

**REPORT ON THE PROCEEDINGS OF THE TRAINING
WORKSHOP ON ENFORCEMENT OF ENVIRONMENTAL
LAWS FOR STATE PROSECUTORS AND DISTRICT
ENVIRONMENT OFFICERS IN UGANDA.**



**HELD AT
RIDAR HOTEL- SEETA**

28TH – 30TH OCTOBER, 2007

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Special mention is made of the various resource persons for your valuable contribution to this programme. Your papers and presentations enabled the participants to acquire more skills, learn and share practical experiences in environmental compliance and enforcement.

We particularly acknowledge the efforts of the **Greenwatch secretariat** for the input provided in the planning, design and selection of the various resource persons and experts on the different topics presented. We are thankful for the tireless efforts exhibited to ensure that the workshop was a success.

LIST OF ACRONYMS

ACODE	Advocates Coalition for Development and Environment
CID	Criminal Investigate Directorate
CIEL	Centre for International Environmental Law
DEO	District Environment Officer
DPP	Director of Public Prosecutions
EIA	Environment Impact Assessment
E-LAW	Environmental Law Alliance Worldwide
ELI	Environmental Law Institute
GDP	Gross Domestic Product
LEAT	Lawyers Environment Action Team
MEA	Multilateral Environmental Agreements
NAPE	National Association of Professional Environmentalists
NEA	National Environment Act
NEAP	National Environment Action Plan
NEMA	National Environment Management Authority
NEMP	National Environment Management Plan
NFA	National Forestry Authority
NGO	Non Government Organisation
UWA	Uganda Wild life Authority
WRI	World Resources Institute

INTRODUCTION

Since the enactment of the National Environment Act (NEA) in 1995, other substantive legislation (Acts of Parliament) and a number of subsidiary legislation (regulation, by-laws, ordinances) have been enacted for the good management and protection of the environment and natural resources in Uganda.

The required institutions have been in place and are functional. However there is no significant improvement in the state of the environment in Uganda. It is largely agreed that this is because of one factor, lack of enforcement.

The law provides for a wide range of measures for the protection of the environment and management of natural resources. Some of these are administrative such as Environmental Impact Assessment (EIA), some are judicial or quasi judicial such as environmental restoration orders, criminal/ civil proceedings.

Since 1995, emphasis has been put mostly on sensitization, education and administrative aspects of compliance. This has had limited success in the area of compliance but largely successful in the aspect of public awareness and sensitization. The country is now ready for the enforcement of environmental law.

Environmental law provides for three major aspects of enforcement and compliance namely; administrative, civil and criminal. As already noted above, a lot has been done administratively. A number of civil suits have been filed in courts of law for enforcement of environmental law and have been largely successful. But civil procedure is long, expensive and complicated. Criminal aspects of environmental law have been largely unexplored yet it has the greatest potential of effectively dealing with a wide range of environmental violations especially at grassroots level. It has been determined by NEMA, **Greenwatch** and other civil society organisations that the reason hindering enforcement of environmental law through criminal procedure is lack of capacity.

Criminal law is enforced by the police, prosecutors and the judiciary. District Environment Officers liaise with the authority on matters relating to the environment and are mandated to gather and manage information on the environment and the utilisation of natural resources in the district. This necessitates working hand in hand with prosecutors to ensure that those violating the law and committing offences are brought to justice. **Greenwatch** and NEMA have since 2000 been conducting training of judicial officers in environmental law, both civil and criminal in all courts of law. The training of police officers in environmental law is hoped to enhance their capacity in enforcing environmental law and ensuring compliance.

This training by **Greenwatch** in collaboration with Judicial Studies Institute and NEMA is geared towards this goal. This is the ninth of the training for a period of three years funded by the John D and Catherine T. MacArthur Foundation.

EXECUTIVE SUMMARY

This report contains the proceedings and technical papers presented at the training workshop for State prosecutors and District Environment Officers on Enforcement of Environmental Laws held from 20th – 30th October at Ridar Hotel, Seeta.

The workshop was attended by twenty seven participants state prosecutors and District Environment Officers and facilitated by various resource persons. The training was conducted and facilitated by **Greenwatch**, Directorate of Public Prosecutions (DPP) and National Environment Management Authority (NEMA).

The aim of the workshop was to enhance and strengthen the capacity State prosecutors and District Environment Officers in enforcing environmental laws using the judicial process in Uganda.

The overall objective of this programme is to strengthen Government's ability to enforce environmental laws which will ultimately save the country's natural resources from depletion and to improve governance of the natural resources.

The workshop was officially opened by Mr. Richard Buteera, the Director of Public Prosecutions, and the Executive Director **Greenwatch**, Mr. Kenneth Kakuru made opening remarks. The workshop lasted three days and was closed by Ms. Margaret Lwanga, the District Support Coordinator who represented the Director NEMA, Dr. Aryamanya Mugisha.

During this period, the participants covered the following topics:

- Overview of the State of Environment in Uganda
- The law relating to the Enforcement and Compliance process
- History of Environmental Law
- Challenges in monitoring and enforcement of environmental laws
- Governance and Protection of natural resources in Uganda: A case for forestry
- Investigating and Prosecuting Environmental law offenders in Uganda: Successes and challenges
- Criminal aspects of environmental law.
- Effective enforcement through Prosecutions
- Initiating the Investigation and Prosecution Process

The proceedings also contain a simulation exercise in which participants were given a moot question. They were divided into groups and later presented their answers to the plenary.

Participants emphasized the need to have the workshop duration increased in order for them to conduct substantive discussions

1.0 SUMMARY OF THE WORKSHOP CONTENT

1.1 Overview of the Workshop Objectives

The overall objective of the workshop was to enhance the capacity of state prosecutors and District Environment Officers in enforcement of environmental laws. The presentations and discussions gave the participants an insight of the state of environment in Uganda, the challenges Government, its institutions and the public are facing enforcement of environmental law and management of natural resources.

The specific objectives of the workshop were to:

- Equip the state prosecutors and District Environment Officers with knowledge, skills and techniques in environmental law in order to strengthen their enforcement capacity;
- Provide an opportunity for dialogue among both the state prosecutors and District Environment Officers on the practical ways of enforcing environmental laws and to provide a forum for review of decided cases on environmental matters both in Uganda and in other countries;
- To forge a lasting link between NEMA, the judiciary and civil society for the purpose of enforcing environmental law.

1.2 Workshop Organization

Each topic was followed by thirty minute plenary discussions. Towards the end of the symposium, the participants were given an evaluation questionnaire to comment on the workshop program, topics and the presentation of the facilitators. On the whole, the participants were appreciative of the symposium.

DAY TWO

29TH OCTOBER 2007

9.00am.

2.0 OPENING REMARKS

2.1 Remarks by Mr. Kenneth Kakuru, *Director, Greenwatch.*

Mr. Kenneth Kakuru, the Director of *Greenwatch* welcomed the participants to the training workshop.

He informed participants that *Greenwatch* is an advocacy NGO that has been conducting training in environmental laws for various calibers of people from judges of the High Court, Court of Appeal to the Supreme Court. He noted that these training have led to increased awareness of key environmental issues and increased knowledge on environmental law. The training for members of the judiciary has led to informed decisions in the courts which have set precedent for enforcing environmental laws and curbing environmental crimes.

The objective of the workshop was to introduce the participants to the basic principles of environmental law and procedure; both civil and criminal and to discuss practical examples of how environmental offenders can be fully prosecuted.

He observed that the Director of Public Prosecution was one of our strongest supporters in enforcing environmental law and that the presence of the Director at the workshop showed the importance the directorate attached to this training and also to compliance and enforcement of environmental laws.

He observed that since 1995 when the National Environment Act (NEA) was enacted, a number of other laws for instance the Mining Act, the Water Act were also enacted. However, the state of the environment has not improved. He stated that the problem is lack of compliance as people are not voluntarily complying with the laws in place and the state is not prosecuting them. People are already aware of the environmental problems that exist and it is now time to enforce the laws in place. He further observed that some crimes relate to the environment and equitable distribution of resources which need to be preserved. This cannot be done without the prosecution of offenders.

He urged the participants to interact and discuss as well as share experiences and knowledge to each other resolve challenges and problems that they face in their respective areas of operations.

He hoped that at the end of the training, the participants would have a general grasp or the pertinent issues in enforcement of environmental laws of the topics and would use them to work better at their different stations. The workshop presented an opportunity to

interact, discuss issues and see how a network can be made to maintain a clean and healthy environment.

He expressed his gratitude to the **John D. and Catherine T. MacArthur Foundation** for availing funds which made the training possible.

2.2 All about Greenwatch- Mr. Ivan Twebembere, *Research Assistant, Greenwatch*

Mr. Ivan Twebembere, a research assistant working with *Greenwatch* informed participants that *Greenwatch* is an environmental advocacy NGO that has been in existence since 1995. He stated that the main objective of *Greenwatch* is to promote public participation in the sustainable management, use and protection of the environment and natural resources.

He highlighted the objectives of *Greenwatch* which include:

- To promote public awareness on the protection of the environment through the use of sustainable conservation methods.
- To formulate policies that promote rational management of natural resources and sound environmental practices.
- To ensure that all judicial and law enforcement officers have sufficient training in environmental law

He observed that *Greenwatch* works with civil society, Government and other like minded institutions in different aspects of environmental protection. He informed participants that *Greenwatch* has held several trainings in environmental law and has realized that the laws are in place, the institutional framework is in place but there was non compliance to these laws hence enforcement was paramount.

He emphasised the need for cooperation between state prosecutors and District Environment Officers.

2.3 OFFICIAL OPENING CEREMONY

Remarks by Mr. Richard Buteera, Director of Public Prosecutions, (DPP).

Mr. Richard Buteera, the Director of Public Prosecutions officiated at the opening ceremony of the workshop.

In his remarks, Mr. Buteera said he was honoured to officiate at the opening of the training workshop on enforcement of environmental laws for state prosecutors and District Environment Officers/inspectors.

He noted that the culture of environmental compliance is poor in Uganda due to lack of innovative incentives to encourage voluntary compliance and disincentives to deter activities that degrade the environment. He stressed that that partnerships have been established with government law enforcement agencies and institutions including; the Judiciary, the National Environment Management Authority and the Uganda Police Force to address the issue of compliance and other emerging challenges.

He also noted that effects of climate change are now very evident in our society and cited the example of heavy rains in the Northern and Eastern parts of Uganda that have displaced many people and left them homeless. He emphasized the need for strict compliance with national the environmental laws in order to reduce environmental degradation

He urged the state prosecutors and District Environment Officers to fully enforce environmental laws within their respective mandates and emphasized the need for them to acquaint themselves with the respective environmental laws.

He thanked the Directorate of Public Prosecution (DPP), NEMA and *Greenwatch* for organizing and coordinating the training workshop. He commended *Greenwatch* for her efforts and initiative in the enforcement process.

He commended **The John D. and Catherine T. Macarthur Foundation** for providing the financial support that made the training possible and wished the participants fruitful deliberations.

At this juncture the workshop was officially declared open.

3.0 PAPER PRESENTATIONS.

3.1 Overview of the State of the environment in Uganda.

By: Ms. Goreti Kitutu, *Environment Information Systems Specialist (NEMA)*

Mrs. Goretti Kitutu's presentation highlighted the diverse range of natural resources in Uganda and the key trends in environmental attributes as social and economic development pressures mount on the environment and natural resources and acting as a resource material for a diverse range of stakeholders.

She noted that Uganda is a land-locked country sitting astride the Equator, characterized by a number of major transboundary natural resources (lakes, rivers and mountains) which calls for greater cooperation with neighbouring countries.

She observed that since 1994, the economy of Uganda has registered an impressive growth rate. Over the period 1994 to 2005, growth of the economy measured by increases in the Gross Domestic Product has averaged over 5% per annum. Headcount poverty levels decreased from 56% of the total population in 1992 to 35% by 2000 and then rose to 38% by 2004. However, the Northern region is the most disadvantage region of Uganda with headcount poverty of about 70% as a result of nearly 20- years of civil war and cattle rustling. Furthermore, while the growth of the economy is impressive, there are worries of inequitable sharing of the benefits. There are indications that the gap between the poor and the rich is now much wider.

She stated that since 1991, growth in industrial output has averaged over 10% per annum. Most of the industrial activity is based on agricultural commodities and natural resources products. The growth in industrial production is accompanied by increased levels of air, water and soil pollution. She noted that wetland degradation is also rampant and the legal boundaries of the wetlands are being encroached upon by developers.

She noted that issues of climate change and climatic variability are of great concern to Ugandans as both impose adverse impacts on livelihoods, especially of the rural poor. In addition, access to land is increasingly becoming difficult, especially for the poorer segments of society. Land degradation, especially through soil erosion is the single largest contributor to the annual cost environmental degradation.

She stated that as Uganda's population in urban areas increases, pollution both in terms of air, water, noise and solid waste is increasingly becoming a big challenge in environmental management. (See detailed paper in annex 2)

Discussion.

In the ensuing discussion, participants made the following contributions and observations:

- Participants observed that environment is a cross cutting issue and therefore all other aspects for including agriculture, road construction, district planning should have environment mainstreamed in their activities. These activities should therefore have environment component and requires environmental considerations to be put in place e.g an Environment Impact Assessment.
- Participants urged NEMA to lobby for funds for the production of the State of the Environment Report; they were informed that environment is given only 50% from the Local Government Development Budget (LGDB).
- Participants were informed that police officers have now been designated as environmental inspectors.
- They emphasized that inspection is key in compliance especially to prevent harm from occurring.
- Participants noted that NEMA signs compliance agreements with developers to guide in the level of compliance required and specifying the time frame for the compliance and action that will be taken in case the schedule is not complied with. NEMA enters into compliance agreements in order to achieve compliance without necessarily using assertive approaches.
- Prosecution is used as a last resort after the other means have been exhausted.
- Participants observed that NEMA liaises with other sectors in environmental resource management, for instance the water resource, and each sector has its own specialist ensure the sector is managed well.
- They noted that lack of resources in terms of man power is a challenge. NEMA is the overall body but facilitation at the grass roots is still a challenge.
- Participants were informed that the thin polythene bags 'kavera', of 30 microns gauge have been banned. This type of polyethylene bags were targeted first because they are widely used and indiscriminately disposed.
- It was noted that a tax of 120% Uganda shillings has been imposed on the thicker polythene bags to deter their importation. However, there is need to ban polyethylene bags from 30 microns and more and to promote alternative packaging materials like sisal bags.
- Participants also observed that change in culture and perceptions on the use of polyethylene bags and plastics will take long time to phase out. It is a long process; hence the ban targeted the 30 microns polyethylene bags first.

3.2 History of Environmental Law.

By: Mr. Kenneth Kakuru, Director, Greenwatch.

Mr. Kenneth Kakuru began his presentation stating that destroying the environment is destroying the very system on which human beings are dependent because water and oxygen are all conducive to life. Human beings cannot exist without the environment they are dependent on the environment for their survival.

He noted that in the process of evolution, man comes last. However, man is now depleting resources for selfish interests without regard for the environment.

He emphasized the need for a policy on reducing man's adverse impacts on the environment but at the same time to maintain livelihoods for human survival. He stated that most of the environmental problems are man-made as man undertakes unnecessary human activity that exerts pressure on the environment to cater to his selfish interests rather than adapt to his environment. He cited the manufacture and use of polyethylene bags 'kavera' whose indiscriminate disposal is causing environmental degradation as one such activity.

Environmental law therefore seeks to curb these activities because it was realized that environmental resources are not infinite as technological advancement further led to increased exploitation of resources.

While expounding on the history of environmental law, he noted that the law sought to address issues pertinent to environmental management, for instance, old land owners' right to use and abuse land. He further noted that recent developments in environmental law allow for public interest cases where any person may bring a case on behalf of another person or group whose right may have been violated. Environmental law also provides for inspection of property yet before, this would have been an aspect of trespass. In addition, environmental law criminalizes the failure to undertake certain activities, for instance, failure to undertake an Environment Impact Assessment. It also criminalizes an action which is likely to impact negatively on the environment before it occurs. Issues which were previously civil like trespass and nuisance have now become criminal and absolute ownership of land has now changed because land should be used in accordance with the law.

He observed that African traditional laws often protected the environment because of the taboos associated with destroying the environment. For instance in hunting communities, hunters released young animals or pregnant ones that were trapped in the nets for continuity of generations.

He noted that the end of colonialism led to a realization that it was necessary to conserve the environment rather than exploit. It was the realization that human activities were greatly impacting on the environment that necessitated the need to criminalize certain actions in order to minimize the negative activities that were done and to protect the environment. The laws have therefore changed to address prosecution and investigation of environment crimes. (Detailed paper in annex 3) *Discussion followed Ms Christine Akello's presentation.*

3.3 The law relating to the Enforcement and Compliance process

By: Ms. Christine Akello, Senior legal counsel, NEMA.

In her presentation, Ms Christine Akello noted that there are multiple approaches to environmental compliance and enforcement that are used in Uganda. These range from the command-and-control approach to the liability approach and use of economic instruments/incentives. Other approaches include a little bit of the responsive regulation

(where Government works with the private sector and public interest groups to develop standards) and voluntary approaches; or a hybrid of the two or more of these approaches.

She emphasized that the environment needs to be protected not only because of its intrinsic value (non-material dimension) but also for its ecological, economic and aesthetic values. These translate into caring for the life support systems of the earth, bio diversity, promotion of economic growth and the enjoyment of the beauty and peace only provided by nature. This calls for a multi-disciplinary and multi-sectoral approach to environmental conservation and protection.

She noted that before 1995, Uganda used the traditional sectoral approach to legislation but as the need arose, sectoral and institutional environmental legislation were enacted. However, there was no comprehensive and systematic understanding of the interactions within the environment and their compatibility. The result was that numerous legislation came up with conflicting provisions and standards. She stated that the protection of the environment needs a comprehensive approach that accommodates changing perspectives, standards and concerns, depending on scientific technological development.

She highlighted the relevant compliance and enforcement tools under the NEA which include:

- Compliance Control covering the areas of permits, inspections and compliance processes and follow up by inspectors which is also very crucial.
- Environment Standard Setting and Licensing for certain activities that require specific permits
- Environmental Monitoring and Impact Assessment which provides self monitoring and enforcement monitoring.
- Use of Compliance Agreements to promote voluntary compliance
- The Use of Economic and Social Incentives

She noted that criminal law provides many opportunities for the exercise of judicial discretion in ensuring minimum conditions for environmental integrity as it establishes violations, provides penalties and imposes fines, imprisonment term and sets out alternative sentencing options. (Detailed paper in annex 4)

Discussion

In the extensive discussions that followed, participants observed, noted and made suggestions as follows:

- They noted the need for government policies to go hand in hand with the alternatives that promote good environmental behaviour.
- Participants were informed that Performance bonds are given whereby industries with a potential to pollute must pay a bond proportional to their magnitude to pollute. It's a charge that's the equivalent of pollution ie the more you pollute, the more you pay.

- They noted that restoration orders are issued by the Executive Director of NEMA to prevent harm from continuing to occur and to restore the environment. .
- They emphasized that outside the ambit of court, there is need to ensure voluntary compliance.
- Participants agreed that it is essential for all individuals to work together to try and prevent environmental harm from occurring.
- They emphasized the need for enforcement of environmental laws noting the essence of bringing offenders to book to ensure the law is enforced.
- NEMA needs to use force in some instances to enforce the law.
- It was emphasized that we all have a duty to protect the environment because its for our own benefit
- It was noted that lack of manpower is a challenge to the District Environment Officers (DEOs) who cannot handle the whole district single handedly.
- Prosecutors were urged to take interest in investigations from the on set in order to guide the investigating officer on what evidence to look for. Participants were informed that prosecutors are middlemen, who rely on information from police investigations. Their role is to peruse files and prosecute. If no prosecution is done, the laws are redundant.
- Participants suggested that the Government should commit money to environmental resources management i.e. on enforcement of the laws for instance, water departments receive money for clean water but the environmental officers do not. The Government should include environmental issues in the budget.
- It was noted that quality assurance of a healthy life is important and should be enforced as a right. There is need to know that abuse of this right is a crime and civil society should make government institutions accountable. However, most people think responsibility of environmental quality assurance lies with NEMA and that NEMA is solely responsible for environmental management in the country.
- There is need to empower the population to ensure they know their rights, i.e. a healthy environment as an inherent right as a human being.
- It was noted that interference from politicians is a challenge. We should find ways to make politicians accountable for their actions Awareness raising has been done for policy makers and Members of Parliament, but the general public has to be trained from time to time.
- Participants were informed that the compliance culture in Uganda is low, but because of ignorance levels, NEMA started with awareness creation rather than the use of force. They also noted that law emanates from policy, and NEMA wrote a paper proposing a total ban on kavera and asking the government to support industries producing alternatives. NEMA has taken up the initiative to collect the stock of polyethylene bags '*kavera*' in the environment to have the recycle.
- The public should be educated on sustainable harvesting of resources like papyrus. There is need to encourage crafts because it also helps ordinary people earn money and the crafts will be used as an alternative to '*kavera*'
- Participants suggested that there should be a total ban on '*kavera*' because it is a nuisance. Some participants noted that if people are not sensitized, they may totally destroy the swamps thinking resources are finite.

- Participants were informed that NEMA has been involved in the greening exercise being carried out for the Commonwealth Heads of Government Meeting, in planting trees and grass in the city.
- NEMA partners with different sectors but has constraints in terms of man power and facilitation.
- Participants were urged to enforce the environmental laws in concert with police officers.
- It was emphasized that rather than apportion blame, participants should work within their respective mandates to protect the environment and enforce environmental laws. There is need for a concerted effort, the fact that the problems are insurmountable notwithstanding. There is need for us to be practical.

3.4 Challenges in Monitoring and Enforcement of Environmental laws in Uganda.

By: Waiswa Ayazika, EIA Cordinator, (NEMA)

Mr. Waiswa Ayazika began his presentation stating Uganda's high natural resource potential on which more than 90% of the country's population depends directly for their livelihoods. He noted that Uganda's development process and opportunities mainly depend on the natural resource base. However, the resources are facing tremendous pressures from the rapidly expanding population, economic activities and in some cases outright abuse by users.

He noted that the Government of Uganda has taken stringent actions to protect public health from environmental pollution & protect the quality of the natural environment using different measures for intervention. Most of these strategies also involve legal requirements that must be met by individuals and facilities. However individuals and facilities need to fully implement the regulations which necessitate efforts to encourage and compel behaviour change that is enforcement. Compliance involves motivating the regulated community to comply, removing barriers that prevent compliance, and overcoming existing factors that encourage non-compliance

He highlighted some of the measures used by NEMA to enforce environmental laws which include

- inspections to determine compliance status of regulated community and to detect violations,
- negotiations with individuals or facility managers who are out of compliance to develop mutually agreed schedules and approaches for achieving compliance through a compliance agreement,
- compliance promotion through educational programmes, technical assistance and subsidies.

He stated that legal action is taken where necessary to compel compliance and impose some consequence for violating the law or posing a threat to human health or environmental quality.

