

The Challenges in Monitoring and Enforcement of Environmental Laws in Uganda

**By: George Lubega Matovu
Natural Resources Management Specialist (Aquatic Biodiversity)
NEMA**

A Paper Presented at a Training Workshop to strengthen and enhance the Capacity of Police Investigators and state prosecutors to enforce environmental laws.

March 2006

1. INTRODUCTION

Uganda has high natural resource potential on which more than 90% of the country's population depends directly for their livelihood. Likewise, the country's development process and opportunities mainly depend on the natural resource base. With a GDP growth rate of about 6% and a population growth rate of 62.7% (World Bank – World Development Indicators Database April 2002), natural resource exploitation will continue to form the basis for livelihoods of the majority in the foreseeable future. However, the resources are facing tremendous pressures from the rapidly expanding population, economic activities and in some cases outright abuse by users.

Uganda has continued to experience environmental degradation manifested by different forms of problems some of which are directly linked to the health and well being of wetlands and water resources. The major forms of land degradation with direct bearing on the state of the wetland and water resources include encroachment into wetland areas, land and vegetation degradation with associated loss of biodiversity, land and water pollution, and poor land management, among others.

The Government of Uganda accord high priority in the protection of natural resources. This is reflected in the Constitution, the Land Act, the Local Government

Act, the Water Act and the National Environment Acts and the Regulations there under.

The National Environment Management Authority (NEMA) was established under the National Environment Statute, 1995, now an Act, as the principal agency responsible for monitoring, supervising and coordinating all activities in the field of environmental management in Uganda. In order to improve the capacity of Government in ensuring sustainable use of natural resources, Government through NEMA put in place a number of Environmental Regulations. The Implementation of the Regulations including monitoring and enforcement, is the responsibility of the District Authorities and relevant Lead Agencies while NEMA's role is to provide oversight on enforcement of the Regulations. It should also be emphasized that local communities and resource users have a key role to play in the protection and sustainable use of natural resources.

2. PRINCIPALS OF ENVIRONMENTAL ENFORCEMENT

The Government of Uganda has taken stringent actions to protect public health from environmental pollution & protect the quality of the natural environment. Among the interventions has been the development of management strategies to prevent or control pollution. Most of these strategies also involve legal requirements that must be met by individuals and facilities.

These requirements are an essential foundation for environmental and public health protection **but they are only the first step.** The **second step is compliance** – getting the groups that are regulated to fully implement the regulations. Compliance doesn't happen automatically – achieving it usually involves efforts to encourage & compel behaviour change that is **enforcement.**

One of the primary goals of environmental enforcement program is to change human behaviour so that environmental requirements are complied with. Achieving this goal

involves motivating the regulated community to comply, removing barriers that prevent compliance, and overcoming existing factors that encourage non-compliance

Two broad approaches are used to change human behaviour:

- Promoting compliance thru education & incentives
- Identifying and taking action to bring violators into compliance

What is Compliance?

Compliance is the full implementation of environmental requirements. It occurs when requirements and desired changes are achieved e.g. processes or raw materials are changed so that for example hazardous waste is disposed of at approved sites

What is Enforcement?

Is a set of actions that governments or others take to achieve compliance within the regulated community and to correct and halt situations that endanger the environment or public health.

Enforcement by NEMA usually includes:

- (i) **Inspections** to determine compliance status of regulated community and to detect violations
- (ii) **Negotiations** with individuals or facility managers who are out of compliance to develop mutually agreed schedules and approaches for achieving compliance – ***compliance agreement***
- (iii) **Legal action** where necessary to compel compliance and impose some consequence for violating the law or posing a threat to human health or environmental quality
- (iv) Enforcement may also include compliance promotion e.g. via
 - ***Educational programmes***
 - ***Technical assistance and subsidies***

3. IMPORTANCE OF COMPLIANCE & ENFORCEMENT

- (i) **To protect environmental quality & public health** - this only becomes a reality only if environmental requirements get results
- (ii) **To build & strengthen the credibility of environmental requirements (including laws and institutions)** – to get results, environmental requirements and the govt agencies that implement them must be taken seriously. Enforcement is therefore essential to build credibility meaning society perceives its environmental requirements 7 the institutions that implement them as strong & effective
- (iii) **To ensure fairness** – without enforcement, facilities that violate environmental requirements will benefit compared to facilities that voluntarily choose to comply
- (iv) **To reduce costs & liability** – an overall healthier environment created by compliance reduces public health and medical costs as well as long term cost to society of cleaning up the environment

4. COMPONENTS OF A GOOD ENFORCEMENT PROGRAMME

- (a) Creating requirements that are enforceable
- (b) Knowing who is subject to the requirements and setting programme priorities
- (c) Promoting compliance in the regulated community
- (d) Monitoring compliance
- (e) Responding to violations
- (f) Clarifying roles and responsibilities
- (g) Evaluating the success of the program and holding program personnel accountable for success

