

UNMASKING THE PERPETRATORS OF ENVIRONMENTAL CRIMES IN AFRICA.

PRESENTATION BY SIR DENNIS ADJEI ON WORLD COMMISSION ON ENVIRONMENTAL LECTURES UNDER THE THEME: ENVIRONMENTAL RULE OF LAW IN AFRICA.

INTRODUCTION

Environmental matters reign supreme by the fact that human beings, animals, fishes and plants depend on the environment for their survival. A healthy environment produces healthy life for all the living creatures within that environment while unhealthy environment produces unhealthy creatures.

The importance of safeguarding the national environment with the co-operation of other countries and international bodies has been recognized by the Constitution of Ghana, 1992; the supreme and fundamental law of Ghana. It provides thus:

“The State shall take appropriate measures needed to protect and safeguard the national environment for posterity; and shall seek co-operation with other states and bodies for purposes of protecting the wider international environment for mankind”¹

¹ Article 36 (9) of the Constitution of Ghana, 1992

LAWS AND INSTRUMENTS

Protection and enforcement of environmental matters are one of the economic objectives Ghana seeks to achieve as they drive the wheels of the country to realize the protection of fundamental human rights, a healthy economy and the right to work under safe and healthy conditions. The duties of the citizenry have also been enshrined in the Constitution of Ghana, 1992 for the establishment of a just and free state. It therefore imposes a duty on every citizen of Ghana “to protect and safeguard the environment.”²

The above two constitutional provisions put matters on environment on a higher pedestal above other matters even though they are equally important. Some environmental matters including the right to clean water and working under satisfactory conditions were subsequently considered as fundamental human rights issues. The UN Human Rights Council Resolution A/ HRC/ RES/ 18/1 passed on 28th September, 2011 made access to safe, sufficient and affordable drinking water a basic fundamental human rights.³

Economic right with respect to employment and satisfactory working conditions is another fundamental human rights applicable to all countries as a result of customary international law. (Universal Declaration of Human Rights and Article 24 of the Constitution of Ghana, 1992.

Africa should not continue to have issues with environment by the application of Universal Declaration of Human Rights which is a soft law but used by the African

² Article 35 (2) of the Constitution, 1992

³ www.un.org/waterforlifedecade/humanrights

Courts as part of customary international law. The African Charter on Human and Peoples Rights known as the Banjul Charter which has a binding effect on the signatory countries also provides for a right to general satisfactory environment.⁴

A duty is imposed on every state to protect and preserve its environment for the living and posterity but greed and selfishness have defeated the importance of environmental rule of law. Who are behind the greed and the selfishness and cannot be exposed? To ensure that environmental rule of law does not exist on paper and we do not pay lip service to it, the perpetrators of environmental offences and crimes must be unmasked.

ENVIRONMENTAL ISSUES

Environmental pollution in Africa has been on the ascendency despite efforts by persons in authority to prevent or curb the menace. The use of fresh air which is to be enjoyed in its unadulterated state to keep mankind healthy has been seriously polluted through the activities of the same mankind. Is it not right to say that human beings are their own enemies? Air pollution affects every part of the continent and therefore all the living creatures within the continent are breathing and inhaling polluted air. Most of the countries in Africa and in particular Ghana depend on the sea and other river bodies for their fish intake. The pollution of the sea affects the use of the sea, the fish and mammals which are used to feed mankind and their domesticated and captive animals. Unregulated bush fires also pollute the environment and seriously affect river bodies, animals and plants. Trees and plants do not have access to escape bushfires and are seriously suffered forgetting that

⁴ The African Charter on Human and Peoples Rights- Rights and Duties of the People

mankind depend on them for larger part of their meals. Illegal felling of trees affects the environment and has damning effect on the ozone layer whose importance to the survival of the living creatures on Mother Earth cannot be understated.

Illegal mining and quarrying are presently the serious enemies to the environment in West Africa. Illegal mining and quarrying affect the land, rivers and river bodies, air and vegetation and thereby exposing the people in the sub- region to all kinds of diseases including but not limited to buruli ulcer and glaucoma. The water bodies have been polluted and their beds destroyed, making it unfit for human and animal consumption. The average people in the sub- region have resorted to the use of boreholes without taking into account that the illegal chemicals and substances which are used by the illegal miners have polluted the underground water and making it unfit for human and animal use. A recent research by Duke University in the second largest town in Ghana, Kumasi revealed that the underground water table has been polluted by the unregulated use of petroleum products by mechanics, accounting for the premature age of the people in the community.