While explaining the challenges in monitoring and enforcement, he noted that failures at different institutional linkages for environmental management are a big problem because the very institutions entrusted with the protection of natural resources have been the very violators of these constitutional and legal provisions. He emphasized the need for an effective grassroots enforcement mechanism to control indiscriminate dumping of materials in wetlands along the roads and other remote areas by anonymous individuals.

He concluded his presentation by urging the Environment Officers/inspectors to enforce the environmental laws in place in order to maintain and enhance a clean and healthy environment. He noted that DEOs are key witnesses in providing evidence to environmental cases being prosecuted by the state prosecutors (Detailed paper in Annex 5)

Discussion.

Participants commended the presenter for his lively presentation and made the following contributions:

- They noted that all stake holders should use their initiative to see how they can contribute to the practical aspect of enforcement.
- It was emphasized that DEOs should liaise with investigating police officers and be vigilant in arresting environmental offenders.
- It was observed that prosecution of cases on ‘*kavera*’ may differ from other offences because experts will be needed to provide evidence on what type of ‘*kavera*’ is allowed and which type has been banned. The technical part of the evidence is a big challenge.
- Participants suggested that NEMA provides experts on ‘*kavera*’ to be used in cases of environmental degradation.
- Participants were encouraged to work hand in hand in order to ensure prosecution of environmental offenders. .
- Participants observed that in Makindye division, court has successfully prosecuted cases of driving under the influence of alcohol by using the breathalyzer, an instrument or gadget used to detect the amount of alcohol consumed. This should be an initiative to curb environmental offenders
- Participants were informed that a micron is a measurement that is used to determine the thickness of materials; for the banned ‘*kavera*’, 30 microns is the width.
- It was suggested that people are sent to collect ‘*kavera*’ that are already in circulation as a community service i.e., in the gardens

3.5 Governance and Protection of natural resources in Uganda: A case for forestry.

By: Mr. Steve Amooti Nsita , Programme Manager, Forest Resources Management and Conservation Programme, National Forestry Authority

In his presentation, Mr. Steve Nsita noted that forests and woodlands in Uganda cover a total of 4.9 million hectares, about 24% of the total land area. The main reasons for the

degradation include forest crimes like illegal harvesting and trade, especially timber, charcoal, firewood & more recently, rattan cane and some other non-timber forest products. Encroachment for agriculture and human settlement are other forest crimes that are highly destructive to forests in Uganda. Forest crimes are often linked to poor governance, and therefore protection of forests is one of the most important activities for forest managers.

He observed that because of corruption and political manipulation, some of these criminals often carry out their lawless activities with impunity. Forest protection is one of the most expensive items on the budgets of forest management institutions.

He stated that law enforcement and administration of justice is one of the most important challenges facing forest managers in Uganda today. Administratively, an offence committed is handled through the administrative processes by the mandated institutions. For example, in cases of minor offences, the offender may admit the offence and opt to pay compensation to the NFA as provided in the law. This is quite common with regard to offences relating to timber movement.

The litigation process requires going through investigations by police, prosecution by the Department for Public Prosecution (DPP), and sentencing by judges and magistrates in courts of law. In this process, different enforcement agencies come into play. He observed that the civil society and the media have contributed to promoting administration of justice by unveiling illegal activities.

He concluded his presentation by emphasizing the importance of public awareness about the crucial role of forests in the survival of the human race that is rapidly growing. (Detailed paper in annex 6)

Discussion.

Participants commended the presenter for a comprehensive and insightful presentation and made the following contributions:

- They observed that there is a lot of activity taking place in mountain forests for instance in Mountain Moroto forest but lack of staff from the NFA to assist them in managing the forest resources. This is a challenge to curbing depletion of forest resources.
- Forest resources are important and timber is not the only resource we get from forests.
- It was noted that we cannot do without timber; hence the public should be encouraged to plant more trees. People associate timber with quality so we should instead encourage planting of trees, encourage private owners to manage their forests sustainably.
- Participants noted with concern the issue of indisciplined NFA staff where forest rangers encroach on local forest reserves. Abim district was cited as an example of this.

- Participants were informed that planting pine trees was in response to the threat on timber with pine trees being grown as an alternative. They noted that in the next 5 years, the old timber plantation of trees like *muvule* would be extinct hence the need for pine.
- Participants were informed that NFA only gives licenses to large scale developers if they have approval from NEMA and if they have carried out an EIA.
- The National Forestry and Tree planting Act provides for planting days with supervision from the ministry.
- It was noted that Districts could do more to work with the traditional leaders to protect their forests in a form of community policing.
- There is need for collaborative forest resource management. NFA should work hand in hand with the police, state prosecutors.
- Participants noted the need for institutional coordination in order for forest resources to be properly managed.

3.6 Investigating and Prosecuting Environmental law offenders in Uganda: Successes and challenges.

By: Doris Akol, Environmental Law Resources Centre.

The objective of this paper was to give general guidance on investigating and prosecuting environmental law offenders in Uganda.

Ms. Doris Akol defined an investigation as a means of establishing the correctness of suspected abuses of environmental laws. She noted that if the evidence warrants, an investigation can also lead to entering into compliance agreements or a possible prosecution.

The intention of investigations and evidence gathering is to successfully prosecute an environmental criminal case, and the prosecution has to prove the case beyond a reasonable doubt. She noted that the conduct, management and control of investigations must be in compliance with policies regulating criminal investigations, and prosecutions keeping in mind the duty to act fairly, the public interest and the promotion of the integrity of the environment.

While prosecuting environmental crimes, there are common difficulties that may be experienced in the process, for instance evidence gathering in investigating environmental crimes which the investigator should be aware of and prepare for. Sometimes, the evidence is not always obvious. This is because by their nature, the evidence in environmental crimes is not always typical. Defining the ingredients of the offences may be cumbersome. In addition, determining whether the degree of destruction is a factor in the commission of the offence may present difficulty in that in the event that there is no apparent destruction, it may be hard to conclude that an environmental crime has been committed.

She also observed that the standard of proof beyond reasonable doubt is difficult to meet to obtain a conviction. She highlighted recommended strategies including; frequent

exposure to the different sectoral environmental laws and offences created by those laws, training in analysis of evidence for those in the laboratories and training in sampling techniques at the crime scene

She urged them to build capacity in their communities to enable them to recognize when offences have been committed and to report them. (Detailed paper in annex 7)

Discussion:-

The following were some of the key issues highlighted during the discussions that followed the presentation:

- Participants were encouraged to always pray for a steep sentence that will act as a deterrence to would be environmental offenders. .
- It was noted that determining the ingredients of an offence that will ultimately end up on the charge sheets is also a challenge.
- Participants observed that the importance people attach to environmental offences is not as high as that attached to other criminal offences especially where the evidence is easier to obtain than the case is for environmental offences.
- It was reported that there is a big problem in Nakapiripirit in resource management. Whereas the law provides that natural resources are to be managed for the benefit of the community and the community should be involved in resource management, this is difficult to enforce in an area like Karamoja where there is no respect for the rule of law as most of the locals are armed. It is therefore essential that the government first deals with the basic issue that is compliance with the law then enforce environmental law. The law cannot be enforced in an area of lawlessness like karamoja.
- It was observed that there is need for an element of courage; threats should not stop officers from executing their duties. The participants were encouraged to carry out their respective duties as mandated by law.
- Participants were encouraged to be committed to bringing environmental crimes to book even though it is a challenge in terms of gathering evidence and facilitating the witnesses.
- It was noted that some NFA officials in some areas like Buliisa district collect bribes from those engaged in deforestation of the central forest reserves. More than half of Budongo forest is found in Buliisa but the district loses revenue because the fines collected from environmental offenders are not remitted to the district.
- Participants were urged to utilize other offices like the Inspector General of Government which are supposed to curb some of these malpractices to check abuse of office. This will set the record straight.
- It was emphasized that no institution is infallible, NFA has a problem with sector managers(middle managers) who need training in the art of communication and working as a group.
- It was noted that when files are brought to state prosecutors, different ingredients of offences are noted, for instance, whether one was destroying the environment in another area. Participants were urged to encourage police officers to make exhaustive investigations and follow up on these environmental offences.

- Participants observed that hearing a case is at the discretion of magistrates. Prosecutors have a role to ensure the cases they are prosecuting are heard by the magistrate, till when they are disposed off.
- Participants were informed that while identifying the ingredients of an offence, there is need to know what offence is being investigated and what law has been broken. They were urged to know the offences, which would guide them in knowing what ingredients to look for. This also depends on what law a prosecutor is proceeding under.

In the evening:

Participants were shown a documentary film entitled “*An Inconvenient Truth*” depicting the impacts of climate change and global warming in the world today. In the documentary, former United States Vice President Al Gore discusses scientific opinion on climate change, the politics and economics of global warming, and describes the consequences he believes global climate change will produce if the amount of human-generated greenhouse gases is not significantly reduced in the very near future.



The Director of DPP, MrRichard Buteera at the official opening of the workshop



A section of the participants during the discussions.



Participants listening to the discussant



Mr, Kenneth Kakuru explaining a point during his presentation. Next to him is Ms. Christine Akello, Senior Legal Counsel, NEMA.



Ms. Damalie Lwanga, Assistant Director of Public Prosecutions during her presentation.



A participant receives his certificate from Ms. Margaret Lwanga, District Support Coordinator, NEMA. Looking on is the National Director Greenwatch, Ms. Irene Ssekyana.

DAY THREE

9.00am

Recap of day one.

Ms. Harriet Bibangambah, a Research Assistant at Greenwatch, thanked the participants for their active participation. She took the participants through the papers which were presented the previous day and introduced the next presenter to the participants.

3.7 Criminal aspects of environmental laws.

By Damalie Lwanga, *Assistant Director of Public Prosecutions.*

Ms. Damalie Lwanga began her presentation by stating that environmental offences are created by law as one of the ways of protecting the environment, through punishing those who violate the laws. The law punishes those who do certain acts or omissions which lead to degradation of the environment and may result into harmful effects to humans, flora, fauna or natural resources.

She observed that when looking at criminal offences, there is need to know the legal technicalities to be taken into account. She noted environmental offences are also issues of global concern; if not handled well, they can affect us all. She further observed that previously, the old laws did not satisfactorily protect the environment. Hence the National Environment Act (NEA) was enacted. Violation of its provisions amounts to an offence.

She noted that some offences are too general so may be difficult to prosecute and highlighted some of the shortcomings of the Penal Code offences including:

- The offences are too general, thus making their interpretation difficult and controversial. i.e. it doesn't specify negligent acts and cover many areas. The NEA was enacted to address specific aspects.
- They are mainly punishable as ordinary misdemeanours with no option of a fine, community work or restoration orders etc, hence may not be deterrent.
- Some of them cater for immediate harm to persons but not the long term effects on the environment.

She stated that there is need for a deterrent sentence that would deter others from committing that same activity. Environmental offences need sentences where the environmental harm that has been committed can be addressed. The Penal Code does not focus on the long term effects i.e., the impact on the environment and the long term effect on the people. The NEA provides for Environmental Impact Assessment, and qualified EIA practitioners are supposed to conduct EIA studies. Failure to submit a project brief is an offence. Underlying the principle of the NEA is everyone has the right to a clean and healthy environment; we have a duty and responsibility to ensure we enjoy the right to a clean and healthy environment.

She highlighted legal technicalities and principles relevant to prosecution and noted that environmental laws address anticipatory injury or damage. They also punish violations of the laws and regulations generally. Environmental offences impose strict and vicarious liability. She noted that there is no requirement for notice of violation before instituting criminal proceedings. (Detailed paper in annex 8) **Discussion after Mr. Vincent Okwanga's presentation**

3.8 Effective Enforcement through Prosecution.

By Vincent Okwanga, Ag Senior Principal State Attorney (In charge of NEMA Desk), Directorate of Public Prosecutions.

In his presentation Mr. Vincent Okwanga stated that prosecution of a criminal case in a Court entails the charging of the suspect before a competent Court of law. He noted that the accused is required to plead to the charges laid against him and if the accused pleads guilty then the Court can proceed to convict him and conclude the trial by sentencing him.

He defined evidence as facts upon which a party, relies in proving the charges against an accused person. Evidence includes exhibits, (whether documentary, physical or non-physical things) and is presented to court by a prosecutor to prove a case. In criminal matters the prosecutor must prove the case beyond reasonable doubt. The court will then make a decision whether the charges have been proved or not.

He noted that an investigating officer collects data but the office of the Directorate of Public Prosecutions (DPP) does not investigate criminal cases on its own. It relies mainly on the CID branch of the Police to investigate criminal matters and complaints which have come to its attention, thus the power to direct the police to investigate any matter/complaint of a criminal nature and report him/her expeditiously. He stated that most environmental cases are investigated by environmental inspectors, and experts in a given field/area of breach or complaint. He noted that it was crucial for the prosecutors to get involved in the case right from the investigations stage for a successful and effective prosecution process.

He observed that guidance and legal advice from the prosecutor is very crucial for investigators when investigating a crime. Every case due for prosecution in court should be submitted to the office of the DPP (ie to the Resident State Attorney) for sanctioning. At this stage the DPP officer is supposed to peruse the case file carefully and evaluate the evidence collected to note whether all the necessary investigations have been done satisfactorily. The office of the DPP also ascertains whether the case warrants prosecuting the suspect and if the evidence is worth sustaining the charge in court. The DPP tenders legal advice and guidance to the police, the government and other Government agencies and authorities regarding any matter under investigation or prosecution. (Detailed paper in annex 8)

Discussion.

Participants thanked the presenters for their thorough and elaborate presentation and made contributions, the highlights of which are outlined below:

- They noted that *mens rea* refers to the intention to commit an offence. However one does not always have to prove *mens rea* in environmental offences. In manslaughter you do not have to prove intent. It is not a strict liability offence. In manslaughter, the prosecutor needs to prove the act resulted into death. Similarly, in environmental offences, the prosecution need not prove intent but that the action resulted or will result in environmental degradation.
- Participants observed that the contradiction in wording in the Constitution of Uganda and the National Environment Act presents a technicality that should be ironed out. They noted that Article 39 of the Constitution provides that every Uganda has a right to a clean and healthy environment while section 3 of the National Environment Act provides that every person has a right to a clean and healthy environment; this is irrespective of whether the person is a Ugandan or not.
- Participants were informed that the requirement for scientific evidence does not violate the precautionary principle. Scientific proof is the best evidence one can have. There is need for an investigation to prove the degree to which the damage has was done.
- It was noted that one's activities should not cause harm to the environment and to the whole community. Although we all have rights, the law offers guidance on how the rights should be enforced.
- Participants noted that the DPP has a right to institute criminal proceedings.
- In order for one to be convicted on account of strict liability, one need not prove that he had intention to cause harm.
- It was noted that conviction for an environmental offence does not create a criminal record unlike other offences.

3.9 Initiating the investigation and Prosecution Process.

By Kenneth Kakuru, Director Greenwatch.

In his presentation Mr. Kenneth Kakuru stated that when initiating the investigation there is need to note what the mischief is. Legal action commences when a mischief is being investigated or has been committed. An aggrieved person can also make a complaint which is then investigated by the police investigators.

Legal action can also be brought about when one finds out that there is a likelihood of harm that can occur when a particular activity is carried out. This is also done to prevent occurrence of a crime.

Violation of rights is not mostly criminal i.e. illegal detention of a person, however, depriving an individual of his property, the right to clean water or the right to health may also be a cause of action to bring about legal action because these are all environmental rights. Violation of the law occurs when there may be no mischief as yet. Violation of the Constitution may involve degazetting a game reserve or allowing people to settle in wetlands. With regard to this, criminal law can be used to prosecute when one commits

an act or by omission. However there is need to employ the precautionary principle to be used before harm is done.

Choice of courts depends on the remedy, procedure and mischief i.e. whether to go to the magistrates Court, High Court, or Constitutional Court. Procedure can be under the Penal Code or another Act. The burden of proof relates to how a case is prosecuted. The burden of proof shifts once one proves his or her case is "*prima facie*". The law puts the burden on the accused to show otherwise hence shifting the burden of evidence. The precautionary principle relates to likelihood of harm and anticipatory damage. This also shifts the burden of evidence to the accused to show that his activities will not cause harm to the environment.

4.0 Live simulation exercise

The participants were divided into four groups and presented with a moot question in which they were asked to find answers.

This presented an opportunity to the participants to acquaint themselves with the practical aspects of handling environmental crimes and drawing specimen and charge sheets.

The group discussions were then presented by a representative from each group who read out the findings of a particular group to the rest of the participants.

The findings of each group to the exercise are annexed in annex 11.

5.0 CLOSING REMARKS

5.1 Remarks by Mr. Kenneth Kakuru.

Mr. Kenneth Kakuru said he was happy to have interacted with the participants which interaction had led to the discussion of pertinent issues. He thanked the participants for finding time away from their busy schedules to attend the capacity building workshop and observed that the group presentations made by the participants showed they had acquired good grasp of the law.

He thanked NEMA for providing the State of the Environment Reports for 2004/2005 to the participants and urged them to share the knowledge they had learnt with their colleagues to help in enforcing environmental laws.

He commended the participants for their active participation, their good conduct and for being thorough in their group presentations which showed they had grasped the issues they had discussed and experience in the work they do.

He expressed his gratitude to the **John D. and Catherine T. MacArthur Foundation** for providing funding for the workshop.

He then presented copies of the State of the Environment Report in Uganda to the different state prosecutors.

5.2 OFFICIAL CLOSING CEREMONY.

By Dr. Aryamanya Mugisha, Executive Director, NEMA .

The District Support Coordinator, Ms Margaret Lwanga represented the Executive Director NEMA Dr. Aryamanya Mugisha at the closing of the training workshop for police officers in environmental law.

In her remarks, Ms. Lwanga observed that the main purpose of the training was to equip participants with the legal mechanisms to enable capacity building for both state prosecutors and District Environment Officers in enforcing environmental laws.

She commended *Greenwatch* for availing the participants with the opportunity to share experience and learn from each other and hoped that the practical knowledge and skills had enhanced their technical proficiency in environmental protection. She urged them to use these skills in enhancing their performance in their respective stations.

She urged the participants to emulate the best practices in enforcement and also to customize and adapt the approaches and practices that they had learnt in relation to their local realities and conditions in order to be relevant and feasible.

She emphasized the need for self improvement which would help in both individual and collective commitment in improving sustainable environmental management in their respective areas of jurisdiction.

She pledged NEMA support in implementing the recommendations made during the training and noted that the best measure of performance can be seen and felt in the tangible improvement in the physical environment which should be the ultimate focus.

She commended *Greenwatch* for organizing the training and bringing state prosecutors and District Environment Officers together to share views, experiences and forge a way forward.

She expressed her gratitude to the **John D. and Catherine T. MacArthur** Foundation for availing funds which made it possible to hold the workshop. She thanked the participants for being able to find time from their busy schedules to attend to the workshop.

The workshop was declared closed at 2.30pm on 28th October 2007

6.0 WORKSHOP EVALUATION

At the end of the training, the participants were provided with an evaluation form and requested to comment on how the workshop was organized and conducted, the nature of topics presented, facilities provided and generally how they rated the workshop. Below is a detailed summary of how they responded.

6.1 Participants stated that the timing of the workshop was convenient for them and majority of them had received their invitations on time.

6.2 (a) The venue was convenient and accessible to the participants as it was near the main high way to Kampala town. It was therefore easy to locate. The participants also noted that the quiet environment was conducive for their training without any interferences.

(b) Most of the participants rated the venue chosen for the workshop as good and commended the Hotel for providing good accommodation and decent meals.

(c) Majority of the participants said they were well received upon arrival by the workshop organizers.

6.3 Comments on the workshop program

(a) Topics

Participants noted that the topics chosen were relevant as they touched on the day to day realities that they face. They stated that the topics were educative and created an interest to learn more about environmental law, thus were appropriate to their work in enforcement of environmental laws.

(b) Duration

Most participants observed that the duration was sufficient. However, some of the participants stated that the duration should be increased to enable them to discuss the issues adequately. They requested that the duration of the workshop be increased to four days.

6.4 Ratings of the presentations by topic.

A) General Overview of the State of the environment in Uganda. - Ms.Goretti Kitutu.

The presentation was well researched and well presented. It was rated as good by most of the participants. The presenter enlightened the participants on how human activities have adversely affected the environment. Her paper was well arranged and relevant to creating awareness among the state prosecutors on the current state of the environment in Uganda.

Legal framework on environmental management in Uganda- Ms Christine Echookit Akello

Participants noted that the presenter was very experienced, knowledgeable and quite interesting. Her presentation was lively and her paper was well researched as it highlighted the various laws relating to environmental management and protection in Uganda.

B) The law relating to the enforcement and compliance process- Mr. Kenneth Kakuru

The presentation was relevant in showing how environmental law had evolved and changed overtime with particular reference to the current trends and principles of environmental law. The presenter was articulate and clearly explained the essence of environmental law to enable the participants grasp the urgency of the need to manage the environment and use it in a sustainable manner.

C) Monitoring and Enforcement of Environmental Laws in Uganda:- Mr. Waiswa Ayazika.

Majority of the participants stated that the presentation was good as the presenter was precise in his definitions. He clearly highlighted the challenges that are faced in monitoring and enforcement of environmental laws, citing various examples that the participants could relate to.

D) Governance and Protection of natural Resources in Uganda: The case of Forestry.- Mr. Steve Amooti Nsita

The presenter gave an elaborate presentation, was well informed and clearly understood by the presenters. The presenter was noted to be very knowledgeable on the topic and gave a thorough presentation. Participants noted that his presentation needed more time for them to be able to internalize the different environmental laws regarding forestry that were discussed.

F) Investigating and Prosecuting Environmental law offenders in Uganda: - Ms. Doris Akol

Participants rated the presentation as very good and noted that the presenter had enlightened them on the key practical steps to follow when conducting an investigation. Her paper was elaborate, well researched and informative

G) Criminal aspects of Environmental law- Ms. Damalie Lwanga

The presenter was well understood, well informed and very articulate. Participants commended the presenter for engaging them in a lively discussion in which they were able to share their experiences in handling environmental issues.

H) Effective enforcement of environmental laws. – Mr. Vincent Okwanga

The presentation was very good and educative. His presentation captured the attention of the participants as he demonstrated a clear understanding and used practical examples with which the participants were familiar.

I) Practical exercise: Initiating the Investigation and Prosecution process - Mr. Kenneth Kakuru

Participants also rated the presentation as good. They noted that the presenter highlighted the importance of public awareness which is necessary in enforcing compliance to the environmental laws.

J) Comments on the relevance of the Simulation exercise and the Environmental Documentary

Participants observed that the documentary film title “ An Inconvenient Truth” was essential in depicting to the public the effects of global warming and emphasizing the need to take precaution and change our lifestyle in order to reduce on environmental degradation and its adverse effects. They also noted that the moot discussion was a good practical exercise through which they were able to show a practical understanding of the issues.

6.5 Comments on whether participants’ expectations were met.

Majority of the participants stated that their expectations were met. They had acquired knowledge on environmental law, and were now aware that environmental degradation is not just a civil matter but is a criminal offence. They commended Greenwatch for issuing them with certificates of participation.