5. STRATEGIES FOR COMPLIANCE/ENFORCEMENT

(i) Developing Laws and Regulations that can be enforced

- Interpreting broad environmental laws with specific regulations
- EIA Regulations; Wetlands, Riverbanks and Lakeshores Mgt; Hilly and Mountainous areas Mgt; etc
- Providing feed back to legislatures to revise laws that are unenforceable

(ii) Identifying the Regulated Community

- Clearly understand who is required to meet what requirements
- Set priorities based on degree of environmental consequences
- Likely require inventory & information management system to keep track

(iii) Promoting Compliance

- Disseminating information about environmental requirements
- Providing cleaner production information, education and technical assistance to regulated community
- Building public awareness and support
- Publicising success stories
- Providing economic incentives & facilitating access to financial resources

(iv) Permitting & Licensing Facilities

- A permitting system enables environmental requirements to be tailored to the circumstances of specific facilities
- Requires the development of permit application procedures, processing of applications, issuing in coordination with other lead agencies

(v) Monitoring Compliance

- Inspections by NEMA & LA's/Gazetted inspectors
- Self monitoring, record-keeping and reporting to NEMA/Lead Agency
- Community monitoring and citizen complaints
- Sampling of environmental conditions (air, water, soil) in vicinity of facility

(v) Timely Responding to Violations

- Every compliance & enforcement programme must develop a hierarchy of enforcement responses consistent with its social-economic & cultural situation
- May involve taking administrative, civil, criminal actions meant to achieve:
 - ✚ Return violators to compliance
 - ✚ Impose sanction
 - ✚ Remove the economic benefit of non-compliance
 - ✚ Correct environmental damages
 - ✚ Correct internal facility management problems
- Various types of enforcement responses: issuing administrative & legal notices; closing down facility or particular operation; revoking a permit; seeking compensation; fining; prison

(vi) Gazettement and equipping of Environmental inspectors

- Section 80 of the NES 1995
- 178 Inspectors currently Gazetted for two years
- Some Inspectors are now equipped with portable equipments that are able to detect changes in environment

(vii) Using the existing structures in the enforcement and technical assistance

- Local Governments
- Government Departments (DWD, WID, etc)
- Police

viii) Development of Technical tools for the implementation of the laws and regulations

- Manuals
- Guidelines

6. ENFORCEMENT MECHANISM AND IMPLEMENTATION TOOLS

Category A - The Precautionary Principle Implementation Tools

- Environmental Planning
- Environmental Monitoring and Impact Assessment
- Environmental Audit
- Environment Standard Setting and Licensing
- Public Awareness and Participation
- Environmental Easements
- The Use of Economic and Social Incentives

(i) Environmental Planning

NEMA is enjoined to prepare a National Environment Action Plan to be reviewed after every five years or less (S. 17(1)). The plan shall cover all matters affecting the environment in Uganda (S.18 (2) (a)). Environmental planning ensures that development activities are harmonized with the need to protect the environment in accordance with established standards.

(ii) Environmental Monitoring and Impact Assessment

Under the Environmental Impact Assessment Guidelines two systems of monitoring are specified as:- Self monitoring whereby the developers themselves are encouraged to monitor the impact of their activities and; enforcement monitoring done by government agencies such as NEMA through environmental inspectors (S. 23(2))

(iii) Environmental Audit

Audits occur after the project has commenced and may lead to prosecution of offenders. Audits may also lead to the redesign of a project or the remodeling of its operations. NEMA carries out continuous audits (S. 22) with the help of inspectors, to ensure that industries comply with the requirements of the Environment Act. The

problem, however, is that many industries were set up before the Act was enacted and environmental standards were not a key feature then.

(iv) Environment Standard Setting and Licensing

Some activities require specific permits. In order to control the environmental effects of these substances the law requires their classification and labeling. Standard setting ensures that licences and permits are issued as a measure to control activities that may have deleterious or beneficial effects on the environment. This requires that the licensing authorities should be environmentally conscious to avoid emphasizing the revenue collection aspect at the expense of environmental concerns.

(v) Environment Standards and Regulations

- The Environmental Impact Assessment Regulations No. 13 of 1998.
- The National Environment (Standards for Discharge of Effluent into Water or on Land) Regulations No. 5 of 1999.
- The National Environment (Waste Management) Regulations No. 52 of 1999.
- The National Environment (Hilly and Mountainous Areas Management) Regulations No. 2 of 2000.
- The National Environment (Wetlands, River Banks and Lake Shore Management) Regulations No. 3 of 2000.
- The National Environment (Minimum Standards for Management of Soil Quality) Regulations No. 59 of 2001.
- The National Environment (Management of Ozone Depleting Substances and Products) Regulations No. 63 of 2001.
- The National Environment (Control of Smoking in Public Places) Regulations No. 12 of 2004.
- The National Environment (Access to Genetic Resources and Benefit Sharing) Regulations No. 30 of 2005.

