involved at different levels of litigation or enforcement of environmental rights. The three key approaches to data collection and analysis will include;

- a. Scanning of the existing literature to establish different cases and court decisions, laws, policies, and practices that relate to PIL and enforcement of environmental rights in Uganda and across the region. Cases supported by NAPE and its partners were identified and documented as part of the desk review. The basic scan helped the researcher establish which cases and decisions to determine trends in PIL in environmental cases. The assessment also helped identify entities and persons, such as litigants and lawyers

at the front of PIL in environmental law, and these were interviewed. From the scanning of the existing data, the researcher will develop an inception report.

b. Data collection and analysis: this involved desk review and conduct of interviews for key informants on trends and the handling of PIL cases in environment cases. Selected key informants included NAPE staff, lawyers engaged by NAPE and other NGOs, NGOs involved in environmental litigation, and central and local government agencies, among others. Interviews focused on capturing experiences and outcomes of litigation. This data is categorized according to different study themes and was analyzed and presented in the final study report.

c. Report writing: this involved documenting the different areas, trends, views, and assessments from interviews and desk review data. The report covers content from the desk reviews as well as field data.

1.7 Validation and Quality Control

Data and the final report was validated through the following

1.7.1 Peer Review:

The draft report was peer-reviewed by a team of selected legal and environmental practitioners who have experienced issues of litigation of environmental rights. The peer review aimed at quality control to ensure accuracy and consistency in issues discussed in the report. Peer reviewing was conducted by a team of Legal professionals working under the umbrella of Muhangi Keshari & company Advocates –Kampala Uganda

1.7.2 Validation:

A validation meeting was held to provide input in the draft report. The validation was mainly by all participants in the initial processes and persons experienced in environment law, PIL, and related fields during the peer review sessions.

1.8 Literature review

1.8.1 Understanding Impact Litigation

Black's law dictionary defines impact litigation as a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or class of the community have a pecuniary interest or some interest by which their legal rights or liabilities are affected². Justice Bhagwati defined it as a cooperative and collaborative effort on the part of the petitioner, the state or public authority, and the court to secure observance of the constitutional or legal rights, benefits, and privileges conferred upon the vulnerable sections of the community and to bring social justice to them³.

Scholars have discussed public or strategic impact litigation. However, what is common among the two is the target for a common good, and the outcome sought, which is normally for the benefit of the community. The term Public impact litigation is sometimes used interchangeably with Strategic Impact litigation. PIL, or SIL as the case might be, involves selecting and bringing a case to litigation to create broader changes in society. The goal is to use the law to leave a lasting mark beyond just winning the matter at hand. PIL/ SIL is more concerned about the impact that the case will have on society based on the outcomes from the court. In some cases, the focus is on immediate and long-term impact.

In several cases, the focus is beyond a win in court. What makes litigation 'strategic' is that it pursues goals that reach beyond the immediate outcome of the litigation for the affected rights holders⁴.

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1.8.2 Why impact litigation

Impact litigation is an important mechanism for the promotion of rights, whether it is economic rights, civil political rights, or environmental rights. It gives an avenue for individuals and institutions, mainly human rights bodies and NGOs, to bring about legal petitions before the judiciary and other quasi-judicial entities for the enforcement of the public good. In cas-

es of the environment, it enables individuals or entities to promote accountability against corporations and government agencies that may be violating environmental rights.

Impact litigation is important in as far as it seeks to enforce environmental laws and rights and in jurisdictions where the law may not be adequate, it is important in expanding the application of the law and other environmental principles⁵. In this case, courts are given a chance to enforce international and other environmental principles that may not necessarily be available in the local jurisdiction. For example in Uganda, impact litigation has been used to promote environmental principles such as the right to a clean and healthy environment and expanding this right to situations like public smoking, forest destruction, and construction.

Impact litigation in the environment is becoming more important today with the increase in environmental extremes such as climate change and the increase in industrialization and exploitation of resources without care for the environment. Interest litigation is becoming a major strategy to check on excesses of companies and governments⁶. It is also becoming an important aspect of testing aspects of laws about a new understanding of climate change and its impacts⁷. As the global landscape grapples with escalating environmental crises, the significance of impact litigation cannot be overstated; it serves not only as a tool for enforcing laws but also as a catalyst for broader societal change.

²

³Peoples Union for Democratic Rights v Minister of Home Affairs [1986] LRC available at <https://www.the-laws.com/Encyclopedia/browse/Case?caseId=105891731000&title=peoples-union-for-democratic-rights-vs-ministry-of-home-affairs>

⁴Ebony Birchall, Surya Deva and Justine Nolan (2023) The Impact Of Strategic Human Rights Litigation On Corporate Behaviour. Available at <https://www.freedomfund.org/app/uploads/2024/03/litigationimpactreport-2023.pdf>

⁵Jie Shan, Zhengshan Luo, Liang and Zhe Song (2024) Impact Study of Environment Public Interests Litigation on Carbon Emissions: Taking Pilot Policy of Procuratorial Public Interest Litigation as a Quasi-Natural Experiment.

⁶Yu Lin (2024) Pluralism of the purpose of environmental public interest litigation. Available at

<https://www.stals.santannapisa.it/sites/default/files/YU%20LIN%20Pluralism%20of%20the%20Purpose%20of%20Environmental%20Public%20InterestLitigation%28Yu%20Lin%29%20-%20final%20version.pdf>

⁷Ibid

Environmental public interest litigation plays an important role in supervising the government to fulfill its duty of carbon reduction regulation and regulating the carbon emission behavior of enterprises and the public and has attracted increasing attention⁸. Thompson considers environmental interest litigation as one of the most persuasive, dazzling, and sustained innovations in modern environmental law⁹.

PIL empowers these communities to engage in sustainable practices by providing them with the legal support necessary to challenge harmful activities that threaten their environments. In countries where legal systems may be weak or underdeveloped, litigation serves as a critical mechanism for enforcing constitutional protections and international human rights standards. For instance, Gilbert highlights case studies involving Indigenous communities in Tanzania and Kenya that successfully used strategic litigation to assert land rights against powerful interests¹⁰.

1.8.4 Measuring the effect of impact litigation

In measuring the impact of impact litigation, scholars have argued that it should not be assessed based on a single incident¹¹, such as going to court and winning a case, but rather one should look at a series of events before the court during litigation and what happens after court irrespective of the outcome of the court. Djo & Erika Dailey of open society justice initiatives suggest that measuring the impact of litigation should focus on the lasting impact of litigation. This is because in some cases there are

some short-term gains and long-term losses, and in some cases, it is the reverse¹².