6.6 Suggestions to improve on future trainings

It was suggested that

- Duration of the workshops be increased to four days in order to have enough time for them to internalize the different concepts.
- Workshops should be conducted at the grass roots in the different districts.
- Workshops should include other stakeholders including politicians and district officials.
- Awareness creation on environmental issues should be extended to schools to impart knowledge.
- More time be allocated to the moot exercise
- Workshops be held for both Magistrates and state prosecutors to enable proper coordination in courts of law.

- Workshops should include technicalities like measuring sound, testing for pollution and experts should be brought on board.
- Conduct a workshop relating environment to human rights

6.7 Comments on whether there is need to hold another workshop covering other aspects of environmental law.

Most of the participants said that there is need for another workshop because of the adverse impacts of human activities on the environment. They noted that more awareness and sensitization is still needed especially at the grassroots hence there is need to equip all stakeholders with knowledge to enable them effectively encourage compliance and enforce environmental law. Participants noted that environmental issues are dynamic and diverse and therefore cannot all be exhausted in only three days but need to be discussed comprehensively. They noted that there is need for a another workshop covering a more detailed course in environmental law to help in creating awareness among law enforcers and to present an opportunity to look in detail at the offences created under the various Acts.

OPENING REMARKS BY THE DIRECTOR PUBLIC PROSECUTIONS, MR. RICHARD BUTEERA, AT THE CAPACITY BUILDING WORKSHOP TO STRENGTHEN THE CAPACITY OF STATE PROSECUTORS AND DISTRICT ENVIRONMENT OFFICERS TO ENFORCE ENVIRONMENTAL LAWS IN UGANDA.

Distinguished participants,

The organizers of this workshop,

Ladies and Gentlemen.

I am indeed honoured to officiate at the opening of this training workshop on enforcement of environmental laws for State prosecutors and District Environment Officers in Uganda.

Your presence here is an indication of the great importance attached to both State Prosecutors and District Environment Officers in ensuring compliance to environmental laws and our shared responsibility to managing our environment.

One of the greatest challenges we face today in environment management is the enforcement of compliance to established environmental laws, regulations and standards. State Prosecutors represent the community in criminal trials. In this capacity, they ensure that the interests of victims and witnesses are promoted; without neglecting their obligations to act in a balanced and honest manner. I believe District Environment Officers encounter the problem on non compliance with environmental laws in their day to day activities.

Environmental Compliance is poor in Uganda partly due to a poor compliance culture, lack of innovative incentives and disincentives and a weak enforcement capacity. To address this and other challenges, partnership have been established with government law enforcement agencies and institutions including; the Judiciary, the National Environment Management Authority and the Uganda Police Force.

State Prosecutors and District Environment Officers have the duty of assisting court in arriving at a fair and just verdict and in the event of a conviction, a fair sentence based upon the evidence presented. Evidence for environmental crimes requires the use of experts and this necessitates the involvement of the District Environment officers in presenting this evidence during a case or investigation of the crime.

As you may have noticed recently, there is a lot of environmental degradation everywhere, globally, nationally and regionally. Effects of climate change are now very evident in our society today. For instance, severe rains have caused floods in the Northern and Eastern parts of the country that have displaced many people and left them

homeless. Crops have been destroyed hence we are likely to face incidences of food security. In other areas, there are reports of vermin encroaching on people's crops. These animals have been displaced from their habitats, the forests due to man's activities. All these catastrophes require strict compliance with national environmental laws at all levels and this should be done in concert with the global and regional laws.

You may also be aware that environmental violations are increasing in Uganda. NEMA and other lead agencies in environment have been taking administrative measures to ensure compliance. There are instances, however, where we have to take stronger action to enforce observance of environmental laws, for instance, the recent ban on polythene bags- "*Kavera*" is now being enforced. We need each of you – to participate in this enforcement work within your respective mandates.

A number of regulations and guidelines have been made under the National Environment Act. Each of these pieces of legislation provides offences and penalties. Hence, where voluntary compliance fails, the law must be invoked to protect the environment. You are, therefore, requested to acquaint yourselves with these laws and play your part.

Capacity building, especially in the enhancement of skills for better enforcement of environmental laws, is a continuous process. This workshop therefore is part of an on-going strategy to equip the State prosecutors and the District Environment Officers/ Inspectors in the country with the necessary knowledge and skills to ensure proper management and utilization of natural resources and how to conduct prosecutions involving environmental crimes.

I sincerely hope that this will be more of an interactive workshop in which you share ideas and experiences to enrich the enforcement mechanisms for environmental laws.

On behalf of DPP and on my own behalf, I wish to thank the co-organisers of this workshop, the Directorate of Public Prosecution (DPP), NEMA for organizing and coordinating this event. DPP is certainly proud of Greenwatch's record, efforts and initiative in the enforcement process.

I commend the sponsors of this workshop, **The John D. and Catherine T. Macarthur Foundation** for providing the financial support to make this training possible and the entire **Staff of Greenwatch** for organising the workshop.

With those few remarks, Ladies and Gentlemen, I wish to declare this training workshop officially open.

OVERVIEW OF THE STATE OF ENVIRONMENT IN UGANDA

By Goretti Kimono Kitutu, Environment Information Systems Specialist – NEMA

Background:

To date Uganda has published six State of Environment reports. These reports are prepared biennially aimed at, among others, creating environment awareness, informing the public, showing key trends in environmental attributes as social and economic development pressures mount on the environment and natural resources and acting as a resource material for a diverse range of stakeholders.

Country Overview.

Uganda is a land-locked country sitting astride the Equator, characterized by a number of major transboundary natural resources (lakes, rivers and mountains). The latter call for greater cooperation with neighbouring countries.

From the 39 districts which were in existence in 1994, there are now about 80 confirmed with others proposed but not implemented. While the increase in the number of districts will mean greater development of central government functions including that of environment and natural resources management, the move will increase the cost of administration. The new districts need to appoint environment and natural resources management offices (lands, forestry, environment and wetlands) as defined in the new structures recommended by the public service. The new districts are also to be candidates for the environment action plan process.

The extensive habitat variations as a result of the intersection of phytochoria, the location on the Equator, and the wide range of altitudinal variations, extensive drainage systems and relatively fertile soils give the country a mosaic of Vegetation, modified climates and extensive wetlands. When climate is considered with agriculture and altitude, one can identify two highland agricultural zones and seven zones with different agro climatic potentials and environmental impacts associated with production.

Ugandans are a hospitable people consisting of at least 46 indigenous tribes with varying production and consumption patterns and hence varying influences on the environment. The population is growing rapidly at a national average of 3.4% per annum. This growth rate masks differences among the districts, ranging from 9% for Kotido District to less than 1% for Kabale. The national population is relatively young. Those below 18 years of age make up 56% of the total population. There is also a high dependency ratio with a significant number of orphans. The mean household size is 4.8 persons -4.2 persons in urban areas and 4.9 in rural settings.

Governance in Uganda is linked to the progressive devolution – as opposed to deconcentration – of power from the centre to the local governments through the process of decentralization.

Since 1994, the economy of Uganda has registered an impressive growth rate. Over the period 1994 to 2005, growth of the economy measured by increases in the gross domestic product has averaged over 5% per annum. Headcount poverty levels decreased from 56% of the total population in 1992 to 35% by 2000 and then rose to 38% by 2004. The northern region is the most disadvantaged region of Uganda with headcount poverty of about 70% as a result of nearly 20- years of civil war and cattle rustling. Furthermore, while the growth of the economy is impressive, there are worries of inequitable sharing of the benefits. There are indications that the gap between the poor and the rich is now wider. In terms of structure, the share of the non-monetary segment of gross domestic product has continued to decline from 1994 and in fiscal year 2003/4 it accounted for 20.4% of the total compared to the monetary component at 79.6%, an indication of a modernising economy.

Apart from the worry with the distributive aspects of the growth of the economy, considerations of sustainability suggest there should be additional concerns. One useful measure of sustainable development is adjusted net savings. Using this measure, Uganda's economic growth is unsustainable, contributed largely by soil nutrient loss. Put another way, the country's natural capital is being 'mined' without sufficient compensatory formation of physical and human capital.

Since 1991, growth in industrial output has averaged over 10% per annum. Most of the industrial activity is based on agricultural commodities and natural resources products. The growth in industrial production is accompanied by increased levels of air, water and soil pollution. The pollution effects are being mitigated somewhat using the environmental assessment process and cleaner production procedures.

Since 1991, the burden of transportation has eased somewhat. There are now more cars on Ugandan roads while air transport is becoming easier with more frequent international flights. On the other hand, rail and water transport are insufficiently developed. The road network is improving and the environmental effects of road construction and maintenance are mitigated using the EIA guidelines for the Roads Sub-Sector and several guidelines to address other cross-cutting concerns.

Communications have improved significantly compared to 1994 whether one uses the efficiency of postal services, fixed line and cell phone owners from almost none in 1994 to close to 900,000 by 2004. By 2003, there were over 7000 internet subscribers from almost none in 1994. While communications will facilitate the transmission of environmental messages, the growth in cell phone use comes with a significant environmental problem, namely, the indiscriminate disposal of the non-biodegradable plastic air time cards and indiscriminate disposal of scrap phones and their parts.

Finally, employment in Uganda is till largely agriculture-based. However, as other sectors of the economy, grow, agriculture's share of total employment is expected to

ATMOSHERIC RESOURCES.

Climate is an important resource. Of concern to Ugandans are issues of climatic change and climatic variability, both imposing adverse impacts on livelihoods, especially of the rural poor. Global research indicates that biodiversity is particularly sensitive to climate change. The country is a net sink for greenhouse gases. But atmospheric gases know no national boundaries; hence Uganda is also impacted adversely by increases and fluctuations in the earth's temperature. Increased frequencies of floods and droughts are manifestations of climate change. The erratic onset and cessation of rains as a result of climate variability make it difficult for farmers to plan when to plant crops. There have been instances of frequent crop failures of late. Hence, to reduce vulnerability to the deleterious effects of climate change and climate variability, adaptation plans including early warning systems need to be put in place.

TERRETRIAL RESOURCES

Land resources and agriculture

Land is a limiting factor of production. Access to land is increasingly becoming difficult, especially for the poorer segments of society. Land degradation, especially through soil erosion is the single largest contributor to the annual cost environmental degradation. Loss of soil nutrients is the reason the country's adjusted net savings are negative, in the absence of other compensatory factors.

With respect to agriculture, the country's dominant development pathways are: expansion of cereals production; expansion of banana-coffee production; non-farm development; expansion of horticulture; expansion of cotton; and stable coffee production. Each of these development pathways has implications for the environment which will have to be addressed whichever pathway are followed.

Forestry resources

Except for some recent policy failures, the loss of forest cover in gazetted areas has been reducing and total cover is stabilising. Unfortunately, forests in protected areas make up only 30% of thee national forest cover. The remaining 70% are on private and customary lands where deforestation rates are high as a result of conversion of forest areas and bushland into agricultural and pastoral land. Furthermore, the country's harvestable timber resources are almost exhausted. Hence, to increase forest cover and ensure increased supply of timber, the sawlog production Grant Scheme and other licensing measures including charging economic rents for timber are in place. Furthermore to ensure that rural communities living adjacent to forest reserves receive equitable benefits, collaborative forest management is being promoted. In recognition of the scarcity of land and goods and services provided by tress, agroforestry systems are also being promoted as integral aspects of farming practices.

Rangeland resources and livestock production.

Rangelands, mostly in the 'cattle corridor' occupy 107 000 km² or 44% of the country's land area. In some places, the conditions of the rangelands are also located in arid and semi-arid areas, themselves fragile ecosystems. In the extreme, pasture and water scarcities are contributing to frequent conflicts between cultivators and pastoralists in the first place, and among pastoralists themselves.

The number of cattle, goats and sheep is on the increase and hence there is need to pay attention to the carrying capacities of Uganda's rangelands. There is anecdotal evidence that in some locals the carrying capacities of rangelands are being exceeded. Unfortunately, nobody knows for sure. Quantitative studies of rangeland conditions are sorely lacking and ought to be addressed. Carrying capacities of various rangelands have also not been established.

On the other hand, piggery and poultry are intensive operations. Large-scale piggery and poultry operations can generate significant pollution problems. From 1999 to 2003, the numbers of pigs and birds have reduced somewhat for a variety of reasons.

Wildlife resources

Conservation or resistance to it, are the driving forces influencing Uganda's wildlife resources. Wildlife constitutes an important resource base for the country – as a source of food and material, recreation, tourism, nature study and scientific research. Wildlife resources occur in protected and un-protected areas. By 1994, wildlife populations whether inside or outside protected areas represented a small fraction of what they were in the 1960s, with some species such as both the black and the white rhino becoming extinct. By 2004, the populations of wildlife in protected areas had stabilised, and some even increased, although marginally so. Outside protected areas, the decline in wildlife populations continues almost unabated as a result of increased off-take, the blocking of migratory routes and habitat conversions, among others. The Uganda Wildlife Authority is piloting the conservation of wildlife populations outside protected area through measures such as the operationalisation of the different classes of Wild Use Rights provided for in the Wild Act Also; communities adjacent to wildlife protected areas are being encouraged to appreciate the presence of wildlife through benefit (including revenue) sharing.

Mineral resources

Reading from geological formations, there is a significant mineral potential in the country. However, the exact locations of commercially-exploitable deposits in most cases are unknown. Of the ones that are known, on a base case scenario, the value of mineral production is expected to rise from the 2003 figure of 12million to over \$ 100 million/year; while on a best scenario basis the value is expected to over \$ 200 million/year. However, the realisation of these projections is contingent upon availing sufficient capital to the mining sector.

When increased mineral production is realised, it will bring with it higher levels of pollution which will have to be mitigated, through among others, the use of the *EIA Guidelines for the Mining Sector* and regular supervision of mining operations.

AQUATIC RESOURCES.

Wetlands.

Wetlands cover about 13% of the area of Uganda and provide a number of direct and non direct values to the people of the country. Up to late 1980's, wetlands were generally considered "wasteland" to be reclaimed for agriculture in rural areas, and "drained" as an anti-malarial measure in urban settings. By 1994, the need for conservation was realised and the process of formulating an appropriate policy of wetlands.

By 2001, wetlands came to be regarded as "granaries of water". From the being a project in 1994, wetlands had by 2005 obtained an institutional home within government structure. Wetlands are now better known and better characterised with detailed information up to the district level. The 56 districts existing by 2004 all had District Wetland Action Plans. Some communities in a few districts have gone ahead and prepared Community Wetlands Action Plans. The management of wetlands is governed by a 10-year Wetlands Sector Strategic Plan which qualified for funding under the Poverty Action Fund. Despite such an impressive achievement, the implementation of the various action plans is constrained by lack of resources.

Furthermore, despite a wide array of achievement, wetlands degradation is still evident-some for basic survival needs of the poor, others as a saving measure where land purchase prices are high, and yet others are the result of ignorance about ownership and legal boundaries of wetlands. Perhaps the most important reason for continued wetland degradation is weak enforcement of the applicable environmental laws and fairly low levels of awareness among policy makers and rural communities.

Water.

Water is life and Uganda has significant quantise of the resources. Form both hydrological and social water scarcity considerations, at the moment Uganda is not water stressed. However, by 2025, indications are that there will be reason to worry as a result of increasing demands for human, livestock, wildlife, irrigations and industrial water. Uganda is ranked in a group of countries that must plan and secure more than twice the amount of water they used as of 1998 in order to meet reasonable future requirements.

The quality of the water form available sources is another concern principally as a result of pollution- residential, industrial and agricultural land discharges into the open water bodies. To some extent the buffering capacity of wetlands is making a contribution towards reductions in pollutions, but this will continue only if the integrity of the wetlands can be sustained.

Fisheries.

The fisheries resource of Uganda has been an important source of high quality solid animal protein. On average Ugandans were consuming about 13kg/person/year by 1994. As of 2005, this consumption was estimated to have declined to about 10kg/person/year, mainly as a result of increasing scarcity and cost. Exports of fish and fish products are also on the increase. The twin effect of increases in domestic consumption as a result of populations growth and higher levels of export demand has pushed capture fisheries close to its long-run sustainable supply and is threatening to exceed it. There is evidence of localised over-fishing in certain water bodies. Two lakes (Victoria and Kyoga) and two species (Nile Perch and Tilapia) account for over 80% of annual harvest, implying a high level of selectivity. On the other hand, the Nile Perch, a carnivore, is having a devastating effect on the fish biodiversity of lakes Victoria and Kyoga.

A new fisheries policy is in place and seeks to address among others enhanced aquaculture development by adding 100 000 tonnes per year to one of capture fisheries of about 330 000 tonnes so as to raise the combined long- run sustainable supply to 430 000 tonnes at least. The development of aquaculture at this magnitude will call for a combination of commercial and artisanal productions. Both modes of production have the potential to generate significant adverse environmental impacts which need to be mitigated. Due to the uniqueness of aquaculture, specific environmental impact assessment guidelines may have to be developed for this activity.

CROSS- SECTORAL RESOURCES.

Energy.

The dominant source of energy in Uganda is biomass and this is expected to remain so in the foreseeable future in spite of plans to increase hydropower energy production. However, the share of clean energy in total consumption is gradually increasing, in part as a result of programmes like the Energy for Rural Transformation. Production of energy has also been liberalised, attracting an increasing interest among private investors. The adverse environmental effects of clean energy production are mitigated through the *EIA Guidelines for Uganda 1997* and the EIA Guidelines for the Energy Sector.

Biomass energy will continue to be an important source of energy , especially for the rural poor, who constitute the majority of Ugandans. In some districts, the scarcity of biomass is already beginning to have impacts on the quality of food prepared. Households are opting for easy to cook but often less nutritious foods. There is need to encourage agroforestry practices so that households can raise their own biomass energy requirements in conjunction with farming practices.

There are some efforts to diversify clean energy sources through the promotion of new renewable energy such as solar and biogas. Unfortunately, the investments required are still at levels which the rural poor cannot afford. Geothermal energy on the other hand, had potential for increased electricity production. There are at least two promising sites awaiting development.

Biodiversity.

Uganda is endowed with a very rich and varied biodiversity due to its bio geographical setting, varied altitudinal range and extensive drainage systems. This biodiversity is a national asset supporting rural livelihoods and contributing to commercial economic activities. The contribution of Uganda's biodiversity resources, organisms or parts thereof, populations or other biotic component of ecosystems with actual or potential value for humanity has been estimated at \$ 1000 million per year, balanced against economic costs of \$ 202 million plus losses to other economic activities of about \$49 million per year.

While Uganda continues to also some of its rich biodiversity, the rate of loss has been reduced somewhat. Reflected in terms of Living Uganda Index, the country out- performs planet earth as a whole when the Living Planet Index is considered. The loss of biodiversity in protected areas has to a great extent been stopped and the trend reversed between 1990 and 2005. Outside protected area biodiversity loss was still continuing as of 2005. The loss of biodiversity is largely the result of habitat conversion and introduction of alien species.

Tourism.

The rich biodiversity is one of the reasons tourists come to Uganda. The projections of tourist arrivals from a base of 68,000 in 1993 was about 140,000 by 2002. In retrospect this projection turned out to be conservative because by 2002, actual tourist arrivals reached an impressive number of 254,000; and by 2004, this number had increased to over 500,000 tourists who generated gross foreign exchange earnings of \$316 million. Still ore tourist revenues are needed if protected areas are to move towards higher levels of financial self-sufficiency instead of depending on government subventions and development- partner assistance.

Increased levels of tourist arrivals have several implications for the environment. First, there are potential adverse impacts as a result of the interaction of different cultures. Second, continued growth in tourist numbers may move towards and gradually beyond the carrying capacity of tourist attractions. Third, the development of infrastructure such as roads and lodges also come with potential adverse impacts which have to be mitigated.

While the growth in tourist numbers and earnings in the aggregate is welcome, it also raises equity issues. For example, rural communities are currently receiving minimal benefits from tourism; and their participation in tourism ventures is limited.

THE SOCIOECONOMIC AND CULTURAL ENVIRONMENT.

Human settlements, housing and urbanisation.

In general, and particularly in rural areas, settlement patterns are wasteful of land and increase the cost of providing services to the areas. The settlements are also largely unplanned; and where plans exists, they are often not adhered to.

The quality of housing Ugandans live in has improved over the years. When compared to the situation in 1991 where over 85% of the houses in both urban and rural areas had rammed earth for floor, by 2002 only 29% urban and 77% rural houses had the same. The use of mud and pole for walls has also declined relieving the pressure somewhat on natural forests and woodland areas, but this change may also mean more clay mining for bricks and stone quarrying both of which have adverse impacts on the environment unless mitigated.

Although Uganda is one of the least urbanised countries in the world in absolute terms, the urban population is growing. Beginning from about 635,000 in 1969, the urban population increased to 938,000 in 1980, 1,890,000 in 1991 and 2,922,000 in 2002. The growth in the urban population means that pollution issues such as solid waste management, and the provision of adequate safe water and acceptable levels of sanitation coverage will have to be addressed.

Safe water and sanitation.

Access to safe water and sanitation in both rural areas has increased compared to the sanitation 10 years ago. For example in 1991, only 11 towns had services of the National Water and Sewerage Corporation. Now, the Corporation covers 19 towns. By 2004, rural access to safe drinking water had increased to 57% while the urban one at 65%. If current trends continue, and incremental investment funds are procured, Uganda should meet its Millennium Development Goal on water supply.

While safe water access *per se* has improved, functionality of water points is another key issue. Also, the cost of water in urban areas and the distance traveled to and queuing at water points in rural areas can easily undermine accessibility.

As far as sanitation is concerned, latrine coverage, the broad indicator (as a measure) of environmental health has improved from 41.7% in 1999 to 56% in 2002.

Pollution.

As Uganda's urban areas increase in number and the urban population grows, pollution, whether air, noise, water or solid waste, is emerging as a significant issue in environmental management. Standards have been established for noise and air pollution and effluent discharge, enforcement of the standards notwithstanding. However, while guidelines have been developed for solid waste management, a stronger law is required and the pre-requisite is a national policy on solid waste management.

The Uganda Cleaner Production Centre is assisting several companies to reduce on waste generation, by conserving raw materials, substituting toxic and dangerous materials, and recovering, recycling and re-using by-products, among others.

Poverty

Headcount poverty has declined from 56% of the national population in 1992 to 38% by 2004. On the other hand, the gap between the rich and the poor is widening. For the poor,

natural resources constitute important “gifts of nature” and social safety nets on which their livelihoods depend all the time or at certain critical periods such as droughts.

The poor are agents of environmental degradation because they have limited livelihood alternatives. They are also at the same time victims of environmental degradation because their coping abilities are limited.

Environmental Health.

Over 80% of all diseases in Uganda can be ascribed to poor environmental conditions. Malaria is the number one killer disease because mosquitoes have fertile breeding grounds. Water borne diseases are a result of poor sanitation. Respiratory diseases are encouraged by poorly ventilated houses and dusty environments as well as congestion in such dwellings.

