

**APPRAISAL OF THE EFFECTIVENESS OF LEGAL AND INSTITUTIONAL
FRAMEWORKS ON ENVIRONMENTAL PROTECTION IN UGANDA**

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**A RESEARCH PROPOSAL SUBMITTED TO THE DEPARTMENT OF PUBLIC AND
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DECLARATION

I **NAMAKULA AISHA** do hereby declare to the best of my knowledge and belief that this is my original piece of work and that it has never been submitted for the award of any credentials to any university or college or published as a whole or part.

I further declare that all materials cited in this proposal which are not my own have been fully acknowledged.

SIGNATURE.....


Date.....20 June 2019

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APPROVAL

This dissertation titled "*Appraisal of the Effectiveness of Legal and Institutional Frameworks on Environmental Protection in Uganda,*" has been submitted under my supervision and approval.

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Signed..........

Date.....*20th June, 2019*.....

DEDICATION

I dedicate this to Mr. Muhumuza Silver who has played his role as a father and family, my aunties and uncles, my grandmother, my mother ,my brothers and sisters who dedicated all their recourses to educating me.

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I appreciate the almighty God for having provided me with every day breath, strength, knowledge, courage and ability to carry out this study. Glory be to Him

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- ii. The Land Act Cap 227 1998 Laws of Uganda.
- iii. The Constitution of the Republic of Uganda 1995
- iv. The National Environment Act, 1995
- v. The Uganda Wildlife Act
- vi. The National Environment Act Chapter 153
- vii. The Uganda, Mining Act 2003 (Uganda Printing and Publishing Corporation)
- viii. Uganda, Local Government Act, Cap. 243, Laws of Uganda - 2000 edition
- ix. Poverty Eradication Action Plan (2004/5-2007/8)
- x. Uganda, Water Act, Cap. I 52, Laws of Uganda - 2000 Edition (Uganda Law Reform Commission).
- xi. The Penal code Act
- xii. The Occupational Health and Safety Act 2002
- xiii. Uganda, National Forestry and Tree Planting Act, 2003
- xiv. Judicature Act Cap 12 laws of Uganda
- xv. The Petroleum Exploration and pollution Act 1985
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LIST OF ABBREVIATIONS

NEMA	National Environment Management Authority
EIAR	Environmental Impact Assessment Resolutions
NEMP	National Environment Management Policy
UNCED	United Nations Conference On Environment And Development
NEAP	National Environmental Action Plan
PEAP	Poverty Eradication Action Plan
PMA	Plan for the Modernisation of Agriculture
EIA	Environmental Impact Assessment
EIA	Environmental Impact Assessment
NFA	National Forest Authority
EPF	Environmental Protection Force

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ABSTRACT

This study will appraise the effectiveness of legal and institutional frameworks on environmental protection in Uganda, the study will examine the relevant laws enacted in Uganda on environmental protection, find out the challenges in the enforcement of environmental protection laws in Uganda and identify any short-comings or gaps in the laws, making it difficult for environmental protection in Uganda. The study will be majorly desktop research. It will use both primary and secondary data sources on the legal and institutional frameworks on environmental protection in Uganda. For primary sources, the study will analyze the statutes, case laws and other instruments for example delegated legislations. Secondary sources the study will collect and analyze information from books and Articles on the legal and institutional frameworks in Uganda. The study will discuss the policy framework, the constitution, the framework environmental law, various sectoral environmental laws and regulations, provide a framework for environmental protection in Uganda. More than ten years since the framework law were enacted; the country has faced numerous challenges but has also registered some successes. The study will outline policy considerations that informed the law and then discuss a few provisions of the framework law and the sectoral laws that were harmonized with the framework law. The study will also discuss the successes and challenges in environmental regulation, using a few provisions and it will also give conclusions and recommendations on the effectiveness of legal and institutional frameworks on environmental protection in Uganda.

CHAPTER ONE

GENERAL INTRODUCTION

1.1 BACKGROUND TO THE STUDY

The alarming rate at which natural resources are being depleted shows that these laws and policies are not enforced effectively¹. The major causes of non-functionality included mechanical breakdown of the water facilities, poor design and workmanship, low water table as a result of depletion of natural catchments, and limited community participation in maintenance of public water works.²

A framework for environmental protection should be conceived within certain parameters. These parameters should guide the policy makers and stakeholders in policy development. They should be based, both on the concrete analysis of each particular country's history, and the comparative experiences of other countries.

Before 1995 Constitution³ was enacted, there was no basic legal framework for the management of the environment instead, Uganda relied on International Environmental Law⁴ across the world whose development started in the early 20th century with the creation of a number of Conventions such the Convention for the Protection of useful birds to agriculture 1902, the treaty for conservation of fur seals Washington and the Convention concerning the use of white lead in painting Geneva 1921. However, with time the number of treaties increased dramatically but the most significant development with regards to this law was the establishment of the United Nations which established various agencies to handle environmental issues such as the World Health Organization, International Atomic Energy Agency and forum⁵

¹ Bergstrom, J. C. "Concepts and measures of the economic value of environmental quality: A review", Journal of Environmental Management (1990) 31, Pg215-228.

² Cropper, M. L. and Oates, W. E. "Environmental economics: A survey", Journal of Economic Literature XXX, (1992) P 675-740.

³ This was enacted on 8th October 1995 following the report from the Odoki commission.

⁴ Article 287 of the 1995 Constitution of the Republic of Uganda.

⁵ Zhang, Kun-min; Wen, Zong-guo. "Review and challenges of policies of environmental protection and sustainable development in China", Journal of Environmental Management. (2008) 88: P 1249-1261.

From the local perspective, Uganda before 1960 relied basically on common law⁶ and civil law such as the law of torts. However, with the development of the International Environmental Legal Framework, Uganda's Environmental Jurisprudence was gravely influenced leading to the development of the National Environmental Policy for Uganda⁷ from the ministry of Natural resources which further enabled the law makers (the legislature or parliament) to put in place legislations to manage the environment post the coming into force of the 1995⁸ constitution parliament came up with the National Environmental Act⁹ as the principle law to control and manage issues to do with the environment through the National Environmental Management Authority created under Act¹⁰ and other legislations were enacted¹¹ as shall be discussed later on in this study protection of the environmental law.

In Africa, a number of factors have contributed to the increased attention to environmental law. The end of colonialism is perhaps the most important predicate condition, as this has allowed Africans to decide whether and how to utilize their natural resources as well as to set their own priorities for public health and development¹². This has placed severe pressure on water resources as well as on forests (for fuel, wood and timber). Forests and other wild lands continue to be cleared to meet agricultural, commercial and settlement needs. African governments, in a bid to alleviate poverty, promote development and to pay national debts, have exploited the natural resource for hard currency.¹³

Lower priority is often given to environmental issues. Governments frequently lack the financial resources necessary to effectively develop, implement, and enforce environmental laws and

⁶ Fang, L., Hipel, K. W., and Kilgour, D. M. "Enforcement of environmental laws and regulations: A literature review", IRR Paper No. 24, Institute for Risk Research, University of Waterloo, Waterloo, Ontario, Canada. (1992) P 1-32

⁷ Epple, D. and Visscher, M. "Environmental pollution: Modeling occurrence, detection, and deterrence", Journal of Law and Economics 27, (1984) P 29-60.

⁸ Chunmei, Wang; Zhaolan, Lin.. "Environmental Policies in China over the past 10 Years: Progress, Problems and Prospects ". International Society for Environmental Information Sciences 2010 Annual Conference (ISEIS). (2010) 2: P 1701-1 712.

⁹ Cap 153 of the Laws of Uganda

¹⁰ S.4 of the NEA Cap 153 Laws of Uganda 2002

¹¹ The Land Act Cap 227 Laws of Uganda.

¹² Benjamin J. Richardson, "Environmental law in Postcolonial Societies": Straddling the Local-Global Institutional Spectrum, 1 I Colo. (2000)P 21

¹³ Fang, L., Hipel, K. W., and Kilgour, D. M."Enforcement of environmental laws and regulations: A literature review", Institute for Risk Research, University of Waterloo, Waterloo, Ontario, Canada., IRR (1992) Paper No. 24 P 35

policies. Thus, for example, the World Bank provides practically all the funding for Uganda's National Environment Management Authority (NEMA) in the 1990s and 2010s. As a result, governmental agencies often lack professional personnel in the environment sector due to financial constraints¹⁴. Many government environmental institutions are designed to coordinate efforts between the various line agencies and ministries. These lead agencies, however, usually have priorities that frequently are at odds with environmental protection¹⁵.

Many African countries have adopted legal and Institutional Frameworks of Environmental management. These laws usually establish a national agency (or vest powers with the Ministry of Environment), include provisions for Environmental Impact Assessment, and set out a number of basic provisions for different environmental sectors (such as air, water, soil, hazardous waste, wildlife, genetic resources) that require development or harmonization with existing implementing legislation or regulations¹⁶.

To date the Ugandan government has developed a number of policy regimes to regulate and influence land use and environmental impacts. For example the poverty eradication action plan (PEAP, 2000) the sector wide approach to planning for water and sanitation sector (2002) the National Wetlands Policies (1995) the Environmental Impact Assessment Resolutions (1998), the national environment management policy (MLWE 1994), the national environment statute (MLWE 1995), the constitution of the republic of Uganda (GoU 1995) and the current draft of the national land and land use policy among others.¹⁷

The national environment management statute was also enacted establishing the national environmental management authority (NEMA) as well as providing for a broad range of issues pertaining to the functions of NEMA and measures for environment protection including water resource management.

¹⁴ McKean, R. N, "Enforcement Costs in Environmental and Safety Regulation", Policy Analysis (1980) 6, Pg 269-289.

¹⁵ OECD "Economic Instruments for Environmental Protection, Organisation for Economic Co-Operation and Development (OECD) Report published, Paris, France. (1989) P 1-35

¹⁶ Ruseell, C.S, "Monitoring and Enforcement," in P.R Portney (ed) Public Policies for Environmental Protection Resources for the future, Washington D.C Russell, C.S (1990b) "game models for structuring monitoring and enforcement systems" Natural Resource Modeling- (1990a) P 4,2, 143-173

¹⁷ Twesigye Morrison Rwakakamba, "Mountain Research and development", International Mountain Society (2010) 29(2): 121-1278

1.2 STATEMENT OF THE PROBLEM

As underlined by Tindifa¹⁸ at the African forum preceding the United Nations conference on environment and development (UNCED) also known as the earth summit, follow up in Johannesburg, Uganda is among the few African countries that have setup a legal and policy frameworks for environmental protection. This policy framework seeks to integrate “environmental concerns in the socio-economic development planning of the country.” It acknowledges the link between development and the environment as fundamental in achieving sustainable development¹⁹. Tindifa pointed out that the policy framework also recognizes integrative environmental management as the most viable approach for “achieving the overall policy goal of sustainable socioeconomic development which maintains and enhances environmental quality and resource productivity, to meet the needs of present and future generations²⁰. Several policies and statutes have been developed, such as the National Environment Statute, the National Wetlands Policies, the Environmental Impact Assessment Resolutions, the National Land Use Policy, and the National Land Policy. However, despite the existence of these policies and implementing organs, the research presented here shows that resources are continuously being encroached upon and are being depleted at an alarming rate.

Uganda is currently experiencing rapid depletion of water resource which in addition to ecological challenges is leading to conflicts in some parts of the country. The Ugandan government has taken action and formulated policies, institutions and policy regimes to regulate land use and impacts on the environment. Despite the existence of laws and regulations, this study illustrates the discrepancy between policy formulation and the reality of implementation on the ground. A glaring gap between the existence of laws and policies on the one hand, and the reality of implementation on the ground. Although Uganda has a number of laws and policies geared toward conserving for-example its environment, natural resources in Particular, water

¹⁸ Tindifa SB, *Peace Conflict and Sustainable Development: The Experience in Uganda*. Paper presented at the Unsustainable Development, Governance and Globalization: An African for Strategic Thinking Towards the Earth Summit 2002 and Beyond” Conference September [2001]. P 1-75

¹⁹ The *National Environmental Management Policy for Uganda*, MoNR (1995)

²⁰ Tindifa SB. *Peace, Conflict and Sustainable Development: The Experience in Uganda*. Paper presented at the “Sustainable Development, Governance and Globalisation: An African Forum for Strategic Thinking Towards the Earth Summit 2002 and Beyond” Conference, September (2001). Pg 1-75

catchments continue to be encroached upon. Therefore, this study seeks to appraise the effectiveness of legal and institutional frameworks environmental protection in Uganda.