(vii) Public Awareness and Participation

The need for popular awareness is a key requirement for enforcement of legislation. NEMA is given the mandate to carry out education and awareness campaigns to ensure that the public participates in environmental decision making and enforcement.

(viii) The Use of Easements and Incentives

An environmental easement may be enforced by any body who finds it necessary to protect a segment of the environment although he may not own property in the proximity to the property subject to the easement. The Act clearly provides that management measures should be carried out in conjunction with the application of social and economic incentives including taxation measures.

Category B - The Polluter Pays Principle Implementation Tools

- Performance Bonds
- Environment Restoration Orders
- Record Keeping and Inspections
- The Use of Criminal Law
- Community Service Orders

(a) Performance Bonds

Industrial plants that produce highly dangerous or toxic substances & therefore have significant adverse impacts on the environment may be required to deposit bonds as security for good environmental practice.

(b) Environmental Improvement Notice

Improvement Notices may be issued by environmental inspectors under section 80(1)(i) of Cap. 153 to require a person to cease activities deleterious to the environment.

(c) Environmental Restoration Orders

Restoration Orders are issued under section 67 of Cap. 153 requiring a person to restore the environment, or to prevent a person from harming the environment. They may award compensation for harm done to the environment or/and levy a charge for restoration undertaken. Restoration Orders are issued by NEMA or a court giving the person a minimum of 21 days to restore what he has destroyed.

Under Section 70(i) of the National Environment Act Cap 153, “where a person on whom an Environmental Restoration Order has been served fails, neglects or refuses to take action required by the Order, the Authority (NEMA) may with all the necessary workers and other officers, enter or authorize any other person to enter any land under the control of the person on whom that order has been served and take all the necessary action in respect of the activity to which that order relates and otherwise to enforce that order as may deem fit.”

(d) Record Keeping and Inspections

Persons whose activities are likely to have a significant impact on the environment are required to keep records of the amount of wastes and by products generated by their activities and as to how far they are complying with the provision of the Act. Inspections are carried out by gazetted inspectors who have very wide powers under the Act e.g to take samples, seize any plant equipment or substance and close any facility or issue improvement notices.

(e) The Use of Criminal Law & Community Service Orders

Criminal law remains a veritable instrument for the control of behaviour because of the natural tendency of people to fear the infliction of pain, isolation or economic loss. Therefore, the Act provides for serious penalties for infraction of its provisions. As an alternative to imprisonment and fines, persons committing environmental wrongs may be required to perform duties in the community as a reparation to the community for the wrong done.

7. CHALLENGES IN MONITORING AND ENFORCEMENT

(i) First, there is the problem arising from **failures at different institutional linkages for environmental management**. 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.

(ii) **Issuance of Land Title in wetland areas by the Central and Local Governments**

Where as 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.

(iii). 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 an enforcement and intervention mechanisms that is closer as possible to the community level if tangible results are to be achieved.

(iii). The “anonymous”, “holiday” and “awkward hour” dumping syndrome and noise pollution

Without an effective grassroots enforcement mechanism, 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. Time and again, people living in and around wetland areas where murrum and waste dumping has taken place have indicated that the dumping is done by unknown truck drivers at awkward hours.

In addition to the above, there has also been a problem of wetland filling during holidays and awkward hours when those dumping probably have full knowledge that enforcement staff are not on duty. 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 them.

(iv). How to transfer management and enforcement responsibility to local authorities and to resource users level.

With the expansion of Central Government enforcement machinery not likely to happen in the foreseeable near future, it is plausible to believe that increased local authority and local community role on matters of wetland

management, planning and enforcement, including stopping wetland abuse through community policing could be a more sustainable way to stem further degradation. However, there still remains a fundamental weakness in the sense that local authorities have not translated the authority vested under them for natural resources management into meaningful action as far as wetland resources are concerned. The approach adopted by the Wetlands Inspection Division for community wetland management planning is worthy support in this regard. However, lessons learnt from this approach are yet to be popularized to other communities.

(v). Need to harmonize 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.

(vi). Poverty and wetland resources use relationship

Over the recent years, there appears to be increasing cases of activities being implemented in wetlands in the name of fighting against poverty. While some of these activities are out-rightly not compatible with wetland conservation nor wise use goals, their promoters have vigorously defended them as intended to assist in the fight against poverty. 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. It is probable that this attitude stems from the old perception that wetlands in their natural state are wasted land.