The sick cannot be counted on to invest in environmental management, such as proper soil and water conservation measures. The sick are also unable to be productive and look for opportunities elsewhere, hence resulting in a heavy dependency on the available natural resources in the immediate vicinity.

Treatment costs mean the diversion of a greater share of household incomes to purchase drugs and to consult with medical personnel, leaving little of else for their expenditures including purchase of food items. It is not wonder then that malnutrition is one of the important health problems among infants and young children in Uganda.

Cultural heritage.

Cultural heritage is part of humanity’s relationship with the world and past achievements and discoveries. The National Environment Act provides for the protection of the country’s cultural heritage. Approximately 187 cultural, historical and pre-historic sites have been identified and their specific locations recorded.

Unfortunately, Uganda’s cultural heritage has not features prominently among the country’s tourist attractions. Yet, the promotion of cultural heritage as a tourist attraction could enhance community participation and even bring districts on board with respect to tourism. Some 15 tourist attractions in 10 districts have been highlighted in this report.

MANAGEMENT SYSTEMS AND TOOLS

Policies, laws and institutions.

The broad policy, legal and institutional framework for environmental management is in place, having begun with almost none ten years ago. However, the need for additional sector or issue- specific policies (e.g. solid waste management) still remains. The same is true for laws and regulations. Institutionally, the structure at local government level is still evolving. There is a new structure for environment and natural resources at the

district level. One key area that needs addressing is the need for better and depersonalised institutional co-ordination . Local governments also need effective institutional structures for vermin control, conservation of biodiversity outside protected areas, and management of cultural heritage.

Environmental Standards, Assessments and Audits.

Standards for air quality, water quality, discharge of effluents into water, control of noxious smells, control of noise and vibration pollution, and soil quality are now in place. However, standards for sub-sonic vibrations, minimisation of radiation and others have yet to be put in place.

There is in place EIA Guidelines, EIA Regulations, and EIA Practitioners Code of Conduct. In addition, some sector-specific EIA guidelines have been developed, and others in the process of developing. Guidelines for environmental audits are in place together with a Practitioners' Code of Conduct. Hence the tools for ensuring the mitigation of adverse environmental impacts and the enhancement of positive ones exist. The framework for regular audits is also there.

Environmental Planning.

Several tools and techniques of environmental planning have been developed since 1994. These include: district environment action plans, right up to the sub-county and parish levels; mechanisms for mainstreaming of the environment into development plans; adoption of the sector wide approach to planning; and integrated assessment and planning.

Ecosystems approach to management.

An ecosystems approach to the management of fragile ecosystems (wetlands, riverbanks, lakeshores, and mountainous and hilly areas) is being implemented in selected districts. If proved successful, opportunities for scaling up to cover other districts would have been created.

Environmental Enforcement

While the existence of a wide range of policies and laws should in theory simplify and make environmental management easier, the evidence on the ground is one of continued violations. The main reason being the low level of enforcement which in part is due to weak institutional structures. Environmental Inspectors have been gazetted and trained to improve enforcement. The police and judiciary are also being made aware of their roles in environmental management, particularly the enforcement of environmental laws.

Environmental Education and Public Awareness.

An environmental education strategy for the formal sector was developed and incorporated in the curricula of education institutions. The strategy for the non- formal sector was also developed. Hence environmental education and public awareness have, by and large, been enhanced. A new focus is on education for sustainable development.

Environmental Research.

Environmental research is scattered among various institutions. In general, the institutions all invariably suffer from insufficient human resources and inadequate equipment and other facilities. There are at least two pertinent challenges. The first is the need to develop a strategic plan for environmental research, highlighting the priorities to be addressed through, among others, inter-institutional collaboration. The second is to ensure that research results are disseminated widely.

Environment Information.

By 1991, environmental information was scattered and sectoral in nature. After the formulation and adoption of the National Environment management Policy , some improvements have been registered. For one, the Environment Information Network was formed and is operational. Beginning with 6 members, there are now 22 active members including NEMA. To some extent, the latter acts as a metadatabase, meaning that even if the institution does not hold the actual data it knows where the data resides.

Second, the Office of the Prime Minister launched the National Integrated Monitoring and Evaluation Strategy in March 2004. Third, there is the Land Information System. Fourth, Makerere University Institute of Environment and Natural Resources houses the National Biodiversity Data Bank. Finally, Uganda is also an active member of the evolving Africa Environment Information Network.

Environmental Monitoring.

While in general monitoring is an expensive undertaking, there is some attempts at low cost monitoring. Within NEMA, there is inter-departmental co-ordination team to facilitate environmental monitoring. Attempts have also been made to define appropriate environmental indicators for purposes of monitoring. However, results in this last regard are not yet conclusive and additional work is required.

Environmental Reporting

The sources of information on the environment in Uganda are now more diversified that was the case in 1994. they include, among others; the state of environment reports at national and district levels; the district environment action plans; environment profiles of the development partners; the poverty eradication action plan; sectoral annual reports; country reports on the Millennium Development Goals; the state of Uganda's

biodiversity; various civil society publications on the environment; environmental impact statements of various development projects; and the national human development reports.

Innovating towards financial stability

In recognition of the fact that financial resources for environmental management are limiting and largely come from support by development partners hence having doubtful sustainability, different domestic sources are being assessed. One option is to make ecotourism pay an increasingly larger share for protected area management costs. The second option is to encourage payment for professional services. The third option involves the popularisation of payment for ecosystem services (carbon, watershed, etc.). Fourth, where funds can be accessed, a surer way to financial sustainability is through the establishment of an endowment fund through, among others, the operationalisation of the National Environment Fund provided for in the National Environment Act. Finally, environment agencies may look at generating revenues through property transactions.

POLICY RESPONSES.

The State of the Environment Report for Uganda 2004/2005 has demonstrated with supporting data that the investments the country, its development partners and civil society have made since 1994 have registered significant progress in the way the environment is management compared to the baseline situation of 1991 to 1994. However many challenges still remain and some are emerging, thus calling for a number of policy responses. Some of the key policy response required are the following.

1. Increase levels of enforcement, especially at the local government levels.
2. Formulate a national solid waste management policy to facilitate the development of appropriate laws to govern the management of solid waste.
3. Create awareness among policy makers that environmental management can complement national economic development in fulfillment of the objectives of sustainable development.
4. Prepare a manual to guide local governments on how to mainstream environment into district development plans so that the practice becomes routine.
5. Create appropriate incentives and disincentives to encourage the more active participation of local communities and the private sector in environmental management, and discourage wrong doers.
6. Encourage the Plan for Modernisation of Agriculture and the National Agricultural Advisory Delivery Services secretariats to increase interventions addressing soil erosion as a matter of priority since it is the main cause of soil nutrient loss and the largest share of the annual cost of environmental degradation which has led to negative adjusted net savings.

7. Complete the formulation and the subsequent adoption of the land Policy and the Land use Policy so as to facilitate the preparation of land use plans.
8. Seek international assistance in the compilation of more current inventory data (forests, wildlife, fisheries, land use changes, rangeland conditions etc) to allow for more informed decision making in environmental and natural resources management.
9. Encourage different sectors to prepare annual reports as this will provide a rich sources of information which can be used to prepare other reports including the state of environment reports.
10. Revise both the National Environmental Management Policy and the National Environment Action Plan to accommodate emerging issues such as greater levels of investment in aquaculture, solid waste management and payment fro environment services.
11. Encourage Government ministries and agencies, civil society organisations and the private sector to identify innovative financing mechanisms for environmental management including creating markets for Uganda's ecosystem services.

THE HISTORY OF ENVIRONMENTAL LAW

By: *Kenneth Kakuru*
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1.1 THE HISTORY OF ENVIRONMENTAL LAW

Environmental law seeks to protect human health, manage natural resources and sustain the biosphere. This is frequently done through laws that set standards for environmental planning, wildlife, mineral resources, land use and activities that can affect the air, water and soil.

1.2 RELIGIOUS, CULTURAL AND HISTORICAL ROOTS

Religious traditions entail an evolving body of norms that govern most aspects of life. The Shari'ah- the body of Islamic law- mentions the environment, commanding the respect for the environment. When combined with the Islamic emphasis on cleanliness (and thus constraining pollution), the Shari'ah can be a powerful source of norms for environmental protection. African customary or traditional, tribal law frequently governs important natural resources such as water, grazing, timber and minerals, particularly pigments. Additionally, some tribes seek to protect the quality of their drinking water by prohibiting livestock from the vicinity of wells and other sources of portable water.

1.3 THE GREEN REVOLUTION

The Green Revolution came as a result of unchecked industrialization. Industries developed new chemical compounds, Organic compounds used as pesticides and herbicides, bio-accumulated in fish and birds, threatening various species with extinction, inn addition to causing cancer and birth defects in humans.

1.4 THE END OF COLONIALISM

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 development.

1.5 THE ENGLISH LAW OF TORT

The environmental law is in fact a modification of tort law and principles. In Uganda, other than the question of locus standi, the polluter pays principle, the doctrine of public trust as incorporated in the constitution and the 1998 land act. All the other principles are of environmental law and basically tort law.

In 14th Century England remedies for wrongs were dependent upon writs. Osborn's Concise Law Dictionary describes a writ as a document in the Queen's (King's) name

under the seal of the crown commanding the person to whom it is addressed to do or forbear from doing an act. Where there was no writ there was no right.

1.6 TRESPASS

The term is usually used in reinforce to forcible or unauthorized entry on land. The underlying principle here is protection of private property. The Feudal order was based on ownership of land by a few individual landlords and protection of their exclusive right to land was of fundamental importance.

The industrial revolution made land less important and promoted the ownership of commodities and other forms of means of production such as machinery etc, Ownership of chattels became as important as ownership of land, as land had become a commodity on the market like any other. There remained however and still remains a great legal requirement to protect private ownership of property in whatever nature or form.

We shall argue in this paper that it has since been realized that damage to ones property in the end results in damage to the property of others and that the total damage caused by each person to his own property eventually adds up to gross damage to the property of all resulting into degradation of mans natural habitat, that effects his quality of life for which development and private ownership of property was meant to enhance. The need to address this led to the emergency of the modern environmental law.

1.7 NUISANCE

The tort of nuisance extended to cover any actions committed by any one on the land adjoining that of the plaintiff it does not matter that the land where the nuisance is created does not belong or is not occupied or in possession of the said defendant.

There was certainly a need to balance the conflicting interests of two property owners with adjoining lands. Whereas each enjoys a right unless actual damage is thereby caused, the earlier position was that even if such damage was caused, the plaintiff could not recover if the damage was due to natural growth of the trees for example. This in the case of *Reed vs Smith (1914) 19 B.C.R. 139 at 140*.²⁰ It was successfully argued for the defendant that "he did not grow the trees, he did not root them and he did not blow them down. It all happened in the cause of nature. But the law has since moved from this position to cover liability in nuisance from the escape of things from the defendant's land to that of the plaintiff even if they were naturally on the plaintiffs land.

But what amounts to injury has been extended to cover not only physical injury to property but also injury to the value of the property. Noise from adjoining property may reduce the rental value of a residential house for example. But still this kind of injury ought to be proved. In case of physical damage actual not potential damage must be proved. However no action will lie for nuisance in respect of damage which ever, though substantial, is due to the fact that the plaintiff is absolutely sensitive or uses his land for exceptionally sensitive purposes.

It is no defence that the plaintiff came to the nuisance and hence consented to the injury. A person is not expected to refrain from buying land or occupying premises because a nuisance exists there. It is no defence that the nuisance although injurious to the individual is beneficial to the public at large. The fact that Mukwano Soap Factory in Kampala produces soap for the benefit of the public, employs many people and pays government taxes is no defence to an individual's suit against it in nuisance, due to fumes emitted from the said factory.

Nor is it a defence that the place from which the nuisance emanates is the best location the defendant can get on the best suitable for the purpose or that no other place is available for which less mischief would result. If no place can be found where the action causes no nuisance then it can only be carried out with the permission or agreement of adjoining proprietors or under the sanction on an Act of Parliament²³ Lack of negligence is no defence to an action in nuisance.

1.8 NEGLIGENCE

The rule of negligence is very simple that man must take reasonable care in his pursuit for personal well being so as not to injure others in the process. If one is to blast rocks for weeks to build a road to acquire money, he must not injure others in the process. If one is to cut trees in a forest he must not put others at risk by his activity. If one is selling food to others who have no time to prepare their own food he must ensure that the food is safe.

The rule in Rylands Vs Fletcher 1868 LR 3 HL 330 was stated by Blackburn .J. in Exchequer Chamber as follows;-

"We think that the rule of law is that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does not do so is prime facie answerable to all damages which is the natural consequence of its escape".

1.9 NONE NATURAL USER OF LAND

Rylands Fletcher established the rule that as a pre-requisite to liability the defendant must have brought on the land something that was not naturally there. This was originally an expression of the fact that the defendant has artificially introduced onto the land a new and dangerous substance. This rule in my view seems to have come as a result of the need to protect property owners from their neighbours' dangerous industrial ventures. It was also a recognition that the increased industrial development by necessity requires that land be used for purposes it was never naturally intended to be used for. That more and more natural environment was being replaced with unnatural environment and there was need to protect those using their lands naturally from those putting theirs to new use.

2.0 THE EMERGENCE OF ENVIRONMENTAL LAW IN UGANDA

The law of tort has its own limitations. It is based on personal injury or injury to property. However for protection of the environment, this question of *locus* became a very big hindrance. The law including the constitution of most countries had to be changed to

address this problem and other related ones. A lot of precedents on this issue and the common law position were reviewed by *Lugakingira J* (in the now famous case of) *Mtikila Vs Attorney General- civil case [No 5 of 1993] High Court of Tanzania p.5.*

2.1 THE RIGHT TO A CLEAN AND HEALTHY ENVIRONMENT

In 1991 the government of Uganda launched the National Environment Action Plan (NEAP). It intended to provide a frame work for integrating environmental considerations broadly defined to include natural and man made environments into the country's overall economic and social development. In 1994 the government endorsed the National Environment Management Policy (NEMP).

2.2 THE EVOLUTION OF ENVIRONMENTAL LAW AND POLICY

The NEMP 1994, The policy set out the objectives and key principles of environmental management and provided a broad framework for harmonization of sector and cross sectoral policy objective. It was on this policy that a comprehensive legal and institutional frame work was designed. The policy through legislation has created new capacity building needs in environmental planning, information generation and dissemination and the use of environmental tools in managing the environment.

2.3 THE CONSTITUTION OF THE REPUBLIC OF UGANDA

In October 1995 a new Constitution came into force in Uganda, the 1995 Constitution. The Constitution sets out in its National Objectives and Directive principles of state policy, among others, the promotion of sustainable development and public awareness of the need to manage our environment.

Chapter 4 of the Constitution sets out a detailed Bill of rights, particularly, the right to a healthy and clean environment as a human right Under Article 39 enjoyable and enforceable as any other form of human rights.

The Constitution recognized the importance of the environment and health as inseparable from all forms of human rights.

2.4 ENFORCEMENT OF ENVIRONMENTAL RIGHTS

Article 50 of the Constitution provides for the enforcement of the rights provided under Chapter IV and for the first time in history of Uganda and unlike in many other jurisdictions, the Constitution provides a right of standing for any aggrieved person. The person enforcing the right does not have to be one personally or physically affected by the violation. The framers as of the Constitution must be given great credit for this as indeed this clearly manifests the power of the people in the Constitution whereas in many jurisdictions the courts have gone to great lengths to look for the locus standi through interpretation, in Uganda it is provided.

The enforcement of environmental rights takes many forms. Providing information is the simplest, the cheapest, at times the most effective way of enforcing environmental rights. By simply reporting an oil spill, illegal dumping, or a forest fire in time would save money and the environment a great deal. If the public was sensitized to know that reporting environmental degradation is very important, a lot would be achieved at the least possible expenses and would be in the interest of developers, producers, investors or government. The information does not only have to be after the fact. The information might be also before the fact such as threatened destruction of a wetland or forest.

There must exist an entity to which this information must be delivered that is within very reasonable reach of the population. The Local Councils for example are in law in charge of environment with Local Defence Units as an enforcement arm. This would be in addition to all arms of government e.g. police, local administration police, etc should be informed and available as reporting centers for environmental problems.

Action ought to be taken upon reporting for the populations to be able to continue reporting environmental damage. If it is fire the population should be mobilized to put it off or police fire station called. If it is pollution like oil spill, immediate action needs to be taken, victims compensated, culprits arrested.

If this is not done the reporter will never report again. On the other hand if the reaction is swift and appropriate action taken that would encourage reporting.

2.5 THE PRINCIPLES OF ENVIRONMENTAL LAW

Listed below are the main principles governing environmental law;

- The Precautionary principle
- Polluter pays Principle
- User pays principle
- Public Trust Doctrine
- Public participation
- Access to Justice and Information
- Inter – Intra generational principle and Equity
- Sustainable Development

2.6 THE PRECAUTIONARY PRINCIPLE

The precautionary approach extends the principle of prevention of environmental damage to situations of scientific uncertainty

When there is **certainty** regarding the risk of harm to the environment, a regulatory measure is preventive; when there is **uncertainty**, a regulatory measure is precautionary. The precautionary approach does not dictate specific regulatory measures, but determines the time at which regulator measures must be adopted

In precautionary regulation the burden falls on the proponent of the new substance, act, or technology to demonstrate that it is not harmful

2.7 RECOGNITION BY NATIONAL COURTS

The precautionary principle has been recognized by some national courts as implicit in the national environmental policies and legislation, therefore applied independently from its status at international level and its incorporation in the national regime:

“The precautionary principle is a statement of common sense prior to the principle being spelt out” [...] “where uncertainty or ignorance exists concerning the nature of environmental harm (whether this follows from policies, decisions, or activities), decisions-makers should be cautious

(Leatch v. National Parks and Wildlife Service - 1994 -Australia)

2.8 POLLUTER PAYS PRINCIPLE

National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment” (Rio Principle 16)

2.9 RATIONALE

PPP introduces economic thinking into environmental law - it deals with allocation of costs of pollution or damage to the environment

The costs of pollution or damage to the environment (or more in general degradation) have to be borne by the person responsible of such pollution or damage, regardless of whether the costs are incurred through direct regulation, taxes, permits or other mechanisms

The PPP also works as an incentive to modify behaviour towards the environment. In more general terms, it means that the environmental costs of the production of particular goods or of providing given services should be reflected in the costs of such goods or services

PPP calls for the abolition of hidden subsidies for goods and services which result from the fact that the deterioration of the environment resulting from production or services is borne by the public and not reflected in the remuneration for such goods or services

3.0 USER PAYS POLICY

In more general terms, it means that the environmental costs of the production of particular goods or of providing given services should be reflected in the costs of such goods or services

PPP calls for the abolition of hidden subsidies for goods and services which result from the fact that the deterioration of the environment resulting from production or services is borne by the public and not reflected in the remuneration for such goods or services

3.1 PUBLIC TRUST DOCTRINE

The Public Trust Doctrine is one of the oldest but constantly evolving doctrines relating to the ownership and use of essential natural resources. It governs the use of property where title is presumed to be held by a given authority in trust for citizens. This doctrine is provided for under article 237 of the Uganda Constitution.

The flexible statutory and judicial interpretation of the responsibilities of the trustee and the resource rights of the beneficiary could lay the basis for a vibrant and thriving legal regime on public interest litigation under the public trust doctrine.

3.2 ACCESS TO INFORMATION

Prior to the enactment of the NES and the Constitution, there existed no inherent right of access to environmental information nor government held information/records. The Official Secrets Act, the Public Service Standing Orders and Public Service Act were the regulating access to information, which was at a fee.

The right to environmental information is a statutory right created by S.86 of the NES. Art. 41, confers upon citizens a right of access to information held by the state or its organs subject to disclosure not being prejudicial to state security interests or an invasion of personal privacy.

Art. 41(2) provides that parliament is under a duty to prescribe a classification system and procedural aspects of access. However, to date, information access mechanisms have not need formulated.

(See the case of Greenwatch V attorney General and NEMA)

3.3 ACCESS TO JUSTICE

S. 72 of NES provides for a person to apply to court for an environmental restoration order against any person who has harmed, is harming or likely to harm the environment.

Sub section 2 provides;

“...it shall not be necessary for the plaintiff ...to show that he has a right of or interest in the property in the environment or land alleged to have been harmed or in the environment or land contiguous to such environment or land...”

Art. 137(b) a person who alleges that an Act of Parliament or any law or anything done under the authority of law or any act or omission by any person or authority, is inconsistent with the Constitutional provisions, may petition the Constitutional Court for redress where appropriate.

Art. 50 of the Constitution of the Republic of Uganda

3.4 SUSTAINABLE DEVELOPMENT

According to the National Objectives and Directive Principles of the Constitution, the State is empowered to promote sustainable development and to prevent or minimize damage and destruction to land, air, and water resources. In the case of NAPE V AES Nile Power Ltd (1999), an action was brought to court seeking a completion of the EIA process by NEMA.

3.5 INTER-GENERATIONAL & EQUITY PRINCIPLE

Every generation has a responsibility to the next generation to preserve the rhythm and harmony of nature for the full enjoyment of a balanced and healthful ecology. See the Oposa case.

3.6 PUBLIC PARTICIPATION

This is one of the key aspects of the NEAP process. This is through community awareness of;-

- environmental concerns,
- How the changing state of environment affects their livelihood,
- And how their lifestyle impact on the environment and natural resource base.
- PP is stressed under Objective XVII, which requires the state to promote, inter alia, public awareness of the need for a balanced and sustainable management of the natural resource base.

THE LAW RELATING TO ENVIRONMENTAL COMPLIANCE AND ENFORCEMENT IN UGANDA

By Christine Echookit Akello, Senior Legal Counsel, NEMA

Approaches to Environmental Compliance and Enforcement

In Uganda, multiple approaches are used. These range from the command-and-control approach to the liability approach and use of economic instruments. Other approaches include a little bit of the responsive regulation (where Government works with the private sector and public interest groups to develop standards) and voluntary approaches; or a hybrid of two or more of these approaches.

The Environmental Legislation

The environment needs to be protected not only because of its intrinsic value (non-material dimension) but also for its ecological, economic and aesthetic values. These translate into caring for the life support systems of the earth, bio diversity, promotion of economic growth and the enjoyment of the beauty and peace only provided by nature.¹

This, therefore, calls for a multi-disciplinary and multi-sectoral approach to environmental conservation and protection.

Before 1995, Uganda used the traditional sectoral approach to legislation. As the need arose, sectoral and institutional environmental legislation were enacted. There was no comprehensive and systematic understanding of the interactions within the environment and their compatibility. The result was that numerous legislation came up with conflicting provisions and standards.

The protection of the environment needs a comprehensive approach that accommodates changing perspectives, standards and concerns, depending on scientific development.

The Constitution of the Republic of Uganda, 1995 provides for environmental protection and conservation. In 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 land, air, and water resources in a balanced and sustainable manner for the present and future generations.

It further provides that the natural resources of Uganda are to be managed in such a way as to meet the development and environment needs of present and future generations of

¹ http://www.botany.uwc.ac.za/sci_ed/grade10/ecology/conservation/conser.htm, visited 24/10/2007.