1.3 OBJECTIVES OF THE STUDY

The objective of this study is divided into general and specific objectives

1.3.1 General Objective

This study seeks to appraise the effectiveness of legal and institutional framework on environmental protection in Uganda.

1.3.2 Specific Objectives

- i. To examine the legal and institutional framework on environmental protection in Uganda.
- ii. To examine the effectiveness of legislation and policies on environmental protection in Uganda and a comparative study on other countries.
- iii. To examine the challenges affecting the environmental protection laws and legislations in Uganda.

1.4 RESEARCH QUESTIONS

The questions that this research hopes to answer are:-

- i. What are the legal and institutional frameworks on environmental protection in Uganda?
- ii. What are the effectiveness of legislation and policies on environmental protection in Uganda and a comparative study on other countries?
- iii. What are the challenges affecting the environmental protection laws and institutions in Uganda?

1.5 SCOPE OF THE STUDY

The scope of the study is divided into two parts that's subject scope and geographical scope.

1.5.1 Subject Scope

The subject scope of this study is to appraise the effectiveness of the legal and institutional frameworks on environmental protection in Uganda in the period between 2007 to 2018.

1.5.2 Geographical Scope

The geographical scope of this study constitutes the environmental protection laws and policies in Uganda.

1.6 SIGNIFICANCE OF THE STUDY

This study helps the ministry of forestry and mineral resources to know the various causes of environmental degradation especially forest degradation in Uganda. The policy makers especially NEMA will benefit from this study because it will give those guidelines on how to be effective in the way they protect the environment. The study is helpful to the government of Uganda to know how effective the enacted legislations policies on environmental protection have been. The study is also helpful to the environmental protection units. Environmental institutions are also in the front line to make sure that the law are followed when it comes to taking care of the environment. The study will also be of importance to future researchers who what to find out literatures on relevant topics on the effectiveness of legal and institutional frameworks on environmental protection in Uganda.

1.7 METHODOLOGY

The writer employed doctrinal or desktop research method for the purpose of accomplishing the thrust of this study.

Under this methodology the writer structured it into primary and secondary sources. The primary sources are international continental, domestic instrument, and case law. On the other hand secondary source include text books, articles in journals, conference procedures and internet facilities. This will enable the writer to invalidate and validate the existing works relating to the present study.

1.8 LITERATURE REVIEW

Karamanos²¹ describes Environmental protection as the practice of protecting the natural environment by individuals, organizations and governments. Its objectives are to conserve natural resources and the existing natural environment and, where possible, to repair damage and reverse trends. Due to the pressures of overconsumption, population growth and technology, the biophysical environment is being degraded, sometimes permanently. This has been recognized, and governments have begun placing restraints on activities that cause environmental degradation. Since the 1960s, environmental movements have created more awareness of the various environmental problems. There is disagreement on the extent of the environmental impacts on human activities and even scientific dishonesty occurs, so protection measures are occasionally debated.

Obiter-Goma²² discussions at the National Environment Management Authority is principally on coordinating, monitoring and supervisory body which cause implementation through the environment local units and the districts. In the event of conflict between the coordinator and the implementer, Institutional paralysis arises with the resultant effect of ineffective implementation of the environmental laws.

It is therefore important that the coordinator and implementers appreciate each other for better results of Environmental Law Enforcement. She pointed out that government should balance between environmental protection, or management and industrialization. She also pointed out that National Environment Management Authority must consult with the lead agencies and the districts to ensure that the measures adopted to enforce environmental laws are acceptable and rationale. This can be achieved through carrying out environmental consultations and awareness campaigns.

²¹ Karamanos, P, *Voluntary Environmental Agreements: Evolution and Definition of a New Environmental Policy Approach*. Journal of Environmental Planning and Management, (2001), 44(1): p. 67-67-84

²² Judy Obiter- Goma: *An Overview of the policy. Legal and institutional framework for environmental management in Uganda*. Paper delivered at the Environmental Management Training Workshop to NEMA staff and district environment officers at Colline Hotel, Mukono 17-22 august; (1998) P 1-16

Mumma²³ observed that in African countries particularly, where regulatory bodies are often lacking in technical and, financial capacities to enforce and implement environmental laws, private actions are mainly by public interest bodies under the damage can play an important complementary role, which it would be a mistake to undermine.

John Kamugisha²⁴, examine the state of the environment in the pre-colonial era. He also looks at the evolution of legislation concerning the environment that started as far back as 1890 under the African Order in Council 1889²⁵. He dealt with the maxim of 'Pacta Sunt Servanda' which is the core treaty law and emphasize that commitments made by a nation, voluntarily and formally should be honored. Uganda being a party to some International Treaties and Conventions is expected to meet its international obligations and duties.

Gombya²⁶ in his book Solid waste or garbage which includes paper, plastic, glass, metal cans, food scraps, and yard trimmings, the greater proportion being degradable and is one of the most visible forms of Soil pollution. Both open dumps and landfills may contain toxins that seep into the soil, ground water or flow into streams and lakes. The uncontrolled burning of solid waste creates smoke and other air pollution. Even burning waste in incinerators can release toxic chemicals, ash, and harmful metals into the air. Environmental standards and laws on pollution management are still inadequate and/or non-existent in some areas. No adequate waste disposal facilities in place despite the enactment of the National Environment (waste management) Regulations. It is therefore a dilemma that the very Institutions entrusted with the protection of environment have in some cases has assisted the crusade for their conservation.

George²⁷ in his book, It is a constitutional and legal requirement that areas such as wetlands, riverbanks, lakeshores are held in trust by Government and Local Government for the common good of all the citizens of Uganda, there are incidences where the very institutions that are charged with this responsibility are the very ones who alienate these wetlands and even issued

²³ Albert M, *Background to Environmental Aw-Common Law Jurisdiction*, A paper prepared for the Symposium for Environmental Law Lecturers from Africa Universities, Nakuru 29th September to October 2004 (2003), P 19.

²⁴ John K, (2001) "*The state of the environment in the pre-colonial era*" African Union P8-36

²⁵ Report No 11 Published by Sidas Regional Constitution Unit

²⁶ Gombya S W and Mukunya .F.; "*Solid Waste Management in Kawempe Division: Issues, Challenges and Emerging Options.*, (2000)

²⁷ George L M "*Challenges in Monitoring and Enforcement of Environmental Laws in Uganda*", Natural Resources Management Specialist – 2006, NEMA. P 10

land titles. There is the problem of enforcement of the legal requirements for protection of the environment and public health. Whereas it is now largely accepted that environment is important worth protecting, and whereas enforcement of environment regulations, is expected to be done through a hierarchy of enforcement levels from national (NEMA).

1.9 ORGANIZATION LAYOUT

This research comprises of five chapters. Chapter one provides introduction and background to the study, statement of the problem, purpose of the study, specific objectives, research questions, scope of the study, significance of the study, methodology, and literature review. Chapter two examines the legal and institutional frameworks on environmental protection in Uganda. Chapter three examines the effectiveness of legislations and policies on environmental protection in Uganda and a comparative study on other countries. Chapter four provides the core discussions of the study. An analysis of the challenges effecting the environmental protection laws and institution in Uganda, An analysis into the existence of potential gaps in the legislation will be undertaken to determine reasons for the difficulty in regulating environmental degradation. Chapter five proposes recommendations and conclusions.

CHAPTER TWO

THE LEGAL AND INSTITUTIONAL FRAMEWORKS ON ENVIRONMENTAL PROTECTION IN UGANDA

2.1 INTRODUCTION

Environmental protection legislation has been the guiding principles of ensuring sustainable development which will use resources without depleting them for the benefit of both the present and future generations.²⁸

The objectives of the legislation are to produce a planning framework, set standards and coordinate for all environmental related issues in the country, to strengthen sectoral law. Sectoral laws are enacted in consultation with the lead agencies to ensure coordination and effectiveness.²⁹ The frameworks must be in harmony with society's need to achieve better materials standards, reduce poverty and achieve sustainable development. However for effective environment protection, legislative are enactment and implementation of laws and regulations for specific sectors regarding: Air quality, Water quality, Disposal of effluent and solid wastes, Conservation and utilization of resources.³⁰

Creation of rights and obligations for the people to live in a decent and healthy environment, including rights to bring action to prevent or stop activities that are likely to adversely affect the environment, requirement of environmental impact assessment to be mandatory for all activities likely to have significant effect on the environment, establishment and enforcement of viable environmental standards on the maintenance of air, water, soil quality and standards for noise, smell, atmospheric pollution and natural resources, establishment and enforcement of viable environmental standards for sound management of municipal and hazardous- wastes, chemical

²⁸ Part XXVII of the 1995 Constitution of the Republic of Uganda

²⁹ In 2003 *Prohibition of smoking in public places* regulation was made by the minister subject to S.107 (1) of the National Environment Act Cap153 laws of Uganda formally S.108 of the 1995 statute.

³⁰ Hussein I. Abdel-ShafyaMona S.M.Mansourb, "*Solid waste issue: Sources, composition, disposal, recycling, and valorization*" Egyptian Journal of Petroleum; Volume 27, Issue 4, December 2018, Pp 1275-1290

and other dangerous products, discontinuance of harm and compensation of individuals harmed, and restoration of the environmental where the harm has already occurred.³¹

2.1.1 Definition of “Environmental Protection”

The study defines Environmental protection as the practice of protecting the natural environment by individuals, organizations and governments. Its objectives are to conserve natural resources and the existing natural environment and, where possible, to repair damage and reverse trends.³²

The word environment of which environmental is the adjective has been defined in many ways by various authorities: William and Robert,³³ defined environment as “surroundings, external conditions influencing development or growth of people, animals or plants; living or working conditions.”

Similar definitions given by other authorities are as follows:

1. “External surroundings, environmental factors are conditions influencing an individual from without,”³⁴ This definition is from the point of view of man, the individual and the medical sciences and therefore parochial.
2. External conditions and surroundings, especially those that affect the quality of life of plants, animals and human beings.³⁵
3. Environment refers to the components of the Earth and includes: lands, water and air, including all layers of the atmosphere; all organic and inorganic matter and living organism; the social, economic, recreational, cultural, spiritual, aesthetic conditions and factors that influence the life of human and communities; and a part or combination of these things referred to above and the interrelationships between two or more of them.³⁶

³¹ The National Environment Act, 1995

³² Karamanos, P., *Voluntary Environmental Agreements: Evolution and Definition of a New Environmental Policy Approach*. Journal of Environmental Planning and Management, 2001. 44(1): p. 67-84.

³³ William & Robert, *Chambers Concise Dictionary*, 1999 Chambers Harrap Publishers Ltd, Edinburgh, at p 344

³⁴ Nancy R, *Churchill Livingstone's Pocket Medical Dictionary*, 13th Edition, (1978) Longman Group Limited, Edinburgh, p 108

³⁵ William & Robert, *Dictionary & Thesaurus of the English Language*, (2002) Geddes & Grosset, New Lanark, ML II 9DJ, at p 111

³⁶ Aibor M S .& Olorunda, J O *A Technical Handbook of Environmental Health in the 21st Century*, (2006) His Mercy Publishers, Akure, Nigeria, at P 357

Protection; Gifi defines³⁷ Protect (Protection), as it is listed therein, means to preserve in safety, to keep intact; to take care of and to keep safe. “Protection” has been any measure which attempts to preserve that which already exists. For instance, trade protection attempts to preserve domestic industry through the imposition of tariffs and custom duties on imported goods.

In the Dictionary and Thesaurus of the English Language³⁸, Protection has been defined as “the act of protecting; the condition of being protected; something that protects; shelter; defence, patronage, etc.”³⁹ It went on to define protection as “to defend from danger or harm; to guard; to maintain the status and integrity of, especially through financial guarantee; to foster or shield from infringement or restriction; etc.