The very process of impact litigation focuses on bringing a case to court for purposes of a broad impact it will have. This involves the selection of the case, strategies adopted to prosecute the matter, advocacy strategies adopted, and other issues around the case. People who bring strategic litigation want to use the law to leave a lasting mark beyond just winning the matter at hand. This means that strategic litigation cases are as much concerned with the effects that they will have on larger populations and governments as they are with the end result of the cases themselves¹³.

In measuring the impact of NAPE's impact litigation, the study took the approach of looking at processes before the court, events around the court and decisions of the court, and the general impact after the court. The study finds that in some cases, the actual impact occurs outside the court. This was common where companies have tended to take action to address the environmental concerns were raised in the petition despite the court issues. For example, in the Bugoma forest case, NAPE and other NGOs sued NEMA seeking the cancelation of an environmental impact certificate, however, the court ruled in favor of NEMA that the certificate was issued rightly. A year after the decision, NEMA canceled the certificate and claimed Hoima Sugar, a company that

⁸Jie Shan, Zhengshan Luo, Liang and Zhe Song (2024) Impact Study of Environment Public Interests Litigation on Carbon Emissions: Taking Pilot Policy of Procuratorial Public Interest Litigation as a Quasi-Natural Experiment.

⁹Thompson, B.H., Jr. The Continuing Innovation of Citizen Enforcement. *Univ. Ill. Law Rev.* 2000, 1, 185–236.

¹⁰Gilbert, J. (2017). *the impact of strategic litigation and legal empowerment*. Retrieved

from <https://minorityrights.org/app/uploads/2024/01/final-report-on-legal-empowerment-and-strategic-litigation-english.pdf>

¹¹For example see Child Rights Information Network 'Children's rights: A guide to strategic litigation' http://www.crin.org/docs/Childrens_Rights_Guide_to_Strategic_Litigation.pdf

¹²Djoyou Kamga, Serges. 2014. An assessment of the possibilities for impact litigation in Francophone African countries. *African Human Rights Law Journal*, 14: 449-473.

¹³Ibid

had benefited from the certificate had destroyed the environment.

Najir argued that when assessing the impact of PIL one should consider the political and social context where the decisions are being made¹⁴.

The social-political situation at the time not only determines the outcome of the cases but also has an impact on and how the case will be brought up. Indeed in this study, many respondents pointed to the fact that the environment was key in the nature of the decisions made.

1.8.5 Conclusion

From the literature above and a number of cases handled, by its nature the achievements of PIL can be short, medium and long-term. The focus on PIL is for the general community

good, and this is achieved through litigation in itself as an end, or litigation as a means to push awareness and advocacy for issues that need public reforms. Sometimes, the reforms happen outside the courtroom and in some cases way after the PIL case was heard and determined.

As we shall see later in the findings, most of the reforms in cases handled by NAPE happened way after the court cases, some happening 10-20 years after the cases. In some cases, some companies put in place mitigation measures even where the courts had decided in favor of the practice or standards that had been challenged. PIL has been an important tool for internal institutional reforms and change in practice to meet environmental standards.

¹⁴GS Nijar 'Public interest litigation: A matter of justice - An Asianperspective' available at <http://www.aseanlawassociation.org/9GAdocs/Malaysia.pdf3>

Chapter 2

Overview of NAPE's Impact Litigation Cases

2.0 Introduction

This Chapter reviews the different approaches adopted by NAPE in public/strategic impact litigation over the years. NAPE has for more than 20 years championed impact litigation as a means to protect and preserve the environment in Uganda. The organization has championed litigation and using administrative means to engage state and non-state actors to promote the environment. In several cases, NAPE has gone against powerful entities that have both the political support and financial means to undermine the systems. However, in a country where civic space keeps reducing, courts tend to remain the main source of hope.

2.1 Brief review of cases filed by NAPE

2.1.1 National Association Of Professional Environmentalists Vs Aes Nile Power Limited

This case is unique in a way that it was the first ever public interest litigation case filed under the 1995 Constitution of Uganda. At the time of filing it, most of the constitutional provisions had not been tested, and there were no Ugandan precedents under the new legal regime.

In 1999 NAPE sought a court order to stop the signing of a power purchase agreement between the government of Uganda and AES Nile Power Ltd until national environ-

mental laws were followed. NAPE urged that the hydropower project at Bujagali will significantly affect the environment and the community living in the area, leading to serious financial loss to the country¹⁵. NAPE also requested the court to order the AES power company and the Government of Uganda (GoU) to make the Power Purchase Agreement (PPA) public. They argued that this would promote transparency and enable citizens to participate in decisions concerning them. This was one of the very first cases to test Uganda's environmental laws and the constitution¹⁵. The court dismissed the case on technicalities, mainly claiming that it could not interfere in issues of parliament and that the EIA by NEMA would be enough to protect the environment.

One of the positive issues that came from this case was the possibility of environmental litigation. This was the first time the possibility of taking the government or an entity to court over environmental issues was tasted. NAPE, not being a party to the agreement, was able to prove that a citizen or organization can sue another citizen, company, or government entity. Indeed, several cases followed this.

In this case, NAPE had asked GoU to make the Power Purchase Agreement (PPA) public. NAPE argued that this would increase citizen participation in decisions. NAPE was also

¹⁵See National Association Of Professional Environmentalists Vs Aes Nile Power Limited Misc. Cause No. 268 Of 1999- High Court Kampala.

¹⁶The case came up in 1999, just 4 years after the 1995 constitution had come into force and 4 years after the National Environment Management Act, of 1995 had come into force. This became the first real test for courts on enforcement of the rights under the constitution and provisions of the Environment Act. The Act has since been repealed and replaced with the National Environment Act of 2019.

concerned that the agreement required GoU to guarantee a constant water level, and where the level fell below what was required for power generation, the government would pay AES for the loss. NAPE argued that due to climate change, it was not possible to guarantee a constant water supply of L. Victoria and River Nile. In 2016, research found that L. Victoria levels had gone down partly due to climate change and partly due to the water dams draining water from the lake¹⁷. The same study found that the failure to follow the agreed water flow curve at dams upstream affected the performance of Bujagali dam, things that NAPE had through court to intervene on.

Due to increased advocacy, the GoU adopted the practice of making Power Purchase Agreements public. Today, several power purchase agreements are publicly available. The Electricity Regulatory Authority (ERA), a body charged with regulating power generation and distribution in Uganda, developed power purchase templates that are publicly available, and citizens can access them through their websites. This practice was triggered by NAPE legal challenges in Uganda and is now a mandatory practice country wide.