Ugandans. 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.

Above all, Article 39 of the Constitution entitles every Ugandan to a clean and healthy environment.

Under Article 17 of the Constitution, every citizen has the duty to create and protect a clean and healthy environment.² The duty is participatory in nature - not to perform any act which may endanger the environment and also the duty to report to the relevant authorities.

Section 3 (2) of the National Environment Act (NEA) provides that every person has a duty to maintain and enhance the environment, including the duty to inform the Authority³ or the local environment committees of all activities and phenomena that may affect the environment significantly.

Article 237 (2)(b) of the Constitution also provides for the public trust doctrine i.e. that the state, including local governments, is required to create and develop parks, reserves and recreation areas and ensure conservation of natural resources and promote the rational use of natural resources so as to safeguard and protect the bio-diversity of Uganda. In accordance with this principle, the management of environmentally fragile resources such as natural lakes, rivers, wetlands, national parks, game reserves and forest reserves is vested in the state. This provision is reflected in section 44 of the Land Act, Cap. 227.

Relevant Compliance and Enforcement tools under the National Environment Act⁴ include the following:

Compliance Control

Compliance control covers the areas of permitting, inspections and compliance processes. More integrated and cross-media permitting is necessary for efficient use of resources and to maintain an effective number of environmental inspectors. Follow up of inspectors is also very crucial.

Environment Standard Setting and Licensing

Some activities require specific permits. Standard setting ensures that licences and permits are issued as a measure to control activities that may have deleterious or

² Clause (1) (j).

³ National Environment Management Authority, NEMA or the Authority.

⁴ Sectoral legislation on the environment are also worth mentioning. These include the Mining Act of 2003 which provides for EIA, environmental protection standards, environmental restoration plans and environmental performance bonds in accordance with the Environment Act (Ss. 108 - 112). The National Forestry and Tree Planting Act of 2003 also provides for EIA.

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.

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)).

Self monitoring can be one of the options for ensuring adequate environmental monitoring and industry should be encouraged to carry out self monitoring and self reporting.

Section 19(1) (d) of the Investment Code Act, for instance, 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.

Use of Compliance Agreements

This is one method to promote voluntary compliance. Compliance agreements are signed with developers to guide in the level of compliance required and specifying the time frame for the compliance and action that will be taken in case the schedule is not complied with.

NEMA enters into compliance agreements with a view to achieving compliance without necessarily using assertive approaches.

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 re-modelling 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.

Use of Environmental Easements

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 Use of Economic and Social Incentives

The Act clearly provides that management measures should be carried out in conjunction with the application of social and economic incentives including taxation measures. These build on the command-and-control approaches and encourage greater pollution prevention and more economic solutions to environmental problems.

For instance, in the 2006/2007 Financial Year, Government imposed a 10% levy on second hand clothing and motor vehicles of more than 8 years. In the 2007/08 Budget Speech, a 10% levy was imposed on used motor vehicle spare parts. This measure is consistent with the practice in the East African Community and the region. A ban on importation and production of plastic bags (commonly known as “buveera”) of less than 30 microns was announced to take effect from 1st July 2007 and an excise duty of 120% on the rest was imposed. However, a transitional period of up to 30th September was slotted in to allow for clearance of the products in stock.

NEMA in concert with the Ministry of Finance may need to look into other environmental fiscal reform measures such as the introduction of fee systems that tax emissions, effluents and other environmental releases. Product charges could also be introduced where the product manufacturing process or usage is a significant source of pollution.

Use of Performance Bonds

Industrial plants that produce highly dangerous or toxic substances and therefore have significant adverse impacts on the environment may be required to deposit bonds as security for good environmental practice. Bonds may also be used to induce satisfactory waste management practices. The legal instrument to operationalise this provision is, however, yet to be made.

Enforcement

Use of Environment Restoration Orders and Improvement Notices

This is a clear case of the application of the liability approach both in terms of fault-based liability and strict liability.

Where a person’s activities affect the environment and natural resources, the Authority or a court may issue a restoration order; and an environmental inspector may issue an improvement notice for any of the following purposes:

- (a) preventing the person from taking or continuing any action which would or is reasonably likely to do harm to the environment;
- (b) requiring the person to restore the environment as near as it may be to its original state, including the replacement of soil, the replanting of trees and other flora and the restoration, as far as may be, of outstanding geological, archaeological or historical features of the land or the area contiguous to the land in issue.
- (c) requiring the person to remove any waste or refuse deposited on land in issue.
- (d) requiring the person to deposit waste in a place specified in the restoration order.

The restoration order may also:

- (e) awarding compensation to be paid by the polluter to other persons whose environment or livelihood has been harmed by the action which is the subject of the restoration order;

- (f) levying a charge on the polluter which represents a reasonable estimate of the cost of any action taken by an authorised person or organisation to restore the environment to the state in which it was before the pollution or degradation.

Enforcement of restoration orders may create both civil and criminal liability. Enforcement may be undertaken through auctioneers or private agents. Costs of enforcement may be recovered either directly by the auctioneer demanding payment from the violator or by the auctioneer giving notice of intention to sue for the amount.

The Authority can recover the costs by summary action in court. NEMA may also institute a civil suit or commence criminal action through the police where direct enforcement fails or is delayed.

Enforcement of Improvement notices may give rise to criminal liability. Legal action is then taken by recourse to police i.e. filing a complaint and making a statement. At this point and as the case progresses documentary, video and other evidence may be submitted to the police file. Police will also take a statement from the suspect. Upon compilation of the file, the consent of the DPP to prosecute may be sought.

The Use of Criminal Law

Criminal law provides many opportunities for the exercise of judicial discretion in ensuring minimum conditions for environmental integrity.⁵ It establishes violations, provides penalties and imposes fines, imprisonment term and sets out alternative sentencing options. The Penal Code Act has a lot of provisions which deal with environmental violations and therefore can be employed to prosecute offenders.

The National Environment Act and sectoral legislation like the Water Act Cap. 152,⁶ the Land Act Cap. 227, the Investment Code Act, the Wildlife Act, Cap. 200,⁷ the Mining Act 2003,⁸ and the National Forestry and Tree Planting Act, 2003⁹ also establish violations, provide penalties and impose fines, imprisonment terms and set out alternative sentencing options.

Statutory Causes of Civil Action

The legislation outlined above also provide for civil remedies for certain environmental violations.

⁵ Anderson, Winston, "Environmental Law Enforcement: The Role of the Judiciary", in the Sixth International Conference on Environmental Compliance and Enforcement, April 15-19, 2002 San Jose, Costa Rica, International Network for Environmental Compliance and Enforcement, Proceedings Volume 2 at page 370.

⁶ The Water Act Cap. 152 provides for rights in water, planning for water use, control of the use of water resources, water easements and control over water works and water use, among others.

⁷ The Wildlife Act, Cap. 200 provides for sustainable management of wildlife, consolidates the law relating to wildlife management, and establishes a coordinating, monitoring and supervisory body for that purpose.

⁸ The Mining Act 2003 vests the ownership and control of all minerals in Uganda in the Government and provides for the acquisition of mineral rights and other related rights.

⁹ The National Forestry and Tree Planting Act, 2003 provides for the conservation, sustainable management and development of forests for the benefit of the people of Uganda.

The use of the Common Law

Increasingly, the common law of trespass, nuisance, negligence and in Contract has been applied more liberally to environmental issues.

Use of Bye laws

Bye laws and ordinances can be enacted under the Local Government Act, Cap 243 to operationalise the Second schedule to the Act which prescribes the functions of the Government that the District Council is responsible for. These functions include land surveying, land administration, physical planning, forests and wetlands, environment and sanitation, protection of streams, lake shores, wetlands and forests.

THE CHALLENGES IN MONITORING AND ENFORCEMENT OF ENVIRONMENTAL LAWS IN UGANDA

By: Waiswa Ayazika, Environmental Impact Assessment (EIA) coordinator, NEMA.

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 an 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 ENVIRONEMNTAL 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, Riverbanks and Lakeshore 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 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 marrum 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.

GOVERNANCE AND PROTECTION OF NATURAL RESOURCES IN UGANDA

*By: Nsita Steve Amooti,
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INTRODUCTION

Forests and woodlands in Uganda cover a total of 4.9 million hectares, about 24% of the total land area. This forest cover is composed of 81% woodland, 19% tropical moist forest (TMF) and less than 1% plantation area. 30% of the forests are in protected areas (Forest Reserves, National Parks and Wildlife Reserves) and 70% are found on private land.

51% of the TMFs on private lands are degraded while 17% of those in PAs are degraded (National Biomass Study, 2003). The main reasons for the degradation include forest crimes¹⁰ like illegal harvesting and trade, especially timber, charcoal, firewood & more recently, rattan cane and some other non-timber forest products. Encroachment for agriculture and human settlement are other forest crimes that are highly destructive to forests in Uganda. Forest crimes are often linked to poor governance, and therefore protection of forests is one of the most important activities for forest managers.

Because of corruption and political manipulation, some of these criminals often carry out their lawless activities with impunity. **Appendix 1** gives some examples of these lawless acts, frequently coming during the election periods.

Forest protection is one of the most expensive expenditure items on the budgets of forest management institutions. It is also one of the most emotional topics on the public discussion agenda today. Yet forests are still deteriorating. Forest cover data (unpublished) on 18 districts covered by the National Biomass Study shows that 43% of the total forest cover in these districts has been lost over the last 15 years (1990 – 2005)!!!. Therefore, it is high time we took a look at our forest governance rather than continue on the law enforcement track alone.

Up to the early 1970's, there was respect for the rule of law but from the 1970's to the mid 1980's, the rule of law collapsed and the quality of forest management and protection slid to its lowest level ever. When constitutional government was re-established in the second half of the 1980s, new policies and laws were made and old ones revised. Notable among these policies at the macro level are the decentralization, institutional reform and private sector-led economic policies.

¹⁰ Foresters have coined this term to mean all those acts that break forest laws, especially those aimed at protecting forests

Box 1: Illegal Harvesting of Forest Produce in Uganda

Illegal harvesting of timber is mainly done with chainsaws and handsaws. The use of powersaws is very rampant in the Central Region Districts especially Mukono, Wakiso and Mpigi, although it is rapidly spreading to all areas of the country. In his public notice of 12 November 2004, the Minister declared chainsawn timber (whether from a licensed activity or not, private land or forest reserves) contraband and liable for confiscation together with any vehicles used for transporting it.

Illegal charcoal burning in CFRs is widespread especially in the reserves within 50 km of the main urban areas where there is high demand for charcoal. The public does not take this offence seriously as it touches directly on the livelihoods of the people, but it is more destructive than timber harvesting as it takes big and small trees alike.

Sand mining and brick-making in CFRs around major urban areas cause serious damage to the land when it is done illegally because it does not provide for restoration work after extraction. Some of these activities, especially around Kampala, Entebbe and Jinja are backed by influential people in our society.

Forest produce from licensed and unlicensed sources finally ends up in the same market. This destabilizes the market, making it unprofitable to deal in legitimate forest produce business. Illegitimate business involves forging the permits, receipts and hammer marks. Timber dealers sometimes manipulate the dates on the permits and receipts in order to re-use them. The illegal produce dealers use various methods to evade law enforcement personnel including movement of the produce at night, concealment in covered trucks, hiding it in residential areas and warehouses, and many other unscrupulous tactics.

Therefore fighting illegal harvesting of forest produce requires the cooperation of all Government law enforcement agencies.

MAIN LEGISLATION INFLUENCING THE MANAGEMENT OF FORESTS IN UGANDA

Out of these macro-policies and the directions set by constitutional reform, many instruments were developed at sector level. In terms of forest management, the most relevant instruments include:

- (a) The National Forestry Policy, 2001
- (b) National Forestry and Tree Planting Act (Act 8/2003)
- (c) The National Environment Act (CAP 53)
- (d) Uganda Wildlife Act (CAP 200)
- (e) Local Governments Act (CAP 243)
- (f) Land Act (CAP 227)
- (g) The Traditional Rulers (Restitution of Assets and Properties) Act (CAP 247)

Other instruments that directly affect forest law enforcement and governance include:

- (h) The Inspector General of government Act (CAP 167)
- (i) The Leadership Code (CAP 168)
- (j) The Prevention of Corruption Act (CAP 121)
- (k) The Investment Code (CAP 92)
- (l) The Magistrates Act (CAP 16)
- (m) The Police Act (CAP 303),

(n) The Evidence Act (CAP 6)

Article 237, clause 2 (b) of the 1995 Constitution authorizes Government or local government as determined by Parliament by law to hold forests in trust for the people and protect “...*natural lakes, rivers, wetlands, forest reserves, game reserves, national parks ...for the common good of all citizens...*”. At this time, the Constitution was not clear in specifying the level of government at which forests would be managed. When it was revised in 2005, some forests were left at the Centre (Central Forest Reserves), while the others were decentralised to the regional level.

Arising out of Article 237 of the Constitution, the Land Act vests ownership of land in the citizens of Uganda. It:

- **Requires all landowners to manage and utilize their land in accordance with the Forests Act and other relevant laws.**
- **Empowers Government, including local governments, to hold in trust for the people and protect forest reserves and other land for the common good of the citizens of Uganda.**
- **Prohibits Government from leasing out or alienating any natural resource mentioned in the Act, without the approval of Parliament. However, Government may grant licenses, concessions or permits.**
- **Encourages local governments to request the Central Government for authority to manage any of the resources that are held by the Central Government. So far, no LG has formally invoked this provision.**

The Forestry Policy distinguishes the roles of the central and local governments in forest management. At the Centre, the Ministry of Water and Environment is responsible for regulation, sector planning, inter and cross-sector coordination, and overall monitoring in the sector. The Forestry Sector Support Department is the technical arm of the Ministry.

The National Forestry and Tree Planting Act, 2003 (NFTPA) created the NFA to manage CFRs and the District Forestry Office to manage local forest reserves (LFRs) and regulate forestry activities on private lands. The Act carried forward all the Statutory Instruments under the repealed Forests Act, 1964 until new regulations are gazzeted.

UWA remains responsible for forests in National Parks (NPs) and Wildlife Reserves (WRs), which are managed under the Uganda Wildlife Act, 1996.

Box 3: Decentralisation of Forest Management in Uganda

In general terms, the most widely understood form of decentralization in Uganda today is devolution of financial and decision-making powers to district, sub-county, parish and village levels. With respect to forest management, the policy on decentralisation has evolved as follows:

- *Before 1967, there was a vibrant local forestry service, which ran local forest reserves (LFRs), especially under the kingdoms. At that time, local governments had powers to decide on development priorities for their areas but the central government was still responsible for management of some of the forest reserves*
- *In 1967, Government adopted a republican constitution, which centralized virtually all government decision-making powers. Consequently, all LFRs became central forest reserves (CFRs). Forests outside the protected area system (PAS) were also placed under central government regulation.*
- *In 1993, the government briefly decentralized forest management, but it became evident that the local governments were not yet ready to assume all forest management responsibilities. In pursuit of revenue to run activities like education, water and health, which had also been decentralized, they set about harvesting the forests with little consideration for planned management;*
- *The forest reserves (FRs) were re-centralized in 1995 through Statute Supplement No. 4, The Local Governments (Resistance Councils) (Amendment of Second Schedule) (No. 2) Instrument, 1995. This turned out to be a rather unpopular move among local governments. They questioned the legal basis for re-centralizing the FRs and maintained pressure on the central government to decentralize them again;*
- *In 1995, Uganda adopted a new Constitution. The Constitution fully embraced the 1993 decentralization policy, but it remained ambivalent regarding management of forests;*
- *In 1998, government went back to a two-tier arrangement of managing FRs. Statutory Instrument 1998 No. 63, The Forest Reserves (Declaration) Order, 1998 once again created LFRs and CFRs. Forests outside the PAS were still being regulated by the Centre under the Forests Act, 1964. However, local governments continued asking for management of all FRs, arguing that the law vested only policy in the central government. On their part, the forest managers maintained that the local governments did not have the capacity and sufficient will to manage the FRs professionally;*
- *The NFTP, 2003 maintained the 1998 position but this time it created the National forestry Authority (NFA). Whereas the FD had been responsible for all aspects of forestry in the country, the NFA would now manage only the CFRs, and forests outside the PAS would be regulated by the District Forest Office.*

The National Environment Act, 1995 creates the National Environment Management Authority (NEMA) with overall responsibility to make sure that all parties involved carry out their activities in an environmentally friendly manner. It provides for establishment of local government Environment Committees to coordinate activities at various local government levels. The Act links into the NFTP by providing for management of all forests in accordance with the principle of sustainable development. It establishes a relationship between NEMA and the lead agency in forestry (the NFA according to National Forestry Master Plan).

FOREST LAW ENFORCEMENT AND GOVERNANCE (FLEG) IN PROTECTING FORESTS

Governance

Wikipedia, the free encyclopedia describes “Governance” as the process of decision-making and the process by which decisions are implemented (or not implemented), whereby, public institutions conduct public affairs, manage public resources, and guarantee the realization of human rights. Good governance accomplishes this in a manner essentially free of abuse and corruption, and with due regard for the rule of law. Good governance defines an ideal which is difficult to achieve in its totality. However, to ensure sustainable human development, actions must be taken to work towards this ideal.

Before the forestry sector reforms of 1998 – 2004, the then Forestry Department (FD) was supposed to manage FRs, carry out extension services and regulate the sector. Inadequate resources, corruption, low staff morale and political meddling led to institutional weaknesses within the FD which undermined efficiency, transparency, accountability and professionalism in the forestry sector. By the mid-1990s, society had lost confidence in the ability of the FD to carry out its responsibilities effectively. The situation was exacerbated by weak checks and balances. However, in the recent past, civil society organisations (CSOs), and especially the media, have increasingly become vocal in holding government agencies accountable for their actions.

One of the unpalatable actions of Government is bringing pressure to bear on forest managers to change land use of CFRs to commercial agriculture, urban expansion and human settlement. **Appendix 2** shows some examples of the CFRs where pressures are being exerted on forest managers to change land use and thus jeopardise the benefits from forests.

Law Enforcement

Law enforcement and administration of justice is one of the most important challenges facing forest managers in Uganda today. Kazoora and Carvalho (2005) identified three possible routes for the administration of justice in forestry, namely voluntary compliance, administrative processes and legal litigation. In voluntary compliance, a person voluntarily complies with the law because of information and knowledge acquired, incentives and disincentives and fear of sanctions. No offence is committed here.

Administratively, an offence committed is handled through the administrative processes by the mandated institutions. For example, in cases of minor offences, the offender may admit the offence and opt to pay compensation to the NFA as provided in the law. This is quite common with regard to offences relating to timber movement.

The litigation process requires going through the whole chain of litigation, including investigations by police, prosecution by the Department for Public Prosecution (DPP), and sentencing by judges and magistrates in courts of law. In this process, different enforcement agencies come into play.

It should be noted that the route taken greatly depends on the players along the route. The common players and their roles are summarized in **Table 1**.

Table 1: Common Players in Law Enforcement in Uganda

Player	Roles
The Public	Normally report offences to NFA staff, the police, local council officials or any other person that is likely to take action of any sort.
NFA Staff	These can be established staff or hired patrol persons. They have the mandate to arrest suspected offenders or those whom they reasonably suspect are about to commit an offence. Report offences to police and inform the NFA Legal Counsel about the cases.
Police Officers	Can be local or central government police officers. They can arrest as in the case of NFA above but they also investigate offences reported to them. Police Prosecutors can also prosecute offenders.
State Attorneys	They study files sent to them by police and take decisions either to prosecute on behalf of Government or not. They are also stationed within the districts and, therefore, most forestry offences, which are prosecuted, go through this level of State Attorneys. They also represent the State in courts of law.
Magistrates and Judges	Try cases presented to them and pass sentences.
Private Legal Practitioners	Can be called upon to represent clients in court or in any other dispute resolution process.
Prisons Officers	Detain and imprison those on bail or sentenced to a prison term by a court of law.
Local Councils	They monitor compliance with the law within their areas of jurisdiction. They are also empowered to hear certain types of local offences and decide what to do, which may include imposing fines in line with the local tradition or referring the offender to a police or a court of law depending on the offence.
All of the above	Can be called on to make statements at police and/or give evidence in a court of law

Source: AFORNET, 2007

The civil society and the media have contributed to promoting administration of justice by unveiling illegal activities. This has led to follow-up of cases and eventual legal or administrative follow-up actions. In 1999, reports about rampant illegal logging nationwide, with alleged involvement of corrupt officials led to decisive government investigations of the FD, resulting in interdictions and disciplinary actions against some senior staff. Similarly, in August/September 2003, press reports implicated senior politicians, army and police officials in illegal trade in timber, which stirred up the office of the Inspector General of Police to investigate the matter.

IMPACTS OF FLEG

Uganda's policies and laws relating to management of forests provide for effective governance and forest management and utilisation. The gazettelement and management of a permanent forest estate, prescriptions for permitted and forbidden activities, and punishments for offences are, to a great extent, sufficiently provided for in the various policies and laws. The main weaknesses lie in the implementation of these policies and laws. Among the factors limiting implementation are political manipulations, limited institutional capacity, lack of practical knowledge of environmental laws within law enforcement agencies, and poor detection of offences.

Effective FLEG

(a) Improved revenue

When a Law Enforcement Section was introduced by the former FD and later strengthened under NFA, official revenue collection progressively rose from US\$ 148,300 in fiscal 1995/96 to US\$ 2,309,300 in 2005/06 (nearly 16 times). On the other hand revenue from impounded timber sold by public auction progressively dropped from 25% of total revenue in 1995/96 to 8% in 2005/06 (**Table 2**). This shows that legitimate business increases with effective FLEG.

Table 2: Total Revenue Collection Compared with Revenue from Impounded Timber

Year	Revenue (Shs)	US\$	% of Impounded Timber Revenue
1995/96	148,000,000	148,266	25
1997/98	760,000,000	618,644	15
1999/00	1,045,000,000	654,370	13
2001/02	1,159,000,000	656,347	2
2003/04	2,563,000,000	1,436,032	7
2005/06	4,223,000,000	2,309,279	8

Source: National Forestry Authority Databases

(b) Good returns on investment

Effective FLEG results in good returns on investment, as seen through price raises whenever illegal timber on the market reduces. When the Forest Produce Monitoring Unit was put in place in 1995/96, the price per piece of timber rose by 300% by 1996/07. This was accentuated by improved observance of rules and procedures. Improved governance and law enforcement led to more timber processors turning to legitimate business because it was worth the investment. In subsequent years, this increased official revenue collection without necessarily cutting down more trees.

(c) Increased Investment in Forest Management Businesses by the Private Sector

With improved FLEG, the private sector is motivated to invest in tree growing. For example, 3 years after the sector reforms of 1998-2004, the confidence of the private sector in tree growing has shot up so that the private sector had established about 10,000 ha of new timber plantations worth Shs. 12 billion (US\$ 6,562,000). Most of these plantations are in grassland CFRs being established under license. The private sector was

reacting to good governance which manifested itself through government commitment which was unwavering until the 2006 elections, the Sawlog Production Grant Scheme, which provided a financial incentive for commercial timber growers, and transparent & legally binding licensing arrangements of the NFA.