Thus to arrive at a definition of the term “environmental protection” therefore will require a synthesis of the definitions of “environment” and that of “protection” as presented above.

The policy framework, the constitution, the framework environmental law, various sectoral environmental laws and regulations, provide a framework for environmental regulation in Uganda. More than ten years since the law was enacted, the country has faced numerous challenges but has also registered some successes.

2.2 LEGAL FRAMEWORK FOR ENVIRONMENTAL PROTECTION IN UGANDA

The laws discussed below have continued to promote the concept of conservation of natural resources and sustainable development.

2.2.1 The Constitution of the Republic of Uganda 1995

The Constitution is the supreme law and provides for environmental protection and conservation. Under the National Objectives and Directive Principles of State Policy, the Constitution provides that the state shall promote sustainable development and public awareness of the need to manage

³⁷ Steven H. Gifis, *Law Dictionary*, Barron’s Educational Series, mc, New York, 5th Edition, (2003) at p. 407

³⁸ The National Environmental Wetlands and River Banks and lakes regulations.

³⁹ William & Robert, *Dictionary & Thesaurus of the English Language*; 2002 Geddes and Grosset, New Lanark, ML II KDJ at p 262.

land, air, and water resources in a balanced and sustainable manner for the present and future generations.⁴⁰

The Constitution further provides that the utilization of the natural resources of Uganda is to be in such a way as to meet the development and environment needs of present and future generations of Ugandans.⁴¹ In particular, the state is required to take all possible measures to prevent or minimize damage and destruction to land, air, and water resources due to pollution or other causes. Article 39 of the Constitution entitles every Ugandan to a clean and healthy environment. Under Article 17(1) (j) it is the duty of every citizen of Uganda to create and protect a clean and healthy environment.

The Constitution also imposes a duty on the state to protect important natural resources; including land, water, minerals, oil, fauna and flora on behalf of the people of Uganda. In its Article 245, the Constitution provides that parliament shall, by law, provide for measures intended to protect and preserve the environment from abuse, pollution and degradation, to manage the environment for sustainable development; and to promote environmental awareness. Parliament has ably done this through the enactment of the National Environment Act, the Water Act, the Land Act, the Wildlife Act and the Local Government Act, among others.

The constitution has provisions for enhancing conservation and management of the environment and natural resources. Objective XIII of the National Objectives and Directive Principles of State Policy and article 237(2)(b) of the constitution pronounce the public trust doctrine.⁴² The content and scope of this doctrine is being tested in the Government efforts to study possible change of land use for parts of the Central Forest Reserves comprised in Mabira Forest and Bugala Island in Kalangala district. It is envisaged that in the near future a public interest action may be filed in the courts to define this doctrine and the role of the state as public trustee.

⁴⁰ Article 2 of the Constitution of the Republic of Uganda, 1995

⁴¹ Art 1(XXVII)(ii) The environment of the 1995 Constitution of the Republic of Uganda.

⁴² Like the Constitution, the section 44 (1), (4) and (5) of the *Land Act thereof enshrines the public trust doctrine and provides that the government or local government holds in trust and protects for the common good of all citizens of Uganda certain environmentally sensitive areas such as natural lakes and rivers, ground water, natural ponds and streams, wetlands, forest reserves, national parks and any other land reserved for ecological and touristic purposes*. Accordingly, under the Land Act, Government has no powers to lease or otherwise alienate any natural resource mentioned above but may only grant concessions or licenses or permits in respect of that natural resource.

The constitution also enshrines a constitutional right to a clean and healthy environment in its article 39. Civil society has used article 50 of the constitution to enforce this right using public interest litigation.

Article 39 provides for the right to a clean and healthy environment, while Article 41 provides for the right of access to information.

2.2.2 The National Environment Act, Cap 153, 1995

This National Environment Act, Cap 153, of 1995 includes ETA in its general principals as a requirement for proposed projects and activities which may significantly affect the Environment or use of natural resources. The Act also establishes the National Environment Management Authority (NEMA) as the principal agency responsible for supervising, coordinating and monitoring all aspects of the environment, including the review of environmental impact assessments carried out for various project⁴³. The Act empowers NEMA, in consultation with lead agencies, to issue guidelines and prescribe measures and standards for the management and conservation of natural resources and the Environment. To this effect, NEMA prepared Guidelines for EIA (1997) which define the roles of the different stakeholders in the ETA process. Section 19 of the Act imposes an obligation on all developers to carry out ETA for their projects that are likely to have adverse impacts on the environment.⁴⁴

The Act also provides for the establishment of a Technical Committee on EIA and this has been in place since 1996. The Committee provides advisory services to NEMA on critical aspects of ETA implementation.

The National Environment Act,⁴⁵ enacted in 1995, is the framework law on environment. It provides for sustainable management of the environment and established the National Environment Management Authority (hereafter referred to as NEMA) as the principal government agency for the management of the environment. NEMA is mandated to coordinate, monitor and supervise all activities in the field of the environment.

⁴³ The National Environment Act Chapter 153 Sec. 6 (3)

⁴⁴ Ibid

⁴⁵ The National Environment Act, note 1 above.

The law had the impact of triggering amendment, enactment and harmonization of sectoral laws on environment. The affected laws include the National Forestry and Tree Planting Act 10 with a provision on ETA; the Land Act 11 under which all owners and occupiers of land are to manage it in accordance with the National Forestry and Tree Planting Act, the Mining Act, the National Environment Act, the Water Act, the Uganda Wildlife Act, the Town and Country Planning Act 12 and any other law; the Investment Code Act 13 Section 19(1)(d) of which makes it an implied term and condition of every holder of an investment license to take necessary steps to ensure that the operation of their business enterprise does not cause any injury to the ecology or the environment; the Uganda Wildlife Act⁴⁶ sections 15 and 16 of which provide for ETA, audits and monitoring of projects that may have an impact on wildlife; the Mining Act,⁴⁷ sections 108 to 112 of which require ETA, environmental audit, environmental protection standards, environmental restoration plans and environmental performance bonds in accordance with the National Environment Act; and the Local Government Act,⁴⁸ the second schedule of which outlines environmental management areas for which district, councils are responsible.

2.2.3 The National Environment (Conduct and Certification of Environment Practitioners) Regulations 2003

Following concern about the quality of Environmental Transport Association done by Practitioners, and in order to provide for a uniform system of certification and registration of ETA practitioners, the National Environment (Conduct and Certification of Environment Practitioners) Regulations, 2003 were gazetted and set minimum standards and criteria for qualification as an EIA Practitioner. The Regulations also establish an independent Committee of Environmental Practitioners whose roles include, among others, to regulate the certification, registration, practice and conduct of all environmental impact assessors and environmental auditors. The Committee also has powers to take disciplinary action as it finds necessary for ensuring the maintenance of high professional standards, ethics and integrity of environmental Practitioners in the conduct of ETA and Environmental Audits.

⁴⁶ See Uganda Wildlife Act, note 4 above.

⁴⁷ Uganda, Mining Act 2003 (Uganda Printing and Publishing Corporation).

⁴⁸ Uganda, Local Government Act, Cap. 243, Laws of Uganda - 2000 edition (Uganda Law Reform Commission).

2.3 INSTITUTIONAL FRAMEWORKS

This gives a detailed and critical review of the legislative and institutional framework on environmental protection and pollution control.

2.3.1 The National Environmental Action Plan (NEAP), the National Environment Management Policy (NEMP) and others

Between 1991 to 1994 the Government of Uganda developed a National Environment Action Plan (NEAP).⁴⁹ NEAP provided a framework for addressing gaps in environment management as well as a strategy for integrating environment into the national socio-economic development.⁵⁰ One of the outcomes of the NEAP was the formulation of the National Environment Management Policy (NEMP) of 1994. The overall goal of NEMP is ensure sustainable social and economic development which maintains or enhances environmental quality and resource productivity on a long term-basis that meets the needs of the present generations without compromising the ability of future generations to meet their own needs⁵¹. This policy goal has informed subsequent policies such as the 2004/5- 2007/8 Poverty Eradication Action Plan (PEAP) and the Plan for the Modernisation of Agriculture (PMA)⁵²

The Policy provides strategies to guide and assist decision makers and resource users in determining priorities in the national context and also at the sectoral, private sector and individual level. It provides for integration of environmental concerns in national socio-economic development planning process, avenues for inter-sectoral cooperation, and comprehensive and coordinated environmental management. As a result, environmental management is now a key criteria for national socio-economic development decisions.⁵³

The Policy also recognised the need for sectoral policies in addressing the specific concerns of the identified environmental sectors. It therefore provided a framework under which several sectoral policies were developed. These include the 1995 Water Policy, the 1996 National

⁴⁹ National Environment Action Plan (NEAP) will be reviewed after every five years or less. See section 17(1) of the National Environment Act, Cap. 153, Laws of Uganda-2000 (Uganda Law Reform Commission).

⁵⁰ National Environment Act, note 1 above, Section 18 (2)(a).

⁵¹ http://www.epa.vic.gov.au/PFAS_NMP: *PFAS NATIONAL ENVIRONMENTAL MANAGEMENT PLAN* (NEMP)

⁵² Poverty Eradication Action Plan (2004/5-2007/8)

⁵³ *Ibid* Note 52

Wetlands Management Policy, the 1996 Wildlife Policy, the 2000 Fisheries Policy, the 2001 Forestry Policy and several district environment management policies from 2000 onwards.⁵⁴

In addition, the policy provided a basis for the formulation of a comprehensive environmental legal framework under the 1995 Constitution and the National Environment Act.⁵⁵ It also provided a framework for multi-sectoral approaches to resource planning and management of natural resources. These approaches found expression in the various environmental and development policies and in legislation such as the Uganda Wildlife Act,⁵⁶ the Water Act,⁵⁷ the Land Act,⁵⁸ the National Forestry and Tree Planting Act,⁵⁹ among others.

The NEAP is a major state policy, which identifies and ensures the sustainable development of nature and society; harmonization between natural resources and nature users, between producers and consumers and the environment; healthy society development; sustainable nature management and rehabilitation of the degraded natural resources.⁶⁰

The NEAP was developed considering the country state with economy in transition and is essential for the most crucial, vital and threatening environmental issues accumulated during twelve year period or more.

The NEAP has been developed for the period when entirely new and large capacities of natural resources (land, water, soil, flora and fauna, forests, recreational resources, etc.) are drawn into the social and economic development of the country. The NEAP is built upon the national environmental legislation, international agreements, and proposals of various state authorities and local administration (khukumats).

The NEAP proposes harmonization of integration and implementation of all state authorities' activity (ministries, institutions, enterprises, organizations including international ones, local

⁵⁴ *Ibid*

⁵⁵ National Environment Act, note 1 above, Section 18 (2)(a).

⁵⁶ Uganda, Uganda Wildlife Act (1996), Cap. 200, *Laws of Uganda* 2000 Edition (Uganda Law Reform Commission).

⁵⁷ Uganda, Water Act, Cap. I 52, *Laws of Uganda* - 2000 Edition (Uganda Law Reform Commission).

⁵⁸ Uganda, Land Act, Cap. 227, *Laws of Uganda* (Uganda Law Reform Commission).

⁵⁹ Uganda, National Forestry and Tree Planting Act (hereafter Forest Act), *Laws of Uganda* (Uganda Law Reform Commission).

⁶⁰ National Environmental Action Plan [2006] P11

khukumats) operating in Tajikistan and dealing with nature management issues, therefore effecting on the environment. The NEAP is a regularly updated document, which reflects the socio-economic and environmental status of the country.