One interesting angle is the government of

Uganda later came and acknowledged that Bujagali Dam had made a mistake and the government had been misled and that the financial and environmental costs of Bujagali Dam were higher than projected¹⁸.

Another major concern for NAPE was that the power generation Dam would put communities downstream at risk of flooding, and this would risk lives, properties as well as the environment. Due to climate change factors, lake Victoria, the main reservoir for the river Nile and Bujagali Dam, witnessed an increase in its water levels from 12 meters to 13.4 meters¹⁹. This posed an increased risk on the Bujagali dam and resulted inflooding and increased erosion of the river banks near the dam. Whereas there are no official figures on how many families were affected, the government of Uganda acknowledged that several families were affected, and many remain at risk.

In 2022²⁰ the government-owned Uganda Electricity Generation Company commissioned a report on the risks of the Bujagali dam (and other dams) on surrounding communities. The report found that the dam was a risk for communities living in the neighborhood, and there had been an increase in environmental degradation due to silting, erosion, and slope collapse of the walls of the river. The increased water also led to increased plant intake at the dam, which choked the dam and resulted in nationwide power blackouts several times be-

¹⁷Kull Daniel (2006) Connections Between Recent Water Level Drops in Lake Victoria, Dam Operations and Drought. Available at <https://www.irn.org/files/programs/nile/pdf/060208vic.pdf>

¹⁸See Daily Monitor Newspaper, Wednesday, November 02, 2011 Museveni duped on Bujagali power project - minister Onek. Available at <https://www.monitor.co.ug/uganda/news/national/museveni-duped-on-bujagali-power-project-minister-onek-1502708> also see Michael Wambi: Museveni Admits Mistakes Over Bujagali Power Tariffs. Available at https://ugandaradionetwork.net/story/museveni-admits-mistakes-over-bujagali?districtId=727#google_vignette

¹⁹See Uganda Government Media Centre. Statement in rising water levels of Lake Victoria. <https://www.mediacentre.go.ug/media/statement-rising-water-levels-lake-victoria-and-nile-system>

²⁰Wilberforce Manirakiza, Emmanuel Tumwesigye, Kevin Otim, Mary Akurut, and Harrison E. Mutikanga. (2022) Lessons learnt from dealing with climatic extreme events - A case of L. Victoria and the White Nile Cascade. Available at https://www.e3s-conferences.org/articles/e3sconf/pdf/2022/13/e3sconf_cigb2022_04003.pdf

tween 2020 and 2022.

This posed a risk to the environment and the communities living near the dam, as well as affected the general economic situation. The report noted that the flooding due to the controlled release of water from the dam affected up to 100 Meters of land downstream, spreading for more than a Kilometer and, in some cases, affecting Lake Kyoga, located 114 km downstream. The report recommended that an Emergency Preparedness Plan (EPP) be developed, and the plan should consider setting up a communication and alarm system in the communities, construction of evacuation routes, and training of members of the community likely to be affected, among others. However, the report fails to provide any environmental mitigation measures. Nonetheless, the 2022 report puts in place the very considerations that NAPE was pushing for when it went to court in 1999 as was to mitigate the potential risks of the dam.

NAPE Vs. Aes Nile Power case demonstrated how public interest cases tend to have long-term outcomes and how the real effects of litigation may take a long to be achieved. Though the case was dismissed, all the issues that NAPE requested the court to grant have been implemented by the state and private actors. The making of PPAs public has increased citizen scrutiny and participation in the energy sector, hence promoting transparency.

2.1.2 National Association of Professional Environmentalists Vs. Hima Cement Ltd²¹

In 2008, Hima Cement Ltd acquired a license to mine limestone in Queen Elizabeth National Park (QENP) in Western Uganda. The li-

cense had been permitted by NEMA and the Uganda Wild Life Authority (UWA). QENP is a United Nations Educational, Scientific and Cultural Organization (UNESCO) designated reserve, and acts of mining would have a negative impact on the fauna and flora in the park as well as persons involved in the mining process. As a result, NAPE sued Hima Cement Ltd, challenging the validity of the certificate of approval of Environment Impact Assessment (EIA) issued by the NEMA and the power of UWA to issue a wildlife permit authorizing the mining of limestone in a national park.

In his ruling, Justice Kibuka Musoke observed that enough assessments and consultations had been done and that the certificates and permits had been issued in line with the laws of Uganda.

This case is a typical example of companies taking action where the court has made a different decision. After the case, Hima Cement Ltd installed filter technology to trap the dust in response to the public outcry that followed the case. The company also revisited its routes, moving them to less populated areas and minimizing the distance the trucks covered in the National Park as a mitigation measure to limit its footprint on the community and the National Park. The action of the company came from the case and from the sustained media campaign that NAPE engaged in during and after the court case.

At the time of filing this case in 2008, environmental impact assessments were not public, and the social impact of different

²¹Misc. Application No. 273 of 2008. Arising out of H.C.C.S. No. 144 of 2008 HIGH COURT KAMPALA.

projects was not being considered. NAPE's challenge in court was that the EIA did not consider the impact of the project on the community and that the public was never involved. This was later to become mandatory after a sustained media and court campaign that demanded that EIAs consider social impacts and that public hearings be conducted. Today, all EIAs must have public hearings, an act that promotes participation and transparency.

2.1.3A FIEGO, Friends of the Earth France, NAPE, Survie, and TASHA Research Institute vs Total Energies.

In June 2019, NAPE, Friends of the Earth France, Survie, AFIEGO, Civic Response of Environment and Development (CRED), and Navigators for Development Association (NAVODA) made a formal demand to TotalEnergies to revise its vigilance plan for the Tilenga Project and the EACOP projects. The demand requested TotalEnergies to make adjustments to its vigilance plan. The NGOs claimed and detailed situations where there were inadequacies in the vigilance plan. The gaps in the Vigilant plan would result in grave violations of human rights and negatively affect the environment if not addressed. TotalEnergies did not make the necessary adjustments as the NGOs had requested. In response, the NGOs filed a suit in France under the French duty of vigilance law, which requires French companies to have systems that manage their environmental and human rights impact. The NGOs are requesting the court to order TotalEnergies to put in place measures that will address key human rights issues.

The case is still in court, and a decision is yet

to be made. However, in 2022, after the above case was filed, Total Energies and EACOP went ahead and developed and published HRIA reports with plans to mitigate possible violations. The companies have also put in place measures such as prompt compensation in some of the cases (though there are still several cases where compensation has not been prompt or adequate). The company has also tried to set up grievance-handling mechanisms in some areas. Much as the HRIA was done by the above companies, they did not address environmental issues in the assessment, and parties are waiting for the final decision of the court.