(d) Recovery of degraded forests

Degraded forests recover with effective FLEG. The NFA showed this in 2004/05, at the height of government commitment to making the new NFA work. Many formerly encroached natural forests began to recover through natural regeneration aided by enrichment planting. However, this trend was reversed with the elections of 2006.

(e) Enhanced Livelihood opportunities

About 3.2 million people live in villages adjacent to forest reserves and hence derive their living through forest products and services. In addition, about 6 million people live within access of the many private forests. Over three quarters of the remainder of the population use trees on-farm for firewood, poles, energy and other uses (MWE, 2006)¹¹. Forests provide incomes through employment or the sale of forest products. The forests provide about 1 million jobs, 100,000 of these being full-time wage earners. The income derived from the sale of non-timber forest products is estimated to be about USD 40 million per year. Glenn Bush, et al (2004) estimated the livelihood value in the formal sector as UGX 139 billion (US \$76 million), while the informal sector value is UGX 412 billion (US\$ 225.3 million) (including subsistence and environment benefits).

Poor FLEG

(a) Local People Often Suffer

The local people are the most visible law breakers, sometimes directly involved in a desperate search for basic income, but in most cases working as agents of the richer traders from towns. As a result, the local people mostly suffer the brunt of law enforcement agencies in place of the rich, while their erstwhile financiers lose very little from their illicit business.

(b) Social Stress Escalates

Intense social stress between the institutions managing forests and the local people escalates. For example, after a government directive to halt removal of encroachers from FRs, people poured into them and became hostile to any efforts at stopping them from entering. As a result, the NFA has been waging running battles with local people, often encouraged by politicians. People on both sides have sometimes been hurt in the scuffles. Because of uncertainty of the Government position on FRs, even the alliance with other

¹¹ Ministry of Water and Environment (2006). Environment and Natural Resources Investment Plan, December 2006 draft.

law enforcement agencies, which the NFA had painstakingly stitched together, started to crumble.

(c) Forest-Related Livelihood Opportunities for Local Communities Are Reduced

Unchecked forest crimes lead to forest destruction, which in the long term negatively affect community livelihoods because the resources become less and more difficult to reach.

(d) Investment in the Forest Sector Is Threatened

Inconsistent application of government policies sometimes inhibits investment in the forestry sector. For example, the practical application of the policy to commercialise agricultural production and the drive towards industrialisation are at odds with the forestry policies, sometimes leading to investors questioning the legitimacy of the protected areas. As a consequence, the private investors have expressed doubt about the long-term ability of the NFA to guarantee their investments in CFRs. Similarly the Development Partners have started to ask why they should invest their money in a sector that does not seem to be a priority to Government.

(e) System Procedures Frustrate Forest Management

A good example is the Public Procurement and Disposal Act, 2003 whose requirements were made too detailed, cumbersome, and time consuming, in an attempt to curtail corruption. For example, the requirements are making it difficult for the NFA to operate as a business organisation. As a result, NFA can only sell less than 50% of the annual allowable cut from its timber plantations, leaving the rest to deteriorate. This has forced it to go into sawmilling itself, thus raising other governance issues such as competing with its own clients on more favourable terms which in turn has made the sawmills, which private processors had bought, to become redundant.

(f) Failure to Run Commercial Forest Management Businesses

The private sector, including local people and commercial investors, are poorly organised resulting in their inability to pool resources to raise investment levels, penetrate quality markets and advocate for their incentives under the various government policies.

(g) Forest Destruction

Ultimately, poor forest governance and forest crimes lead to massive destruction of forests and trees, the result of which are having serious ecological and social-economic consequences. Therefore, it is increasingly becoming difficult for rural Ugandans and the urban poor to access the goods and services offered by forests (**Box 2**).

INITIATIVES IN FOREST LAW ENFORCEMENT AND GOVERNANCE

1. Sector Initiatives

In an effort to promote good FLEG, Uganda has developed many environment-related policies and laws, reflecting Government's commitment to sustainable utilization of the forest resources. The forestry policy and law encourage public participation in the management and conservation of forests and trees, and promote the devolution of functions, powers and services within the forestry sector. The Uganda Forestry Policy (2001) and the National Forest Plan (2002) recognise the multi-stakeholder nature of forestry and clearly define the roles and responsibilities of central and local government agencies, donor agencies, the private sector, non-governmental organisations (NGOs), community-based organisations (CBOs), and local communities in the management of forestry resources. The National Forestry and Tree Planting Act (2003) identifies specific bodies responsible for management of forests and provides for inclusive participation of stakeholders, especially including local communities, in decision-making.

Box 2: Ecological Impact of Inadequate Forest Protection

Virtually all forest reserves (over 1 million hectares) serve the important functions of protecting biodiversity, water catchments, riverbanks, lakeshores and stabilisation of steep slopes. The whole cattle corridor, stretching from Rakai, through Mbarara, Masaka, Sembabule, Mubende, Kiboga, and Luwero Districts will be rendered unviable for cattle grazing and agriculture when the forests are destroyed. The Government's 'water for production' programme in support of the Poverty Eradication Action Plan will be rendered unviable because it requires these natural regulators and reservoirs of water flow.

There are over 1.3 million people in Mubende, Kiboga and Kibaale Districts. They depend on the water that is caught by the forests in the Mubende – Kiboga hills that constitute an important part of the Kafu and Katonga River Systems. The forests in these hills and valleys ensure that the boreholes, wells and dams in the area are constantly refilled. Today the leaders in Mubende and Kiboga Districts admit that water has become a major concern. Boreholes and dams are drying up because the valley forests are being converted into cropland. The forests and wetlands ringing L. Victoria stand between the survival and extinction of the fish in the lake. Millions of people depend on lakes and rivers for their livelihoods. In 2002, fish exports brought in US\$ 87.9m.

Of recent, some areas in Mbale District have been experiencing serious land slides that left a number of families homeless. This has been attributed to the big extent of cutting down vegetation cover on the mountain slopes that has left the soils bare. This has resulted in serious erosion and landslides. Also a number of rivers have already been silted and the residents of the area can now hardly get clear water, especially on the plains, for domestic purposes.

The PAs along the River Nile stand between the poisons generated by human activities (e.g. commercial agriculture, manufacturing industries), and the river's fresh waters.

Millions of people live along the Nile. We cannot guarantee their survival when the lake becomes a death trap as a result of ecosystem degradation.

2. Institutional Reforms

The sector reforms referred to earlier recognised the multi-stakeholder nature of forestry and created the NFA to manage CFRs, District Forest Services (DFS) to manage LFRs, community forests and Private Forest Owners to manage forests in private lands. The FSSD helps the Minister to supervise these Responsible Bodies.

While the NFA was properly considered and subsequently well funded (at least for the first 4 years), the DFS and private forest owners were not given due consideration and funding. In the absence of good forest management by the latter two, the forests outside the PAS will continue to deteriorate and ultimately, the NFA will find it increasingly difficult to hold on to the CFRs.

3. Cross-sectoral Initiatives

There are a number of cross-sectoral initiatives that directly or indirectly impinge on forest management and utilisation. These include the Leadership Code, the Office of the Inspector General of Government, the Ministry of Ethics & Integrity, Parliamentary and Local Government Accounts Committees, and the law enforcement agencies within the Justice, Law and Order System. Given that these instruments are largely young (many came into force with the 1995 Constitution), practical implementation of the law enforcement and governance provisions is still evolving. However, hard lessons are being learnt as confidence grows in the democratic systems of governance.

4. Institutional Partnership Arrangements

Partnership building with other law enforcement stakeholders is a good strategy to reduce conflict in resource management. These stakeholders play different roles in FLEG, but their performance is determined by their internal capacities. The NFA, NEMA and UWA have shown that it is possible to forge formal institutional partnerships with other law enforcement agencies to curb environmental crime. Because poachers in national parks and wildlife reserves can be armed with sophisticated weapons, UWA operates in close association with the Uganda Peoples Defence Forces (UPDF). On the other hand NFA operates closely with the police to deal with the relatively less lethal forest crimes. NEMA has an environment desk within the police headquarters in Kampala to help deal with environment crimes.

5. National Forestry Authority Initiatives

(a) Law Enforcement Section

Specifically with respect to forestry, the NFA has set up a Law Enforcement Section for curbing crime in CFRs. The section inherited and developed an elaborate system of

verifying the origins of timber with a view to eliminating illegal timber on the market (**Appendix 3**). Because the District Forestry Services (DFS) are under-resourced, the Minister has asked the NFA Law Enforcement Section to assist the local governments and the then Forestry Inspection Division (recently turned Forestry Sector Support Department) to monitor compliance with the law outside CFRs, but most local government officials view this as an intrusion into their mandate.

(b) Transparent Management Systems

In accordance with the policies and laws, NFA has put in place open and transparent systems for sale of forest produce. These include competitive bidding for the sale of forest produce from CFRs and paying attention to staff discipline in a decentralised revenue collection approach. It also operates a “decentralised” system in which field staff take full responsibility for what they do.

(c) Collaborative Forest Management

Under-resourcing notwithstanding, the mechanisms to prevent forest crimes can be expensive even for CFRs alone. It can involve large numbers of patrol persons and other resources like vehicles. In order to promote stakeholder participation and sharing of costs, NFA is promoting Collaborative Forest Management (CFM) to involve communities themselves in protecting the forests.

The CFM process is aimed at giving forest adjacent communities the opportunity to participate in decision making regarding the management of the forest, receive benefits from the forest and take on some of the management responsibilities. The details of this shared management are arrived at through meaningful negotiation and are expressed in signed agreements.

6. Civil Society Initiatives

Currently, the CSOs are doing a commendable job of information dissemination, advocacy and holding Government institutions accountable. This was seen when the media and a number of national NGOs challenged Government during the public debate on changing land use of some CFRs to commercial agricultural production. The campaign was endorsed by society when the people poured out on the streets of Kampala and near Mabira CFRs itself to demonstrate against the proposed give-away of Mabira CFR. This intervention is likely to have far-reaching impacts on the governance of forest resources in Uganda.

Institutionally, NGOs and CBOs involved in promotion of forestry have organised themselves into the Uganda Forestry Working Group hosted by Environmental Alert in order to utilize synergies among themselves. The fruits of their work are being seen in the districts where they helped to operationalise the DFS with funding from FAO.

At the regional level, Uganda Wildlife Society led a dialogue to try and ensure the sustainability of the permanent forest estate in East Africa. During a meeting with the East African Legislative Assembly in Nairobi in June 2005, it was agreed that the promoters help to draw up proposals for a regional law to this effect but the efforts appear to have slowed down.

CHALLENGES IN FOREST LAW ENFORCEMENT AND GOVERNANCE

- (a) The DFS is supposed to manage 70% of the country's forest cover. Most of this cover provides public goods like watershed protection, climate amelioration and soil stabilisation. The challenge lies in mobilising resources and government commitment to make the DFS work in such situations where there is no direct cash generated as government revenue.
- (b) While progress is being made with owners of private industrial plantations, there is very little work being done to motivate owners of private and community natural forests. The challenge lies in getting financing agencies, including government to view management of natural forests on private lands as crucial for economic development of the country, and thus provide resources appropriately.
- (c) Another serious challenge lies in ensuring government commitment to its own policies on forestry. Since environment is not yet a vote winner during elections, it is likely to be out-manoeuvred by the drive for primitive accumulation of wealth at the expense of the environment
- (d) Corruption has permeated all levels of society. The challenge is how to turn society around so that corrupt acts are not glorified but rather, they are effectively punished. Punishment of one high profile corruption person is cheaper and does much more to promote Uganda than millions of dollars spent in state-of-the-art advertising.
- (e) In order to reduce cross-border forest crime, it is necessary for the countries involved to cooperate. Under the East African Community arrangements, this will be possible but the challenge remains in getting the cooperation of Uganda's neighbours like DRC and Sudan, which have substantial forest resources, but are not members of the East African Community.
- (f) There is a general scarceness of understanding and appreciation among the Justice and Order System (JLOS) players about the urgency to combat environmental crime. On the other hand, forest managers have little understanding and skills in how to get the JLOS effectively deal with environmental matters. The challenge lies in mobilising enough resources to train personnel and carry out sensitization work on a massive scale.

Recommendations for Action

1. Corruption in Uganda is so ingrained in society's psyche that the numerous instruments and institutional arrangements in place cannot contain it. The struggle should now

If my people ...will humble themselves and pray and seek my face and turn from their wicked ways, then will I hear from heaven and will forgive their sin and **will heal their land** (2 Chronicles 7:14)

intensify at the spiritual plane. Therefore everyone who believes in God and His Son Jesus Christ cannot afford to be complacent.

2. Institutions responsible for forestry should forge stronger partnerships among law enforcement agencies at local, national and regional levels for purposes of joint planning, sharing of information, raising awareness, harmonizing activities and optimizing use of resources.
3. To enable the law enforcement agencies deal with FLEG effectively, Government should provide strong, consistent and open political support to the forest management authorities and the law enforcement agencies. One good word from the President would do the trick.
4. Governance and law enforcement cut across all sectors. Therefore, more resources should be invested in raising the public consciousness about the dangers of poor forest governance and inadequate law enforcement across the board. The CSOs are better at doing this than Government.
5. Incentives such as easing access to benefits from the forests by local communities should be provided to foster support for FLEG through collaborative forest management.
6. As a matter of urgency, FSSD should work with Uganda Local Authorities Association (ULAA) to mobilise funding to strengthen the operating capacity of the DFS, especially with regard to infrastructure. The target should be to enable them work alongside NFA as equals.
7. The FSSD should help private owners of natural forests (especially those with substantial areas) to organise themselves so that they can begin to work towards certification of their forests
8. Continuous training should be carried out for all those involved in FLEG. Key training themes include community mobilisation, prevention of forest crime, and tracking forest crime through the entire litigation chain.

CONCLUSION

More than ever before in Uganda, public awareness about the crucial role of forests in the survival of the human race is rapidly growing. It cuts across party politics and ethnic lines. Therefore, those involved in the justice, law and order system need to treat forest crime as going far beyond just a minor offence. The impact may not be immediately seen but cumulatively, they can be catastrophic or very beneficial. Whether the momentum gained can be maintained will depend on the extent to which we deal with matters of governance and law enforcement.

The private sector has been galvanized into investing in industrial timber plantations. There is still goodwill among development partners to be cultivated & encouraged so that they can continue to invest in forestry and the environment in general. Our commitment & behavior during FLEG does a better job of marketing Uganda than expensive advertising, legal reforms and policy reviews.

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Appendix 1: Examples of Lawlessness

In Uganda, the ugly side of parliamentary democracy has manifested itself through lawlessness in the forestry sector. Lawlessness tends to erupt during election periods when politicians are most vulnerable. During the last election period (2005/06), tempers were inflamed to a level where any decisive action towards forest crime led to mob action, resulting into grievous bodily harm to the PA managers. To illustrate:

1. In South Busoga Forest Reserve, one NFA staff was taken hostage, beaten and cut with a *panga*. The situation escalated to a level where it had to take the personal intervention of the Inspector General of Police to restore some sanity in the area. Up to now, the situation is still delicate.
2. In Ngereka and Lubanyi CFRs where Nile Ply had been licensed to grow industrial timber plantations, local people were incited to destroy young trees worth Shs. 100 million. Nile Ply asked NFA to compensate them for the losses incurred.
3. In Rwoho CFR, veterans entered and took over parts of the reserve. With the help of security agencies, they were removed but soon after, they returned in bigger numbers and formed a local “command structure”, conducting military drills every morning. The district security committee treated it as a security threat and subsequently forcefully removed the veterans. Later, the veterans did something similar in Lwamunda CFR
4. In Kibale District, about 8,000 new encroachers occupied 13 CFRs. These CFRs had not been previously encroached. NFA staffs were chased from work on the external boundaries of some of these FRs. The situation was worsened by the ethnic conflicts over land ownership in the region. After elections, most of them left voluntarily but recently, tensions have been growing, largely due to ethnic rivalry over the “right to encroach”, presumably in anticipation of 2011.
5. In April 2006, one NFA staff was severely beaten by a mob in Kiboga District causing grievous bodily harm (broken bones) and destroying an NFA motorcycle.
6. During this same month (April 2006) criminally minded people induced 2 of the people who normally help NFA to monitor illegal timber cutting to go out and killed them in Mukono District. Up to now the criminals have never been brought to justice.
7. In Luwero District, lawless community members, with the incitement of local politicians, have made it difficult for licensed investors in tree growing to do their work. They routinely destroy their trees by deliberately sending in cattle to graze, setting fires to the planted areas and even directly uprooting tree seedlings.
8. Back in the 1990’s, the encroachers in Luwunga CFR took Government to court for evicting them from what they claimed was their land. Government won the case and the High Court ruled that they were not eligible for compensation. Later, the Solicitor General advised the Forestry Department to evict the encroachers. The District Chairman petitioned the President for a stay of eviction until the district had found land for the encroachers. This did not happen but during the election period, the encroachers started to press Government to find land for them. The Minister of General Duties, on behalf of the Prime Minister, (to whom they appealed), traveled to Luwunga to address the issue but the standoff has not been resolved.

Appendix 2: Examples of CFRs under Pressure to Degazete

Forest Reserve and Year when First Proposed	Location District	Reason for Change of Use, Degazetting and/or Occupation	Current Ecological and Physical Status
Kabale (1984)	Kabale*	Dairy Farm	Drained and Replanted With Pasture Grass
Lutoboka (1978)	Kalangala*	Urban Expansion. Kalangala Town Council noted that this is the easiest and most appropriate area for the expansion of Kalangala Town	Receding Closed Canopy TMF, Development of Illegal Plots, Air Strip
Buyaga Dam	Masaka	Peasant Settlements	Mixed farming
Namanve (1997)	Mukono, Mpigi	Industrial Estate. This is a “Production” FR and Factories will be for Production, according to the responsible Permanent Secretary at the time. The FR has no environmental value”	Clearing of Eucalypt Woodlots, Draining Wetlands and Development of Factory Structures
Mbale (1998)	Mbale	Industrial Estate to Boost Local Employment in Factories since Forest Plantations are a waste of land.	Fully Stocked FD Eucalypt Plantation
Kamusenene (1999)	Luwero	Settlement of One Peasant family	Illegal Peasant Occupation and Grazing
Gala Namatembe Banga, Towa, Mugoye (2000)	Kalangala	Development of Oil Palm Plantation. Land proposed to be given to a Foreign Private Company Under IFAD Financed Project. “The project will boost employment in the district” according to political activists	Closed Canopy TMF with a Strict Nature Reserve in Mugoye.
Kabwika-Mujwalanganda (1978)	Luwero	Cattle Ranching	Illegal Peasant Occupation and Grazing
South Busoga (1982)	Iganga	Rural Settlement	Closed TMF, Savanna Woodland, Industrial Plantation Developing, Illegal Cultivation, abuse of

Forest Reserve and Year when First Proposed	Location District	Reason for Change of Use, Degazetting and/or Occupation	Current Ecological and Physical Status
			Taungya
Kibeka (1994)	Masindi	Rural Settlement of peasants and an arrangement (outside the law) by the Ranches Restructuring Board.	Illegal Peasant Occupation and Grazing.
Butamira (1999)	Jinja	Sugarcane growing	Community Tree Farming
Mabira (2005)	Mukono	Sugarcane growing	Closed forest with thriving ecotourism and collaborative forest management.

Source: Forest Department/NFA Records

Appendix 3: Chain of Custody for Independent Verification of Sources of Timber from CFRs

General

In Uganda, a class of “green consumers” of forest products is gradually emerging, especially among organisations and companies that would like to protect their environmental integrity. Forest certification attempts to link these “green consumers” to forests with responsible forest management practices, especially with regard to legal sources of the products. The “green consumers” are often the buyers of the forest products, but in most cases, it is the processors (e.g. sawmill companies and honey processors) that get into contact with the forest owner. In addition to demands by “green consumers”, society also demands responsible forest management because it (society) owns the CFRs and consumes products and services like watershed protection, recreation, and non-timber forest products.

In trying to convince the consumers that a particular forest is being sustainably managed, it is becoming necessary to verify the claims of SFM through an independent party. This is because someone else whom the customer trusts (often not the forest owner or government institution) says so by issuing a certificate. As a result many companies with an image to protect are increasingly finding it beneficial to limit their dealings to products whose legal origins can be independently verified.

In view of the foregoing, the FD and later NFA embarked on developing a system for tracking the legal sources of timber from the forest to the destination. The essential features of the system include:

- Legal compliance with national legislation;
- Stock mapping in natural forests in order to harvest according to annual allowable cuts;
- Sale of natural forest graded logs by public auction;
- Harvesting using reduced impact logging systems;
- Monitoring harvesting using stock-maps in natural forests which show harvest, seed and reserve trees;
- A chain-of-custody system involving timber marking and documentation from the tree stump in the natural forest to the destination timber sheds in the market; and
- Impromptu checking of vehicles during transit to exclude illegal timber being mixed with legally sourced timber.

Timber tracking from the Forest to the Sector Manager's Office

The tree is felled in such a way that the stock number is left on the tree stump. If this is not possible, the staff in charge paints it again on top of the stump after felling. The staff takes measurements for diameter and log lengths and records them on the Log Volume Measurement Form. This will be used to compute volumes for comparison with volumes generated by the computer immediately after stockmapping. If the buyer wants to track the timber from its source to establish its management integrity and legality, each piece of timber milled is marked with a stamp in indelible ink showing coded information for compartment number, ISSMI block number and tree number. The Forest Supervisor (FS) maintains a database in a spreadsheet form showing this information plus the species, number of pieces of timber cut from each log for each tree (shown by its stock number) and their sizes. The sawmiller fills in a Sawn Timber Record Form, which is submitted to the buyer at agreed intervals.

When the timber is loaded on the vehicle, the FS hammers (or stamps with indelible ink) each piece of timber with the relevant FR code. He/she then issues a Forest Produce Declaration Form (FPDF) showing the species, timber sizes, and licensee particulars among others. The FPDF is addressed to the Sector Manager (SM). Each vehicle loads only timber whose origin can be verified through this system.

At the Sector Manager's Office

The SM checks the FPDF and the labels on each piece of timber to make sure that the details correspond. He also ensures that payment for fees has been made. If he/she is satisfied, he/she signs on the FPDF, thus allowing the timber to be moved to any destination in Uganda.

Timber in Transit and in the Market

Any vehicle moving timber from the forest must have a valid FPDF, a general receipt on which payment of fees was made and the timber must have hammer marks/stamps showing the code of the forest of origin. It must be in transit to the SM's office for

verification. Any vehicle moving from the SM's office must have the above documents and marks but this time, the FPDF must bear the signature of the SM.

The NFA's Law Enforcement Unit inspects vehicles carrying timber on the roads. The checks can be expected at any point during transit and in the timber sheds. Informers located *incognito* around the marketing centres service the Unit. If the buyers wish, their stores maintain an independent database recording particulars of the timber received from the forest. This will enable crosschecking information with the field databases by independent auditors.