The National Environment Action Plan (NEAP) process resulted in the preparation of a National Environment Management Policy which was passed in March 1994. The overall Goal of the Policy is sustainable social and economic development, which maintains or enhances environmental quality and resource productivity. The specific Policy objectives are to introduce: Sound environmental management; Environmental planning; Ecosystem conservation; Sustainable resource consumption; and Environmental awareness and community participation.⁶¹

2.3.2 Environmental Impact Assessment (EIA)

Environmental Impact Assessment (EIA) is a tool for protecting the environment. EIA ensures that environmental impacts are considered during conception, design and implementation of projects, at the same time, that their financial and technical aspects are being considered. EIA is conducted to ensure that important environmental resources are recognized and protected early in the planning and decision making process.⁶² EIA also provides developers and decision makers with an opportunity to examine likely impacts of development proposals on the environment and thereby recommend mitigate actions for adverse impacts before decisions are made to approve such actions.⁶³

Within the policy, EIA is recognized as an important tool to assist in attaining the above-mentioned Policy objectives. The Policy also recognizes that “the low cost of preventing environmental damage compared to the high cost of repairing such damage is a sound economic justification for instituting and carrying out Environmental Impact Assessments” The Policy in advocating for the use and application of EIA, seeks to integrate environmental concerns early

⁶¹ *Ibid* 51

⁶² Justin Ecaat, *A review of the application of environmental impact assessment (EIA) in Uganda a report prepared for the united nations economic commission for Africa*, (July 2004) P 10

⁶³ Review of EIA Application in Uganda, July 2004 P 10

enough in the development planning process for all activities and projects at national, district and local levels, with full public participation.⁶⁴

In addition to the above policy provisions, other sectoral natural resources Policies such as the National Policy for the Conservation and Management of Wetland Resources (1995) refer to ETA as a management tool and include the need for EIA for development activities likely to affect these resources as a policy strategy for the conservation and management of such resources.

Whereas the EJA process in Uganda is operational by virtue of the National Environment Act, Cap 153 of 1995 and the Environment Impact Assessment Regulations of 1998, a number of other laws, most of which were enacted from 1995, have continued to promote the use and application of EIA.

2.3.3 Environmental Impact Assessment Regulations, 1998

In 1995, Uganda enacted a National Environment Statute (now Act Cap 153) calling for Environmental Impact Assessment (EIA) for all development activities likely to negatively impact on the environment before they are implemented and the National Environment Management Authority (NEMA) was created and mandated to protect the environment.⁶⁵

The ETA Regulations elaborates in detail the provisions of the Act and present the details of the EIA process and roles of various stakeholders. The Regulations also stipulates it as an offence for any person to commence, proceed or execute any project without approval from NEMA. The Regulations also advocate for the principle of full disclosure in the conduct of EIAs and makes it an offence to make false statements in an ETA.

Sec (2)⁶⁶ no developer shall implement a project for which environmental approval is required under the Act and under these regulations unless the environmental impact assessment has been concluded in accordance with these regulations.

⁶⁴ *Ibid* 50

⁶⁵ Brief background on NEMA, www.gov.ug Accessed on 21/05/2019 at 4:18 pm

⁶⁶ Environmental Impact Assessment Regulations, 2014

Sec 22 (b)⁶⁷ the Agency considers it necessary for the protection of the environment and promotion of good governance.

2.3.4 The National Environment Management Authority (NEMA)

NEMA which became operational in 1996, was created as the principle agency responsible for oversight, co-ordination, supervision and monitoring implementation and compliance to the ETA requirements and also to champion ETA capacity building in Uganda. Section 6(1) (f) of the Environment Act provides that the Authority is charged with the function to review and approve environmental impact assessments submitted in accordance with the provisions in the Act or any other law.

2.3.5 National Environmental Management Policy

In fulfillment of the objectives under the National Environmental Management Policy, Article 39 of the Constitution of Uganda provides for the right to a healthy and clean environment. The National Environmental Management Statute was also enacted, establishing the National Environmental Management Authority (NEMA) as well as providing for a broad range of issues pertaining to the functions of NEMA and measure for environmental protection. On the face of it, therefore, Uganda has moved a great distance towards providing a sound policy and legislative framework for environmental protection. The issue however, is whether these policy and legal claims are well integrated in Uganda's investment policy.⁶⁸

The Government of Uganda adopted a National Environment Policy in 1994 and one of the policy objectives is to collect, analyze, store and disseminate reliable information relating to environmental management issues.

⁶⁷ Environmental Impact Assessment Regulations, 1998

⁶⁸ NEMA (National Environment Management Authority), *National State of the Environment Report for Uganda 2002*. Kampala, Uganda: National Environment Management Authority, Ministry of Natural Resources, Government of Uganda.

2.5 COMMON LAW

Common law is that part of the law of England formulate developed and administered by the common law court, Based only on the common law customs of the country, and unwritten. It has generally developed and derives through judicial decisions.

Common law approach is applicable in environmental litigation. It is distinguishable for statute law because for statute law is passed by parliament. Common law become applicable in Uganda through the 1889, 1902 and 1911 orders in council and was trained by the judicature Act of 1967 and the current judicature act⁶⁹. This Section 14 of the judicature act confers upon the high court, subject to the constitution; unlimited original jurisdiction in all matter and such appellate and other jurisdiction as may be conferred on it by the constitution or this act or any other law. This jurisdiction is to be exercised in conformity with written law, but where written law does not extend or apply, in conformity with common law and doctrines of equity. The law of torts is part of common law and by virtue of the above section, it is applicable.

A :tort: is a crooked conduct, a wrong, an act which causes harm to a determined person, whether intentional or not, being a breach of a duty arising out of a personal relation or contract and which is either contrary to law or an omission to a specific legal duty, or a violation of an absolute right.⁷⁰

⁶⁹ Judicature Act Cap 12 laws of Uganda

⁷⁰ Osborn's law of dictionary

CHAPTER THREE

EFFECTIVENESS OF THE EXISTING LEGAL AND INSTITUTIONAL FRAMEWORKS ON ENVIRONMENTAL PROTECTION

3.1 INTRODUCTION

This chapter addresses the effectiveness of the existing laws and institutions on environmental protection in Uganda. It looks at the constitution laws, articles and other relevant laws. Statutory law remains the most significant legal frameworks for the protection of environment in Uganda.

3.2 LEGAL FRAMEWORKS

This examined the legal framework effectiveness on the environmental protection in Uganda.

3.2.1 The Constitution of the Republic of Uganda, 1995

The 1995 Constitution of the Republic of Uganda is the supreme law of the land and it contains rights. The Constitution provides that an applicant does not have to demonstrate that any person has incurred loss or suffered injury.⁷¹ However, to succeed in their plea, one must demonstrate that their rights under Article 42 has been or is likely to be denied, violated, infringed or threatened.⁷²

By virtue of Article 287 of the Constitution of the Republic of Uganda 1995, Uganda to stringently follow the ratifications made thereto. The principal legislation⁷³ further requires the particular law providing for the enforcement mechanisms of these international treaties. For example, issues governing the environment are dealt with under the Section 28 of the National Environment Act clearly stipulating the procedure of ratification of such agreements, hence bringing its enforcement in to Uganda.

National objectives and directives of state policy (NODPSP); Objective XIII of the NODPSP is to the effect that the state shall play the important role in protecting natural resources of all forms on

⁷¹ Art. 70(3); See also section 3(1) of Environment (Management and Conservation) Act, 1999 (EMCA)

⁷² *Joseph Owino Muchesia & another v Joseph Owino Muchesia & another* [2014] eKLR, para. 34.

⁷³ Article 287(2) of 1995 constitution of Uganda

behalf of the people. Similarly Objective XXI encompasses state responsibility to promote a good water management system at all levels. Hence, pollution is checked by this objective. In the nutshell, Objective XXVII embodies the responsibility of the state to promote sustain development and public awareness to manage public resources on and beneath the earth surface (environment)

Section 106 of the NEA, Article 17(1)(j)⁷⁴ places the obligation on the citizens to protect the environment therefore as agents of pollution they are halted. Article 39 provides for the right to a healthy and clean environment which also condemns environmental pollution in its constitutional interpretation. Article 50(1) and (2) empowers any person or organization to bring an action against violators of human rights including those touching the environment as was seen in the case of *TEAN V BAT*.⁷⁵ Article 237 of the constitution⁷⁶ requires the Government or a Local Government as determined by Parliament by law, to hold in trust for the people and protect, natural lakes, rivers, wetlands, and other natural resources implying a duty upon the government to ensure that the same is not polluted for the common good of all citizens. In performance of this duty, the government is to have regard to all policies as regard to land⁷⁷. Article 245(a)⁷⁸ empowers the parliament to enact laws for the protection of the environment against pollution.

These instruments define actions and activities which are polluting and specific pollutants which are subject to control. Until now, this remains the most significant legal framework for the control of pollution and environmental management and protection in Uganda. However, it has not been efficient enough in dealing with problems of pollution at the national level. Its main failure lies in lack of clean air and waste management Act; lack of generally applicable criteria and standards; overlap of tasks of the different legislations, and of the different organs; and lack of enforcement powers.

⁷⁴ The Constitution of the Republic of Uganda, 1995

⁷⁵ MISC. Application No. 444 of 2001

⁷⁶ The Constitution of the Republic of Uganda 1995

⁷⁷ Article 241(2) of the Constitution of the Republic of Uganda, 1995

⁷⁸ *Ibid*, no 1

3.2.2 The National Environment Act Cap 153,1995

It was enacted to provide for the management of the society for the sustainable management of the environment and under Section 4⁷⁹ the NEMA is established that the authority with the mandate to manage, monitor and supervise all activities on the field under the following provisions.

Section 24⁸⁰ deals with air quality standards and provides with establishment of procedures for measurement of air quality and takes measures to reduce the existing source of air pollution⁸¹ by requiring use of new technology and redesign of plants and minimize the emission of greenhouse gasses to control air pollution.

Section 25 provides for establishment of minimum water standards for all the water in Uganda for different users such as industrial use, domestic such as drinking, wild life, fisheries and other uses not prescribed. For this to be done, NEMA has to consult the lead agency.⁸²

Section 26 provides for the discharge of effluent water the standards which shall be set by authority but all water discharged should be of a quality standard to control pollution. Under Section 4⁸³ the main objective of the regulation is to minimize pollution and control wetland degradation through setting up a committee to ensure protection of the environment, hence a relevant control tool of pollution in wetlands.

Section 27 deals with the control of standards of noxious smells for which the authority shall establish the minimum standard to the control of smell pollution and measurements or guidelines leading to abatement of obnoxious smells. The national environment (Noise Standards and Control) Regulations provide detailed noise standards pursuant of this provision.

⁷⁹ National Environment Act cap 153

⁸⁰ The National Environment Act cap 153

⁸¹ In 2003 Prohibition of smoking in public places regulation was made by the minister subject to Section 107 (1) of the national environment act cap153 laws of Uganda formally Section 108 of the 1995 statute.

⁸² Section 1(g) of the National Environment Act provides that a, "lead agency" means any Ministry, department, parastatal agency, local government system or public officer in which or in whom any law vests functions of control or management of any segment of the environment

⁸³ The National Environmental Wetlands And River Banks and lakes regulations

Section 28 deals with the standards of noise and vibration and Section 29 subsonic vibration and all these have to be controlled with regard to the significance in the impact of the environment so as not to pollute it.

Section 30 provides for soil standards and NEMA shall regulate the disposal of any substance on the soil and prohibit any practice that will degrade the soil and promote practices that will conserve. The National Environment (minimum standards for soil management of soil quality) regulation 2001 was made so as to regulate soil standards and control pollution.

Section 31 provides for standards for minimization of radiation and NEMA shall create standards for minimization of such radiation to the society and control its exposure to other people and its effects too.

A nuclear power law⁸⁴ established the Atomic Energy control Board which is to be consulted for any issue regards to minimization of radiation.

Section 32⁸⁵ provides for other standards such as construction materials, industrial products, solid waste disposal and such other activities that may pollute the environment.

Section 2(k)⁸⁶ is to the effect that the polluter of the environment is to bear costs for his actions further a license may be denied by the granting authority if the polluter is unable to compensate the victims of such pollution and clean up the environment in accordance with the polluter pays principle⁸⁷.

Section 57⁸⁸ provides that no person shall pollute or lead any person to pollute the environment contrary to any of the standards set in the act and no person shall either pollute exceeding the standards set out in the pollution license granted under Section 60 of the National Environment Act cap 153.

⁸⁴ (Atomic Energy Act, Cap. 143) was passed by Parliament in 2008

⁸⁵ National Environmental Act cap 153

⁸⁶ National Environment Act cap 153

⁸⁷ Section 58(6) of the National Environmental Act and in line with Principle 3.9 of the National Environment Management Policy 1994

⁸⁸ The National Environment Act Cap 153,1995

Section 60 provides for pollution licenses and for the same to be granted the and Environmental Impact study must be carried out in accordance with the act in order to determine the pollution likely to result and considerations necessary for it's control whereby if the applicant fails to comply with the conditions given then the license will not be granted.

3.2.3 Land Act Cap 227 1998

Section 43⁸⁹ of the land act provides that a person who owns or occupies land shall utilize and manage the land in accordance with the National Environment Act, water act and any other laws relevant for the management, conservation and preservation of the environment hence all land in Uganda is subject to proper use so as to control pollution.

Section 44⁹⁰ provides for the public trust doctrine that the Government shall hold in trust for the people and protect the natural recourses for the common good of the citizens⁹¹ but the government may grant concessions or licenses or permits .n respect of natural resources referred above.

Section 70⁹² provides that subject to s.44⁹³, all rights in the water of any natural spring, river, and spring shall be reserved by the government and no such water shall be polluted except with the permission of the minister responsible for water or natural resources in accordance with the water act.

3.2.4 The Water Act Cap 152

Section 4(b) and (d) provide that the objective of the Act is to provide clean and safe water supply and control pollution, promote treatment of waste which may be discharged in water in order to control pollution⁹⁴.

⁸⁹ Laws of Uganda 2000 cap 227

⁹⁰ Ibid, no 101

⁹¹ This is in line with Article 237 of The Constitution of Uganda 1995

⁹² Land Act cap 227 of the Laws of Uganda

⁹³ Ibid, no 104

⁹⁴ This is in line with Art. 39 of The Constitution of the Republic of Uganda 1995

Section 20 further states that a holder of a permit (granted under PART IV) shall not allow water to be polluted and Section 29 requires a holder of a water permit to install pollution control or waste discharge treatment equipment.

Section 31 provides for the prohibition of water pollution stating that a person shall commit an offence if without permission (permit) allows waste to come in to contact with water, waste to be discharged directly or indirectly in to water and to allow water to be polluted and if a person with a permit exceeds his permit he shall too be liable under this Act⁹⁵.

3.2.5 The Penal Code Act, Cap 120

The Penal Code basically criminalizes air and water pollution. Section 176 provides that a person commits an offence if he voluntarily corrupts or fouls the water of any public spring or reservoir so as to render it less fit for the purpose and Section 177 applies to air pollution providing that a person commits an offence if he voluntarily vitiates the atmosphere in any place so as to make it undesirable to health of persons in general dwelling or carrying on business in the neighborhood or passing along a public way hence creating a prohibition to air pollution.

The Mining Act Section 86 and 109 of the mining act state that in carrying out mining activities in lakes, river banks another areas the miners are supposed to pollute the environment in accordance with the regulation under the National Environment Act and if they exceed the standards stipulated then liability may incur on the polluters thus a mechanism of controlling pollution. Judicature Act cap 16. Common law is also part of the statute law since it was adopted by virtue of Section 14,15 and Section 33 of the Judicature act cap 13 of the laws of Uganda.

Standards for the discharge of effluent into water⁹⁶ The authority may, in consultation with the lead agency establish standards for the discharge of any effluent into the waters of Uganda; prescribe measures for the treatment of any effluent before discharge into the sewage system;

⁹⁵ Regulation 4 of the National Environment Regulations provides that every industry or establishment shall install in its premises anti-pollution equipment for the treatment of effluent chemical discharge emanating from the industry or establishment which has to be based on the best practicable means environmentally sound practice or other guidelines as the executive director may determine, further Regulation 4 of the Water(waste Discharge) Regulations provides that no person shall discharge effluent or waste on land or into aquatic environment contrary to the standards established under regulation 3 unless he or she has a permit issued by the Director .

⁹⁶ The Environment Act Part 2(26)

require that the operator of a plant undertake such works as it considers necessary for the treatment of effluent before it is discharged into the water.

Standards for the control of noxious smells⁹⁷The authority shall, in consultation with the lead agency, establish procedures for the measurement and determination of noxious smells; minimum standards for the control of pollution of the environment by smell; guidelines for measures leading to the abatement of obnoxious smells, whether from human activities or from naturally occurring phenomena.

Standards for the control of noise and vibration pollution⁹⁸ The authority shall, in consultation with the lead agency, establish criteria and procedures for the measurement of noise and vibration pollution; minimum standards for the emission of noise and vibration pollution into the environment; guidelines for the abatement of unreasonable noise and vibration pollution emitted into the environment from any source.

Standards for subsonic vibrations⁹⁹ The authority shall, in consultation with the lead agency, establish criteria and procedures for the measurement of subsonic vibrations; standards for the emission of subsonic vibrations which are likely to have a significant impact on the environment; guidelines for the minimization of the subsonic vibrations referred to in paragraph (b) from existing and future sources.

Soil Quality Standards¹⁰⁰ the authority shall, in consultation with the lead agency, Establish criteria and procedures for the measurement and determination of soil quality; minimum standards for the management of the quality of the soil.

For the purposes of subsection (1), the authority shall issue guidelines for the disposal of any substance in the soil; the identification of the various soils; the optimum manner for the utilization of any soil; the practices that will conserve the soil; the prohibition of practices that will degrade the soil.

⁹⁷ The Environment Act Part 2(27)

⁹⁸ The Environment Act Part 2(28)

⁹⁹ The Environment Act Part 2(29)

¹⁰⁰ The Environment Act Part 2(30)

3.2.6 The National Environment Act

The National Environment Act of 1995 sets out the general legal framework and policy objectives for the sustainable management of the environment in Uganda. It encourages the participation by the people of Uganda in the development of policies, plans and processes for the management of the environment as well as the equitable use of natural resources for the benefit of present and future generations.¹⁰¹ To co-ordinate and supervise all activities in the field of the environment the National Environment Agency (NEMA) was established under the Act as the principal agency for the management of the environment in Uganda.¹⁰²

The functions of the NEMA comprise the gathering and dissemination of information on the environment and natural resources, the publication of relevant data on environmental quality and resource use as well as the organization of public awareness and education campaigns in the field of environment.¹⁰³ The NEMA is tasked to exchange information with other Ugandan, foreign, international and non-governmental agencies, co-ordinate the management of environment information with other government agencies and local authorities and advise Government on existing information gaps and needs.¹⁰⁴

In collaboration with education and regional authorities NEMA is also responsible for educational campaigns on the environment aimed at schools and the general public.¹⁰⁵ The NEMA shall publish a State of the Environment Report every two years.¹⁰⁶ Any person who carries out any activity which has or is likely to have a significant impact on the environment shall keep records relating to resulting waste and byproducts, their effects on the environment and financial implications.¹⁰⁷

¹⁰¹ Section 3(2) of the National Environment Act, 1995

¹⁰² Sections 5 & 6 National Environment Act, 1995

¹⁰³ Sections 3 & 87 National Environment Act, 1995

¹⁰⁴ Section 87 National Environment Act, 1995

¹⁰⁵ Sections 7(1), 88 National Environment Act, 1995

¹⁰⁶ Sections 7(1) & 87(2) National Environment Act, 1995

¹⁰⁷ Section 78 National Environment Act

These records shall be transmitted to the NEMA annually and be used as a basis for the preparation of the state of the environment report.¹⁰⁸

According to section 86 of the Environment Act people have “freedom of access to any information” relating to the implementation of the Act submitted to NEMA or any other government institution or official with legal management or control functions related to the environment. Access shall be granted “on the payment of a prescribed fee” but “does not extend to proprietary information which shall be treated as confidential”. The Act further outlines the basic steps and requirements of the Ugandan Environmental Impact Assessment (EIA) process.

The Environmental Impact Assessment Regulations of 1998 further specify the rules and procedures for carrying out an environmental impact study. The Regulations provide that “[t]he developer shall take all measures necessary to seek the views of the people in the communities, which may be affected by the project”. For this purpose the Regulations prescribe a minimum standard of activities to proactively facilitate access to information about the proposed development.¹⁰⁹

3.2.7 The National Forest and Tree Planting Act, 2003

The National Forest and Tree Planting Act of 2003 consolidated the law relating to the forest sector and trade in forest produce. The Act aims to contribute to the conservation, sustainable management and development of forests for the benefit of the people of Uganda. Its objectives include increasing public participation in forest management, creating greater awareness for the benefits of forest cover and “to guide and cause the people of Uganda to plant trees”.¹¹⁰

The law provides for the establishment of different categories of forest reserves with the involvement of local communities. In order to designate a central or local forest reserve a notice must be published in the government gazette, print media and “any other media that is likely to draw the matter to the attention of all interested persons”. Local communities shall be consulted through public meetings and other means and an environmental impact assessment must be

¹⁰⁸ Section 79 National Environment Act

¹⁰⁹ Regulation 12 of the Environmental I

¹¹⁰ Section 2 of the National Forest and Tree Planting Act, 2003

carried out. The notice must identify the location of the reserve, summarise the proposed management plan and “invite written comments and representations”.¹¹¹ The same procedure applies if the government intends to amend or revoke the declaration of a forest reserve.¹¹²

The formal requirements for declaring an area as a community forest (or amending such declaration) are less stringent. Following approval by the District Council and consultations with the local District Land Board and the local community a community forest may be established. The order made to this effect “shall be published by posting outside the office or other meeting place of the local government”.¹¹³

Management plans for forest reserves and community forests shall be drawn up and revised every five years in consultation with the local community. They contain a description of “all matters relating to the forest” including the measures for sustainable development and “the involvement of local communities in the management of the resources”. “A management plan shall be disseminated to the local community.”¹¹⁴

The law prescribes a number of other information obligations. A person intending to undertake an activity that may have a significant impact on a forest shall undertake an environmental impact assessment.¹¹⁵ Through the media the Minister shall notify the public of the existence of plant and livestock pests or diseases.¹¹⁶ In respect of private land trees may be declared protected. But before making such an order the authorities need to “take into account the views of the affected communities”.¹¹⁷ The government is further required to put together an inventory of all forests in Uganda.¹¹⁸

The Act established the National Forest Authority (NFA) as the principal organ responsible for its implementation. It explicitly tasks the Authority to promote innovative approaches for local

¹¹¹ Sections 7 & 10 National Forest and Tree Planting Act, 2003

¹¹² Sections 8 & 11 National Forest and Tree Planting Act, 2003

¹¹³ Section 17 National Forest and Tree Planting Act, 2003

¹¹⁴ Section 28 National Forest and Tree Planting Act, 2003

¹¹⁵ Section 38 National Forest and Tree Planting Act, 2003

¹¹⁶ Section 36 National Forest and Tree Planting Act, 2003

¹¹⁷ Section 31 National Forest and Tree Planting Act, 2003

¹¹⁸ Section 37 National Forest and Tree Planting Act, 2003

community participation in the management of central forest reserves.¹¹⁹ In consultation with the local authorities it may establish Forestry Committees to advise on the “ideas, desires and opinions of the people in the respective areas on all matters relating to the conservation and use of ” and “assist local communities to benefit from the central forest reserves”.¹²⁰ Section 91 addresses the right to access information.

3.2.8 The Petroleum Exploration and Pollution Act, 1985

The Petroleum (Exploration and Production) Act of 1985 is the main law governing the exploitation of oil in Uganda.¹²¹ The Petroleum Act focuses on so called “upstream” elements of petroleum production i.e. the exploration and extraction of oil. The holder of a petroleum exploration licence is required to inform the authorities about the discovery of oil and has to furnish further information as requested.¹²² A subsequent application for the production of oil must be accompanied by specified geological, chemical and other data.¹²³ Any licence holder has to maintain records and report in regular intervals on, amongst others, drilling activities, the quantities of oil won or gas flared.¹²⁴

Although the Act recognises the potential for conflicts between oil exploration and other rights to the land (related to grazing and farming) the communication of environmental information is mainly addressed as a one way flow in the direction of the government.¹²⁵ The authorities have to keep records¹²⁶ but as a matter of principle any information provided by a petroleum exploration or production license holder shall not “be disclosed to any person who is not a Government Minister or an officer in the public service except with the consent of the licensee”. Exceptions apply in connection with legal proceedings, studies, requests of financial institutions, liability claims and contractual agreements. Violation of the non-disclosure obligation is a

¹¹⁹ Sections 52 & 54 National Forest and Tree Planting Act, 2003

¹²⁰ Sections 62 & 63 National Forest and Tree Planting Act, 2003

¹²¹ The Mining Act of 2003 does not apply to petroleum (as defined in the Petroleum Exploration and Production Act of 1985 (Act 7 of 1985). The Petroleum Supply Act of 2003 addresses issues around the transportation, storage, distribution and marketing of petroleum products.