2.1.4 GreenWatch vs National Forestry Authority, NEMA and AG

Green Watch instituted a case against the Attorney General (AG) and NFA seeking a declaration that the AG and NFA had failed in their duty as trustees for the citizens to protect the environment, and this resulted in the abuse of a clean and healthy environment. Their failure to protect the environment has put citizens at risk of disease. They are seeking orders for the protection of the forest cover and mitigating the effects of climate change. NAPE applied to the court to be an amicus to court, and an order was granted²². NAPE submitted its memorandum, and it is hoped that the court will use this memorandum to develop an opinion that will be important for the protection of the environment.

At the time of doing this report, the court had not made a final ruling. However, the admission of NAPE as amicus in an environmental case is important for the development of PIL

in Uganda generally. Until the case of *Amama Mbabazi vs Museveni* in 2016²³, it was nearly impossible for an entity to come as an Amicus in court in Uganda. This was due to the fact that prior to this period, the court had ruled that if it needed an opinion, it would be the one to call an amicus and not a person to apply. This had closed all doors for those intending to provide important information to the court. The court moved away from this position in the *Amama Mbabazi* case, in which applications came through a PIL petition. In fact, in a much earlier case of the *National Association*

*Of Professional Environmentalists Vs. EAS Nile Power Limited*²⁴, the court had ruled that NAPE did not have many contributions. The new position and actual admission of NAPE as Amicus provide a great opportunity for experts to present their cases.

This case presents another chapter in environmental litigation where NGOs and other persons not parties to suits can file in courts or present their professional/expert knowledge on issues of the environment before courts of law to enable courts to arrive at informed, balanced, and fair decisions.

See-Detail of the current ruling by court on NAPE being approved as an Amicus –Curie / Friend of court on Environmental Degradation cases –July 2024;

In a land Mark ruling by the Ugandan High Court, National Association of Professional Environmentalists (NAPE) has been approved as a Friend of court to provide expert information and evidence on cases of environmental rights abuse (deforestation and climate change). The amicus included an expert opinion on deforestation in Uganda and made arguments regarding the Paris Agreement and the public trust doctrine. Here, NAPE relied on the public trust doctrine to argue that the Ugandan government holds the forest on trust for the benefit of Ugandan citizens. The amicus also addressed the Ugandan constitutional right to a healthy environment and international jurisprudence on the right to life in relation to environmental protection. We think this is a key process victory that will in the near future enable NAPE to provide expert evidence in courts against degradation impacts triggered by the East African crude oil pipeline (EACOP) and other large Land based investments.

<https://www.landmarkchambers.co.uk/news-and-cases/ugandan-high-court-grants-application-to-intervene-in-deforestation-and-climate-change-case>

²²Landmark Chambers (2024) Ugandan High Court grants application to intervene in deforestation and climate change case. Available at <https://www.landmarkchambers.co.uk/news-and-cases/ugandan-high-court-grants-application-to-intervene-in-deforestation-and-climate-change-case>

²³See *Amama Mbabazi vs Yoweri Kaguta Museveni*, Electoral Commission, The Attorney General and Professor Oloka Onyango & 8 Ors (Amici Curiae) available at <https://ulii.org/akn/ug/judgment/ugsc/2016/4/eng@2016-08-26>

²⁴Misc. Cause No. 268 Of 1999- High Court Kampala.

2.1.5 The Bugoma Case -2020

In 2020, NAPE, the Water and Environment Media Network (WEMNET), and the Africa Institute for Energy Governance (AFIEGO) sued the National Environmental Management Authority (NEMA) and Hoima Sugar Limited over plans to clear part of Bugoma forest. They argued that on August 14, 2020, NEMA granted Hoima Sugar Ltd a certificate of approval of Environment and Social Impact Assessment, allowing the use of 21.54 square miles for sugarcane growing and associated developments, and that Hoima Sugar made an inadequate assessment. Justice Musa Ssekaana dismissed the application, saying that the environmentalists based their case on distorted facts and that only 2,393 hectares of land were to be used for sugarcane growing. The parties later appealed because the judge made an error when he did not look at the facts on the ground²⁵. The parties later withdrew the appeal and expressed concern about the frustration they had faced in court and the delays that enabled further degradation of the forest. The case needed a quick relief, and the court seemed not willing to grant it²⁶.

In September 2022, NEMA issued an order withdrawing the EIA Certificate it had issued to Hoima Sugar and ordered Hoima Sugar to restore the degraded forest²⁷. Hoima Sugar had gone ahead and acted above what the EIA had recommended and was thus in breach.

This was another PIL case where, despite the matter being lost in court, NEMA made a restoration order for the very issues that had been petitioned in court

2.2 Administrative remedies as a result of court cases

Several documented administrative remedies have taken place as a result of court cases. Some were taken up immediately, while others took time to be put in place. NAPE adopted a two-pronged strategy in its impact litigation approach: one is going to court and litigating, and the other is using administrative systems to address the issue. On the other hand, companies have also tended to adopt the administrative aspect of the issues.

2.2.1 Mabira forest case

In 2006, the government of Uganda made plans to degazette Mabira Forest and grant the land to the Sugar Corporation of Uganda Ltd (SCOUL). The plan was to clear a quarter of the forest (71,000ha) and establish a sugarcane plantation. The government of Uganda (GOU) and SCOUL claimed that this would create jobs and increase government earnings through import substitution. NAPE and several environmental actors came together to oppose the move. The different actors formed a loose coalition called Save Mabira Crusade (SMC), which brought together several actors from academia, NGOs, and individual environmentalists. The strategy was to carry out demonstrations to force the government to abandon the plan. Several environmental actors, including the Executive Director of NAPE, were arrested and charged with Murder, Terrorism, and destruction of property.

²⁵ AFIEGO: Court Of Appeal Starts Hearing Of Court Case To Protect Bugoma Forest. Available at <https://www.afiego.org/wp-content/uploads/2024/02/Press-statement-on-hearing-of-Bugoma-forest-case-appeal-25-July-2023.pdf>

²⁶ Nile Post: CSOs withdraw Bugoma forest court case. Available at <https://nilepost.co.ug/Bugoma%20Forest/210709/csos-withdraw-bugoma-forest-court-case>

²⁷ Daily Monitor Newspaper. Nema throws Hoima Sugar off forest land available at <https://www.monitor.co.ug/uganda/news/national/nema-throws-hoima-sugar-off-forest-land-3965186>

The charges were meant to intimidate the SMC champions and scare them away; however, this did not achieve its intended objectives as the demonstrations continued.