INVESTIGATING AND PROSECUTING ENVIRONMENTAL LAW OFFENDERS IN UGANDA: SUCCESSES AND CHALLENGES

By *Doris Akol*

Environmental Law Resources Centre

1. An **INVESTIGATION** a means to establish the correctness of suspected abuses of environmental laws .
2. If the evidence warrants, an investigation can also lead to entering into compliance agreements or a possible **PROSECUTION**
3. “Criminal investigation” means the deliberate examination or inquiry of available evidence aimed at a finding of whether or not and by whom a crime has been committed.
4. “Evidence” denotes the means by which any alleged matter of fact , the truth of which is submitted to investigation, is proved or disproved and includes statements by accused persons , admissions, judicial notices, presumptions of law, and ocular observations by the court in its judicial capacity.
5. The Intention of investigations and evidence gathering.
 - a. To successfully prosecute an environmental criminal case,
 - b. The prosecution has to prove the case beyond a reasonable doubt
6. The conduct, management and control of investigations must be in compliance with policies regulating criminal investigations, and prosecutions keeping in mind the duty to act fairly, the public interest and the promotion of the integrity of the environment

INVESTIGATIVE STEPS

7. Initiated with the reporting or discovery of a possible offence. It proceeds through the data-gathering and evaluative steps of:
 - a. acquiring the initial report and all relevant data from eye witnesses or observers;
 - b. surveying the site, evidence gathering and collecting data and samples;
 - c. the storage/forwarding of samples for analysis;
 - d. Analysis and interpretation of data and the results of sample analysis;
 - e. Reporting the results of the analysis; and
 - f. Follow-up investigations and initiating other actions
8. **Receipt of initial reports/information**

9. The investigation officer is expected to obtain the following key information:
 - a. Physical location of scene of the alleged crime/environmental incident(s)
 - b. Date and time of the incident(s).
 - c. Details regarding notification of the incident(s)
 - d. Parties involved.
 - e. Noticeable impact on the environment/ecosystem
10. The investigator must also document information encompassing his or her observations and actions at the crime scene. Information includes locations, appearances, and conditions of all persons and items noted, and should communicate scene conditions, statements and comments made by victims, suspects and statements and comments made by witnesses and the actions of other personnel.

Dealing with the Suspected Offender.

11. A statement should be recorded from the suspected offender as soon as he is in the custody of the investigator, if he has been intercepted or from any person reporting the offence. Statements should be taken quickly because for environmental offences, evidence may dissipate very quickly.

Search Warrants

12. Search warrants allow investigators to go onto private property to investigate further suspected illegal activity and to obtain samples of evidence of the degraded environment. However, before a search warrant can be issued, probable cause that a crime has been committed and that evidence exists in the place to be searched must be shown.
13. Investigators should show probable cause through information they have developed during the investigation, as well as other supporting exhibits, such as photographs and public complaints.

Managing the Investigation - Points to Note

14. Witness interviews should be recorded along with other field activities such as sampling and environmental measurements.
15. When assisting in the execution of a search warrant, the investigative team should ensure that the evidence collected is authorized by that warrant. Each person collecting evidence could ultimately be called as a witness later.
16. Marking, labeling, preservation (if appropriate) of exhibits should all be part of the permanent record of the crime scene visit.
17. Chain-of-custody records should include a standard form documenting the delivery and the receipt of each exhibit. Personnel handling the exhibits are recorded from the initial contact at the crime scene through each exhibit transfer until the exhibits are

received in the laboratory. Under chain-of-custody procedures, exhibits are to be under the control of the investigative team at all times. The location of each exhibits from the time of collection through the time of laboratory analysis, should be documented.

18. Steps to be followed for successful prosecutions
 - a. Commitment by the Prosecutor and not mere involvement.
 - b. Requires working hand in hand with the investigating officer
 - c. Evidence gathering
 - d. Case file compilation
 - e. Preservation of evidence
 - f. Presentation of evidence to secure a conviction
 - g. Sentencing

Evidence Gathering

19. Evidence gathering and preservation is a critical step in prosecuting any case and environmental cases are no exception. it is the burden of the government to prove that any evidence presented in court is authentic.

20. Types of evidence

21. There are three types of evidence:

- a. physical,
- b. human, (obtained through witness statements or interviews) and
- c. documentary (including photographic media).

22. Physical evidence may include solids, liquids, or gases.

23. Documentary evidence includes all documentation developed by the investigator.

24. Evidence gathered at a crime site will typically involve interviews, visual observations, measurements, samples, paper documents and records.

Gathering Evidence

25. The investigative file should contain records of interviews, photographs, video-recordings, sketches, correspondence, field notes, chain-of-custody records and other

Preservation of Evidence

26. Preserving and controlling evidence are essential to the integrity and credibility of the investigation. Security and custody of evidence are necessary to prevent its alteration or loss and to establish the accuracy and validity of all evidence collected. The point of contact is responsible for assuring that a chain of custody is established for all evidence.

27. Collected evidence needs to be stored and to maintain its integrity after collection.

28. Principles in presenting evidence

29. Standard of proof – beyond reasonable doubt
30. Best evidence rule
31. Evidence must be relevant, i.e., it must point to the offence having been committed by the accused.
32. It must not be prejudicial, i.e. it must not hinder the prosecution in discharging the standard of proof.
33. Therefore, evidence pitfalls, e.g. hearsay evidence must be avoided

CHALLENGES AND SUCCESS IN PROSECUTION OF ENVIRONMENTAL CRIMES

34. Evidential difficulties
35. There are common difficulties that may be experienced in the process of evidence gathering in investigating environmental crimes which the investigator should be aware of and prepare for.
36. Not always easy to gather evidence in the investigation of Environmental crimes.
37. Sometimes, the evidence is not always obvious. This is because by their nature, the evidence in environmental crimes is not always typical.

a. Delicate nature of the evidence,

Evidence required to prove environmental crimes is often delicate and hard to preserve or store. e.g. noise pollution offences.

b. Transient nature of the offence

Most environmental crimes are of a continuous nature and therefore the difficulty comes in identifying at which particular point in time that evidence applies?

c. Defining the ingredients of the offences

On account of the transient nature of the offence, identifying the ingredients may be cumbersome. In addition, determining whether the degree of destruction is a factor in the commission of the offence may present difficulty in that in the event that there is no apparent destruction, it may be hard to conclude that an environmental crime has been committed.

d. Socio- economic / socio cultural aspects of environmental offences and thus “what is the public interest?”

Most environmental offences are committed in the pursuit of “daily bread”. The difficulty here is considering the public interest, is it worthwhile investigating and prosecuting the offence? In addition, the exhibits required in the proof if the crime may actually be the source of livelihood of the offender, e.g., the papyrus mats, firewood, etc.

e. Chain of custody issues

The rudimentary nature of our systems ensures that the most probable way that the evidence will be stored will compromise the chain of custody. The threat posed by lack of integrity cannot be underscored.

f. Unavailability of technology to analyse environmental evidence,

The unavailability of up to date and complex equipment that is required in the analysis of environmental evidence seriously compromises our ability to gather, preserve and use some evidence in prosecution of environmental crimes. e.g. level of air pollution.

g. Proving intention and wilfulness for non strict liability offences

Shortage of experts to testify as to the breach of an environmental standard and environmental offence vis a vis accepted levels e.g. for air / noise pollution

38. Many of the concepts in environmental enforcement are new to us. As a result we still suffer from a serious shortage or presence of experts who can make conclusions on evidence gathered or who can present expert evidence in courts.
39. Relatively low knowledge base in enforcement agencies and JLOS institutions of environmental laws and offences created there under in addition to the relatively low priority attached to environmental offences as opposed to e.g. crimes such as theft, rape, obtaining money by false pretences, embezzlement etc
40. Standard of proof of beyond reasonable doubt is difficult to meet to obtain a conviction.
41. Inadequate evidence laws.
 - a. The existing version of the Evidence Act is seriously deficient in allowing the submission of certain types of evidence. e.g. Amendment of Evidence Act is crucial to allow certain evidence e.g. electronic evidence that shows certain pollution limits have been exceeded may currently be inadmissible.

42. Not enough cases are being reported or forwarded for investigation and prosecution as environmental offences

43. Recommended Strategies

- a. Frequent exposure to the different sectoral environmental laws and offences created by those laws
- b. Frequent exposure to various environmental sectoral standards to improve recognition of when an offence has been committed
- c. Training in analysis of evidence for those in the laboratories
- d. Training in sampling techniques for the crime scene
- e. Training in evidence gathering and preservation technologies
- f. Improving the availability of photographic equipment to facilitate photography and videography in evidence gathering
- g. Inclusion of environmental law and offences in the Uganda Police Training Syllabus

44. **Successes**

45. Guidelines for Investigation of Environmental offences developed to guide Environmental inspectors and the Police
46. Specimen Charge sheets being developed by NEMA for common environmental offences to aid in preferring charges
47. Training and Sensitisation in the field of Investigations and Prosecutions of environmental offences has been massively done by both NEMA and Greenwatch
48. Some successful judgments which contain principles in criminal environmental enforcement, e.g. the Roger Ddungu case, the smuggling of Chimpanzees case,

CRIMINAL ASPECTS OF ENVIRONMENTAL LAW.

By: Damalie Lwanga, Asst. Director of Prosecutions

INTRODUCTION

Criminalizing certain acts or omissions is one of the methods for attaining environmental protection. Other methods include inspections, negotiations, compliance promotions and civil litigation.

This paper highlights the criminal aspects of environmental law, including the legal technicalities relevant to the prosecution of environmental cases.

Generally, an environmental crime is any deliberate act or omission leading to degradation of the environment and resulting into harmful effects on humans, flora, fauna and natural resources. Environmental crimes however include all violations of environmental laws attracting criminal sanctions.

Traditional criminal law did not seriously provide for environmental protection. Consequently, aggrieved citizens relied mainly on civil remedies under the common law of nuisance and trespass to abate environmentally offensive conduct.

However, there are a few provisions in our Penal Code Act relating to environmental protection in the sense of protecting the right to a clean and healthy environment.

Parts XVII provides for nuisances and offences against health and convenience

Part XXI provides for offences endangering life or health.

- S.160 - Common nuisance
- S.171 - Negligent act likely to spread infection of disease
- S.172 – Adulteration of food or drink
- S.173 – Sale of noxious food or drink
- S.174 – Adulteration of drugs
- S.175 – Sale of adulterated drugs
- S.176 – Fouling water
- S.177 – Fouling air
- Offensive trades

- See also S.230 – Dealing in poisonous substances in negligent manner.

The effectiveness of the above provisions on environment and/or public health protection is rather limited by number of factors, including:-

- While the National Environment Act (NEA) and regulations made under it are more effective in creating specific environmental offences, the offences under the Penal code are generalized and their interpretation may be difficult and controversial;
- While the offences both under the Penal Code and the NEA are misdemeanours, the NEA includes the option or addition of a substantial fine and is therefore likely to be more deterrent.

The NEA therefore provides a more comprehensive and effective legal frame work for environmental protection measures within the criminal justice system.

OFFENCES AND THE LAW APPLICABLE

Environmental offences are created mainly under the National Environment Act Cap. 153 and also under subsidiary legislation made under the said Act, namely:-

1. The National Environment (Wetlands, River Banks and Lake Shores Management) Regulations – S.I 3 of 2000.
2. The Environment Impact Assessment Regulations S.I 13 of 1998.
3. The National Environment (Standards for Discharge of Effluent into water or on land) Regulations S.I 5 of 1999.
4. The National Environment (Hilly and Mountainous Areas Management) Regulations of 2000 Supplementary 1 – 2000.
5. The National Environment (Waster Management) Regulations of 1999.
6. The National Environment (Minimum Standards for Management of Soil Quality) Regulations S I 59 of 2001.

Environmental related offences are also created in Acts such as the Water Act (Cap. 103) and the Fish Act (Cap. 197)

There are various offences and penalties relating to:-

- Environment Impact assessment (SS. 19, 20 and 96)
- Environmental Standards relating to air, water, discharge of effluent, noxious smells, noise, vibrations and soil (Parts VI and VII and S.98)
- Hazardous waster, materials, chemicals and radioactive substances (SS.52, 53, 54, 55, 56 and 99)
- Pollution (Part VIII, SS.61 and 100)
- Environment restoration orders (SS. 67, 72 and 101)
- Environmental Inspectors (SS. 79, 80 and 95)

- Record keeping (SS 77 – 78 and 97)
- Wetlands, lake shores and river banks (The National Environment (Wetlands, River Banks and Lakeshores Management) Regulations, 2000). See also the main Act.

Environment Impact Assessment

The Act defines what an Environmental Impact Assessment is.

The law requires every developer of a project of the type described in the Third Schedule to the Act to submit a project brief and if it is determined that the project may, is likely to or will affect the environment, the developer is required to undertake an EIA to determine the impacts of the proposed project on the environment. The burden is on the developer to conduct and submit an EIA report to NEMA.

After conduction an EIA, the developer is under a legal duty to ensure that the requirements of the EIA are complied with. This requirement arises both under the Act and the EIA regulations, 1998.

Failure to submit a project brief or to prepare an EIA when required to do so, or fraudulently making a false statement in the EIA is an offence punishable with imprisonment of up to 18 months or a fine of not less than shs. 180,000/= or both.

Having a project without an EIA is in itself an offence.

Environmental standards

Activities and operations impacting on the environment must be within prescribed minimum standards, criteria and measurements relating to:-

- The discharge of effluent and waste waters;
- Soil quality, the ozone layer and solid waste;
- Air, noxious smells, pollution, noise and vibrations.

Waste management

What amounts to 'waste' is defined in the Act. Wastes have to be classified and prescribed as such. This has been done under the National Environment (Waste Management) Regulations, 52, 1999.

Every person is under a duty to manage wastes generated by his or her activities in such a manner that does not cause ill health to any person or damage the environment.

No person is allowed to dispose of toxic and hazardous wastes into the environment unless he or she follows the law and the guidelines.

It is an offence to import any waste which is toxic, extremely hazardous, corrosive, carcinogenic, flammable, explosive or radioactive.

It is an offence to discharge hazardous chemicals, substances or oil into water contrary to established guidelines. The offender may be ordered to pay the cost of removal (of oils) and restoration of the environment damaged and compensation

These offences are punishable by imprisonment for not less than 36 months or a fine of not less than 360,000/= and not more than 36,000,000/= or both.

Pollution

“Pollution” is defined in the Act.

It is an offence to pollute or lead any other person to pollute the environment contrary to the set standards or guidelines or in excess of conditions set by a license. The offences attract imprisonment for not less than 18 months or a fine of not less than 180,000/= and not more than 18,000,000/= or both.

Environmental restoration orders

NEMA has powers to issue environment restoration orders requiring a person who has damaged or is about to damage the environment, to restore it, not to do the act which may result in damage or to compensate for damage already done. See SS. 67 and 70. The same orders can be issued by court under S.71. There is a right of appeal to court against a restoration order issued by NEMA.

Nothing in the law stops NEMA from issuing a restoration order where criminal proceedings have been instituted and are still pending against the offender.

Failure to comply with a restoration order is an offence attracting a penalty of 12 months imprisonment or a fine of not less than 120,000/= and not more than 12,000,000/= or both.

Environmental Inspectors

The Act creates the institution of environmental inspectors (S.79) with powers to enter on any land, premises or vehicle and inspect to determine whether the provisions of the Act are being complied with. The inspector has many other powers under S.80.

Hindering or obstructing an environmental inspector, or failing to comply with a lawful order such as an improvement order issued by an Environment Inspector is an offence attracting a term of imprisonment of not less than 12 months or a fine of not less than 120,000/= and not more than 12,000,000/=.

Record keeping

Those who engage in activities likely to have a significant impact on the environment are required to keep records of the amount of wastes, by-products, effects generated and how far they are complying with the provisions of the Act.

Failure to comply with the above and the fraudulent alteration of records are offences punishable with up to 12 months imprisonment or a fine not less than 120,000/= and not exceeding 12,000,000/= or both.

Wetlands, lake shores and river banks

The law (S.37 of the regulations) prohibits any reclamation or drainage, depositing of any substance, damaging or destruction of any wetland without a permit from NEMA. River banks and lake shores are also protected.

A person convicted is liable to imprisonment of not less than three months or a fine not exceeding 3m/=.

In addition, the person may be required to carry out community work that promotes the conservation of wetlands

Permits and licences

Certain activities having environmental impacts are prohibited except if permitted and regulated by permit or license. This is a very effective means of ensuring compliance with the law as the license can be revoked or stringent conditions included.

The very act of carrying out the activity without the permit or license is an offence regardless of whether or not any environmental damage has been done.

LEGAL TECHNICALITIES AND PRINCIPLES RELEVANT TO THE PROSECUTION OF ENVIRONMENTAL CASES

- **Environmental law caters for anticipatory injury or damage.** Even where a violation of the law may not necessarily result in any direct or immediate injury to person or property, failure to comply with the law is an offence. In such cases, the law seeks to guard against the danger or probability of injury or damage and thereby minimize it.
- **Environmental laws punish violations of the law provisions as such.** Unlike the traditional criminal offences under the Penal Code Act which prohibit specific acts and impose penalties for those acts, environmental statutes tend to provide for criminal penalties for violation of *any* of the provisions of the statute. That is why S. 102 of the Act creates a general penalty for breaching any provision for which no penalty is specifically provided.

- **Environmental offences tend to impose strict and vicarious liability.** Although the burden of proof lies with the prosecution, there is no need to prove *mens rea* (Criminal intention). Also, the employer or proprietor of a facility can be held liable for acts of the employees. The strict liability nature can be seen from the wording of the provisions in the statute. Also, environmental statutes are regarded as ‘public welfare’ statutes (creating public welfare offences). The law is aimed at protecting human health and the environment. The offender (as a reasonable person) is deemed to know that his or her conduct is subject to stringent public regulation and may seriously threaten the community’s health or safety. In a real court prosecution, however, the question of strict and vicarious liability is likely to be controversial since the statutes themselves do not expressly provide for vicarious and strict liability.
- **Like for other criminal offences, causation must be established.** That is, that the prohibited event was caused by the accused’s acts or omissions.
- **No requirement for notice of violation before instituting criminal proceedings.** There are always attempts to handle environmental violations amicably. In this regard, in practice, the offender may be notified that they are violating the law. The notice however is not a legal requirement and is therefore not a legal pre-requisite for instituting criminal proceedings. Criminal proceedings can be commenced even without a prior notice of violation.
- **No requirement for prior civil proceedings.** There is no requirement to institute civil proceedings before commencing criminal proceedings.
- **Investigations.** Environmental inspectors play a key role to gather scientific evidence and make reports. They also serve as expert witnesses. Police need to involve them very early in investigations.
- **Trials.** These are characterized by specific evidence to prove ingredients and presentation of scientific evidence. The exhibits include – reports of the Environment Inspectors – laboratory reports – photographs – maps. Police Photographers are already being used to take photographs.
- **Jurisdiction and Bail.** The offences are triable and bailable by a Magistrate Grade I or Chief Magistrate.
- **Punishments.** Most offences are punishable with a fine, imprisonment or both. However, under S.105 of the Act, the court may in addition to any other orders, order:-
 1. That the substance, equipment and appliance used in the commission of the offence be forfeited to the state;

2. That any license, permit or other authorization given under the statute and to which the offence relates be cancelled;
3. That the accused do community work which promotes the protection of the environment;
4. Issuance of an environmental restoration order against the accused.

As prosecutors, we should ask courts for deterrent sentences and high fines because of the high costs caused by degradation. For example, the degradation of a forest or wetland which has existed for many decades is not only a great loss to society, but very difficult and costly to replace.

Examples of punishments from other jurisdictions:

- In U.S versus FREZZO BROTHERS INC. – 602 F.2d 1123 (3rd Cir.1979), the two defendant corporation operators were convicted of illegally discharging pollutants (without a permit) and sentenced each to 30 days imprisonment and a fine of \$ 50,000.
- In U.S versus WEITZENHOFF. – 1 f.3D 1523 (9TH Cir. 1993), A manager and an assistant of a sewerage plant were convicted of illegally polluting the ocean by failing to treat waste water prior to discharging. They were sentenced to 21 months imprisonment.
- In U.S versus HOPKINS. – 53 G.3rd 533 (2d Cir. 1995) a case of discharging excessive amounts of toxic materials into a river, the defendant signed a consent order with the regulatory authority and agreed to pay a fine of \$30,000 for past discharge violations.
- **Effect of conviction.** Environmental offences are not committed by ‘**criminals**’ in the normal sense of the word. These are people like factory managers and proprietors, mayors of local authorities, etc. Conviction for an environmental offence does not create a criminal record as such.

CONCLUSION

As we continue sharing experiences and through a coordinated and concerted effort by all concerned, we shall surely see a positive contribution to environment protection by our criminal justice system.

EFFECTIVE ENFORCEMENT THROUGH PROSECUTION

By: Vincent Okwanga, Ag. Senior Principal State Attorney, (In charge of NEMA Desk), Directorate of Public Prosecutions

Introduction

Prosecution of a criminal case in a Court entails the charging of the suspect before a competent Court of law. The suspect on being charged stands accused of the offence(s) for which he is charged.

He (accused) is required to plead to the charge (s) laid against him; if he (accused) pleads guilty i.e, expressly admits the charges read to him in Court, then the Court can proceed to convict him and conclude the trial by sentencing him.

Where the accused pleads not guilty, then the matter should proceed by way of full trial, which entails the presentation of evidence (including necessary exhibits) on both sides. The Court will then make a decision whether the charges have been proved or not. "Evidence" are facts upon which a party, especially a (prosecutor), relies in proving the charges against an accused person. Evidence includes exhibits, (whether documentary, physical or non-physical things).

A prosecutor presents evidence in Court by examining witnesses who state before Court what they experienced through their human senses; i.e they (saw, heard, felt, did, touched, tasted, smelt, etc).

A prosecutor in Court relies on the evidence (a collection of facts/data) assembled together which can consistently) prove the case. In criminal matters the prosecutor must prove the case beyond reasonable doubt.

The collection of facts/data is put together by the investigating officer. The process is investigation or inquiry.

The office of the DPP does not investigate criminal cases on its own, it relies mainly on the CID branch of the police to investigate criminal matters and complaints which have come to its attention, thus the power to direct the police to investigate any matter/complaint of a criminal nature and report him/her expeditiously Art. 120(3) (a), **the Constitution of the Republic of Uganda(1995)**. Most cases falling under Environmental laws are investigated by Environmental Inspectors, and experts in a given field/area of breach or complaint.

The prosecutor should get involved in the case right from the investigations stage.

Sanctioning cases/files to Court

Every case due for prosecution in Court should be submitted to the office of the DPP (RSA/RSP) for sanctioning the officer of the DPP at this stage is supposed to peruse the case file carefully and evaluate the evidence collected with a view to satisfying himself that all the necessary inquiries/investigations have been satisfactorily done and warrants prosecuting the suspect (s) and also the value of evidence/ is **worth sustaining the charge in Court.**

This is where the guidance and legal advice from the prosecutor is very crucial.