¹²² Section 18 of the Petroleum Act

¹²³ Section 21 Petroleum Act

¹²⁴ Section 37 and 2nd schedule

¹²⁵ Sections 38 to 41 Petroleum Act

¹²⁶ Section 42 Petroleum Act

criminal offence.¹²⁷ The Act does not address “downstream” oil production activities such as the refining of oil and utilisation of gas, the use and distribution of oil revenues or local benefits and participation in the industry.

This lacuna in the legal framework has been addressed by the new National Oil and Gas Policy. The policy officially launched in February 2008 aims to achieve exploitation and utilization of oil and gas in a manner that contributes to poverty eradication and “creates durable and sustainable social and economic capacity for the country”. Objectives also include national participation in the petroleum and gas industry, nature conservation and the use of revenues “to create lasting value for the entire nation”.

3.2.9 THE OCCUPATIONAL HEALTH AND SAFETY ACT 2002

Article 28(1)¹²⁸ of the Occupational Health and Safety Act provides that it is the duty of a person who designs, manufactures, imports or supplies any article, chemical substance or mixture of chemical substances, for use at work.

Article 28(1)¹²⁹a of the Occupational Health and Safety Act provides that to ensure, as far as is reasonably practicable, that the article or chemical substance or mixture of chemical substances is designed or constructed or formulated to be safe and without risk to health when used properly and for the purpose for which it is meant.

Article 28(1)¹³⁰b of the Occupational Health and Safety Act provides that carry out or arrange for the carrying out of any testing and examination that may be necessary for the performance of the duty imposed on him or her by section 27, properly and for the purpose for which it is meant;

Article 28(1)c of the Occupational Health and Safety Act provides that to take any steps that are necessary to ensure that there is available in connection with the use of the article, chemical substance or mixture of chemicals at work, adequate and clear information about the use for which the article, chemical substance or mixture of chemicals is designed and that

¹²⁷ Section 59 Petroleum Act

¹²⁸ Ibid 120

¹²⁹ Ibid 120

¹³⁰ Ibid 120

it is tested, and that any conditions necessary to ensure that, when put to use, it will be safe and without risks to health.

3.3 INSTITUTIONAL FRAMEWORKS

This examined the effectiveness of the institution framework on the environmental protection

3.3.1 Environmental Impact Statement

Where a project has been determined under section 19(7) as requiring an environmental impact study, the developer shall, after completing the study, make an environmental impact statement in the prescribed form and in the prescribed manner. An environmental impact statement shall be made according to guidelines established by the authority.¹³¹

In any case where the statement is not requested by a lead agency, a copy of the statement shall be forwarded to the relevant lead agency and the authority. The environmental impact statement shall be a public document and may be inspected at any reasonable hour by any person. Consideration of the statement by the lead agency; obligation of the developer

The lead agency which receives an environmental impact statement under section 20 shall, in consultation with the authority, study it and if it considers it to be complete shall deal with it in the manner prescribed. In executing the project, the developer shall take all practicable measures to ensure that the requirements of the environmental impact statement are complied with.

3.3.2 Environmental Audit

The authority shall, in consultation with the lead agency, be responsible for carrying out an environmental audit of all activities that are likely to have significant effect on the environment.

An environmental inspector appointed under section 79 may enter any land or premises for the purpose of determining how far the activities carried out on that land or premises conform with the statements made in the environmental impact statement.

¹³¹ Justin Ecaat "A Review of the application of Environmental impact assessment (EIA) in Uganda a report prepared for the united nations economic commission for Africa. (2004)

The owner of the premises or the operator of a project for which an environmental impact statement has been made shall keep records and make annual reports to the authority describing how far the project conforms in operation with the statements made in the environmental impact statement.

The owner of premises or the operator of a project shall take all reasonable measures to mitigate any undesirable effects not contemplated in the environmental impact statement and shall report on those measures to the authority annually or as the authority may, in writing, require. The environmental impact statement shall be made to the authority, the lead agency or any other person requesting it.

3.3.3 Environmental Impact Assessment

This is a requirement before any developer can proceed with any project to assess the possible impact of such project to the environment hence calling upon environmental Impact Statement after the review has been done to ensure that the activity going to be done will not compromise the environmental standards set by the law or the permit granted by the law otherwise the developer might be asked to come up with a pollution mitigation scheme in order for his project to be cleared hence if he fails NEMA and the other consultative authorities might deny them the chance to carry out their project.

3.3.4 Public Interest Litigation

The authorities can now litigate polluters on issues where they have no locus stand in which calls for vigilance against polluters.

Art 50(2) allows any person or organization to bring an action against the violators of another persons or groups human rights and by virtue of Art 39¹³² every person has a right to live in a clean and healthy environment meaning this provision is setting out against polluters thus in British *American Tobacco v Environment Action Network Ltd*¹³³ an action was brought against BAT on grounds that smokers were polluting the society with smoke hence infringing on the

¹³² The Republic of Uganda Constitution 1995

¹³³ Civil Appl. no. 27/2003, High Court of Uganda at Kampala (2003).

right to a clean and health environment. This case points out that public interest litigation may be brought on environmental matters. The following have challenges faced by the law enforcement authorities and the inadequacies of the law effecting environmental laws.

3.3.5 Action against pollution on wetlands

NEMA has taken a stand against pollution of wetlands especially swampy areas and river banks and lakes shores and for one to construct in such areas there is a stipulated distance which does not have to be occupied for example in *Amooti Godfrey Nyakana v NEMA*¹³⁴ the petitioner constructed a house in a wetland and it was destroyed by NEMA and he petitioned and in the holding the court stressed out the importance of controlling unauthorized activities on the environment and the role of authorities such as NEMA and struck out the case on ground that the petitioner was afforded the chance to be heard but he did not utilize it hence NEMA succeeded in the case.

3.3.6 Environmental Inspection

NEMA is given powers to designate as many officers as it deems fit from duly qualified public officers, whether by name or by title of office, to be environmental inspectors within such local limits as may be specified in the notification in the gazette.¹³⁵ An environmental inspector may, in the performance of his or her duties under NEA or any regulations made there under, at all reasonable times and without warrant enter on any land, premises or vehicle to determine whether the provisions of this Act are being complied with; require the production of, inspect, examine and copy licences, registers, records and other documents relating to this Act or any other Act relating to the environment and the management of natural resources; make examinations and inquiries to discover whether this Act is complied with; take samples of any article or carry out periodic inspections of all establishments within the local limits of his or her jurisdiction which manufacture, produce as by-products, import, export, store, sell, distribute or use any substances that are likely to have a significant impact on the environment, to ensure that the provisions of this Act are complied with; carry out such other inspections as may be necessary to ensure that the provisions of the Act are complied with; seize any plant, equipment,

¹³⁴ Constitutional Petition NO.03/05

¹³⁵ Section 32 of the NEA, 1995

substance or any other thing which he or she believes has been used in the commission of an offence against this Act or the regulations made there under; close any manufacturing plant or other activity which pollutes or is likely to pollute the environment contrary to this Act for a period of not more than three weeks; issue an improvement notice requiring the operator of any manufacturing plant or other activity to cease any activities deleterious to the environment which are contrary to this Act; and cause a police officer to arrest any person whom he or she believes has committed an offence under this Act.

3.3.7 Environmental monitoring

The authority shall, in consultation with a lead agency, monitor all environmental phenomena with a view to making an assessment of any possible changes in the environment and their possible impacts; the operation of any industry, project or activity with a view to determining its immediate and long-term effects on the environment.

An environmental inspector appointed under section 79 may enter upon any land or premises for the purpose of monitoring the effects upon the environment of any activities carried out on that land or premises.

3.4 EFFICIENCY OF THE LEGAL FRAMEWORK ON CONTROLLING POLLUTION IN UGANDA

Efficiency basically means the results¹³⁶. Examining the effectiveness of the law from the date of its enactment hence the question is whether it has met the purpose of the law or it is failing to do so. The following are the achievements of the legal framework in controlling of pollution Creation of NEMA. The creation of the National Environmental Management Authority as the corporate body to monitor all issues involving the environment has gravely helped to control pollution especially through the provisions of the national environmental act under Section 57

¹³⁶ Websters Universal English Dictionary 2006 Geddes and Grosset

which prohibits pollution and the a foregoing sections which are for granting of pollution permits¹³⁷.

According to records in the national environment management authority (NEMA), 104 EIA reports in the oil sector have been submitted and they have all been approved. Out of these only 14 EIA reports are available in the NEMA library because the rest of the reports are sent to oil exploration districts so that they can be accessed by the public¹³⁸

From July 2002, the cumulative total of 431 EIA's have been reviewed out of which 135 have been approved. A GLS laboratory equipped with digitizers, scanners, plotters and computers has been established to aid production of spartial and non-spatial information. Data base for EIAs was developed and is in use. It is to be improved and integrated fully with spartial data¹³⁹.

*In the matter of scheer property limited registered proprietor and private developer of leasehold VS NEMA*¹⁴⁰. Justice Paul Mugamba held *inter alia* that as a principle agency for environment management in Uganda in ensuring sustainable development, NEMA has continued to ensure that environmental safe guards are incorporated to all development policies, programmes and projects. In pursuit of this development objective, NEMA received the environmental impact assessment report for the proposed ICT scanning and achieving office premises and did not approve the project.

The high profile environmental matters enjoyed in the country are a result of a successful Public awareness strategy within NEMA. To date, formal and non-formal environmental Education strategies have been drawn up and the former integrated in Primary and Post primary Levels of education; the mass media has been widely used to disseminate messages of good environmental practice; a Newsletter is produced quarterly and widely distributed; and public debates on matters of environmental concern are common in the country¹⁴¹.

¹³⁷ In contrary the National Environment Management Policy 1994 guiding principle provides that pollution control should be coordinated by a single agency but NEMA's hands are tied due to lack of recourses because the lead agencies always do not fund environmental ventures.

¹³⁸ *Ibid* no 25 at p 199

¹³⁹ 2003 annual NEMA report

¹⁴⁰ MISCELLANEOUS CAUSE No. 232 OF 2008

¹⁴¹ *Ibid* NO 30

Perhaps the most ambitious step taken to increase participation in environmental management has been the decentralization of responsibility to district and sub-district levels (in the form of district and local environment committees (DECs and LECs)). The design of these local level institutional structures within the NEAP reflect fundamental reforms in the governance and administrative structures in Uganda, and the desire to have more participation in decision making on matters of environmental concern at the community level. Though there remain areas requiring further clarification and harmonization, especially regarding the NEAP's local implementation arrangements and NEMA's role in achieving this, the achievements to date must be lauded¹⁴².

In seeking to give "ownership" of the environment and related decisions to local governments and communities, NEMA has developed a corp of allies. NEMA's broad mandate and limited resources would not have enabled its presence at all the levels necessary to ensure effectiveness. These "lead agencies," therefore, act as the authority's monitoring network, in addition to representing their own inherent interests in maintaining the integrity of their environment¹⁴³.

Air quality standards are dealt with under section 24 of NEA and NEMA in consultation with the lead agency is required to establish criteria and procedures for the measurement of air quality; establish ambient air quality standards; occupational air quality standards; emission standards for various sources; criteria and guidelines for air pollution control for both mobile and stationary sources; and any other air quality standard prescribed. NEMA is also required to take measures to reduce existing sources of air pollution by requiring the redesign of plants, installation of new technology or both to meet the requirements of standards established under the section; and make guidelines to minimize emissions of greenhouse gases and identify suitable technologies to minimize air pollution¹⁴⁴. In *Byabazaire v Mukwano industries*¹⁴⁵. Court stated that the National environment management authority had to establish air quality standards before the totality of the right to a healthy environment could be gauged.

¹⁴² Section 80 of the National Environment Act, 1995

¹⁴³ *ibid*

¹⁴⁴ *Ibid*

¹⁴⁵ Misc Application No. 909 of 2000

CHAPTER FOUR

CHALLENGES AFFECTING THE ENVIRONMENTAL PROTECTION LAWS AND INSTITUTIONS

4.1 INTRODUCTION

This gives the detailed examination of the challenges affecting the environmental protection legislations and institutions in Uganda. The environmental protection is much affected by various institutes that hinder the performance of the laws in Uganda. This involves the residents, government bodies, the leaders in high capacity.

4.2 CHALLENGES FACING LEGISLATIONS IN ENVIRONMENTAL PROTECTION

The following are the challenges of legislation on environmental protection;-

4.2.1 Insufficient Capacity of Law Enforcement Agencies

There is less enforcement and insufficient capacity of law enforcers, both in terms of environmental law management, expertise, equipment and facilitation thereby underscoring the importance of continuous training and capacity building; inconsistent political positions and statements on the environment, especially during election undermine the integrity of the environment.

4.2.2 Inadequate or Non-existent of Laws in Certain Areas

Solid waste or garbage which includes paper, plastic, glass, metal cans, food scraps, and yard trimmings, the greater proportion being degradable¹⁴⁶ and is one of the most visible forms of Soil pollution. Both open dumps and landfills may contain toxins that seep into the soil, ground water or flow into streams and lakes. The uncontrolled burning of solid waste creates smoke and other air pollution. Even burning waste in incinerators can release toxic chemicals, ash, and harmful metals into the air.

¹⁴⁶ Gombya S W and Mukunya .F.; “*Solid Waste Management in Kawempe Division: Issues, Challenges and Emerging Options.*”, (2000)

Environmental standards and laws on pollution management are still inadequate and/or non-existent in some areas. No adequate waste disposal facilities in place¹⁴⁷ despite the enactment of the National Environment (waste management) Regulations¹⁴⁸ Whereas for example, wetlands are held in trust by Central Government or local Government for the common good of the people of Uganda, recent examples of wetland abuse have included cases where Local Authorities have been the very violators of these constitutional and legal provisions. Where this has happened, local authorities have indicated that they converted wetlands for the sake of providing their communities with economic growth opportunities and for fighting poverty. It is therefore a dilemma that the very Institutions entrusted with the protection of wetlands have in some cases not assisted the crusade for their conservation.

It is a constitutional and legal requirement that areas such as wetlands, riverbanks, lakeshores are held in trust by Government and Local Government for the common good of all the citizens of Uganda, there are coincidences where the very institutions that are charged with this responsibility are the very ones who alienate these wetlands and even issued land titles.¹⁴⁹

There is the problem of enforcement of the legal requirements for protection of the environment and public health. whereas enforcement of environment regulations is expected to be done through a hierarchy of enforcement levels from national (NEMA), Districts down to community levels, the enforcement capacity available at all these levels appears not to be able to match the widespread nature of the problem of pollution. The responsibility for environment management has been also¹⁵⁰ vested under the local authorities, but cases where local authority intervention on environmental management are involved are minimal, implying that even where local authority intervention would have been enough to stop abuses; such cases still continue to be referred to NEMA.¹⁵¹

¹⁴⁷ *Ibid*

¹⁴⁸ National Environment (waste management) Regulations of the Laws of Uganda 2000

¹⁴⁹ George L M “*Challenges in Monitoring and Enforcement of Environmental Laws in Uganda*”, Natural Resources Management Specialist – 2006, NEMA. P 10

¹⁵⁰ George L M “*Challenges in Monitoring and Enforcement of Environmental Laws in Uganda*”, Natural Resources Management Specialist - NEMA P11

¹⁵¹ George L M, “*Challenges in Monitoring and Enforcement of Environmental Laws in Uganda*”, Natural Resources Management Specialist – 2006, NEMA. P 10

In 2003, in *GREENWATCH V. AG*¹⁵² court delivered a judgment banning the use of polyethene bags but the society still use this today which shows the laxity in enforcing environmental laws against pollution.

The “anonymous”, “holiday” and “awkward hour” dumping syndrome and noise pollution without an effective grassroots enforcement mechanism,¹⁵³ it has been extremely difficult to control indiscriminate dumping of materials in wetlands along the roads and other remote areas by anonymous individuals such as truck drivers, who probably view wetlands as “good” open space to dump in rather than drive long distances to designated dumping sites.¹⁵⁴ Time and again, people living in and around wetland areas where marrum and waste dumping has taken place have indicated that the dumping is done by unknown truck drivers at awkward hours. It remains an uphill task to prosecute these cases, and the affected wetlands can hardly recover their original state even if the culprits are required to restore them¹⁵⁵.

4.2.3 Violations of Environmental Laws

Usually, violations of environmental laws are handled in a civil manner, with the imposition of fines and civil damages to injured parties. But an emerging trend is spreading through the field of environmental law in favor of the enactment of state laws criminalizing environmentally destructive behavior. This has led to imprisonment of those who violate the laws for protection of environments (such as building a home on protected wetlands) and business executives who allow their companies to pollute.

Environmental laws also have relevance to product design in the form of emissions control, environmentally friendly materials, and energy-efficient electronic devices. They have relation to tax laws in the form of incentives for activities intended to benefit the environment, like fuel efficient vehicles and the installation of solar panels. They affect housing codes in the form of requirements for insulation, heat transfer through windows, and non-polluting construction

¹⁵² Misc. Cause No.140/2002.

¹⁵³ Even though there are various regulations for the purpose to promote proper disposal of wastes(National Environment waste Management regulation)

¹⁵⁴ George L. M., “Challenges in Monitoring and Enforcement of Environmental Laws in Uganda”, Natural Resources Management Specialist – 2006, NEMA. P 11

¹⁵⁵ George L. M., “Challenges in Monitoring and Enforcement of Environmental Laws in Uganda”, Natural Resources Management Specialist – 2006, NEMA. P 11

materials. In other words, environmental laws are all around us and affect nearly every aspect of our daily lives in one way or another.

4.3 CHALLENGES FACING INSTITUTIONS IN THE ENVIRONMENTAL PROTECTION

The following are the challenges of institution on the environmental protection;-

4.3.1 Poverty and Wetland Resources use Relationship.

The increasing cases of activities being implemented in wetlands in the name of fighting against poverty whereby some of these activities are out-rightly not compatible with wetland conservation, their promoters have vigorously defended them as intended to assist in the fight against poverty.¹⁵⁶

Activities such as brick making in wetlands which are done for economic gains have tended to give no regard at all to conservation nor restoration of the affected wetlands so as to control pollution¹⁵⁷ corruption. NEMA which is mandated to evict people who are polluting wetlands have ended up favoring the rich and evicting the poor due to illegal considerations advanced to protect the interests of the rich, for example Ntinda industrial area where Britania and pharmaceutical industries have been constructed on wetland areas.¹⁵⁸

4.3.2 Issuance of Land Title in Wetland Areas by the Central and Local Governments

It is a constitutional and legal requirement that areas such are wetlands, riverbanks, lakeshores are held in trust by Government and Local Government for the common good of all the citizens of Uganda, there are incidences where the very institutions that are charged with this responsibility are the very ones who alienate these wetlands and even issued land titles.¹⁵⁹

¹⁵⁶ George L M “*Challenges in Monitoring and Enforcement of Environmental Laws in Uganda*”, Natural Resources Management Specialist – 2006, NEMA. P 12

¹⁵⁷ George L M , “*Challenges in Monitoring and Enforcement of Environmental Laws in Uganda*” Natural Resources Management Specialist - NEMA 13

¹⁵⁸ The Researcher “*Finding on the Kampala Areas with poverty lines*”. Kampala 2019.

¹⁵⁹ George L M “*Challenges in Monitoring and Enforcement of Environmental Laws in Uganda*”, Natural Resources Management Specialist – 2006, NEMA. P 10

There is the problem of enforcement of the legal requirements for protection of the environment and public health. Whereas it is now largely accepted that environment is important worth protecting, and whereas enforcement of environment regulations, is expected to be done through a hierarchy of enforcement levels from national (NEMA), Districts down to community levels, the enforcement capacity available at all these levels appears not to be able to match the widespread nature of the problem of environment degradation. In addition, while the responsibility for environment management has been vested under the local authorities, cases of local authority intervention on environmental management are still few, implying that even where local authority intervention would have been enough to stop abuses, such cases still continue to be referred to NEMA. It should be stressed that this state of affairs for a dispersed resource such as wetlands requires enforcement and intervention mechanisms that is closer as possible to the community level if tangible results are to be achieved.

4.3.3 The Formulation of the Right to a Clean and Healthy Environment

This may pose a challenge in environmental protection. The right to a clean and healthy environment as captured in the Constitution is anthropocentric. It is human-centered. The entitlement is individualistic with no corresponding duties on the right-holders to conserve and protect the environment for its intrinsic worth. It is provided that every person has the right to a clean and healthy environment including the right to have the environment protected for the benefit of present and future generations and to have obligations relating to the environment fulfilled.¹⁶⁰ The right puts human beings at the fore front.

In conclusion sustainable development efforts may not bear much if the country does not move beyond laws. There is need for educating the public on the subject, with emphasis on preventive and conservation measures. The same should include change of attitude by the general public. Through encouraging use of traditional knowledge in conservation and production to active and meaningful participation in decision-making, the citizenry can hopefully appreciate the fact that the creation of a clean and healthy environment is not a State's responsibility only but there is a requirement of cooperation between the State actors and the individuals.

¹⁶⁰ Article 42 of the Constitution of Uganda as amended 1995.

It is to be recalled that Article 39¹⁶¹ of the Constitution provides that every Ugandan has a right to a clean and healthy environment and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources. There is need to empower communities so as to actualise these constitutional provisions.

4.3.4 Need to Harmonise Urban Planning and Land-use in General with Modern Wetland Conservation Goals.

Until now, NEMA continues to receive development proposal on wetland areas that have been demarcated as plots by planning authorities. This apparently continues to send wrong signals to other wetland users who seem to perceive a sense of no action being taken in especially urban areas where wetland encroachment continues. In Kampala District, most of the wetlands which served as flood relief areas were allocated for industrial and residential developments and this trend has not been halted completely yet. Worth mentioning is the difficulty of enforcing planning requirements in peri-urban flood prone areas where the urban poor communities have massively and indiscriminately encroached into the wetlands, such as is the case in Bwaise and Bukoto areas.

4.3.5 Challenges to Environmental Planning

Environmental planning as a tool of environmental management is intended to ensure that development activities and exploitation of natural resources for different purposes are harmonized with the need to conserve the environment. The publication of national state of environment reports assist in providing the much needed information for planning purposes, resource allocation, national and institutional budgetary processes. However, challenges to environmental planning both at national and district level do exist and these include: population size, growth rate, structure and distribution that negatively impacts on fragile ecosystems like wetlands, rivers banks, lakeshore, hilly and mountainous areas; high dependence on fuel-wood for cooking, leading to increase in deforestation and land degradation; soil erosion and land degradation due to poor farming methods;¹⁶² and inadequate funding for the environment sector

¹⁶¹ Article 39 of the Uganda Constitution 1995.

¹⁶² Uganda Human Development Country Report – 2005 Reports that the Annual Economic Value of Soil Nutrient Loss is Estimated at United States Dollars 625 Million. This Leads to Loss of Soil Fertility and decline in

which is still heavily dependent on the ever decreasing support from development partners/donors, thereby calling for mechanisms to make the sector self sustaining.

Environmental monitoring and impact assessment (hereafter referred to as EIA) processes, provided for under the framework law, have been useful tools in regulating activities which have or are likely to have deleterious impacts on the environment and an EIA database has been created to track this activities. The success of the EIA process is such that the number of EIAs has grown from 10 in 1996 to about 1,500 in March 2007.

CHAPTER FIVE

FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.1 FINDINGS OF THE STUDY

This chapter present the findings, conclusions and recommendations of the study about the challenges affecting the environmental protection in Uganda.

5.1.1 The National Environment Regulations

Licensing of Pollution: the National Environment (Waste Management) Regulations, S.I No.153-2, requires that a person intending to transport or store waste: own or operate a waste treatment plant: export or import waste should apply for a license from the Authority. A total of 101 applications for licenses were received for consideration in FY 2017/2018. Figure 3 below shows that, in FY 2017/18 there were more applicants for treating and disposal of waste compared to FY 2016/17 likewise the transportation licences to handle municipal solid waste.

Noise Pollution Control: the Authority is required to regulate noise pollution in line with the National Environment (Noise Standards and Control) Regulations, 2006. A total of 53 noise related complaints were received by the Authority as seen in Table 7 below, twenty-five (25) of which were registered with the Environmental Protection Force (EPF). The complaints were mainly related to noise from places of worship and bars as has previously been the case. Most of the offenders were served with warning notices and regular impromptu follow up monitoring visits to check on compliance. A total of Six (06) facilities had their music equipment's confiscated for violating the Regulation, while fifty three (53) offenders of noise related cases were presented for litigation for failure to comply with the requirements.

5.1.2 Occupational Health and Safety

Compliance to occupational health and safety standards increased by 8.7% from an average compliance rate of 48.6% to 57.3%. The increase is attributed to use of PPE (38.5%), company commitment (15.7%) and willingness to comply to standards (7.2%) to mention but a few.

5.1.3 Environmental Impact Assessment Department, 2018

During the FY2017/2018, a total of 1,518 compliance and audit verification inspections were undertaken by NEMA, against the planned target of 1,400 representing an achievement of 108%. Inspections were undertaken at various facilities and activities across the country, including players in the manufacturing and processing industry; waste management and health care; infrastructure like roads and transport projects; mining and quarrying activities that impact on the green environment. Compliance inspections were also carried out at major hydropower projects; Isimba, Nalubale and Bujagali Hydro-Power Projects. Inspections were informed by the risk categorization of the facilities, the project location, and the compliance history of the facilities, as well as the environmental audit reports submitted for review.

5.1.4 Results from National Environmental Management Authority

NEMA has always strived to meet the targets through initiatives such as the establishment of sectoral clusters as part of the internal reforms in the Authority, review of inspection and audit protocols (checklists and tools), multi-sectoral and high-level inspections. The Laboratory at NEMA has been equipped with air, water and noise monitoring equipment. This equipment has been utilized in drawing conclusive reports during several inspection and monitoring activities including the inspection of River Musamya; where it was established that the water quality of the river had not been significantly impacted by the activities of SCOU; contrary to what had been reported in sections of the media.

5.2 CONCLUSION

The study was about appraisal of the effectiveness of legal and institutional frameworks on environmental protection in Uganda. As shown above, the basis for environmental regulation in Uganda is well established. What needs to be done is to garner support for more funding to the environment sector to facilitate environment management activities including law enforcement and public awareness, information and training programmes.

Additional drivers will be required to gradually build the capacity within government to transform from a relatively secretive top-down institution to a more open service orientated one.

This may entail the inclusion of additional indicators (on, for example, access to and dissemination of information) in reports measuring government performance and the endorsement of aspirational international standards such as those embodied in the Aarhus Convention which is now open to global participation.

5.3 RECOMMENDATIONS

There is need to create and strengthen partnerships at community, local, national, regional and international levels, step up efforts in ensuring compliance with environmental law; continue effective restoration of degraded ecosystems; and provide effective checks and balances to harmonise development objectives, poverty alleviation and conservation interests for well informed trade-offs. Other recommendations are as follows:

5.3.1 Access to Government Information

The legal regime on access to information could be improved through a revision of the 2005 Access to Information Act clarifying provision, extending its scope of application and regularly publicising information that has been disclosed pursuant to a request.¹⁶³ Alternatively or in addition the right to access information under the National Environment Act or the Forest and Tree Planting Act might be further strengthened and elaborated through subsidiary legislation that goes beyond the general law. In the United Kingdom, for example, there is a distinct set of rules to access environmental information – the Environmental Information Regulations (which do not differ substantially from the general freedom of information law).

Equally the existing legal gaps in the oil and petroleum legislation should be closed. New provisions will provide an opportunity to not only put in place equitable arrangements for the sharing of benefits but also to involve stakeholders meaningfully. In this respect the new oil and gas policy may not go far enough. It remains particularly vague on the anticipated involvement of local communities and civil society as to future benefit sharing structures and related decision

¹⁶³ See above FN 87 with Reference to the Various Recommendations Contained in the Analysis of the Uganda Draft Bill(s) by the Common Wealth Human Rights Initiative and Article 19

making processes. In large parts the criticism and proposals formulated by ACODE in relations to the draft of the policy remain valid.¹⁶⁴

In absence of a stronger general law, new legal provisions should require civil servants in general to act openly and be responsive. Exceptions to disclosure of information should be narrow and carefully drafted. In addition, the increased utilisation of the existing law and subsequent applications for judicial review could help to clarify provisions and gradually strengthen their value.

However, a focus on law reform may neglect the fundamental challenges encountered by the Ugandan society at large. If there is a lack of knowledge, capacity and structures to demand and enforce rights, any freedom of information legislation is in danger of being perceived as just another alien Western concept promoted by donors and inadequate for developing countries.¹⁶⁵ No matter how good the legal framework eventually may be, it is only one step in promoting open governance. The experience in Uganda and elsewhere indicates that passing a law without addressing larger questions of secrecy achieves very little.¹⁶⁶

In practice openness depends on daily decisions by civil servants and their commitment to apply the law in the manner intended. A wide range of measures can be suggested to address the culture of secrecy: this includes training that addresses not only formal questions of implementation, but also the rationale behind the legislation as well as the benefits it will bring to society and civil servants themselves (who in the future may be able to rely on two way communication). On the other hand public education campaigns should be undertaken to ensure that the public are aware of their right to access information. Schools and universities also provide good fora to promote civic understanding about the right to access information.

In order to strengthen the existing legal framework on access to environmental information and make it more relevant in practise, it appears necessary to extend the reach of the existing

¹⁶⁴ Arthur B, Hope K and Benson T, Escaping the Oil Curse and Making Poverty History, ACODE Policy Research Series, No 20, 2006 available at www.acode-u.org/pubs.htm

¹⁶⁵ George W K, Commentaries on Law, Politics and Governance, Oh Uganda! Series Book 1, Kampala, 2006

¹⁶⁶ Toby Mendel, Parliament and Access to Information: Working for Transparent Governance, Conclusions of a Common wealth Parliamentary Association – World Bank Institute Study Group on Access to Information, held in partnership with the Parliament of Ghana, 5-9 July 2004, World Bank Institute, Washington, 2005 with examples from Common wealth Countries

provisions. The current situation could be characterised by uncertainty and a degree of confusion about their implementation. But this also provides an opportunity for government as a whole (possibly through a Presidential decree) or individual ministries to initiate subsidiary legislation under, for example, the National Environment Act,¹⁶⁷ the National Forestry and Tree Planting Act¹⁶⁸ or the Access to Information Act.¹⁶⁹

Such regulations could help to challenge the culture of secrecy by encouraging a narrow interpretation of the exceptions to information disclosure, clarifying provisions and emphasising the obligations of civil servants vis-à-vis citizens. They should stress the protection of civil servants that disclose information and the requirement to take decisions in the public interest. In this connection Ugandan NGOs have called for the promulgation of “whistle blower” legislation. However, building on the willingness of many “technical officers” to collaborate, strongly worded internal rules which can be invoked as a “protective shield” against undue influences may already make a significant impact. It is therefore recommended to focus on the development of subsidiary legislation that enshrines openness as a core value and strengthens the independence of civil servants.

5.3.2 Generating and Disseminating Information

Addressing the culture of secrecy successfully will also build trust amongst better informed citizens to participate in decision-making processes. Thus the public will better understand their role, which in turn could reduce friction, misunderstandings and unwarranted criticism. As a result, officials will have better and more comprehensive information upon which to base their work. Increasing the information subject to routine disclosure does further undermine a culture of secrecy.

Public bodies should therefore publish information beyond current legal requirements on the internet. This includes information related to their functions, the type and form of records held, relevant laws and policy documents, audited accounts, services to the public, achievements and so on. In a country like Uganda where even senior civil servants often find it difficult to obtain

¹⁶⁷ Section 108 National Environment Act 1995

¹⁶⁸ Section 92 National Forestry and Tree Planting Act 2003

¹⁶⁹ Section 47 Access to Information Act

official documents and hold on to their hard copies with a vengeance, it would be unrealistic to expect the general availability of reports, studies, EIAs, gazettes or laws in print. But as a result of advances in information technology it should be possible to maintain basic websites for all public institutions, which provide meaningful information in electronic format and are regularly updated.

Although NGOs, local officials, lawyers and others working with communities increasingly rely on the internet to fulfil important gatekeeper functions, at present the internet only reaches a very limited audience. Hence, the dissemination of information by other means such as radio broadcasting or theatre performances, at local gatherings and in different languages seems even more important. There is still a need to write popular versions of national forestry plans and translate them into local languages.

But there are examples of good practice, particularly in the forestry sector, that should be replicated in other areas. One example of a technique not mentioned by those consulted for this study that could also enhance information penetration is the use of (solar) mobile cinema units.

In particular, NGOs expressed the view that because information could only be found in different outlets and locations there was a need for one stop environmental information centres. A similar need analysis has led Tullow Oil to contemplate whether they should set up information centres in their operation areas.

Enhancement of the communication and processing of environmental information could be achieved through the gradual development of the environmental impact assessments procedures. This should include the introduction of further sector specific EIA guidelines and uniform assessment methodologies. Such methodologies clearly indicate high and low impacts of a project and prioritise the significance of environmental aspects. This makes it easier for project participants to measure the overall environmental performance of a proposal. The EIA regulations should be supplemented by the requirement to inform the public adequately about the approval of a project and how its impacts will be addressed. New legislation should contain corresponding provisions, and be supported by additional guidelines and tool kits for the dissemination of information to civil society and specific communities.

5.3.3 Government Capacity

In general, Ugandan government institutions dealing with the environment and natural resources are understaffed and under-funded. Although relatively well equipped in comparison to other departments, NEMA nevertheless lacks the manpower to effectively monitor and enforce compliance. The Directorate of Environment Affairs established in 2007 (within the Ministry of Water and Environment) does not yet have the necessary technical staff and equipment to operate properly. Building the capacity to communicate environmental information may therefore not immediately seem to be a compelling need.

In order to improve the ability of public authorities to provide access to information, training provision could focus on additional technical and scientific skills, the promotion of the Access to Information Act, a culture of openness and service delivery, as well as the ability to engage successfully with a variety of stakeholders. In this connection workshops and visiting external experts will have a role to play. But in order to achieve long term sustainable change it would also be necessary to further develop academic education and general training programmes, and facilitate knowledge exchange and learning between government institutions and from foreign jurisdictions through mentoring or work placement schemes.

There are also areas where reorganisation, institutional reform and performance incentives could help to optimise the use of resources, free up capacity and potentially improve access to information. The mandate of the recently created Directorate of Environment overlaps to some extent with responsibilities assigned to NEMA (e.g. to develop policies and monitor resources for environmental management) under the National Environment Act. A clear allocation of the different roles required for effective and sustainable natural resource management (e.g. provision of authoritative environmental information, policy development or enforcement) may ease existing strains on NEMA and contribute to the better utilisation of limited resources.

5.3.4 Maintain Political Support for use of Environmental Monitoring and Impact Assessment (EIA)

There is need to maintain political support for use of EIAs at both central and local level and measures to improve public consultation. On the other hand, the challenge remains that of ensuring effecting monitoring and achieving compliance with environmental standards. In some of the recently approved projects such as the use of DDT for indoor residual spraying for malaria control and approval of environmental aspects for Bujagali hydro power development,¹⁹ it has been sought to circumvent this challenge by creating joint monitoring teams. It is yet to be seen how well these teams will operate, given their multi-sectoral nature and the limited resources at their disposal.

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