After several demonstrations, the government suspended the plans to degazette the forest. However, this was short-lived, and in 2011, fresh attempts were instituted to degazette the forest. In an attempt to find a lasting solution, NAPE and other NGOs filed a petition in court challenging the planned gazettement. More demonstrations took place, and eventually, members of SMC were invited to meet the president, where it was agreed that the forest would not be degazetted.

The SMC provided several lessons for the actors, and so were the achievements. First, the immediate target of stopping the degazetting of Mabira Forest was achieved. Second was the demonstration that public campaigns can result in tangible results.

The court case was later withdrawn since the target of litigation had been achieved through negotiation. The withdrawal of the case was after because litigation tends to take a long and that the case had been overtaken by events. He noted that, however, the case provided an extra tool to push SCOUL and the government actors to accept. The success in court of an earlier case involving the degazetting of Butamira forest showed that even Mabira was likely to succeed, and the state and SCOUL could have felt that they did not need to have a permanent record in the form of a court order; hence the decision to settle out of court.

2.2.2 The BIDCO Oil Palm cases²⁸

The BIDCO Oil Palm case was brought by resi-

dents of Bugala islands who were evicted to give way to the palm oil project. NAPE and other NGOs supported residents of the area sue the company, seeking an order for compensation for the land lost and for the protection of the environment. Numerous trees had been cleared to give way to the project, and the whole ecosystem was destroyed. NAPE supported members of the community to organize themselves and challenge the away of their land and environmental destruction. This was aimed at creating ownership of the advocacy and community engagement. Through this support, the Bugala Farmers' Association (BFA) was formed. BFA became the face of the campaign as it sought to reinstate the rights of its members. With the support of NAPE and partners, BFA filed a case in the High Court at Masaka.

There were numerous delays in the cases, and by the time the court sat to decide the case, the forests and other ecosystems had been destroyed. This made the prayers being sought from the court ineffective. There was a need to change the strategy, and the different entities agreed to use other available options. In seeking other options, NAPE, on behalf of the BFA, filed a complaint with the Compliance Advisory Ombudsman (CAO) of the World Bank²⁹. The complaint looked at key concerns of environmental degradation, such as

1. Degradation and destruction of forests.
2. Destruction of ecosystems and

²⁸Muyiisa John & 10 Others Vs. Sylvia Gloria Nakitto, Bhimji Depar Shah Co. Ltd (Bidco), Oil Palm Uganda Ltd (Opul), and A.G Civil suit no. 16 of 2015. High Court of Masaka.

livelihoods that depend on the forest.

3. Continue pollution of Lake Victoria as a result of continue palm oil farming activities³⁰.

The matter was referred to dispute resolution by the CAO, and a settlement was reached. Key from the settlement was that the company compensate the affected persons and buffer zones be created between the lake and the plantations established for the prevention of pollution. These were implemented under CAO supervision, and final reports were shared with all the parties involved, including the 36 land owners and members of BFA³¹.

In this case, the prayers of NAPE, which had not been achieved at the high court level in Uganda, were achieved at the CAO level. The delays in Uganda's courts had resulted in the destruction of the environment and made the court decision in Uganda a moot that would not have much effect since there was no status quo to maintain. NAPE used ingenious means of petitioning the CAO, which gave better and quicker results as opposed to Ugandan courts.

2.2.3 Bujagali (T-Line case, Bujagali)

NAPE, together with Counter Balance (Europe), CLAI (Italy), and Association Sherpa (France), filed a complaint on the Bujagali project, which challenged the approval and continued construction of the Bujagali Power dam, which they stated violated environmental rights, such as the risk of increased climate change effects, negatively affecting water and animal and plant life around the area of the dam and resulted into involuntary resettlement. The NGOs claimed that the above issues violated World Bank standards and asked the CAO to find the company liable and order for restitution of the

environment as well as addressing other human rights issues such as labor rights. An order to address labor and environmental concerns was made by the CAO. The CAO continues to monitor the project. In May 2024, the CAO issued their latest report on the project, where they stated that there were still environmental and labor risks and that the project implementers had not met the World Bank's standards³². Recommendations were made to compensate all those resettled and unpaid wage should be compensated³³.

The above case provides important lessons for strategic litigation. Apart from the key issue that positive results were obtained from the litigation, the CAO has continued monitoring the implementation of recommendations to ensure they meet the standards years after the complaint was filed and initial orders were made. Monitoring the enforcement of such orders is a big challenge for NGOs, who normally run projects with specific timelines. The fact that the CAO has continued monitoring and issuing reports reduces the burden on NGOs to monitor the implementation of recommendations.

2.2.4 The Kalagala-Itanda offset

Following the campaign on environmental degradation caused by the construction of the Bujagali dam, the GoU agreed to create a conservation area that would offset the damages caused by the dam

²⁹ See Uganda: Bidco Bev. & Det-03/Kalangala. Available at <https://www.cao-ombudsman.org/cases/uganda-bidco-bev-det-03-kalangala>

³⁰ Ibid

³¹ See Dispute Resolution Conclusion Report – Uganda Bidco-03/Kalangala https://www.cao-ombudsman.org/sites/default/files/downloads/Bidco-03ConclusionReport_January2018-English.pdf

³² See CAO: Compliance Monitoring Omnibus Case Report: Q4, FY2024. <https://www.cao-ombudsman.org/sites/default/files/downloads/CAO-Omnibus-Report-May-2024-ENG.pdf>

³³ Ibid

construction. NAPE championed the campaign for the conservation of the Bijagali area and engaged the engagement of the funders, including the CAO, on human rights and environmental issues caused by the Bujagali dam. As a compromise to offset the damages caused by the construction of the Bujagali Power Dam, the Kalagala-Itanda offset was created as a special conservation area under S. 51 of the National Environment Act 2019. The 2,835 Hectares of land area was gazetted and is now managed as part of the protected forests in Uganda, with only activities such as research and tourism allowed.

The creation of the Kalagala-Itanda offset is an important milestone in environmental conservation in Uganda. It sets a precedent where alternative conversation areas are declared to offset environmental damage caused by development projects. At present, NAPE and other entities continue monitoring.

The creation of the Kalagala-Itanda offset should be understood from the two-pronged campaign that NAPE took. One part of the campaign was litigation and filing a complaint before the CAO, and the other aspect was to engage the company and different government agencies to find alternatives to environmental degradation. The gazetting of the Kalagala-Itanda offset set standards that not only need to be followed by other companies but also an option for advocacy and environmental organizations.

2.2.5 Advocacy on the Rights of Nature

NAPE, working with other organizations such as ANADE, has, over the years, campaigned for the legal recognition of the right of nature.