PROSECUTION AND INITIATION OF ENVIRONMENTAL MATTERS

There are good laws to control environmental offences to ensure that flora and fauna enjoy healthy life but these laws have become white elephants. Almost every country in the sub- region has an Environmental Protection Agency / Authority to curb the menace but how effective are these laws? In Ghana, the Environmental Protection has been given the mandate by the Attorney- General which is responsible for initiation and prosecution of criminal cases to prosecute environmental offences.⁵

⁵ Article 88 of the Constitution of Ghana, 1992

The Judiciary has created an environmental division of the High Court and the District Courts handle environmental matters but there are no cases for them to handle while thousands of environmental offences and crimes are committed daily. It is not an open secret that illegal mining goes on in the forest reserves and some areas daily but the perpetrators are not arrested.

Environmental matters which affect the public at large cannot be initiated by individuals in most common law countries as they are normally brought by the State to abate public nuisance. It has been held by the apex court in Ghana, the Supreme Court that civil suits on public nuisance are brought by the Attorney- General and not private persons.⁶

GOVERNMENTAL EFFORTS TO PROTECT THE ENVIRONMENT

Ghana enacted the Maritime Pollution Act, 2016 (Act 932) to fight marine pollution from various angles including the prevention of marine pollution by dumping of wastes and other matter into the sea, prevention of pollution by oil, prevention of pollution by noxious liquid substances in bulk, prevention of pollution by harmful substances carried by sea in packaged form, prevention of pollution by sewage from ships, prevention of pollution by garbage from ships and prevention of air pollution from ships. The Governments have been equipping the Navy and the Air Force to enable them patrol the sea and arrest offenders. The Marine Police was formed as a squad within the Ghana Police to help curb marine pollution. Have they made any meaningful strides in the fight?

⁶ Amidu Alhassan Amidu & Another v Mitu Alawiye & 6 Others [2019] DLSC 6537

FIGHT AGAINST ENVIRONMENTAL OFFENCES AND CRIMES

The Government of Ghana on assumption of office determined to curb illegal mining which is really a menace and set up a team of soldiers, police officers, the Immigration Service, National Security and the Bureau of National Investigation and co-named it " Operation Vanguard". Operation Vanguard at its initial stages seized over five hundred excavators owned mainly by the Chinese and few Ghanaians which were used for illegal mining. The illegal mining is still going on and some of the impounded excavators have allegedly gone missing.

There are serious environmental issues in the sub- region mainly, marine, air, land, river and water bodies, vegetation and soil. It is therefore impossible for the flora and fauna in the sub-region to have a healthy life from the polluted environment.

UNMASKING

The question is who are behind these environmental pollution and environmental crimes?

Firstly, governmental agencies responsible for fighting the menace have either acquiesced or benefit from the wrong doing. Is the Mineral Commission aware of the upsurge in illegal mining and quarrying? What steps have been taken to address the menace? Are the police officers and members of Operation Vanguard unaware of the menace and the areas where the illegal activities go on twenty-four hours a day?

Secondly, the unemployed Chinese citizens come through the airports and land borders daily and are given resident permits contrary to the laws of the countries in the sub region. It is notoriously known that these Chinese come to undertake illegal mining and quarrying. The Chinese bring fleets of excavators to the country and do the officials inquire into their purpose and use? They are used to illegally mine and

furthermore, pollute the water bodies, air, underground water tables, land and the vegetation. At the end of the day, they smuggle the quantities of gold they mine back to their home country without the suffering countries benefitting from it.

POLITICAL WILL TO CURB THE MENACE

Are the arresting officers and the prosecutors for environmental offences up to the duties assigned to them by law to discharge? Do they account and how are they assessed?

Some politicians are deeply involved in the illegal activities which results in environmental pollution for their selfish gains but they are presumably above the laws of the land.

Marine pollution in Africa are principally caused by the ship owners and captains from Europe and the Western World. They cannot commit those offences in their continents without being punished but commit them in Africa with impunity.

All those involved in environmental offences are known but the political will to arrest and prosecute them is not there.

Africa may have one of the best laws on environmental pollution and institutions of higher learning where environmental laws are taught. Africa may have good structures on paper to fight environmental crimes but until the perpetrators are unmasked and strong political will is committed to abate the crime, the goals of environmental rule of law in Africa shall remain a nightmare.
