

***Opening Remarks at the IUCN Africa Protected Areas Congress' Side Event
on the theme: JUDGES, PROTECTED AREAS AND ENVIRONMENTAL
DEFENDERS: AN ETHICAL, SCIENTIFIC AND LEGAL DIALOGUE ABOUT
ILLEGAL DEFORESTATION AND WILDLIFE CRIME – By***

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Distinguished participants,

It is a pleasure to join you this afternoon to discuss on this important theme.

About a week ago when the Minister of Justice, Dr. Emmanuel Ugirashebuja contacted me and told me that the organizers of this Dialogue wanted me to deliver opening remarks, I thought that, like many other people who have started to pay close attention to issues pertaining to climate change and environmental justice, it would be a good opportunity to know more on this subject matter by interacting with distinguished panelists and participants who have acquired strong expertise in this area.

With regard to the concept of protected area, it is commonly defined as “a clearly defined geographical space, recognized, dedicated and managed, through legal or other effective means, to achieve the long-term conservation of nature with associated ecosystem services and cultural values” (**International Union for Conservation of Nature**). In legislations and policies, countries define their own suite of protected area types, such as national parks, national reserves and forest reserves.

We are familiar with the statement that “**Forests are the lungs of the Earth.**” Thus, the need to set up mechanisms and take measures aimed at holding practitioners of illegal deforestation and other crimes accountable – Illegal deforestation is rarely a crime committed in isolation. “Forest crime” including corruption, tax evasion, money laundering and other acts, runs rampant in the forest and land-use sectors of many developing nations and contributes greatly to

deforestation.¹ I came to better understand the magnitude of this problem during my last meeting with Hon. Justice Antonio Herman Benjamin, from the National High Court of Brazil, President, Global Judicial Institute on the Environment, a renowned leader in the Global environmental law, who illustrated the importance of setting up mechanisms and taking appropriate measures to protect forests, giving the example of the Amazon rainforest and the Congo rainforest.

In Africa like in other parts of the World, countries have enacted laws and ratified international conventions on protected areas. In the protected area sector, it is admitted that the law has an adjudicative function between different uses/users, whose rights and interests must be preserved, despite the difference in means of action and powers between them. Within the forest sector, as one study² points out, the law also aims to guarantee respect for the balance provided for between commercial logging, conservation and community uses. This is to ensure the sustainability in its economic, ecological and social pillars in accordance with the objectives of national and sub-regional forest policies.

Noting the current upward trend in illegal activities in the forest sector, the earlier mentioned study on the Congo Basin Countries pointed out that the increase in logging activities seem to be explained by the peculiarities of the repressive system in the forest sector, which has ensured immunity of violators of the legislation: weakness of regulatory standards, which does not include all infringements or penalties to cover all the obligations imposed on loggers, in principle, as well as the marginalization of the judge in managing litigation. Their study highlights that in Central Africa, in forest related litigation, there is a limitation of the law enforcement action in two essential areas: (1) The conduct of the prosecution process, which takes place far from the courtrooms, under the responsibility of the administration; (2) the sanction mechanism, which also excludes the judge, both in determining the sanction and in its execution. This particular regime makes the forest sector a separate entity within the legal system of the Congo Basin, in which disputes are settled between the offender and the administration, out of sight of all the usually competent national authorities, and of the general public. Offenders are assured of maintaining control of the procedure, and of running no risk other than

¹ See Climate Advisers, A New Tool to Protect Forests: Strategic Litigation, October 20, 2020, <https://www.climateadvisers.org/insightsfeed/a-new-tool-to-protect-forests-strategic-litigation/>

² See Samuel Nguiffo, Aurelian Mbzibain, Habiba Mohamed, H el ene Blanchard The judge and the forest in Central Africa: why do illegal logging persists and escalates in the Congo Basin countries? <https://cidt.org.uk/wp-content/uploads/2021/05/IWT-Briefing-Note-EN.pdf>

that of limited administrative and/or financial penalties. The administration cannot impose custodial sentences, which are provided for by law. The generalized situation of impunity which results from this atypical system results to an aggravation of illegal logging, a degradation of the forest cover, and enormous financial losses for the State. Putting the judge back at the centre of the system for repressing forest law violations will undoubtedly have the effect of slowing down the current upward trend in illegal activities in this sector.³

For this to happen, it is recommended to ensure the effectiveness of sanctions and repressive measures in the forest sector by improving investigation, prosecution and adjudication of illegal logging and other forest crimes. But more importantly, it has been proposed that forest crime be addressed through multifaceted approaches involving different stakeholders, including the protection of forest defenders who are often intimidated, attacked and even killed. The courts have to play their role in this process, given the recognized increasing critical role that judges play in the development, enforcement and compliance with environmental law. But as all agree, there is need to strengthen judicial capacity in these complex and ever-evolving matters. It is admitted that judges must develop climate consciousness and that legal and judicial education in this area should be strengthened to enable them to better understand salient problems, their causes and consequences that can inform a court's choices in finding, interpreting and applying the law, since in this area, like in any others, judges operate within the framework of the law.

In closing my short remarks, stressing the need for collaboration with all stakeholders in order to achieve better results, allow me to quote the former President of South Africa's, Nelson Mandela, at the IUCN World Parks in Durban, who eloquently stated:

"We know that the key to a sustainable future for protected areas lies in the development of partnerships. It is only through alliances and partnerships that protected areas can be made relevant to the needs of society."

I wish all of us fruitful and engaging discussions.

Thank you for your kind attention.

³ Idem, p. 9