The right of nature is a relatively new concept that many legislators, judicial officers, and other law enforcers would not easily understand. It is also not recognized by the law in Uganda, though increasingly, courts and international environmental bodies are recognizing this right. Because of it being a new concept not easily understood, NAPE opted to conduct a campaign for the promotion of this right and engagement of different government agencies. During the debate on the Environment Act, NAPE supported organizations to submit memoranda to parliament requesting for the right of nature to be included. Though the final text of the National Environment Act did not have all the aspects of this right, the parliament of Uganda was able to recognize the right of nature, including the right to exist, persist, maintain, and regenerate its vital cycles, structure, functions and its processes in evolution.³⁴

Under S. 4 (2) of the National Environment Act,³⁵ a person has a right to bring an action before a competent court for any infringement of rights of nature. This provision is important in as far as it promotes public interest litigation in the protection and defense of the environment.

NAPE's continued advocacy for the rights of nature also resulted in Buliisa District passing a resolution to recognize this right but also bylaws that recognize the right of nature, including documenting and recognizing customary laws as part of laws to protect the rights of nature.³⁶ This was another milestone that not only makes the right of nature justifiable and implemented at local government but also gives ground for feature PIL to promote this right.

2.2.6 EIA addendum on the establishment of a mini oil refinery in the Kabwoya Wildlife Reserve

In 2009, GoU proposed to build a mini oil refinery in Kabwoya Wildlife Reserve. The refinery was to be funded by Tullow Oil, a key oil player in Uganda at the time.³⁷ NEMA approved the oil refinery in the Park.³⁸ NAPE was concerned over the construction of this refinery, which was inside a wildlife reserve. Kabwoya Wildlife Reserve is located below the Rift Valley and is a major catchment area for L. Albert. The construction of the oil refinery located 5 km from River Howa would potentially affect the fauna and flora of the park and also pollute major water sources such as the rivers that drain the wildlife reserve and L. Albert.

NAPE carried out an independent EIA that showed that the refinery would cause major risks to the fauna and flora in the park. These risks had not been stated in the official EIA carried out by the developer. The EIA addendum was submitted to NEMA and provided alternative data to NEMA and the company. Based on the addendum, the idea for a mini refinery was abandoned termed at the time as “The Early Production Scheme for Oil and gas in Uganda of 2009”. GoU also following that challenge from NAPE again abandoned the idea of placing an oil refinery inside a conservation area, and all oil activities, such as the refinery, processing facilities, waste treatment, etc., were moved out of conservation areas (kabwoya wildlife reserve) due to the

EIA addendum and legal suits spearheaded by NAPE.

2.2.7 PIL and promotion of gender issues

One of the key issues NAPE has achieved through PIL and through using administrative remedies has been the promotion of the rights of women. By its very nature, PIL is likely to protect the rights of vulnerable members of the community who may not be able to bring cases in court or who, due to power relations, may not be able to advocate for their rights. A vivid case of this is when NAPE engaged Project Affected Persons (PAPs) who complained of having signed away their land without knowledge during the land acquisition process. Most of the affected persons were women, and NAPE has engaged with the companies and government involved in the Tilenga project to ensure there is free and informed consent in the process.³⁹

Related to the above has been NAPE's constant advocacy for the rights of the community, especially women in the oil and gas sector. Petroleum exploration in Albertine Graben has negatively affected livelihoods, and most of the affected persons have been women who depend mainly on farming. This, compounded with climate change, has severely affected the livelihoods of women. Through different interventions, NAPE has promoted the rights of women using both courts and administrative approaches.⁴⁰ Several women have had skills training and engagement from NAPE and oth-

³⁴S. 4, of the National Environment Act, 2019

³⁵The National Environment Act, 2019, Act 5 of 2019

³⁶NAPE makes a breakthrough as Buliisa District Council recognizes customary laws of Bagungu Indigenous communities available <https://nape.or.ug/nape-makes-a-breakthrough-as-buliisa-district-council-recognizes-customary-laws-of-bagungu-indigenous-communities/>

³⁷Gerald Tenywa (2009) Oil Company to build refinery in reserve. Nw Vision Newspaper. Available at <https://www.newvision.co.ug/news/1252730/oil-firm-won-eur-build-refinery-reserve>

³⁸Jack Kimbal (2009) Uganda's environment body approves early oil output available at <https://www.reuters.com/article/business/finance/ugandas-environment-body-approves-early-oil-output-idUSJOE52C099/>

er entities, including oil companies, to adopt climate-smart technologies as well as remedies to address livelihood challenges.

In its approach to address the above, NAPE is implementing a legal aid project that focuses on minority groups, especially marginalized women, who are unable to access lawyers or other legal remedies in the community⁴¹. The testimonies from the beneficiaries indicate that majority has secured their land rights and even got land titles due to the legal support secured through the legal aid clinic model.

Conclusion

Overall, NAPE's approach, which includes direct court engagement, negotiation, advocacy, and seeking non judicial remedies, has had a big impact on the protection of the environment and preservation of human rights in Uganda. The study finds that even where cases were lost in court, the cases not only provided important lessons and guidance on the development of precedents in understanding environmental laws but also there have been numerous reforms that have tended to follow the court cases, and these have had a positive impact on the enforcement of environmental laws.



NAPE pilots legal aid clinics in the Albertine region. In the picture is a lawyer recording community cases on oil cases induced land grabs in the oil Refinery and Sugar cane affected resettlement camps of Kyakaboga and Kijjaye - Hoima / Kikuube Districts.

<https://nape.or.ug/nape-pilots-legal-aid-clinics-in-the-albertine-region/>

³⁹Precious Naturinda (2024) Signing in darkness: Oil host communities struggle to attain justice for their land in the face of the East African Crude Oil Pipeline (EACOP) and Central Processing Facility (CPF) developments in Uganda's Albertine Oil region. Available at <https://nape.or.ug/signing-in-darkness-oil-host-communities-struggle-to-attain-justice-for-their-land-in-the-face-of-the-east-african-crude-oil-pipeline-eacop-and-central-processing-facility-cpf-developments-in-ugandas/>

⁴⁰New Vision Newspaper (2023) Communities In Bunyoro Region Hail NAPE for Standing With Them As Oil Developments Continue To Cause Havoc In Their Region. Available at <https://nape.or.ug/communities-in-bunyoro-region-hail-nape-for-standing-with-them-as-oil-developments-continue-to-cause-havoc-in-their-region/>

⁴¹NAPE (2020) NAPE pilots legal aid clinics in the Albertine region. Available at <https://nape.or.ug/nape-pilots-legal-aid-clinics-in-the-albertine-region/>

Chapter 3

Lessons, achievements, and Challenges

3.0 Introduction

This Chapter documents the major lessons, achievements, and challenges from NAPE's approach to PIL. The lessons, achievements, and challenges are picked from interviews, mainly those who faced them. Some are directly related to court processes of PIL, while others are external and came mainly as threats to the work that NAPE was doing.

3.1 Lessons learned

From the different approaches adopted by NAPE and as seen from the literature, there is no one-size-fits-all fit-all for achieving sustainable environmental campaigns. NAPE has taken multiple-pronged approaches to achieve its targets. Sometimes, litigation is used as a mechanism to bring powerful companies to a discussion, while in some cases, it was key to bring an issue to the fore of discussion and public publication. These have been important for the general protection of the environment.

PIL/SIL impact on environmental matters tends to take time. This is often done after the project has ended. Sometimes, delays in courts and the court system take longer than planned, and entities involved in PIL/SIL need to be ready to go all the way.

Research and documentation are key for successful litigation and follow-up on the impact

of litigation. Litigation has been successful where there has been research used as evidence of violation of environmental rights.

Loss of court cases in interest litigation does not necessarily mean loss of the cause for which it was brought up. As seen in the study, several cases were lost, but companies or government agencies went ahead and implemented reforms that addressed the issues that were brought up in court.

Collaboration with different stakeholders helps achieve results by avoiding a single entity being targeted by those threatening entities that have taken up litigation, promoting the sharing of resources and expertise, and at times, building trust between NGOs and government agencies, as seen in the Bugoma case where NAPE collaborated with National Forest Authority to challenge the destruction of forests and in Nyakaa-na case where different NGOs supported NEMA in case of evicting a person who had encroached wetlands.

Planning for impact litigation should consider the fact that there might be threats to the entities and individuals involved in litigation. Organizations should have proper safety and security assessments and put in place

safety plans for the organizations and the individuals involved.

3.2 Some Key Achievements

As noted earlier in the literature review, achievements of impact litigation maybe immediate or may take time to be realized. This is due to the nature of impact litigation, which by itself requires time and the process it takes for governments and companies to adopt policy reforms that are aimed at addressing the issues that were litigated. NAPE's litigation approaches achieved several direct and indirect reforms in Uganda. Some of them still need continued monitoring. Some of the key achievements include;

Reforms in the practices by the different companies and regulators. For example, in the case of NAPE vs Hima Cement, the company put in place measures to control dust and air pollution even when the court case had been lost. Similarly, in the case of NAPE and others vs. NEMA, where the petitioners wanted the court to cancel the EIA certificate issued to Hoima Sugar, NEMA issued a directive to restore the forest and canceled the certificate even after the court had initially agreed with NEMA that the environment would be protected⁴². The same was noted in the Bujagali cases (both the court case and the T-line case), where more than 20 years after NAPE sued EAS Nile Power Ltd for taking steps to protect the environment, Uganda Electricity Generation Company has, as of 2022, started taking steps to address the potential issues of environmental degradation.

There have been several situations where potential harm has been prevented. For example, in the

Mabira forest, the degazetting of the forest was prevented, in the Bugala island case, the order to have a buffer zone as a mitigation to prevent soil erosion and dumping in the lake has prevented the potential of polluting Lake Victoria. Similar situations for the prevention of harm to the environment and individuals are documented in the Bujagali T-line case, where orders for payment of affected communities and payment of workers were documented.

Perhaps one of the most profound achievements of NAPE's involvement in litigation has been the protection of the rights of the most vulnerable members of the community. For example, in the Bugala island case, landowners were able to get compensated, the same applies in the Bujagali cases, including payment of workers fair wages.

Adaptation of policies and approaches aimed at better environmental implementation. For example, following the challenges of companies involved in the African Crude Oil Project (EACOP) in Uganda and France, Total Energies and EACOP conducted Human Rights Impact Assessments (HRIA), which document the potential violation of rights and key environmental concerns as well as provision of measures that the organization will take to prevent such violations. The HRIA was the first of its kind adopted by the two companies.

⁴²Okello Emmanuel (2022) NEMA Disowns Hoima Sugar for Deforestation and Abusing Environmental Guidelines. Uganda Radio Network Available at https://ugandaradionetwork.net/story/nema-disowns-hoima-sugar-for-deforestation-and-abusing-environmental-guidelines#google_vignette

In the Bujagali T-line case, NAPE and others were able to get the CAO to carry out regular monitoring and assessment of the project, which is still ongoing to date. This has ensured that the proposals are implemented, and where there is a need for adjustment due to different factors, the changes are documented. It provides an important lesson for how different projects may need to be implemented in order to protect the environment and the rights of individuals affected.

One major milestone from all the cases NAPE has handled has been the creation of awareness of environmental issues. Nearly all respondents agree that the cases have had an important impact on creating awareness of the key environmental issues. NAPE's approach to litigation, which involves creating campaigns around the issues, has tended to create ownership and awareness of the issues. This cut across most of the campaigns, such as SMC, Save Bugoma Campaign (SBC), Bugala Island, etc. This has ensured community monitoring and reporting of environmental and human rights issues. The media has also tended to pick these cases, hence giving them a bigger public outreach.

3.3 Challenges

In Uganda, interest litigation does not come with ease. There are several situations where litigants or entities supporting them are threatened by the different state and non-state actors. This provides one of the biggest challenges to interest litigation either as individuals or as organizations. The threats to individuals have tended to be direct.

One of the documented direct threats to Interest Litigants was the arrest of 20 people, including the Executive Director of NAPE, who were ar-

rested over SMC activities. These were charged with different offenses that were later dropped after spending several days in police cells. The arrest was aimed at intimidating and keeping the different actors off the campaign to save the Mabira forest.

Several key informants shared their experiences of how they have been intimidated after filing cases. One of the common nature of threats has been office break-ins, where offices are raided after an entity filed an SIL case. Some organizations have faced several break-ins, and in some cases, mainly electronic systems such as computers and court files are taken.

Whereas office break-ins for NGOs have been common in Uganda, there has been no conclusive investigation on the break-ins, nor have there been any arrests. There have also been other forms of threats, such as arrests and detention of environmental activists.⁴³

There is a lack of capacity among judicial officers to appreciate environmental issues and cases of environmental litigation. Respondents observed that whereas in the past, there were programs to train judicial officers in environmental matters and issues of litigation, this is no longer the case. In 2021, Uganda's judiciary observed this as one of the major challenges faced by the judiciary and, as a result, proposed to establish a specialized environmental court that would handle issues such as pollution, wetland encroachment,

⁴³Human Rights Watch: "Working On Oil is Forbidden" Crackdown against Environmental Defenders in Uganda https://www.hrw.org/sites/default/files/media_2023/11/uganda1123web_2.pdf

deforestation, and others⁴⁴. On the other hand, there are not many specialized environmental lawyers and legal practitioners who would take on many of the environmental cases.

There is a challenge of lack of monitoring mechanisms to monitor and document achievements of litigation. This challenge is made worse by the fact that some of the achievements of interest litigation are realized after a long period. For example, it took more than 10 years for issues of the Bujagali dam that NAPE complained of in court to be realized. At times, there are no mechanisms to ensure that the court orders are enforced by government agencies, and this makes it difficult to determine the actual impact of litigation.

Related to the above is the lack of mechanisms to gather scientific evidence that can

be used to support litigation in some cases. This is mainly compounded by the lack of technology, skill, and other resources to gather evidence and to be able to relate the results to an act of a company or entity in relation to environmental degradation.

There is a general fear of litigation in Uganda. In many cases, entities fear a backlash they might get for taking on impact litigation cases. Lately, this has increased with cases involving the East EACOP, where a number of actors are often attacked on social media and other media. In many such situations, employees of government agencies such as the Uganda Police Force (UPF), Petroleum Authority of Uganda (PAU), and the Uganda National Oil Company (UNOC) have publicly described environmental actors as traitors and persons who commit treasonous acts against the state⁴⁵.

⁴⁴The Independent Newspaper (July 2021): Judiciary to establish a specialized court to handle environmental matters. <https://www.independent.co.ug/judiciary-to-establish-specialized-court-to-handle-environmental-matters/>

⁴⁵See Magelah Peter G (2021) The state of Human Rights in the Oil and Gas sector in Uganda. A review of human rights standards and approaches by different sector players in Uganda. April 2021 to November 2022

Chapter Four

Recommendations

4.0 Introduction

This Chapter covers recommendations gathered from the field and assessment of the different desk reviews of cases, court decisions, and general approaches adopted by different entities. The recommendations are specific to different entities, including NAPE and other NGOs, development partners, judiciary, and government agencies. It is hoped that the recommendations can be implemented to improve not only the conduct of PIL but also the protection of the environment generally.

4.1 Recommendations to NAPE and other NGOs

12. There is a need for increased focus on strategic litigation for the environment. This should focus on emerging issues such as climate change, wetland encroachment, and others. As seen in this report, litigation helps push for reforms either at the entity level or generally through reform of the law, providing a better understanding of the law and general development of jurisprudence. Litigation has also been an important tool in bringing environmental issues to the core of debate in Uganda. These should be promoted.

13. There is a need to invest in research and documentation. This should cover pre-litigation activities such as gathering evidence that can be used in litigation, litigation activities and

processes, and post-litigation after a decision has been made to document the impacts and outcomes of the litigation.

14. There is a need for continued training for judicial officers, lawyers, prosecutors, and CSO members involved in environmental law litigation. The training and capacity building should consider new trends and understanding of environmental rights and issues across the world and how these can be applied to Uganda's context.

15. There is a need for support and investment in the safety and security of environmental activists in Uganda, especially those involved in litigation. They have increasingly become targets for those not happy with the work they do. Such support should be extended to individuals and organizations.

16. There is a need to invest in scientific systems such as laboratories and other mechanisms that can gather scientific data and provide concrete evidence that can be used in court for environmental litigation.

17. Increased collaboration between the different actors has proved to be an effective way of going about litigation and

other aspects of environmental protection. This should be promoted for better and sustained results.

4.2 Recommendation to development partners

18. Development Partners need to avoid projectizing litigation and subjecting it to a specific period since it is difficult to achieve results within a short time, such as a project time span. As seen in the report, some impact and evidence have taken more than 20 years to be realized, and this is way beyond the project period.

19. Development partners should be aware of the sensitive security contexts in which environmental activists and those involved in litigation operate. Development partners should be able to allocate funding for personal and institutional safety and security, including funds for emergency rescue, emergency legal aid, and legal compliance for organizations that may end up being targeted because of their work.

4.3 Recommendations to the Judiciary.

20. Carry out training for judicial officers in areas of impact litigation and environmental laws. Such training should cover members of the judiciary at different levels, from lower-level judicial officers to registrars and judges of courts of record. The training should also cover prosecutors and police officers such as environmental police and others engaged in gathering evidence.

21. Fast-track the establishment of a specialized court for environmental cases. This will help address the backlog in cases generally but also support the litigation and prosecution of those who violate environmental laws in Uganda generally.

22. Resist from awarding costs to entities and individuals who file interest litigation cases since, by their nature, such cases are brought up for the good of the community. Whereas lately, the judiciary has not been awarding such costs in most of the cases, there have been situations of costs, and this has kept away a number of would-be litigants.

23. Adopt a less intimidating court system and approach that would enable ordinary citizens, especially the poor, the illiterate, or other vulnerable persons, to be able to access courts and file interest litigation cases. This would ease access to justice for society's poor and vulnerable.

4.4 Recommendation to Government of Uganda agencies.

24. Implement court orders when issued for the protection of the environment. These orders may require continued evaluation and follow-up since a number of them focus on recurring events.

25. Government agencies such as NEMA and NFA should focus on enforcing reforms for the protection of the environment and not wait to be sued or for court orders.

26. Government agencies like NEMA, NFA, PAU, UNOC, UPF, and others should engage their staff and control the intimidation of environmental actors. The entities should understand that impact litigation is aimed at improving their work and providing a better understanding of the law generally.

Annex 1

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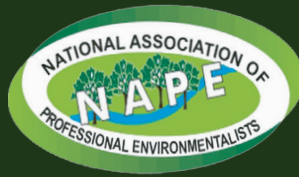


“Oil corporates are not corporates”.

Signing in Darkness – “A community Member showing how she was cheated off her land in Buliisa by Oil companies after signing land acquisition documents for the Buliisa based feeder oil pipelines she did not understand”.

“The Consent form has a disclaimer “This Consent form is made in compliance with the requirements to secure the consent of the land owners under section 135 of the Petroleum Act. It shall be signed by the landlord only as evidence of such mandatory consent .It is not and must not be taken as notice of intended use, acquisition or purchase of the described land by TEBU nor does it entitle the land owner to any payment or form of compensation .Any such claim based primarily on endorsement of this consent shall be disregarded”

“Such documents have been used by oil corporate and other land grabbers to illegally acquire land of oil host communities without Pay –Violating Article 26 of the Uganda constitution that gives the land owner exclusive rights over his or her land until adequate compensation is paid”.



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