Where in the prosecutor's legal point of view, the evidence is not worth sustaining the charge or doesn't merit prosecution in Court, the case should not be sanctioned; hence advice that no prosecution shall be done.

Who prosecutes/how different stakeholders work together to prosecute offenders;

Art. 120 (1) of the Constitution mandates the DPP to initiate, conduct, and control all prosecutions in the country in all Courts of law except the Court Martial.

While excising the above functions, the DPP is mandated to: -

- Direct the police to investigate any information (matters) of a criminal nature and report to him expeditiously.
- Institute criminal proceedings against any person or authority in any Court with competent jurisdiction other than Court Martial.
- Take over and continue any proceedings instituted by any other person or authority.
- Discontinue at any stage before judgment is delivered, any criminal proceedings instituted by himself or any other person or authority, except that the DPP shall not discontinue any proceedings commenced by another person or authority except with the consent of the Court.
- Delegate some **of the functions** above (i.e, the first three functions listed above may be delegated but the 4th function can only be exercised by the person of the DPP exclusively).

While carrying out the above functions, the DPP also tender legal advice and guidance to the police, the government and other Government Agencies and authorities regarding any matter under investigation or prosecution.

It is also the responsibility of the DPP to ensure appropriate, prompt and successful investigation and prosecution of criminal cases and complaints in collaboration with other institutions, law enforcement agencies involved in protecting law and order.

The DPP Prosecutes cases in Court through his staff of state Attorneys, State Prosecutors and police prosecutors.

Prosecutors in the other law enforcement Agencies/and other authorities also prosecute "specialized cases" under the authority of the DPP; example KCC Law, Enforcement Officers, Officers of Uganda Wildlife Authority, Urban and Municipal Authorities, etc.

The DPP also cooperates and liaises with the IGG in its work of investigation and prosecuting of cases.

In exercising his duties; the DPP shall have regard to the public interest, the interest of the administration of justice and the need to prevent abuse of legal process.

The DPP is not subject to the direction or control of any person or authority.

Most criminal cases on Environmental laws in Uganda are mainly prosecuted by the law enforcement officers and prosecutors of Urban and Municipal Authorities like KCC etc. Such Agencies/Authorities have the technical staff of investigators and capacity to enforce compliance.

Selection of charges:

Charges are framed in accordance with the law creating the offence. Offences under Environmental laws in Uganda are created by a wide range of penal laws, which include:

- The Penal Code Act
- Public Health Act
- The National Environmental Management Authority Act
- Fish Act
- Forest Act
- The Waterworks Act
- The prohibition of the Burning Grass Act
- Wild life Authority Act
- Game Preservation and Control Act
- Access to Road Act (350). Etc

In cases under environmental laws all the principles of criminal law are applicable including ‘*Strict Liability*’.

Sentences:

Sentencing in Environmental Matters for the offence of causing/suffering a nuisance etc c/s 61(2) PH Act is a fine of Shs. 400/= in addition to costs incurred up to the time of hearing or making the order for the removal of the nuisance.

S.133 fine of 2,000/= and a further fine of Shs. 60/= for each day of continuing contravention the Penal Code Act etc. NEMA Act provide for imprisonment in default of a fine, failure to comply and or repetitive breaches. Some of the sentences are so low in terms of gravity/security and didn't appear deterrent enough.

Sentences under NEMA Act:

S.96 provides for 12 months imprisonment or a fine of not less than 120,000/= and not more than 12,000,000/= or both.

S.97/18 months imprisonment or fine of not less than 180,000/= and not more than 18,000,000/= or both.

S.98 not less than 12 months imprisonment or fine of not less than 120,000,000/= and not more than 12,000,000/= or both.

S.100 liable to imprisonment for a term of not less than 36 months or fine of not less than 360,000/= and not more than 36,000,000/= or both.

The sentences under NEMA Act appear to be reasonably deterrent while those under the general statutes do not measure to those under NEMA. Need to harmonize these various sentences to compare favorably to each other.

Close cooperation and coordination required between the different stakeholders in the investigation, monitoring, information and data sharing prosecution of cases of Environmental nature.

Capacity building for police, the DPP, Urban and Local authorities and other major stakeholders be made a priority.

NEMA Investigators and enforcement Officers to work together with the police and other enforcement Agencies during investigation of cases.

CLOSING REMARKS BY THE EXECUTIVE DIRECTOR NEMA, MR. ARYAMANYA MUGISHA AT THE TRAINING WORKSHOP ON ENFORCEMENT OF ENVIRONMENTAL LAWS FOR STATE PROSECUTORS AND DISTRICT ENVIRONMENT OFFICERS.

**The executive Director, Greenwatch,
Participants in this workshop in your respective capacities
Facilitators from Greenwatch
Ladies and Gentlemen,**

The main purpose of this training was to equip participants with the legal mechanisms and technicalities of environment enforcement and compliance. You have now attained a thorough understanding of the existing environmental legislation and also acquired knowledge and skills in enforcing environmental laws.

It is expected that you have had sufficient time to first of all share experiences and learn from each other. Thank for the organizers and facilitators to this workshop.

Like any other training drive, I am optimistic that this exercise has further sharpened your practical knowledge and skill, enhanced your technical proficiency and will in effect enhance your performance once you return to your stations. However, this will be possible only if you are ready and able to do three important things, namely;

1. Benchmarking: You should be able to emulate the best practices in enforcement that you have learnt in the process
2. Adaptation: You must be able to customize and adjust the approaches and practices that have copied elsewhere to your local realities and conditions in order to be relevant and feasible.
3. Self-improvement: You should also as individuals be ready to ask yourself whether the way you have been going about your work as environment officers/inspectors is efficient and effective compared to the experiences you have shared with your colleagues and the activities you have seen elsewhere. It should be value adding experience for you even in terms of performance at an individual level.

I therefore hope that the way forward you have paved for yourself as a result of this exposure will go a long way to generate greater impact in environment management. To this end, I do urge you to take this way forward as both individual and collective commitment to the improvement of sustainable environmental management in your respective areas of jurisdiction.

In particular, I do expect in the near future to see the following major indicators of improved environmental performance.

- Improved waste management and better sanitation levels in urban centers
- Protection of existing wetlands, riverbanks, lakeshores, hills and mountains
- Restoration of degraded wetlands, forest, riverbanks, lakeshores, hills and mountains
- Protection of water systems and water supply sources.
- Improved land use and better soil conservation
- Increased tree planting and forest development and last but not least
- Integration of environmental concerns and adequate environmental screening of all projects be they private, public, local or central.

I must emphasise that, the best measure of your performance as environmental managers will not be the reports and claims you make about the workshops and inspections you have conducted. The measure will be the tangible improvement that can be seen and felt in the physical environment, and this should be the ultimate focus of all your plans and efforts.

I also pledge that NEMA will carefully study all the recommendations you have made, and make effort to implement them as much as practically possible.

I thank you for making it a point to turn up for this important activity and to have participated actively and productively up to the end. Please keep up this good spirit.

I also thank Greenwatch who planned and coordinated this programme successfully. I must also commend the **John D. and Catherine T. Macarthur Foundation** for sponsoring this workshop.

Please go and put what you have seen, learnt and agreed and resolved together into practice.

I take this honour to declare the training closed.

Thank you for listening to me.

PRACTICAL EXERCISE: THE MOOT.

On the 4th June, 2007, Mr. John Jones Ochegere, the Director of a local NGO called Mazingira environmental organization' learnt from the Monitor news paper, that Mr. Ladhah Singh, intends to build a hotel at Masese on the shores of the Lake Victoria. He is a Director of a Kenya-based multinational million Company.

Whereas the Monitor reported that Government had 'passed' the project, no Environment Impact Assessment (EIA) has been carried out at all and the company is already reclaiming the wetland by filling it with murrum. It intends to create a big hotel garden.

The Uganda Investment Authority had already granted the investment license and construction was to start immediately. The government has granted the company a 99 year, lease title although part of the land is in a forest reserve and wetland, and which is a habitat for migratory birds.

NEMA is not happy with the project and sent two inspectors who were chased and threatened by the company employees and security guards. The inspectors issued the company with improvement notice which were ignored.

Again, NEMA issued an environment restoration order stopping the company from carrying out any further developments and to restore the wetland.

The company has ignored this order also.

The company has bought on the site several drums of chemicals labeled "agricultural chemical Product "Danger. Toxic"

The company has refused to disclose information as to what the drums contain. But they say they are to be used during the construction process. The DPC issued an order requiring the company to disclose the contents of the drums but the company director ignored it.

On 15th May, Mazingira environmental organisation visited the project site and carried out interviews with local people. The community was not happy with the project. They fear they would lose access to firewood, honey, medicinal plants etc. from the forest reserve.

The fence of the construction site is at the shore itself, just 10 meters from the water.

Mr. Ladhah Singh insists he has an Investment License, a land title, approved building plans and a letter from the Minister of Environment and Natural Resources authorizing him to construct the hotel.

The government spokesperson has said the hotel is required urgently, as it has to be ready before 2007 Commonwealth Summit.

John Ochegere has come to Police and reported this case. The Police has sent you the file to peruse and advise.

Advise on the necessary steps required to stop this project.

1. What are the possible charges and against who?
2. What evidence is required to prove the offences?
3. Name possible witnesses.
4. What are the possible defenses available to the accused?
5. What are the possible punishments the offender is likely to get if convicted?

GROUP DISCUSSIONS

Group 1

1. Possible charges

- Failing of the company to carry out EIA contrary to section 99
- Reclamation contrary to EIA c/s 37 (a), 38(1)(2) of NEA
- Unlawful disposal of gazetted area
- Obstruction of environmental inspectors
- Failure to comply with restoration order
- Importation of hazardous wastes
- Failing to disclose drum contents

2. Evidence

- No EIA report and conditions from NEMA
- Murrum on the site (expert report and photos)
- Letter and license from UIA
- Report of inspectors

3. Witnesses

- The community inspectors
- DPC

4. Defenses

- Government permission
- Valid certificate

5. Cancellation of certificate

- Permanent injunction
- Imprisonment
- Compensation damages

Group 2

Accused Ladhah Singh

Possible witnesses

- Ochegere
- Environmental Inspectors
- DPC
- Local community

Possible defense

- Land title
- Letter from the minister

- Possession of permit
- Investment license
- Approved building plan

Punishment

- Fine
- Imprisonment
- Injunction
- Community service
- Compensation to the community

Offences

- C/S 19 and 96(b) of NEA
- C/S 36 (1)(d) and 102 of NEA
- C/S 14 (1) and (2) of National Forestry and Tree Planting Act
- C/S 80 and 95 (a)
- C/S 80 and 95(b)
- C/S 67 and 101 (a)

Evidence

- Documentary evidence
- Certificate of approval from NEMA
- Project brief
- EIA report
- Oral evidence of eye witnesses like the community members, environmental inspectors, police.

Exhibits

- Murram photos
- Chemicals
- Expert report on chemicals.

Group 3

Who to charge

Mr. Ladhah Singh(the intending developer)

1. Possible charges

- No EIA undertaken contrary to S. 19 and 96 of NEA
- Obstruction of the inspectors s. 79,80 and 38 of NEA
- Withholding information about material S. 52- 56 and 99
- None compliance with the improvement notice S. (1), restoration order S. 101

2. Evidence to prove offence

- None submission of project brief as reported by DEO and NEA
- Inspection reports (DEO, WID and NEMA)

- witnesses (Inspectors, community members
- Proof of service of the improvement notice and restoration order/ in case of refusal-affidavit

3. Possible witnesses

- Mr. John Ochegere
- DEO
- Members of the affected community

4. Possible defenses

- Denial of receipt of improvement notice and restoration order
- Claim to having carried out an EIA
- Claim it is not a wetland but his land since he has a land title/ an investor.

Punishment

- Fine
- Imprisonment
- Restoration of degraded area
- Cancellation of licence issues by Uganda Investment Authority

Group 4

2. What evidence is there to prove offence?

- Fence along the lakeshore, only 10 meters
- Murrum in the wetland
- Drums of toxic material
- Lack of EIA report
- Community disapproval of project

3. Name of the possible witness

- Ochegere
- Community
- Documentary evidence
- Expert
- NEMA officials

4. Possible defenses

- Investment licenses
- Land title
- Approved building plan
- Consent letter from the ministry to build

5. Punishments

- Cancellation of license
- Imprisonment

- Fine

Possible charges and against whom

Complaint against Mazingira environmental organization vs. Ladhah Singh

Possible charges

- Section 36 (2) of the EIA
- Failure to prepare and submit a project brief and EIA contrary to section 36 (2)
- Depositing murram in a wetland contrary to S.37(b and 38 (1) of NEMA

**TRAINING WORKSHOP ON ENFORCEMENT OF ENVIRONMENTAL LAWS
FOR STATE PROSECUTORS AND DISTRICT ENVIRONMENT OFFICERS**

**28TH-30TH OCTOBER, 2007.
RIDAR HTEL, SEETA**

LIST OF PARTICIPANTS

NO.	OFFICER	STATION
1.	Kedi Paul	State Prosecutor Katikamu
2.	Waira Sam Benson	State Prosecutor Malaba
3.	Basomi Moses	State Prosecutor Bushenyi
4.	Keem Timothy	State Prosecutor Busia
5.	Wandeka Rachael	State Prosecutor Entebbe
6.	Boonabana Prisca	State Prosecutor Fort Portal
7.	Mugoya Kennedy	State Prosecutor Hoima
8.	Masika Naome	State Prosecutor Kasese
9.	Masaba Arthur	State Prosecutor Masaka
10.	Okello Owino	State Prosecutor Rukungiri
11.	Namwase Victoria	State Prosecutor Mbale
12.	Akite Miriam	State Prosecutor Mpigi
13.	Yamangusho Kaidara	State Prosecutor Mityana
14.	Feni Justine	State Prosecutor Makindye
15.	Aanyu Christine	State Prosecutor Nabweru
16.	Fred Onyai	District Environment Officer Nebbi
17.	Kiyonga Joseph	District Environment Officer Kotido
18.	Agnes Awili	District Environment Officer Abim
19.	Basoma Moses	District Environment Officer Bugiri
20.	Rashid Mafabi	District Environment Officer Sironko
21.	John Lotyang	District Environment Officer Moroto
22.	Moses Opio	District Environment Officer Oyam
23.	Lodungokol Simon Peter	Ag. District Environment Officer Nakapiripirit
24.	Kodet Phillip	District Environment Officer Kaabong
25.	Phillip K. Ngogha	District Environment Officer Buliisa
26.	Sikor Stephen Mella	District Environment Officer Bukwo
27.	Mary Wamimbi	District Environment Officer Bududa

Resource persons/ Facilitators

NO.	Names	Designation/ Address
1.	Ms. Goretti Kitutu	Environment Information Systems Specialist, NEMA
2.	Ms.Doris Akol	Environment Law Resource Centre
3.	Mr.Waisswa Ayazika	EIA Cordinator,NEMA
4.	Mr.Kenneth Kakuru	Director, Greenwatch
5	Ms. Christine Akello	Senior Legal Counsel,NEMA
6.	Mr. Steven Amooti Nsita	Programme Manager, Forest Resource management and conservation Programme(EU/NFA)
7.	Mr. Vincent Okwanga	Ag Senior Principal State Attorney
8.	Ms. Damalie Lwanga	Asst. Director of Prosecutions.

Secretariat

- | | |
|------------------------|---------------------------------|
| 1. Irene Ssekyaana | National Coordinator, Grenwatch |
| 2. Harriet Kezaabu | Research Officer, Greenwatch |
| 3. Ivan Twebembere | Research Assistant, Greenwatch |
| 4. Harriet Bibangambah | Research Assistant, Greenwatch |

**TRAINING WORKSHOP ON ENFORCEMENT OF ENVIRONMENTAL LAWS
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DRAFT PROGRAMME

DAY 1: SUNDAY 28TH October, 2007

3:00p.m. on wards : Arrival of Participants

DAY 2: MONDAY 29TH October, 2007

- 8:00 – 8:15 a.m. : Registration of Participants**
- 8:15 – 8:20 a.m. : Workshop overview and Expectations, Ms. Irene Ssekyaana**
- 8:20 – 8:35 a.m.: Welcome Remarks: Mr. Kenneth Kakuru, Director, Greenwatch**
- 8:35 – 9:00 a.m. : Official Opening Remarks; Mr. Richard Buteera, Director of Public Prosecutions.**
- 9:00 -9:40 a.m. : General overview of the State of Environment in Uganda:
Overview of environmental problems and Successes in Uganda since 1995-to date; The Future of Our Environment.; **By Ms. Goretti Kitutu, Environmental Information Systems Specialist, NEMA.****
- 9:40 -10:10 a.m. : Discussion**
- 10:10 – 10:30 a.m. TEA BREAK (Group Photo then tea break)**
- 10:30 – 11:30 a.m: Legal Framework on Environmental Management in Uganda;
i) Introduction on Environmental Law: *Brief History of Environmental Law;* Mr. Kenneth Kakuru, Director Greenwatch
ii) The Law relating to enforcement and compliance process, Ms. Christine Akello, Senior Legal Counsel, NEMA.**
- 11:30 – 11:40a.m Discussion**
- 11:40- 12:30p.m.: Monitoring and Enforcement of Environmental laws in Uganda:
*Introduction, definitions and concepts used
The Monitoring tools, Enforcement mechanisms
Components of a good enforcement programme
Importance of an enforcement programme
Challenges in Enforcement and Monitoring,
The role of Prosecutors in environmental enforcement*
By Mr. Waiswa Ayazika, EIA Coordinator, NEMA**
- 12:30 – 1:00 p.m. Discussion**
- 1:00 - 200 p.m. : LUNCH BREAK**
- 2:00 – 2:40 p.m. : Governance and natural Resources Protection in Uganda. :**

The Case of Uganda:

*Legal Framework on Forest Management and Governance Enforcement and Current Initiatives, Challenges: **By Mr. Steve Amooti Nsita, Programme Manager, Forest Resource management & Conservation Programme (EU)/ NFA.***

- 2:40- 3:10p.m. : Discussion
3:10 – 3:30 p.m. : Evening Tea Break
3: 30 – 4:00 p.m. : Investigating and Prosecuting Environmental Law Offenders in Uganda; Successes and Challenges *Ms. Doris Akol, Environmental Law Resources Centre*
Definitions and concepts
Is evidence relevant, prejudicial, Types of evidence?
Practicalities of gathering and adducing evidence, conduct, management and control of investigations of criminal environmental offences
Nature of offences, Preparation of investigation reports, gathering and documenting evidence, Dealing with offenders etc
- 4:00 – 4:30 p.m. : Discussions
4:30-4:50 p.m. : Evening Tea
5:00 – 6:00 p.m. : Field excursion
- 7:00 p.m. BBQ Dinner
- 8:00 p.m. : Documentary: **An Inconvenient truth; An Environmental Documentary**
by Al Gore

END OF DAY TWO

DAY 3: TUESDAY 30th October, 2007.

- 8:00 – 8:20 a.m. : Recap of day Two
- 8:30 – 9:00 a.m.: Criminal Aspects of Environmental Law, Ms. Damalie Lwanga, Asst. Director, Directorate of Public Prosecutions.
- 9:00 - 9:15 a.m. : Discussion
- 9:20 – 10:00 a.m. Practical Exercise: *Initiating the Investigation and Prosecution process: Mr. Kenneth Kakuru*
- 10: 00 – 10:30 a.m.: TEA BREAK
- 10:30 – 11: 10 a.m.: **Effective enforcement through Prosecution: *Mr. Vincent Okwanga, DPP:*** Presenting evidence at trial, selection of charges
Applicability of criminal principles; who prosecutes, Sentencing in environmental prosecutions; fines, prison and beyond
How different stakeholders can work together to prosecute offenders
- 11:15 – 11:30 p.m.: Discussion
11:40 – 12: 10 p.m.: Simulation Exercise: The Moot
12:10 -12:30 p.m : Presentations from Group Discussions
- 1:00 – 2:00 p.m. : LUNCH BREAK
- 2:00 – 2: 30 p.m.: Presentations from Group Discussions
2:30 – 3:15 p.m. : Wrap Up and Presenting certificates;Mr.Kenneth Kakuru

**3:15-3: 30p.m : Official Closing Dr. Aryamanya Mugisha, Executive Director,
NEMA**

4:00 p.m. : Departure ; All

**TRAINING WORKSHOP ON ENFORCEMENT OF ENVIRONMENTAL LAWS
FOR STATE PROSECUTORS AND DISTRICT ENVIRONMENT OFFICERS IN
UGANDA.**

28TH – 30TH October 2007.

RIDAR HOTEL, SEETA.

EVALUATION FORM.

Please answer the following questions and return the filled form to the secretariat.

1. Did you receive your invitation on time, and was the timing of the workshop convenient?

Yes

No

2. a) Was the venue convenient and accessible?

Yes

No

Please explain

.....
b) Rate the venue

i) Very good

ii) Good

iii) Fair

iv) Poor

3. Were you well received on arrival by the workshop organizers?

Yes

No

If no, Please explain.

.....
4. How did you find the workshop program?

a) Topics

.....
b) Duration

.....
5. Rate the presentations on each topic by the different Resource Persons.

a) General overview of the State of the Environment in Uganda.

- i) Very good ii) Good iii) Fair iv) Poor.

Comment on the nature of presentation and the presenter.

.....

b) Legal framework on environmental Management in Uganda.

- i) Very good ii) Good iii) Fair iv) Poor.

Comment on the nature of presentation and the presenter

.....

c) The Law relating to the Enforcement and Compliance process.

- i) Very good ii) Good iii) Fair iv) Poor.

Comment on the nature of presentation and the presenter

.....

d) Monitoring and enforcement of environmental laws in Uganda.

- i) Very good ii) Good iii) Fair iv) Poor.

Comment on the nature of presentation and the presenter.

.....

e) Governance and Protection of Natural Resources in Uganda: The case of Forestry.

- i) Very good ii) Good iii) Fair iv) Poor

Comment on the nature of presentation and presenter.

.....

f) Investigating and Prosecuting Environmental Law Offenders in Uganda: Successes and Challenges

- i) Very good ii) Good iii) Fair iv) Poor.

Comment on the nature of presentation

.....

g) Criminal Aspects of Environmental Law.

- i) Very good ii) Good iii) Fair iv) Poor

Comment on the presentation:

.....

h) Effective Enforcement through Prosecution.

- i) Very good
- ii) Good
- iii) Fair
- iv) Poor

Comment on the presentation:

.....

i) Practical exercise: Initiating the Investigation and Prosecution process

- i) Very good
- ii) Good
- iii) Fair
- iv) Poor

Comment on the presentation:

.....

j) Comment on:

i) The relevance of the Simulation exercise: moot problem

.....

ii) The Environmental Documentary titled “An inconvenient Truth”

.....

6. Were your expectations met? Please explain.

.....

7. Please suggest any way in which we could improve future training programmes.

.....

8. Do you think there is need to hold another workshop covering other aspects of environmental law?

Explain.

.....

Thank you.

Signature: