

**AN APPRAISAL OF THE NATIONAL ENVIRONMENT MANAGEMENT
AUTHORITY (NEMA) IN PRESERVING UGANDA'S WETLANDS
IN KAMPALA DISTRICT.**

BY


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DECLARATION

I **NAKITTO ANNET** do hereby declare that this study was carried out by myself and save where it is mentioned, the authorship is original and has never been given to any university or institution of learning for an academic award.

Signed.....

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APPROVAL

I certify that I have duly supervised this work in accordance with the regulations of the school of law,
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ACKNOWLEDGEMENT

I convey a word of thanks to the Almighty God for enabling me complete my study and all those who have made my academy journey a success.

Special thanks to my Mum Mrs. Lubega Harriet and my Daddy the late Lubega Sam that have nurtured me and supported me in this journey, my brothers.

I extend my sincere thanks to my supervisor Madam Emma Ssali has given me attention and guidance to accomplish this piece.

Many thanks to my classmates for the support and help that has been part of my academic achievement.

DEDICATION

I dedicate this research to my lovely mother MRS Lubega Harriet ,my daddy the late Lubega Sam, my brother Mr. Kasozi Henry and my lovely friend Nambi Ruth for the key role that have been to my academic journey, endless support and care towards my studies. May the Almighty God reward you abundantly.

LIST OF ACRONYMS

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CHM	Clearing House Mechanism.
DEA	Directorate of Environmental Affairs.
DEO	District Environment Officers
DFSs	District Forestry Services
EIAs	Environmental Impact Assessment
FSSD	Forest Sector Support Department
MWE	Ministry of Water and Environment
NDP	National Development Plan
NEA	National Environment Act
NEMA	National Environment Management Authority
NFA	National Forestry Authority
PCE	Policy Committee on Environment
UNEP	United Nations Environment Programme
UWA	Uganda Wildlife Authority
WCED	World Commission on Environment and Development
WED	World Environment Day
WHC	World Heritage Convention
WMD	Wetlands Management Department

LIST OF LEGAL INSTRUMENTS AUTHORITIES

Constitution of the Republic of Uganda 1995

National Environmental Statute 1995

National Forestry and Tree Planting Act

National Environmental Act 153

Statutory Instrument No. 63 of 2001

Environmental Act 1995

Uganda Wildlife Act cap 200

Water Act Cap 152

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ABSTRACT

As an institution set up in May 1995 and became operational in December 1995, the National Environment Management Authority (NEMA) has been since then an over seer in the protection of the environment through sectors like the civil society, local governments, district levels and in the private sector in Uganda because it has the mandate to do so as provided by the constitution of the republic of Uganda. Therefore, this research project is basically carried out to establish the exact role of the NEMA in the management of the environment in Uganda.

This research study was carried out with the aim of establishing the environmental laws that help NEMA to carry out its enforcement, challenges it faces in doing so and to establish the solutions to these challenges. This study enlarges the scope of knowledge in the area of environment protection in Uganda which would be of importance to all the policy makers at all levels if they are to properly protect the environment. The data for this research study was acquired using both qualitative and quantitative methods as it was the only way the researcher would reduce the biasness in data collection.

The study majorly found out that NEMA to a wider extent tries to play its role in environment protection however it has been let done by other institutions in the country like the politicians and leaders at local government levels who get involved in environment degradation for their own selfish interests and this has to a bigger extent increased the violation of environment laws in the country which negatively impacts on the environment.

CHAPTER ONE

1.0 Introduction

NEMA is the established Authority in Uganda for the management of the environment to coordinate, monitor and supervise all activities in the field of the environment¹. It is an autonomous institution established in May 1995 and became operational in December 1995 as the principle agency². By 2002, its constitutional set up was completed and continued to build capacity for environment management in local governments; civil society organization, districts, lead agencies and the private sector. NEMA is concerns on the environment are voiced at high levels of decision-making and policy formulation and it is an institution with necessary political approval. The study intends to examine the roles of NEMA in preserving Uganda's wetlands in Kampala District.

NEMA is a semi- autonomous institution established in May 1995 under the National environment Act (NEA) cap 153 and became operational in December 1995³. The National environment Act (NEA) established NEMA as the overall body charged with management of environmental issues in Uganda with power to co-ordinate, monitor and supervise all activities in the field of environment⁴. NEMA is a body corporate with perpetual succession and a common seal, it can in its own name be capable of suing and being sued and doing and suffering all acts and things as bodies corporate may lawfully do or suffer⁵ and under S.4 (4)⁶, NEMA is to be under the general supervision of the minister.

The National Environment Management Act, Cap 153 under Section 1(000) defines wetlands as areas permanently or seasonally flooded by water where plants and animals have become adopted.

Uganda's National Policy for the Conservation and Management of Wetland Resources (1994) defines wetlands as areas "where plants and animals have become adapted to temporary or permanent flooding." It includes permanently flooded areas with papyrus or grass swamps, swamp forests or high-altitude mountain bogs, as well as seasonal flood plains and grasslands.

¹ Section 4 (0) national environmental Act Cap.153

² Section 53 (2) of the National Environment Act Cap 153,

³ Brief background on NEMA, www.gov.ug downloaded on 3/18/2014 at 4:18 pm

⁴ Section 5 of the National Environment Act

⁵ S 4 (2) and (3) of the National Environment Act

⁶ National Environment Act

1.1 Background to the study

Environmental management begun since time immemorial and currently has been modernized with the introduction of statute, However these have been faced with a lot of challenges as discussed below.

Prior to the statutes, rural communities had evolved various customary rules which governed use of Natural resources such as forest and wet lands based on Nature whereby certain Flora and Fauna species were given special protections due to medicine or religious beliefs and certain vegetables were protected for herbs and certain features were regarded as a body/divine for the gods for instance lake Victoria.

The internationally recognized definition of wetlands comes from the Ramsar Convention held in Ramsar, Iran in 1971 to establish standards for wetlands and promote their protection. The definition agreed upon is that “wetlands are areas of marsh, fern, peat-land, or water, whether natural or artificial, permanent or temporary, with water that is static, or flowing, fresh, brackish or salty, including areas of marine water that do not exceed 6 meters at low tide.”⁷ This definition is similar to the definition set forth by the National Wetlands management and Conservation Policy of 1994, “an area that stays wet long enough for only certain plants and animals to grow even when there is no rain.”⁸ Both definitions will be usable and are applicable for this research.

However for the benefit of this research, a wetland has been defined to mean; " an area permanently or seasonally flooded by water where plants and animals have become adopted; and includes swamps, dambos, areas of marsh, peat lands, mountain bogs, banks of rivers, vegetation, areas of impeded drainage or blackish salt.”⁹

Wetlands cover approximately 26,600 km² of Uganda’s total area of 241,500 km², including water bodies. With a coverage of 11 percent of the total land area, wetland resources represent one of the country’s vital ecological and economic natural resources. Unfortunately, their importance is almost exclusively associated with their direct consumptive use values such as crop cultivation, human settlement and extraction of useful materials. The essential life support processes – stabilization of the hydrological cycle and microclimates, protection of riverbanks,

⁷Wise Use of Wetlands Handbook, Ramsar Convention Secretariat, Gland, Switzerland 2007

⁸National Wetland Management and Conservation Policy 1994 Uganda pg 34

⁹ The National Environment [wetlands, river banks & lake shore management] Regulations No 3/2000, Section 2 [herein after wetlands regulations]

nutrient and toxin retention, and sewerage treatment – are the least recognized.

It is estimated that, approximately 5 million people depend directly on wetlands for their water supply needs, valued at US\$25.0 million per year¹⁰. The importance of wetlands to water resources management is observed through groundwater recharging, water storage and water purification. In this way, wetlands serve as freshwater reservoirs that release water slowly to the major drainage basins. This slow release of water ensures continuous water availability, particularly during the dry season, to support the economy.

Wetlands are complex areas of water and land that when used to their fullest potential can be an invaluable resource. However, their ecological complexity can make them difficult to manage in even the best of situations. With Uganda's rapidly expanding economy and booming population the choice between conservation of wetlands for future generations and development of businesses for current employment and income becomes a difficult one. As a result of this challenge, this paper seeks to understand the role of National Environment Management Authority (NEMA) in preserving Uganda's wetlands in the Kampala District¹¹.

Article 23[1][b]¹² authorizes the government to a local government as determined by parliament by law to hold in trust for the people and protect natural resources, lakes, rivers, wetlands, forests reserves, national parks, and any land to be reserved for ecological and touristic purposes for the common good of all citizen.

This research study will help in establishing the role of national environmental management authority in the protection of the wetlands in Kampala district. It clearly tries to identify the areas in which the authority has done well in protecting the environment.

However the research also aims at identifying the weaknesses of the authority regarding its ability to preserve the environment which has presently been manifested in the way the country's environment has been degraded especially in the urban areas. Therefore the research study is aimed at addressing some of these challenges that NEMA is facing which have impacted in preserving Uganda's wetlands in Kampala.

¹⁰ NEAP Secretariat: *Water Resources and Aquatic Biological Diversity*, Ministry of Natural Resources, Kampala, 2017.

¹¹ Ministry of Education (MOE); IUCN, National Curriculum Development Centre (NCDC), (2016): *Proceedings of the National Workshop on the Formulation of a National Strategy for the Integration of Environmental Education in Formal Education Sector*. Kampala, April, 2017.

¹² 1995 Constitution, Republic of Uganda 6 covers, the period between 1900-1962

When the national resistance movement [NRM] government came to power in 1986, it inherited a chaotic situation in the social economic, political as well as in environmental spheres including wetlands. However, within months after taking power, the government took diverse steps to halt the destruction of wetlands. In September, 1986, government issued administrative guidelines to curtail the devastation of wetlands resources. In particular a ban on large scale drainage schemes was imposed until such a time that a more elaborate, scientifically proven and socially harmonious policy was put in place. The purpose of this was to provide basic environmentally sound management and rational utilization of the wetland resource. In 1987, the Ministry of Environment Protection was imposed was established as the main coordinating body for all development activities with a bearing on environmental management. One of its functions was to ensure multidisciplinary and inter-sectorial planning for economic development and wetland degradation was identified as one of the key national environmental issues.

In 1989, the national wetland conservation and management programme was designed with technical assistance from the world conservation union and it started in 1992. The enactment of the 1995 constitution and other laws such as the national environmental act (NEA) and the local government act (lag) brought new innovations restrict the use and access of wetlands in Uganda. These innovations were enhanced by the establishment of the national environment management. Authority (NEMA) and the wetlands inspection division (WID) under the ministry of water and environment. NEA cap 4 under which NEMA was established with the authority to enforce proper management of environment through activities like environment impact assessment and restoration order against the order. That is; NEMA to bring action against any other person whose activities impacted on environment. Moreover institutional conflicts, rivalry and lack of Effective Corporation, coordination both within and outside government have resulted in ineffective implementation of programme geared towards sustainable effective environmental conservation.

For instance for a long time wetlands were not regulated under the jurisdiction of any specific institution. In early 1989 it was established under the national wetland conservation and management program (n/VP) to develop policies and implementation strategies for the sustainable management of Uganda's wetland. However in 1995 when the government endorsed the national policy for conservation and management of wetland resource, it has been centered at present on the wetland inspection division of

the ministry of water, lands and environment. Therefore lacked management policy direction as a result lead to mass degradation of wetlands and resources for example areas like Game Store Logogo, Speke Resort Munyonyo are established in wetlands causing environmental degradation.

Wetlands cover approximately 26,600km of Uganda's total area of 241,500km² including water bodies with a coverage of 11% of the total land area, wetland resources represent one of the countries vital ecological and economic natural resource. Unfortunately their importance is almost exclusively associated with their direct consumptive you values such as crop cultivation, human settlement and extraction of useful materials. The essential life support processes/ stabilization of hydrological cycle and micro climates, protection of river banks, nutrients and toxic retention and sewerage treatment are the least recognized.

It is estimated that approximately 5 million people depend directly on wetlands for their water supply needs values at USD 25million per year. The importance of wetlands to water resource management is observed through ground water recharging, water storage, and water purification. In this way wetlands serve as fresh water reservoirs that release water slowly to the major drainage basins. This slow release of water ensures continuous water availability particularly during the dry season to support the economy.

Wetlands are complex areas of water and land that when used to their fullest potential can be an invaluable resource. However their ecological complexity can make them difficult to manage in even the best of situations. With Uganda's rapidly expanding economy and booming population, the choice between conservation of wetlands for future generations and development of business for t current employment and incomes becomes a difficult one. As a result of this challenge, this paper seeks to understand the role of NEMA in preserving Uganda's wetlands in Kampala district.

This district was chosen as the area of focus because of the tropical climate, proximity to Lake Victoria and hilly geography which makes it a hot spot for wetlands to occurs naturally. Kampala also has a rapidly growing population that includes many citizens who have land titles or are in the process of developing wetlands for other usages.

Wetlands in Kampala decreased by 50 percent, in the ten years between 1995 and 2005¹³, this degradation comes in several forms, cultivation, infilling, construction and pollution. Cultivation, results in wetlands being drained and new agricultural plants being introduced, this can lead to

¹³The Future of Wetlands keynote address by Arymanya-Mugisha Henry PhD January 28th 2005

soil erosion and flooding.

To ensure intra and intergenerational equity, it is important to conserve wetlands.

The many usages of wetlands have left many wondering the role of NEMA in preserving wetlands. This study is to examine the role of NEMA, the challenges, solutions and conclusions in preserving wetlands in Kampala.

Taking into account the wetlands Policy and the National Environment Management Policy, the National Environment Statute was enacted. Wetlands although looked at as part of the environment in general, were given specific treatment in part VII of the statute. The operative provisions are sections 35, 36, 37 and 38 which relate to matters that fall within the definitions of wetlands under the Ramsar Convention. These provisions attempt to incorporate the wise use approach.

Section¹⁴ deals with the management of rivers and lakes. It prohibits the carrying out of any of the following activities without the consent and written authorisation of the National Environment Management Authority (NEMA)¹⁵:

- use, erect, alter, extend or remove any structure in, above, on or under the bed;
- excavate, drill, tunnel or disturb the bed otherwise;
- introduce any plant, micro-organism or animal whether alien or indigenous into a river or lake;
- divert or block any river; and
- drain any river or lake.

Section¹⁶ provides for the management of river banks and lake shores. It requires a collaborative approach between the central government, the districts and lower local governments to collaborate in determining and implementing the measures necessary for the management of lake shores and river banks. The size of the river and lake and existing interests in land in such banks or shores must be taken into account in making guidelines and regulations for their management.

¹⁴ Section 35 of the National Environmental Act cap 153

¹⁵ NEAP Secretariat: *Water Resources and Aquatic Biological Diversity*, Ministry of Natural Resources, Kampala, 1993.

¹⁶ Section 36 of the National Environmental Act cap 153

Section¹⁷ addresses the management of wetlands. It requires the approval of NEMA in consultation with the lead agency for any person to:

- reclaim or drain any wetland;
- erect, construct, place, alter, extend, remove or demolish any structure that is fixed in any wetland;
- disturb any wetland by drilling or tunneling in a manner likely to have an adverse impact on the wetland;
- deposit in, on or under any wetland any substance in a manner that is likely to have an adverse impact on the environment; and
- introduce any plant or animal into the wetland.

Section¹⁸ provides NEMA with authority in consultation with the lead agency the sustainable management of wetlands. The Authority is further empowered, in consultation with lead agencies, District Environment Committees and local environment committees to establish guidelines for the sustainable management of wetlands, to identify wetlands of local, national, and international importance and to declare wetlands to be protected wetlands. Where wetlands are declared to be protected, human activities may be excluded or limited¹⁹.

All these provisions, sections 35 - 38 stress the need for environmental impact assessment for activities and developments in wetlands. At the same time the law governing wetlands must be seen within the total context of the Environment Statute in general and especially the provisions relating to pollution, environmental restoration orders, environmental easements, public awareness, and enforcement of the law.

The Constitution of Uganda specifically mentions communal wetland tenure. It states: “wetlands are held in trust of the common good for all citizens.”²⁰ The national Environmental Statute (1995) asserts that without written approval from the national environmental management Authority (NEMA) it is illegal to reclaim or drain any wetland. Moreover it is an offence to build any structure or engage in any activity that has adverse effect on the wetland. The local

¹⁷ Section 37 of the National Environmental Act cap 153

¹⁸ Section 38 of the National Environmental Act cap 153

¹⁹ Mathews, G. V. T.; *The Ramsar Convention on Wetlands: Its History and Development*. Gland, Ramsar Convention Bureau, 1993.

²⁰ The Republic of Uganda, 1995, The constitution of Uganda

Government Act (1997) developed responsibility of wetland management to district authorities. The environmental impact assessment Regulations (1998) mandates the use of environmental impact Assessment (EIAs) prior any development.

1.2 Statement of the problem

Despite the NEMA environmental management measures in preserving Uganda's wetland in Kampala district, they are still under encroachment due to some loopholes that exist in the Act;²¹.

The problem that needs immediate concern is the reclamation of wetlands with development justifications, population pressures than environmental justification. For example wetlands have been garzatted and developed as industrial parks which are an encroachment to them.

Despite this clear legal mandate of NEMA, in practice the position has not been so clear. The National Wetlands Conservation Programme which was initiated in 1989 as a stop-gap measure remains in place together with its Inter Ministerial Committee on Wetlands. Also in place, is the programme management unit, the ad hoc Secretariat of the programme. According to the current structure of NEMA, this unit would form part of its Secretariat. Why two Co-ordinating agencies remain charged with the same function the one *de jure* the other *de facto*, cannot be explained by reason but by politics. The Ugandan Government is going through a serious restructuring exercise. It is hoped that at the end of the day reason will prevail. Wetlands will continue to be managed within the general framework of environmental management²².

Therefore an appraisal of the role of National Environment Management Authority (NEMA) in preserving Kampala district's wetlands will help us uncover the necessary steps in preserving these wetlands and thus NEMA has to effectively work for preservation of wetlands. The study is basically focusing on wetlands in Kampala District.

²¹ NEAP/Ministry of Natural Resources (MNR), (1994): *The National Environment Management Policy*.

²² The National Environment Action Plan (NEAP), 1993: *Policy, Environmental Legislation and Institutional Arrangements*.

1.3 Purpose / Objectives of the Study

To critically examine how effective NEMA has addressed issues concerned with preserving Uganda's wetlands in Kampala district and briefly on how policies to have dealt with the issue of wetland preservation.

1.3.2 Specific Objectives

- I. To examine how effective NEMA has been in addressing the problems associated with wetland preservation
- II. To examine the Legislative review which helps to identify the negative aspects of policies affecting wetlands and those actions that need to be taken to modify such legislation.
- III. To analyze how the NEMA policy frameworks have been of value to wetland preservation
- IV. To examine other stake holders, NGOs and authorities in wetland preservation
- V. To identify the remedies and recommendations to the challenges facing NEMA in implementing its roles

1.4 Research Questions

- I. What are the legal framework that governs NEMA in its efforts to protect the wetlands in Uganda?
- II. What challenges does NEMA face in playing its role of a sustainable utilization of wetlands in Kampala district of Ugandan?
- III. What are the remedies and recommendations to these challenges?

1.5 Scope of the Study

1.5.1 Subject scope

Despite the wide range uses of wetland, there faced with problems which greatly threaten their existence thus the study is geared towards examining the effectiveness of laws in cubing problems associated with wetlands management in Uganda and briefly tackles the role played by policy instruments in addressing the problems with emphasis being on implementation of the structures with emphasis on wetlands located in Kampala district.

Subject / time scope

The subject scope of this study is to examine the role played by NEMA in preserving Uganda's wetlands in Kampala district, the challenges and solutions to the authority in the period between 2007 to 2018.

1.5.2 Geographical Scope

The geographical scope of this study constitutes the Kampala Districts wetlands.

1.5.3 Significance of the study

The study concerns issues pertaining wetlands preservation in Kampala district of Uganda. The study shall be significant to students, lecturers, environmentalists, academicians and the general public in understanding the role played by NEMA in preserving wetlands in Kampala district of Uganda.

This study will provide information about the existing activities that are being carried out and which have direct effect on preserving wetlands in Kampala district.

This study will provide information to policy makers about the wetlands preservation. The study will further consequentially bring to attention of the general public on the roles played by NEMA other stakeholders such as Local Government, Lead Agencies and Non-Governmental Organizations and Kampala Capital City Authority in ensuring wetlands preservation in Kampala, challenges and the solutions there under.

Methodology

The research will be majorly desktop research. It will use both primary and secondary data source on preservation of wetland in Uganda. For primary sources, I will analyze the statutes, case law and other instruments for example delegated legislations. Secondary sources I will collect and analyze information from books and Articles on preservations of wetlands in Uganda. I will also carry out interviews with officials of NEMA. The research will be analyzed in the context of the aims and objectives of the study.

CHAPTER TWO

LITERATURE REVIEW

2.0 Introduction

The main purpose/objective of this- research is to address the deficiency on the laws in tackling issues associated with wetlands management.

Although many researchers have written articles and books on wetlands, my research though in the field of wetlands, will look at the law, its deficiency and inability to address the looming crisis on wetlands that are being settle on and hence violating her use as natural resource.

Principle xiii [13] of the national objectives and directive principles of state policy enshrined in the non-institution enjoins the state to protect and preserve natural resources. Principle xxi [21] enjoins the state to create good water systems and; Principle xxvii [27] obliges the state to promote sustainable development.

The law applicable to wetland management emanating from the 1995 Constitution includes the; Land Act Cap 227, National Environmental Act Cap 153, water Regulations SI No 33/98 and National Environmental Regulations SI No 3/2000

Article 39 of the Constitution provides for the right to clean and healthy. Thus, in **JUAN ANTONIA OPOSA & OTHERS Vs FULNESIA**²³ [the right to a clean environment was equated to the right to life]. It was observed by the Supreme Court, as a matter of fact that, these basic rights need not even be written under the constitution for they are assumed to exist from the inception of human kind if they are explicitly mentioned in the constitution. This means that life and environment are in separation.

Further, **Article 237[2] [b]** of the 1995 Constitution provides that, the government of Uganda shall hold and protect the wetland for the people.

As regards law enforcement, National Environment Act in Section 72-76 provides for environmental easements. A person may apply for easements to protect the environment. In

²³ (1993) Supreme Court of philistines, GR 101083, reprinted in the environmental law. Case book for practitioner and judicial officers-judicial symposium on environmental law and practice in Uganda p314-329.

view of the constitutional right to clean and health environment and the limited capacity of any person to enforce the right, NEMA can enforce the easement if it finds it necessary.

As apparent in section 67-71, NEA, NEMA or court may issue a restoration order requiring the person to cease the activities and or restore the environment as much as possible to its original state if the persons are likely to affect the environment.

The power to enforce a restoration order was exercised against Amooti Godfrey Nyakana, whose plan for the development of the plot was approved by the works, physical, planning and inspection committee of Kampala City Council. NEMA issued an environmental restoration order raging degradation of Nakivubo wetland located in Nakawa division, Kampala.

The restoration order ordered Mr. Nyakana Godfrey to demolish the house structure, remove the debris and restore the original state within 21 days who refused to comply. The executive director of NEMA commenced criminal proceedings against him and he was accordingly arrested by police and NEMA went ahead to destroy the house.

In **BYABAZAIRE GRACE THADDEUS VS MUKWANO INDUSTRIES**²⁴ Court held that, NEMA is the only person vested with the power and duty to sue for violations committed under the statute, further that the only resource available to every person whose rights under the state is violated is to inform NEMA or the Local Environment Committee of such violation.

In international law, the state is liable for the activities of private person with person are the subjects of intentional law. {State liability for accidental transactional environmental damage by private persons, vol. 74 p 527}²⁵

In **GREENWICH AND ADVOCATES COALITION FOR DEVELOPMENT AND ENVIRONMENT LACODE] VS GOLF COURSE HOLDINGS LTD**²⁶, here the applicant JUDY OBITER-GOMA discusses that NEMA is principally coordinating, monitoring and supervisory body which cause implementation through the environment local unit and the districts. In the event of conflict between the coordinator and the implementer, institutional

²⁴ HCCS, No 466/2000

²⁵ Hand book, 1980

²⁶ HCCS No 834/2003

paralysis arises with the resultant effect of ineffective implementation of the environmental laws NGOs concerned with environment protection sought a temporary injunction to restrain the respondent from constructing a hotel on a wetland. Applying section 71 of the NEA, Akiiki Kiiza J. although declined to issue the injunction, recognized the fact that the interest of the applicants was stated to be of a public nature and that section 71 NEA gave them a right to sue.

JUDY OBITER-GOMA²⁷ discussed that NEMA is principally coordinating, monitoring and supervisory body which cause implementation through the environment local unit and the districts. In the event of conflict between the coordinator and the implementer, Institutional paralysis arises with the resultant effect of ineffective implementation of the environmental laws.

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

DR. ALBERT MUMMA²⁸ of the Faculty of Law University of Nairobi pointed out that in African countries particularly, where regulatory bodies are often lacking in technical and financial capacity to enforce and implement environmental laws, private actions and claim by public interest bodies under the damage can play an important complementary role, which it would be a mistake to undermine.

JOHN KAMUGISHA, in his book, *"Managing of Natural Sources and Environment in Uganda Policy and Legislative Trade Marks,"* tries to examine the state of the environment in the pre-colonial era.

We again look at the evolution of legislation concerning the environment that started as far back as 1890 under the African Order in Council 1889/29. **HENRY STEINER AND DELTER** deals with the maxim of "**PACTA SUNT SERVANDA**" which is the core treaty law and

²⁷ Judy Obiter- Goma: an overview of the policy. Legal and institutional framework for environmental management in Uganda. Paper delivered at the environmental management training workshop for NEMA staff and district environment officers at Colline Hotel, Mukono 17-22 august; 1998 p 16

²⁸ Dr. Albert Mumma: background to environmental law- common law jurisdiction, 2003, p19, a paper prepared for the symposium for environmental law lecturers from African universities, Nakuru 29th September to October 2004.

²⁹ Report No 11 published by Sidas Regional Constitution Unit

emphasize that commitments made by a nation, voluntarily and formally should be honored. Uganda being a party to some international treaties and conventions is expected to meet, its international obligations and duties.³⁰

The environmental law institute; looks at how a citizen can participate in environmental enforcement through access to information of both public and private information with mechanisms for participation and the requirement for effective citizen enforcements.³¹ Furthermore NEMA has been able to protect wetlands through fighting legal cases against people misusing the wetlands such as in the case of **Godfrey Nyakana vs National Environment Management Authority** and others³² held that section 2(2)(c) in particular lays out one of the principles NEMA is required to follow thus “to use and conserve the future generation taking into account the rate of population growth and the productivity of the available resources hence the judge was right to rule that Byamugisha, JA addressed herself to this section in her judgment when she observed as follows;

With regard to the wetlands act section 36 imposes restrictions on the use of wetlands and to carry out any activity on the wetlands requires written approval of the first respondent. The petitioner is not challenging the constitutionality of these restrictions. In my view, it is these restrictions which gave the first respondent power to carry out inspection on the petitioner's property to ascertain whether the activities he was carrying out on the land was in conformity with the provisions of the section hence the service of the restoration order.

Wetlands as areas where plants and animals have become adapted to temporary or permanent flooding by saline, brackish, or fresh water³³. These include permanently flooded areas with sedge or grass swamp, swamp forest, high altitude mountain bog, seasonal floodplains, and depressions without regular flow. As a result of the vast surface area and the narrow river-like shape of many of the wetlands, very extensive wetland edge habitat is present in Uganda, providing rich habitat for wildlife, fish, and other species that use wetlands (for nesting and breeding, hunting and feeding, hiding, and/or as a water source). Two broad types of wetland ecosystems are found in Uganda are; natural lakes and lacustrine swamps, and riverine and floodplain wetlands associated with the major river systems in Uganda.

³⁰ Henry Steiner and Deiter, University Casebook Series

³¹ Role of the citizen in environmental enforcement Aug, 1992.

³² Constitutional appeal No 5 of 2011 [2015] UGSC 14 (20th August 2015)

³³ The National Policy for the Conservation and Management of Wetland Resources of Uganda (1995)

Wetlands in Uganda provide important habitats for about 43 species of dragonflies, 9 species of molluscs, 52 species of fish (which represent 18 percent of all fish species in Uganda), 48 species of amphibians, 243 species of birds, 14 species of mammals, 19 species of reptiles, and 271 species of macrophytes³⁴. About 600 fish species are found in Uganda; the most commonly encountered is Nile perch (indigenous to Lake Albert and from there, introduced to Lakes Victoria and Kyoga), Nile tilapia (indigenous to Uganda's lakes), and other small fish species, such as *Rastroneobola argentea*, *Neobola bredoi*, *Clarias gariepinus* (catfish), *Bagrus docmak* (silver catfish), and *Protopterus aethiopicus* (lungfish)³⁵

2.1 Wetland Reserves

Uganda's rich endowment in wetlands, which accounts for about 10% of the land area, is mainly due to her geological past. Many wetlands originated with the upwarping of land associated with the formation of the Rift Valley. The warping was spread over a wide area impending and even reversing river flow.³⁶

The wide distribution of wetlands means a large proportion of the population have access to the utilization of wetlands, resulting in extensive degradation of the wetlands. This calls for particular urgency in their efficient management and sustainable utilization. The Wetland Policy 1995 provides for protection and sustainable use of wetlands. The GOU requires the protection of vital (A vital wetland is considered to provide at least one known essential good, service, or other attribute, for which there is either no alternative source of supply, or where the alternative is not practically or economically viable. This includes wetlands that contribute crucially to services provided by a larger wetlands system or wider ecosystem); or harbor an endangered, endemic, or rare species; or contain unique habitats)³⁷ and critical (A critical wetland is one that is subject to on-going degradation that may jeopardize continuation of its attributes to supply ecosystem goods and services or its existence)³⁸ wetlands, and that their characteristics and functions be conserved through boundary demarcation and restoration (Restoration refers to re-establishment of wetland conditions to as near as possible the original conditions in an area where the wetland state had been altered by past human activities.

³⁴ NEMA, Uganda, 2015

³⁵ NEMA, Uganda, 2014

³⁶ National wetland policies Uganda

³⁷ Enhancing Wetlands' Contribution to Growth, Employment and Prosperity. Kaggwa, R., Hogan, R., and Hall, B. UNDP/NEMA/UNEP Poverty Environment Initiative, Uganda. Year: 2009 Place: Kampala.

³⁸ ibid

The Wetland Department undertakes this activity by removal of illegal structures and alien species, removal of reticulation of water to allow for natural regeneration and sometimes replanting of wetland vegetation. The before and after conditions of the wetland are noted and the restoration is measured in terms of number of hectares restored)³⁹ (this is part of the process to gazette them as Wetland Reserves). Uganda has designated the 12 Ramsar Sites as vital and critical wetlands. The Wetlands Department in the Ministry of Water and Environment has jurisdiction for wetlands management. MWE is now assessing additional wetlands to be listed as wetlands of vital and critical importance, especially those near urban areas like the Gazettement of three vital and critical wetlands, including Nakivubo and Kinawataka wetlands in Kampala, as Wetlands Reserves is currently taking place⁴⁰ Boundary demarcations of five critical municipal wetlands (Jinja, Mbale, Gulu, Lira, and Bushenyi); have been completed and the wetlands are awaiting gazettement⁴¹

Functions and uses of wetlands

The functional aspects of wetlands can be divided into those which are ‘natural’ i.e., those which would exist even with no human manipulation (referred to herein as ecological), and those which are created by human exploitation (referred to herein as socio-economic). These functions are itemised below and are not in order of importance because this varies depending on location and many of the functions are inter-related.

Ecological functions

- (i) Maintenance of the water table The impeded drainage allows the water to stay in one place long enough to maximize infiltration This helps to recharge the water table. A high water table means that in the immediate surroundings of the wetland there is access to water supplies for plants.
- (ii) Prevention of erosion If it were not for the retarded flow of water, the region downstream of the wetland would receive the full erosive force of storm events, resulting in soil and stream bank degradation.
- (iii) Reduction in extremes of flow. Wetlands act like leaky dams, ponding back water when they receive it and subsequently letting it flow through slowly. This results in

³⁹ ibid

⁴⁰ Wetlands Department, Uganda 2014);

⁴¹ Ministerial Policy Statement, 2013/2014.

maximizing the area of land which can be kept moist for productive purposes, as well as the lengths of time during the year for such activities.

- (iv) **Sediment traps** Material eroded from the surrounding catchment by rivers is sedimented out when the flow is slowed upon entering a wetland. Sediment retention prevents downstream resources of dams, farmland, rivers and lakes from being silted up.
- (v) **Wildlife habitats and centers of biological diversity.** Wetlands provide habitat for a variety of plants and animals, some of which depend entirely on wetlands for their survival. They are natural habitats for the Sitatunga and the Shoe Bill, among other species. The Crowned Crane, Uganda's national bird breeds in wetlands with a preference for seasonal grass swamps.

Socio-economic functions

Wetland resources in Uganda have also traditionally been utilized by the people as a source of materials for construction, crafts, furniture and as hunting and fishing areas, grazing cattle, growing crops and a source of domestic water and they are a major habitat for wild life resources.⁴² Plant products Papyrus and similar plants have been traditionally harvested for everyday necessities such as thatching, mats, baskets while the palms and smaller sized trees are used as structural building materials.

Article 237(1) b of the 1995 constitution, further states that wetlands are source of ecological and touristic purpose. As ecological, wetlands play various roles such as moderating floods and supplying water during seasons, maintain the water table; and a source of water for plants and animals and also play a significant role in the prevention of erosion by retarding the flow of water.⁴³ The marginal parts of wetlands, where the soil is permanently or seasonally moist, have for long been used as grazing areas for livestock especially during the dry season.

Wetlands harbor a substantial population of fish, which have traditionally been caught as an important food item in many parts of Uganda which are far away from the main lake fisheries. Besides, wetlands provide resources such as Ambach wood, fishing floats which is common in Lake Victoria; wildlife resource, such as Sitatunga. Antelope, Birds, fisheries including fish species like; tilapia, cat fish, and lung fish; further, wetlands are a forage hence a source of grasses, act as microphyte resources thus they have products such as papyrus, typha, phoenix and

⁴² Republic of Uganda (1995) national policy of the conservation and management of wetlands resources.

⁴³ The republic of Uganda (1995) national environmental action plan for Uganda (NEAP) P30

phragmites; people drive products such as; rice, tallow, palm **products** and beans sesbania out of agriculture as a source; as a water resource, wetlands provide water supplied directly or via borehole."⁴⁴

Water supply Wetland plants have the capacity to take out impurities from the water thus filtering it. Because of this function, it has been possible for rural communities to obtain a pure water supply at no cost.

Nutrient and Toxin retention; because wetland vegetation will strip out nutrients from the in-flowing water, this protects the quality of water downstream. They also have the ability to strip toxic substances from in-flowing water.

Tourism; The diversity of wetland biological communities have a potential for earning tourism income.

Uganda's wetlands cover about, 29,000 sq. km, or 13% of the total area of the country. They comprise swamp (8,832 sq. km), swamp forest (365 sq. km) and sites with impeded drainage 20,392 sq. km (Figure 5).

They include areas of seasonally flooded grassland, swamp forest, permanently flooded papyrus, grass swamp and upland bog. As a result of the vast surface area and the narrow river-like shape of many of the wetlands, there is a very extensive wetland edge.

There are basically two broad distributions of wetland ecosystems in Uganda: (a) the natural lakes and lacustrine swamps and the riverine and flood plain wetlands which are associated with the major river systems in Uganda. Wetlands also have intrinsic attributes, perform functions and services and produce goods of local, regional, national or international importance. Together, they represent considerable ecological, social and economic values. Wetlands in Uganda are known to support some 43 species of dragon flies (of which 8 are known to occur in Uganda only); 9 species of molluscs; 52 species of fish, 48 species of amphibians, 243 species of birds, 14 species of mammals, 19 species of reptiles, and 271 species of macrophytes. 11 sites have been gazetted as Ramsar sites and as such are being given special protection. Apart from

⁴⁴ Ibid (16)

providing seasonal breeding and reproductive ground for various fish species including *Labeo sp.*, *Barbus sp.*, *Clarias sp.*, and *Mormyrus sp.*, Uganda's wetlands also provide habitats for feeding endangered fish species.

Other notable values of wetlands in Uganda include their important water sources for human consumption, agriculture, livestock, and recreation, as well as their ecosystem functions and services such as water purification, water flow, storage and recharge, shoreline stabilization, micro-climate regulation and biodiversity habitat provision. Papyrus and other wetland plants have commercial value, at least 22 species of plants growing in wetlands are edible, and many other plants are used for medicinal purposes.

CHAPTER THREE

LAWS AND MANAGEMENT OF WETLANDS

3.1.0 Introduction

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

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

Creation of rights and obligations for the people to live in a decent and healthy environment, including rights to bring action to prevent or stop activities that are likely to likely to adversely affect the environment, Requirement of EIA to be mandatory for all activities likely to have significant effect on the environment, Establishment and enforcement of viable environmental standards on the maintenance of air, water, soil quality and standards for noise, smell, atmospheric pollution and natural resources, Establishment and enforcement of viable environmental standards for sound management of municipal and hazardous- wastes, chemical and other dangerous products, Discontinuance of harm and compensation of individuals harmed, and restoration of the environmental where the harm has already occurred.

3.2.0 Laws on Environment and Wetlands Management

The 1995 Constitution

The 1995 Constitution of Uganda is the supreme law and provides for environmental protection and conservation under Article 237[1] that provides for land as belonging to the citizens of Uganda that vests in them in accordance with the land tenure systems provided for under Article 237[2][b] which provides for government holding in trust for the purpose of protecting Natural lakes, Rivers, Wetlands. Therefore a close analysis of the ward 'holding in trust leaves a lot to be desired but the immediate implication is that when people want to use the wetlands. . It sets out

the norms, standards, rights and obligations at national levels.⁴⁵

It also sets out the national objective and directive principles of state policy.

The national objectives and directive principles of state policy provides that, the state shall protect important natural; resources including; water, wetlands, minerals, oil, fauna

And flora on behalf of the people of Uganda⁴⁶. The state is also required to take all practical measures to promote a good water management system at all levels.

The Constitution also provides for sustainable environmental management⁴⁷, which provides that, every Ugandan citizen has a right to a clean and healthy environment.

The Constitution further provides that, the government or local government as determined by parliament by law shall hold in trust for the people and protect natural lakes, rivers, wetlands,. Forest reserves, game reserve, national parks any land to be reserved for ecological and touristic purposes for the common goods of all citizens.⁴⁸

The Constitution requires parliament⁴⁹, by law to provide for measures intended to protect and preserve the environment from abuse, pollution and degradation, to manage the environment for sustainable development, and to promote environmental awareness.

The Land Act Cap 227

The land act provides that, a person who owns or occupies land shall manage and utilize the land in accordance with the Forest Act, Mining Act, National Environmental Act, Water Act, Uganda Wildlife Act and any other law⁵⁰.

It further provides for the public trust doctrine⁵¹ and goes ahead to state, that, the government or local government shall not lease out or otherwise alienate any natural resource referred to in this section. However the government or local government may grant concessions, licenses or permits in respect of a natural resource referred to above.

Section 70 of the land act provides that, subject to Section 44, all right in the water of any natural

⁴⁵ Principle Xiii

⁴⁶ Principle Xxi

⁴⁷ Principle Xxvii and Article 39

⁴⁸ Article 237 (2) (b)

⁴⁹ Article 245

⁵⁰ Section 43

⁵¹ Section 70

spring; river, stream, water course, pond or lake on or **under** land whether alienated or unalienated shall be reserved to the government; and no such water shall be obstructed, dammed, diverted, Polluted or otherwise interfered with directly or indirectly except in pursuance of permission in writing granted by the minister responsible for water or natural resources in accordance with the water Act.

Sectoral Environmental Legislation

The Water Act Cap 152

The water Act provides for water permits, accordingly it is not allowed to construct or operate any works unless authorized to do so by a permit granted by the director⁵². Thus a holder or permit is not permitted to cause or allow my water to be polluted; and has to prevent damage to the source from which water is taken or to which water is discharged after use.

The holder is also required to take precautions to ensure that no activities on the land where water is used result in the accumulation of any substance which may render water less fit for the purpose for which it may be reasonably used; observe condition prescription by regulations made under this Act and observe any special conditions that may be attached to the permit⁵³.

The Act prohibits pollution.⁵⁴ It provides that, a person commits an offense who, unless authorized under this act; causes or allows;

- a) Waste to come into contact with any water
- b) Waste to be discharged directly or indirectly into water
- c) Water to be polluted, person wishing to discharge asset may apply to the director for a waste discharge permit in the prescribed manner

The Uganda Wildlife Act Cap 200

The objective of this Act is to provide for sustainable managements of wildlife and to consolidate the law relating to wildlife management.

The Act states that; any person who in any wildlife conservation area unlawfully;

- a) Hunts, takes, kills, Injures, or disturbs any wild plant or animal or any domestic animal
- b) Takes, Destroys, damages or de--faces any object of geomorphologic, archaeological,

⁵² Section 8

⁵³ Section 20

⁵⁴ Section 31

Historical, Cultural or scientific interests or any structure lawfully placed or constructed⁵⁵.

- c) A person also commits an offence if; except in accordance with this act, enter into or resides in, or attempts to enter into or reside in, any national park, wildlife reserve or any other protected area.⁵⁶

The National Environmental Act Cap 153

In an attempt to ensure proper wetland management established under section 4 of the national environment Act, NEMA is empowered as the overall body to control, coordinate and monitor environmental management in Uganda including wetlands.

NEMA is empowered in consultation with lead agencies to issue guideline, Measures and standards for the management of and conserving wetlands resources and the environment. Section 5 of the NEA Cap 153 mandates NEMA to develop standard guidelines, laws and measure to be used.

The National Forestry and Tree Planting Act No 8/2003

The Act requires the responsible body to prepare a management plan and, in the case of a community forests the plan shall be prepared in consultation with the local community.⁵⁷

Prohibited Activities

The act prohibits any person, except for forestry purposes and in accordance with a license granted under this act, in a forest reserve or community forest to;

- a) Cut, take, work or remove forest produce
- b) Clear, use or occupy any land for
 - i) Grazing
 - ii) Camping
 - iii) Livestock farming
 - iv) Planting or cultivation of crops
 - v) Erecting of building or enclosure
 - vi) Recreational, commercial, Residential, Industrial o hunting purposes

⁵⁵ Section 21

⁵⁶ Section 22

⁵⁷ Section 28

- c) Collect biotic and a biotic specimens; or
- d) Construct or re-open a road, track, bridge, airstrip or landing site Under Section 23, The Act emphasizes on sustainable utilization of natural resources

International Environmental Laws in Uganda⁵⁸

Uganda recognizes the need to participate in International Environmental Law.

Article 123 of the Constitution provides that, the president may make treaties, conventions, agreements or other arrangements between Uganda and any international organizations in respect of any matter. The article further adds that parliament shall make laws to govern ratification of any treaty, conventions, agreements or other arrangements.

Section 106 of the NEA provides that where Uganda is a party to any convention or treaty, concerning the environment; after the convention or treaty has been ratified under Article 123, the minister may by statutory order with the approval of parliament by resolution set out provisions of the convention or treaty; give the force of law in Uganda the convention or treaty or any part thereof required to be given force of law in Uganda; amend any enactment other than the constitution for the purpose of giving effect to the convention, make such other provisions as may be necessary for giving effect to the convention in treaty in Uganda or for enabling Uganda perform its obligations or exercise its rights under the convention or treaty.

Uganda has signed several international conventions and treaties; the 1995 Constitution⁵⁹ provides for recognition of such treaties, agreements and conventions.

These include:

- i) African convention on the conservation of nature and natural resources of 1968 and ratified in 1977.
- ii) Convention on the conservation of migratory species of wild animals [Bonn convention] of 1979.

This aims at conserving terrestrial, Marine and aviary migratory species throughout their range. It's concerned with the conservation of wildlife and habitants on a global

⁵⁸ UNEP for and on behalf of NEMA-guide to the practice of environmental law in Uganda: a hand book, 2003 pgs 46-55

⁵⁹ Article 123

scale.

- iii) Convention on many wetlands of international importance especially as water Fowl [Ramsar convention] ratified on 4th March, 1988.

This seeks to ensure the sustainable, "wise use" of wetland resources including designation of wetland site of international importance and to ensure that all wetlands resources are conserved now and in the future.

- iv) Stockholm convention on persistent organic pollutants 2001 signed in 2004. The objective of this convention is to protect human health and the environment from persistent organic pollutants⁶⁰.
- v) Basel convention on control of trans-boundary movement of hazardous waste and their disposal 1989 signed in 1999.

The overall goal is to protect by strict control of human health and the environment against the adverse effect which may result from the generation, Trans-boundary movement and management of hazardous and other wastes. Other objectives include reducing trans-boundary movement of wastes to a minimum consistent with their environmentally sound and efficient management, and controlling any permitted trans-boundary movement under the terms of the convention, minimizing the amount of hazardous wastes generated and ensuring their environmentally sound management; and assisting developing countries in environmentally sound management of the hazardous and other waste they generate.

The Basel convention had a similarity with the Bamako convention on the Ban of import into Africa and the control of trans-boundary movement and management of hazardous wastes within Africa of 1991.

Common Law

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

common law approach is applicable in environmental litigation. It is distinguishable for statute law because for statute law is passed by parliament. Common law become applicable in Uganda through the 1889, 1902 and 1911 orders in council and was trained by the judicature Act of 1967 and the current judicature act⁶¹. This Section 14 of the

⁶⁰ Article 1

⁶¹ Cap 12 laws of Uganda

judicature act confers upon the high court, subject to the constitution; unlimited original jurisdiction in all matter and such appellate and other jurisdiction as may be conferred on it by the constitution or this act or any other law. This jurisdiction is to be exercised in conformity with written law, but where written law does not extend or apply, in conformity with common law and doctrines of equity. The law of torts is part of common law and by virtue of the above section, it is applicable.

A :tort: is a crooked conduct, a wrong, an act which causes harm to a determined person, whether intentional or not, being a breach of a duty arising out of a personal realtion or ontract and which is either contrary to law or an ommission to a specific legal duty, or a violation of an absolue right⁶².

3.3.0 Effectiveness Of These Laws On Nakivubo Wetland

The effect of Article 237(b)⁶³ has been felt in different dimension in this regard, it will be denoted that, as a matter of discussion, Uganda is one of the most advanced countries in Africa and the world in terms of wetland management. This is so because wetlands represent one of the country's most vital resources. It has within its borders over 80% of Africa's wetland resources. Wetlands are "held in trust" by the government and local governments for the good of all citizens of Uganda in accordance with the Constitution 1995.

It should however be noted that, in exercising her duty to hold resources for public purposes, in 2001 the government of Uganda brought all wetland activities under one planning network; the Wetland Sector Strategic Plan [WSSP]. This was done in recognition that wetlands are playing a key role in achieving Uganda's.

The wetlands sector strategic plan operates as an integral planning and the basket funding concept.

Wetland sector strategic plan has provided a clear sense or purpose, direction and a supporting action framework for all those involved in wetlands management and conservation for the next 10 years. The plan identified the implementation of the plan.

The document has attracted sufficient internal and external funds for the continuation of wetland management in Uganda.

⁶² Osborn's law of dictionary

⁶³ 1995 constitution of the republic of Uganda

Underlying the wetland sector strategic plan is Uganda's vision for its wetland. The vision has played a critical role by emphasizing that wetland management should serve the interest of the environment and the people of Uganda. It denies any approach to environment management that promotes protection for the sake of the environment alone. It has recognized that wetland management which includes protection is done for the benefit of all Ugandans and it has emphasis that sound wetland management runs parallel to poverty eradication and achieving of economic prosperity.

The economic value of the Nakivubo urban wetland as such has been estimated as seen;

	Wetland benefit	Economic value [US \$ / Year 2002]
1	Crop cultivation	60,000
2	Papyrus harvesting	10,000
3	Bick making	17,000
4	Fish farming	30,000
5	Water treatment and purification	700,000-1,300,000

Source: Schuyt, 2018

Government has realized the importance of wetlands as a vital resource and has allocated funds for their management at both district and national level. Nevertheless, so far few districts have included wetland planning and management in their districts development.

Plans partly due to the fact that planners at this level are not sufficiently aware of what should be planned for and how much budget to allot to the activities involved in wetland management.

Wetland inspection division (WID), the lead agency, has drawn up framework to guide local government in planning and budgeting for wetlands based on the wetland and sector strategic plan 2001-2011. The overall objective of wetlands management in districts is “contribution of wetlands to the welfare of the districts population and environment protection” as showcased above.

Since the districts and the sectors as a whole has limited resources, local administrators have been advised and so have managed to prioritise the identified activities using “some clear criteria” to ensure wetlands management is not jeopardized for instance, it has been pointed out, a vital wetland is one that provides essential goods or services for which there is no alternative. If it’s threatened, it should be restored. Valuable wetlands such as

Nakivubo wetland that are threatened but provide goods and services that are important but are available from others (may be lower quality) sources, take priority in terms of action.

The national environment (wetland, riverbanks and lakes shores management), regulation No.3/2000, statutory instrument 153-5. These regulations provide for the protection of wetland, their conservation and wise use: inventory of wetlands and wetland use permits to regulate activities.

Wetlands inventories; wetlands have always existed and are known by traditional name by people around them such as “Nakivubo wetland”. The national biomass study first mapped land cover including wetlands for the whole country in 1994. Before that there was no database that one could use to readily determine the systems of wetlands. The National Biomass Study [NBS] mapped wetlands in 28 districts of Uganda. The objective of the exercise was to survey, describe, quantify and map wetland in these district. With this, Reports have already been dealt with in the 28 districts, regions named in the central part included districts of Kampala, Wakiso and Mukono, that have been identified as having the greatest conversion of wetlands.

Monitoring; established under section 4 of the National Environment Act, NEMA is empowered with the overall responsibility for coordinating, monitoring and supervising environmental matters in Uganda. This extends to providing technical support and supervision to kick-start the management of wetlands.⁶⁴

In enforcing section 4 of the NEA, national wetlands programme has developed guidelines for compliance monitoring of wetlands⁶⁵. These guidelines deal with how to monitor the adherence to laws related to wetlands and accomplishing regulations and the implications and penalties involved.

The main target audience is the district officials who are charged with the responsibility to uphold the wetland laws and regulations. Capacity building of districts is one of the priority

⁶⁴ (NEMA, 1999)

⁶⁵ (MWLE, 2002)

activities within the District Wetlands Action Plan [DWAP]. Capacity building efforts began with the training of trainers [District environment offices] and provision of training tools and publicity materials. The trainers [DEOs] then train the other district officials at lower levels. The exercise began with the training of Kampala city council enforcement officers in 2001 and has already been completed for all districts in central Kampala inclusive of Nakivubo wetland as concern area targeted for enforcement measures.

To ensure that guidelines for compliance monitoring, of wetlands are implemented and that abuse of wetlands are effectively curbed in order to contribute to the overall goal of sustainable management of Uganda's wetlands resources. The sum of \$ 0.45 million has been allocated for implementation of the guidelines for compliance monitoring. The major activity of the organ has been sensitizing and creating awareness, through training and backstopping of the law enforcement agencies.⁶⁶

In an effort to effect article 245 of the 1995 Constitution, that requires parliament by law to protect and preserve the environment from abuse, Pollution and degradation to manage the environment from sustainable development, and to promote environmental awareness.

⁶⁶ "I bid" footnote 21

Table: 1.1.0 gives an overview of the wetlands that are to be gazetted and accorded high level protection⁶⁷

District	Wetland Name	Area	Remarks
Masaka	Nabajuzi	7.8	Partly converted, water source for Masaka Town.
Bushenyi	Rwanbanjeri		Partly encroached, vital water source
Kisoro	Karugorora		Gravity scheme to supply, water to about 26,000 people
	Kabiranyuma		Gravity scheme to supply water to 6000 people
Kampala	Nyakagezi	4.9	Highly encroached upon by yam growers and settlement Purification of waste water. Wetland survey on-going in
	Nakivubo	4.5	Partly encroached upon upstream. purification of waste water
	Kansanga	4.2	Upstream converted for industrial development, purification of waste water
	Kinawataka		Encroached by developers amenity and storm water retention
Masaka	Kitante		Partly converted. purification on of water
Jinja	Nakaiba		Encroached on the edges. Purification of waste water.
Mpigi [Entebbe]	Kirinya	3.5	Intact. purification of waste water
Mbale	Namiro		Partly encroached upstream However, the wetland is self protecting downstream because of deep water. Water storage. Storm
Kasese / Bushenyi	Lake George		Existing RAMSAR site
Mpigi	Lutembe Bay		Proposed additional RAMSAR site
Masaka	L. Nabugabo, Kayugi		Next proposed RAMSAR site. Has endemic fish that are threatened and depleted in L Victoria.
Masaka / Rakai	Sango Bay		
Kumi / Soroti	L. Opeti Bisina		Has high biological diversity. UWA interested in its protection as well as water source for Kumi Town

Source: WID, 2000

Given the importance of wetlands to Uganda, they are protected by law under clauses 37 and 38 of the national environment statute 1995, which in part states that; it's an offence for any person to alter or change any wetlands which is responsible for providing guidelines for

⁶⁷ WID, 2000

adherence to the national environment statute. It also mandated to assess and approve Environmental Impact Assessment [ETA] in consultation with lead agencies before any developments are undertaken. Wetland Inspection Division [WLD] as the lead agency for wetlands also reviews all EIA documents involving developments relating to wetlands.

It follow therefore that NEMA may inspect or cause to be inspected any activity to determine whether that activity is harmful to the environment as mentioned under clauses 37 and 38 and therefore it may take into account the evidence obtained from that inspectionary decision on whether or not to serve an environmental restoration order⁶⁸

Under the NEA where a person on whom an environmental restoration has been served fails, neglects or refuses to take the action required by the order. NEMA may, with all necessary workers and other officials enter or authorize any persons on whom that order has been served and take all necessary action in respect of the activity to which that order as may seem, fit⁶⁹

The power to enforce a restoration order was exercised against Amooti Godfrey Nyakana whose plan for the development of a plot was approved by the works, physical, Planning and inspection committee of Kampala City Council. NEMA issued an environmental restoration order regarding degradation of Nakivubo wetland located in Nakawa division, Kampala. It was alleged that the environmental inspectors and officials from Kampala City Council, wetland division and police had assessed compliance of land use and reported that he had continuously dumped soil and constructed a house in a wetland.

The restoration order ordered Mr. Nyakana Godfrey to demolish the house structure, remove the debris and restore the original state within 21 days who refused to comply. The executive director of NEMA commenced criminal proceedings against him and he was accordingly arrested by police and NEMA went ahead to destroy the house.

3.4.0 Challenges facing effective implementation of these law

Uganda's wetlands face enormous pressures largely from citizens wishing to convert them for agricultural production. The pressures vary by region and location. For instance wetlands in urban areas example Nakivubo wetland] are likely to be dumping sites for wastes and in some regions, to be converted for peri-urban agriculture.

⁶⁸ Section 69

⁶⁹ Section 70

Wetlands in rural areas are likely to be used when a particular crop such as paddy rice, horticulture produce have become major income earners.

All over the world Uganda inclusive, degradation and loss of inland wetlands and species is driven by infrastructure development example building of dams, land conversion, water withdrawals, pollution, over harvesting, the indication of invasive alien species and global climate change [NA, 2005]. In the case of Uganda, additional pressures come from, policy and management challenges, ownership, the trans-boundary nature of resources and political interference. A lot of these pressures are connected to each other.

Wetlands are also under extreme pressure due to economic development activities including residential development which is affecting several wetlands, notably Nsooba Bulyera, Kiyanja Kansanga, Kyetinda, Mayanja and Nakivubo in Kampala district. All the seasonal wetlands have been reclaimed and the people have even resorted to degrading critical wetlands such as; Kinawataka, Nakivubo and Kansanga. In Nakivubo wetland. The original area of intact wetland vegetation [mostly papyrus] of 44km² was reduced to 2.8km² in 1991 1.9km² in 1995 and 1.31=2 in 20000. Current estimated indicate the size to be less than 1km².

As the population grows, the demand for more agricultural land is expected to increases. In 1991 out of 16.7 million people close to 89% [14.8 million people] lived in areas occupying 8.4 million hectares of subsistence farm land; by 2002, the population of Uganda was 24.7 million of whom close to 85% lived in rural areas. Land cover including wetlands has come under pressure for conversion into farm holdings.

The population of illegal settlers in the wetlands is estimated to over ten thousand with major concentrations being in Kitintale zone b II, in Nakawa division and Namuwongo slum in Makindye division.

Problems also result from the narrow, sectoral approaches taken to economic development, perverse economic subsidies that development consider tile link between ecosystem services and human livelihoods, or properly formulated responses to poverty. Unsustainable exploitation of wetlands is often the result of poor unsectoral planning and lack of recognition of the ecological, hydrological and economic functions and values associate

3.5.0 Tools of Enforcing Environmental Law on Wetlands Management

Environmental Impact Assessment [EIA]

EIA is a systematic examination conducted to determine whether or not the proposed project will have adverse impact on the environment. EIAs are an essential management tool in ensuring environmentally sound development planning in any society. It is a process for examining, analyzing and assessing proposed activities in order to maximize the potential for environmentally sound and sustainable development.

Section 19 of the NEA requires a developer of a project described in the 3rd schedule to the act to submit a project brief to the leading agency in the prescribed form and give the prescribed information. Under the 3rd schedule, generally, an activity out of character with its surroundings; any structure or scale not in keeping with its surroundings, or major changes in land use are to be subject to EIA [demolition of Nyakana structure constructed in a wetland].

Public Participation and Hearing In EIA Process

This is regulated by the environmental impact assessment public hearings guidelines, 1999. The purpose of these guidelines is to guide the conduct of the hearings in the environmental impact assessment processes especially in questions and answers respecting a project under review.

Environmental Audit

NEA defines, "environmental audit" to mean the systematic, Documented, Periodic and objective evaluation of how well environmental organization, Management and equipment are performing in conserving the environment and its resources.

Section 3[3] [c] requires that any on-going activity be subject to an environmental audit in accordance with section 22 of the act. NEMA in consultation with the lead agency is responsible for carrying out an environmental audit of all activities that are likely to have significant effect on the environment in relation to wetland; as an environmental resource, this process would be efficiently used.⁷⁰

Environmental Monitoring

NEA defines, "environmental monitoring" to mean the continuous determination of actual and potential effects of any activity or phenomenon on the environment, whether short term or long

⁷⁰ NEA section 22

term.

The general objective of monitoring is to establish the status of environment in general and natural resource in particular.

NEMA is required, in consultation with a lead agency, to monitor all environmental **phenomenons** with a view to making_ an assessment of many possible changes in the environment and their possible impact.

Environmental Standards

The National Environmental Action Plan for Uganda [1995] recognized the need to establish environmental standards. The plan recommended the establishment of committees to develop standards in consultation with the lead agencies in every aspect of environmental management and train and equip corresponding monitoring units in line agencies.

Environmental Restoration Orders

NEMA is empowered under the NEA to issue to any person in respect of any matter relating to the management of the Environment and natural resources and an order referred to answer an Environmental restoration order. This order may be issued requiring a person to restore the environment as near as it may be to the sate in which it was before the taking of the action, which is the subject of the order [issued against Geoffrey Nyakana].

Environmental Easements

An easement I a right to the use of land, or a right to restrict the use of land, N easement is the right to do something or the right to prevent something over the real property of another NEA empowers NEMA to carry out some of this obligation whereas the Land Act calls for permits and issuance of licenses for occupation of land.

Polluter Pays Principle

The principle implies that the polluter should bear the expenses of carrying out pollution prevention measures or paying for damages caused by pollution. The **polluter** pays principle addresses liability for environmental damage.

The polluter pays principle is incorporated in principles for environment management under section of the NEA, where it is provided that, _ total costs of Environmental pollution are borne by the polluter.

In relation to wetlands management, a person would be liable for pollution of wetlands example dumping wastes and other refuse.

Precautionary Principle

The principle is one of the most important general Environmental principles for avoiding Environmental damage and achieving sustainable development. As set forth in the Rio-Declaration, the precautionary principle states that; where there are threats of serious or irrelevant damage, Lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent Environmental degradation. This is wholly applicable in wetlands management.

3.6.0 Rationale for Wetlands Management

Wetlands as a sub sector in the natural resource sector qualifies for Poverty Action Plan since it addresses two pillars of the poverty eradication action plan. One pillar is *"increasing the quality of life of the poor"*. Wetlands contribute to PEAP's pillar 4 through the indirect benefits — wetlands functions of water purification and filtration flood control and nutrient retention. The other, PEAP's pillar 3, is *"increasing the ability of the poor to raise their incomes."* Wetlands contribute to this through direct benefits use of wetlands products [fish, fuel wood, building poles, sand and clay, water, medicines, pasture and recreation]. Poverty action fund, funds to the sub sector has been increasing since 2000/01 to date⁷¹

⁷¹ Wetlands sector strategic plan: 20-01-2010

CHAPTER FOUR

OTHER AUTHORITIES ON WETLANDS MANAGEMENT

4.1.0 Introduction

These institutional frameworks have played a pivoted role in reclaiming, protecting, gazetting and sensitizing the masses on how wetlands resources are to be utilized substantially without compromising the ability of the future general to utilize those very resources.

4.2.0 Role of NEMA

The National Environment Management Authority (NEMA) is established under Section 4 of the National Environmental Act as the principle agency in Uganda for the management of the environment to coordinate, monitor and supervise all activities in the field of the environment. NEMA has played the following roles in an effort to alleviate the shortcomings associated with wetlands and the environment generally. NEMA has managed to;

- a) Coordinate the implementation of government policy and decisions of the policy committee
- b) Liaise with the private sector, intergovernmental organizations, non-governmental agencies and governmental agencies of other states on issues relating to the environment.
- c) Review and approve environmental assessments and environmental impact statements submitted in accordance with this Act or any other law.
- d) Promote public awareness through formal. no formal and formal education about environmental issues.
- e) Ensure observance of proper safeguards in the **planning and execution** of all development projects, including those already in existence that **have** or are likely to have significant impact on the environment determined in accordance with part v of this Act.
- f) Undertake such studies and submit such reports and recommendations with respect to the environment as the government or the policy committee may consider necessary.
- g) Undertake research and disseminate information about the environment.
- h) Mobile expedites and monitors resources for environmental management.
- i) Propose environmental policies and strategies to the policy committee.
- j) Initiate legislative policies, standards and guidelines on the environment.

- k) Ensure the integration of environmental concerns in the overall national planning through coordination with the relevant ministries, departments and agencies of the government. In the case of *BYABAZAIRE GRACE THADDEUS VS MUKWANO INDUSTRIES* court held that the national and Management Authority [NEMA] is the only party vested with power and duty to sue for violation committed under the statutes and that the available recourse for any person who claims that his rights have been violated is to inform NEMA or a local environment committee about such a violation. Article 50 provides liberty to a person to sue when his rights been infringed upon and worth noting that in *BYABAZAIRE'S CASE* court held that NEMA is the one to sue on his behalf therefore, though authenticating that government is a trustee however there incidences where an individual may act to arrest the situation.

NEMA is a semi- autonomous institution established in May 1995 under the National environment Act (NEA) cap 153 and became operational in December 1995⁷². The National environment Act (NEA) established NEMA as the overall body charged with management of environmental issues in Uganda with power to co-ordinate, monitor and supervise all activities in the field of environment⁷³. NEMA is a body corporate with perpetual succession and a common seal, it can in its own name be capable of suing and being sued and doing and suffering all acts and things as bodies corporate may lawfully do or suffer⁷⁴ and under S.4 (4)⁷⁵, NEMA is to be under the general supervision of the minister.

Principles of environmental management.

First and foremost S.2 of the National environment Act sets out the principles of environment management and in *Advocates coalition for Development v Attorney General and NEMA*⁷⁶ court said that it was upon the second respondent (NEMA) to ensure that principles of environmental management set out in the above section are observed. The principles of environmental management include;

- To assure all people living in the country, the fundamental right to an environment adequate for their health and well-being,
- To encourage the maximum participation of Uganda in the development of policies, plans and processes for the management of the environment

⁷² Brief background on NEMA, www.gov.ug downloaded on 3/18/2014 at 4:18 pm

⁷³ See S 5 of the National Environment Act

⁷⁴ See S 4 (2) and (3) of the National Environment Act

⁷⁵ National Environment Act

⁷⁶ *supra*

- To use and conserve environment and Natural resources of Uganda equitably and for the benefit of both present and future generations, taking into account the rate of population growth and productivity of available resources.
- To conserve cultural heritage and the environment and natural resources of Uganda for the benefit of both present and future generations
- To maintain stable functioning relations between the living and non-living parts of the environment through preserving biological diversity and inspecting the principle of optimum sustainable yield in the use of natural resources
- To establish adequate environmental protection standards and to monitor changes in the environmental quality
- To require prior environmental assessments of proposed projects which may significantly affect the environment or use of natural resources
- To publish relevant data on environmental quality and resource use
- To ensure that environmental awareness is treated as an intergral part of education at all levels
- To ensure that the true and total costs of environmental pollution are borne by the polluter
- To promote international cooperation between Uganda and other states in the field of the environment.

Therefore as emphasized in ACODES case⁷⁷, NEMA should make sure that all the above mentioned environmental principles as are observed and accomplished.

Right to a healthy environment

S 3(1) of the National Environment Act stipulates that every person has a right to a healthy environment. Rubby Aweriopio in *Advocates coalition for development V Attorney general and NEMA*⁷⁸ held interalia that NEMA is to ensure that all people in the country have the fundamental right to an environment adequate for their health and well being.

Functions of NEMA as set out in S 6 In *Amooti Godfrey Nyakana vs NEMA*⁷⁹, It was stated that S.6 of the National environment Act sets out the functions of NEMA; these are,

⁷⁷ supra

⁷⁸ supra

⁷⁹ Constitutional petition No 03/05

- To coordinate the implementation of government policy and the decisions of the policy committee
- To ensure the integration of environmental concerns in overall national planning through coordination with the relevant ministries, departments and agencies of the government
- To liaise with the private sector, inter-governmental organizations, non-governmental agencies and governmental agencies of other states on issues relating to environment
- To propose environmental policies and strategies to the policy committee,
- To litigate legislative proposals, standards and guidelines on the environment in accordance with the Act,
- To review and approve environmental impact assessments and environmental impact statements submitted in accordance with the NEA or any other law
- To promote public awareness through formal, non-formal and informal education about environmental issues
- To undertake such studies and submit such reports and recommendations with respect to environment as government or policy committee may consider necessary
- To ensure observance of proper safeguards in the planning and execution of all development projects, including those already in existence , that have or likely to have significant impact on the environment determined in accordance with the NEA
- To undertake research and disseminate information about the environment
- To prepare and disseminate a state of the environmental report once in every two years
- To mobilize, expedite and monitor resources for environmental management
- To perform such other functions as the government may assign to the authority or as are incidental or conducive to the exercise by the authority of any or all of the functions, provided for under the NEA.

Environmental Audit

NEMA in consultation with the lead agency is required for carrying out an environmental audit of all activities that are likely to have significant effect on the environment⁸⁰. Environmental audit in the broadest sense is simply a check on some aspect of the environment management⁸¹. S 3(3)(c) of NEA requires that any ongoing activity be subjected to an environment audit in accordance with S.22 of the NEA. An environmental inspector appointed by NEMA according to

⁸⁰ See S 22 of the National Environment Act

⁸¹ See Emmanuel Kasimbazi, TOOLS OF ENFORCING ENVIRONMENTAL LAW, class notes

S 79 of NEA is authorized to enter any land or premises for the purpose of determining how far the activities carried out on that land or premises conform to the statements made in the environmental impact statement⁸².

Environmental Monitoring

Under S. 23, NEMA is required in consultation with a lead agency, to monitor all environmental phenomena with a view to making an assessment of any possible changes in the environment and their possible Impacts, and the operation of any industry, project or activity with a view to determining its immediate and long term effects on the environment and their possible impacts; and the operation of any industry, project or activity with a view to determining its immediate and long term effects on the environment. For this purpose, an environmental inspectors appointed by NEMA may enter upon any land or premises for the purpose of monitoring the effects upon the environment of any activities carried out on that land or premises⁸³.

Environmental Standards

The National Environmental Action Plan for Uganda (1995) recognized the need to establish environmental standards⁸⁴. These are clearly dealt with under part VI of the NEA⁸⁵ and NEMA as we shall see has a role in ensuring that these standards are achieved. These environmental standards include;

a) Air Quality Standards

Air quality standards are dealt with under s.24 of NEA and NEMA in consultation with the lead agency is required to establish criteria and procedures for the measurement of air quality; establish ambient air quality standards; occupational air quality standards; emission standards for various sources; criteria and guidelines for air pollution control for both mobile and stationary sources; and any other air quality standard prescribed. NEMA is also required to take measures to reduce existing sources of air pollution by requiring the redesign of plants, installation of new technology or both to meet the requirements of standards established under the section; and make guidelines to minimize emissions of greenhouse gases and identify suitable technologies to minimize air pollution⁸⁶. In *Byabazaire v Mukwano industries*⁸⁷. Court stated that the National

⁸² Ibid

⁸³ See s 80 of the National environment Act

⁸⁴ Ibid no 11

⁸⁵ Ibid

⁸⁶ Ibid

environment management authority had to establish air quality standards before the totality of the right to a healthy environment could be gauged.

b) Water Quality Standards

S 25 of NEA establishes water quality standards. Under the section, NEMA in consultation with the lead agency, is required to establish criteria and procedures for the measurement of water quality; Minimum water quality standards for all the waters of Uganda; minimum water quality standards for different uses, including-drinking water; water for reservation purposes; water for fisheries; water for wildlife, and any other water use prescribed.

c) Standards for the Discharge of Effluent into Water

Under S.26 of the NEA standards for the discharge of effluent into water are provided and under this section NEMA is required in consultation with the lead agency to establish for the discharge of any effluent into water of Uganda; prescribe measures for the treatment of any effluent before discharge into the sewage system; and require that the operator of a plant undertake such works as it considers necessary for the treatment of effluent before it is discharged into the water. They have been developed and contained in the National Environment (Standards for discharge for discharge of effluent into water or on land) Regulations⁸⁸.

d) Standards for the Control of Noxious Smells

Under S.27 of the National environmental Act, NEMA is also required, in consultation with the lead agency to establish procedures for measurement and determination of noxious smells; minimum standards for the control of pollution of the environment by smell; and guidelines for measures leading to the abatement of obnoxious smells, whether from human activities or from naturally occurring phenomena⁸⁹.

e) Standards for the Control of Noise and Vibration Pollution

NEMA in consultation with the lead agency is required under s.28 of NEA to establish criteria and procedures for the measurement of noise and vibration pollution, minimum standards for emission of noise and vibration pollution into the environment; and guidelines for the abatement

⁸⁷ Misc Application No. 909 of 2000

⁸⁸ Ibid No 11

⁸⁹ Ibid

of unreasonable noise and vibration pollution emitted into the environment from any source⁹⁰.

f) Standards for Subsonic Vibrations

S 29 of the NEA requires NEMA in consultation with the lead agency to establish criteria and procedures for the measurement of subsonic vibrations; standards for the emission of subsonic vibrations which are likely to have a significant impact on the environment; guidelines for the minimization of the subsonic vibrations referred to in paragraph (b) from existing and future sources⁹¹.

g) Soil Quality Standards

NEMA in consultation with the lead agency, is required to establish criteria and procedures for the measurement and determination of soil quality; minimum standard, for the management of the quality of the soil for their purpose, NEMA has to issue guidelines for the disposal of any substance in the soil, the identification of the various soils; the optimum manner for the utilization of any soil, the practices that will conserve the soil, the prohibition of practices that will degrade the soil⁹². These have been developed and contained under the National Environment (minimum standards for management of soil quality) requirement, 2001 specified in the schedule to the regulations⁹³.

h) Other Standards

NEMA in addition to the standards specified above is required to establish standards for buildings and other structures; industrial products; materials used in industry, agriculture and for domestic uses; solid waste disposal; such other matters and activities that may affect the environment⁹⁴.

Environmental inspection.

NEMA is given powers to designate as many officers as it deems fit from duly qualified public officers, whether by name or by title of office, to do environmental inspections with such local limits as may be specified in the notification in the gazette⁹⁵.

⁹⁰ Ibid

⁹¹ Ibid

⁹² See S 30 of the NEA

⁹³ Ibid No 11

⁹⁴ See S 32 of the NEA

⁹⁵ See S 79 of the NEA

EIA Guidelines for the energy sector

NEMA also has EIA guidelines for the energy sector which apply to oil exploration projects. The guidelines provide ministry officials, developers and practitioners with a simple overview of their tasks during the EIA process. They also describe impacts commonly associated with different energy projects, possible mitigation measures and guidelines for resettlement and compensation. They list energy projects/activities among those that should be subjected to an EIA before they can be granted approval for implementation⁹⁶.

Successes:

Environmental Impact Assessment

Encouraging coordination relationships have developed between NEMA and the lead agencies in the area of EIA. NEMA sends to the lead agencies EIS's for review and they carry out the review and submit their reports back to NEMA. At discussions with staff of the forestry department, it was reported that in the last one and half years or so they have reviewed at least eight EIS's⁹⁷. According to records in the national environment management authority (NEMA), 104 EIA reports in the oil sector have been submitted and they have all been approved. Out of these only 14 EIA reports are available in the NEMA library because the rest of the reports are sent to oil exploration districts so that they can be accessed by the public⁹⁸.

From July 2002, the cumulative total of 431 EIA's have been reviewed out of which 135 have been approved. A GLS laboratory equipped with digitizers, scanners, plotters and computers has been established to aid production of spatial and non-spatial information. Data base for EIAs was developed and is in use. It is to be improved and integrated fully with spatial data⁹⁹. In the matter of scheer property limited registered proprietor and private developer of leasehold and in the matter of NEMA¹⁰⁰. Justice Paul Mugamba held inter alia that as a principle agency for environment management in Uganda in ensuring sustainable development, NEMA has continued to ensure that environmental safe guards are incorporated to all development policies, programmes and projects. In pursuit of this development objective, NEMA received the environmental impact assessment report for the proposed ICT scanning and achieving office premises and did not approve the project.

⁹⁶ Emmanuel Kasimbazi, Environmental Regulation of Oil and Gas Exploration and Production, Journal of Energy & Natural Resources, Vol 30 No.2, 2012, p13

⁹⁷ Partnership for the Development of Environmental Law and Institutions in Africa, published by UNEP

⁹⁸ Ibid no 25 at p 199

⁹⁹ 2003 annual NEMA report

¹⁰⁰ MISCELLANEOUS CAUSE No. 232 OF 2008

Contribution to the constitution

NEMA has scored success in making valuable contribution to the constitution. For the first time, environmental issues have been given prominence in the 1995 constitution; providing a right for and obligation to clean and healthy environment for all people living in Uganda¹⁰¹. The state also undertakes the protection of the environment¹⁰².

The Environmental Liaison Units (ELUs)

As a major effort to facilitate coordination, NEMA has invested in the promotion of the establishment of ELUs in the lead agencies. NEMA has assisted line agencies to establish ELUs so that they will be able to incorporate environmental requirements within their day-to-day operations as well as coordinate with NEMA and other agencies efforts in the implementation of the NES and consequently the NEAP¹⁰³. Here is a list of lead agencies where ELUs are being strengthened¹⁰⁴

- Department of Surveys and Mapping
- Forestry Department;
- Factories Inspectorate;
- Uganda Investment NEMA;
- Directorate of Water Development; inter alia

Establishment of technical committees

NEMA has established the following technical committees with an advisory function on matters related to environment, soil conservation, biodiversity conservation, and environment impact assessment. The technical committee on the licensing of pollution is yet to be established¹⁰⁵. The technical committees of the board have also been operationalised and have undertaken the following activities; review of the soil policy; Review and development of sectorial EIA guidelines; review and development of the national biodiversity strategy and action plan; development of environmental standards; development of the framework for EIA sectorial guideline¹⁰⁶.

¹⁰¹ Frank Turyatunga, uganda case study; The National Environment Management Authority

¹⁰² Ibid

¹⁰³ Ibid No. 26

¹⁰⁴ Ibid

¹⁰⁵ Ibid

¹⁰⁶ NEMA Annual report 2003

Degazetting of Mabira

NEMA successfully protested the government move to degazette Mabira¹⁰⁷. In 2006, the government proposed to allocate 7100 hectares out of the 32,000 hectares of Mabira central forest reserve to Sugar Corporation of Uganda limited. This attracted criticism from many civil society organizations including institution of a petition on economic environmental, social and ecological grounds¹⁰⁸. NEMA said that the giveaway of Mabira would have effects on the environment¹⁰⁹. This was a success on NEMA's side since Mabira was not given away.

Environmental Education, Information and Public awareness

The high profile environmental matters enjoyed in the country are a result of a successful Public awareness strategy within NEMA. To date, formal and non-formal environmental Education strategies have been drawn up and the former integrated in Primary and Post primary Levels of education; the mass media has been widely used to disseminate messages of good environmental practice; a Newsletter is produced quarterly and widely distributed; and public debates on matters of environmental concern are common in the country¹¹⁰. The authority (NEMA) has also acquired a site on the World Wide Web where most of the NEMA's publications are found. At the local levels, the authority has guided districts in environmental reporting, leading to production of district environmental profiles and district state of environmental reports. The purpose of these reports is to serve as a guide for integration of environment issues in national and local level development planning. Perhaps the most important impact of these information efforts has been the influences on policy formulation and development of legislation¹¹¹. Improved materials / law books purchased for NEMA and its partners. Laws of Uganda (red and blue volume) were purchased and stocked in the legal chambers, NEMA library and CID environment department. There is also improved access to information and legal research materials for the chambers, the NEMA library and selected LEAD agencies¹¹².

¹⁰⁷ Emmanuel Kasimbazi, THE PUBLIC TRUST DOCTRINE AND FORESTRY RESOURCES IN UGANDA; PROSPECTS AND CHALLENGES

¹⁰⁸ Ibid

¹⁰⁹ Ibid

¹¹⁰ Ibid NO 30

¹¹¹ Ibid

¹¹² NEMA annual performance report 2008/2009

Development of Environmental Tools

In order to meet its environmental monitoring responsibilities, NEMA has developed the following tools: guidelines and regulations for environmental impact assessment, and standards and regulations guiding effluent discharge into the environment. In addition, the procedure for inspections of sites and plants likely to have adverse impact on the environment have been regularized. Wetland management and conservation regulations have also been prepared¹¹³. As per the 2003 NEMA annual report the following regulations, standards and guidelines were developed; regulations on environment impact assessment 1998; regulations on waste management 1999; national environment instrument (delegation of waste of effluent into land and water 1999); regulation of the management of hilly and mountainous areas 2000; national environment notice (designation of environment inspectors 2000), regulations on the management of depleting substances 2001, minimum standard for the management of soil quality 2001, regulations standard on noise 2002 , code of conduct for EIA practioner 2002. The following are in advanced stages of preparation; regulations and standards on audit, oil spilling easements, toxic chemicals and aid quality. Guidelines on air quality solid waste disposal, conservation of biological diversity, management of forest, sustainable management of range lands, management of dangerous materials and processes, management of hazardous waste, chemicals and materials and gathering, processing and dissemination of environmental information¹¹⁴.

Capacity building

With a limited number of professionals at its disposal, NEMA has struggled to build its own internal capacity in order to meet implementation expectations imposed on it by the existing policy and legal provisions in the area of environment management. The scale and speed of the Authority's achievements indicate that these efforts have been relatively successful. The training of District Environment Officers, District Environment Committees and Local Environment committees has opened new avenues of collaboration and local level participation in natural resources management. NEMA has also worked with communities to implement 26 micro projects aimed at rejuvenating degraded areas¹¹⁵.

¹¹³ Ibid no 30

¹¹⁴ Ibid No. 35

¹¹⁵ Ibid no 30

Decentralization of Environmental Management

Perhaps the most ambitious step taken to increase participation in environmental management has been the decentralization of responsibility to district and sub-district levels (in the form of district and local environment committees (DECs and LECs)). The design of these local level institutional structures within the NEAP reflect fundamental reforms in the governance and administrative structures in Uganda, and the desire to have more participation in decision making on matters of environmental concern at the community level. Though there remain areas requiring further clarification and harmonization, especially regarding the NEAP's local implementation arrangements and NEMA's role in achieving this, the achievements to date must be lauded¹¹⁶.

In seeking to give "ownership" of the environment and related decisions to local governments and communities, NEMA has developed a corp of allies. NEMA's broad mandate and limited resources would not have enabled its presence at all the levels necessary to ensure effectiveness. These "lead agencies," therefore, act as the authority's monitoring network, in addition to representing their own inherent interests in maintaining the integrity of their environment¹¹⁷.

Environmental compliance and implementation of the law

According the NEMA annual performance reports of 2008/2009, it was stated that in enhancing environmental compliance and enforcement of the law. All facilities, development projects and land use are compliant to environmental law, regulations and standards. NEMA is also implementing local, regional and global programs aimed at achieving sustainable development, for example the authority (NEMA) is at the helm of discussion and programs to implement the national environmental action plan, the national environment act¹¹⁸. It is coordinating Uganda's efforts to conserve biological diversity as part of the east African region initiative. Similarly NEMA has assumed responsibility of implementing agenda 21, the United Nations framework convention on climate change, the convention on biological diversity and the convention to combat drought and desertification¹¹⁹.

¹¹⁶ Ibid

¹¹⁷ ibid

¹¹⁸ Ibid

¹¹⁹ Ibid

Environment Inspections

108 environment inspectors have been gazetted, drawn from district and lead agencies for a two year period from January 2001 to December 2003. From July 2002, a total of 240 environmental inspections were carried out. 900 environmental inspections were carried out as per the 2008/2009 annual performance report¹²⁰

Challenges

Underfunding

The National environmental management authority has faced a challenge of underfunding. It's because of underfunding that the review of the National management policy was none implemented. This was because it was not funded due budget cuts. There has also been delayed and inadequate funding for timely activity implementation especially compliance and enforcement of environmental law, regulations and projects¹²¹.

Insufficient capacity of law enforcers

Insufficient capacity of law enforcers both in terms of environmental law and management expertise and equipment and facilitation, thereby underscoring the importance of continuous training and capacity building. More so inconsistent political positions and statements on the environment undermine the integrity of the environment¹²².

Failure to access locations

The study that was conducted by the National association of professional environmentalists (NAPE) established that NEMA as one of the oil monitoring teams in the ongoing exploration activities has faced a bigger challenge of access to locations where explorations are taking place and therefore there are suspected or unknown effects that are not monitored¹²³.

Weak coordination between oil companies and NEMA

The study also established that coordination and monitoring between oil companies and government agencies responsible for environment management (like NEMA) are woefully weak or perhaps nonexistent. It was noted that the oil companies have their own field based

¹²⁰ Ibid no 35

¹²¹ Ibid No 41

¹²² Christine Echokit Akello, Environmental Regulation in Uganda; Successes & Challenges, Environment and Development Journal

¹²³ Ibid no 25 at p 199

environmental officers whose duty is to monitor and advise their own operations on matters of environmental management but there is poor communication between these officers and district environmental officers and yet the latter oversee all environmental aspects in their respective districts. Furthermore, at the district level the capacity to monitor the environmental aspects of the oil sector is weak because the office of the DEO's are ill equipped in terms of facilities, technical capacities and mandate to be able to exercise their duty diligently¹²⁴.

Impacts of oil exploration activities

According to the NEMA report 2008, although EIAs have been undertaken and mitigation measures proposed. The current activities (oil exploration activities) are already having an impact on wildlife, the eco-system and the human environment. For example road construction, drilling and movement of heavy machinery are interfering with wildlife movements, feeding and breeding¹²⁵. It appears from the above that this has become a big challenge for NEMA¹²⁶.

Increment in the pursuit of both civil and criminal sanctions for environmental violations

That notwithstanding enforcement measures that have been undertaken including eviction of encroachers from wetlands, forest reserves and other protected areas, confiscation of equipment used to dump murum in wetlands or making noise and arrest and prosecution of suspects. The challenge is in increasing the pursuit of both civil and criminal sanctions for environmental violations¹²⁷.

Uganda's economic policies

Uganda's economic policies have created attractive conditions for investment in the country. The competition between economic development and environment management goal is evident. For the poor of this country, lacking alternatives, the promise of earning income from development at the expense of the environment is one they would not give a second thought. For example Mabira (7100 hectares) were being given to sugar corporation of Uganda limited (SCOUL)¹²⁸ for development purposes at the expense of the environment. NEMA finds a challenge of tilting this balance in favour of sustainable development¹²⁹.

¹²⁴ ibid

¹²⁵ ibid

¹²⁶ ibid

¹²⁷ Ibid no 51

¹²⁸ Ibid no 36

¹²⁹ Ibid no 46

Auditing of industries that were set up before coming into force of framework law

The other challenge relates to environmental auditing of the many industries that were setup before the coming into force of framework law. Bringing those industries to comply with environmental standards has been very slow and laborious and takes numerous visits of environmental inspectors, several compliance visits of environmental inspectors, several compliance schedule and agreed benchmarks intended to achieve gradual compliance. The issues that usually comes up relates to the cost of cleanup operations and adaption of appropriate technology. For instance, Uganda Breweries, makers of beer in Uganda, spend US\$ 7m in effluent to treatment¹³⁰.

Challenge in ensuring effective monitoring and achieving compliance with environmental standards

Ensuring effecting monitoring and achieving compliance with environmental standards is a challenge for NEMA. In some of the recently approved projects such as the use of DDT for indoor residual spraying for malaria control and approval of environmental aspects of Bujagali hydro power development. Though it has been sought to circumvent this challenge by creating joint monitoring teams, it is yet to be seen how well these teams will operate, given their multi-sectorial nature and limited resources at their disposal¹³¹.

Roles of civil society in managing the environment sustainably

The cooperation of all stakeholders (for example, community, government, conservationists and foreign donor agencies) is crucial for lasting success in environmental protection programs and this initiative will require the adoption of conservation strategies that are proactive, mutually beneficial and environmentally friendly and sustainable¹³². Apart from service providing role (delivering services such as education, health, food and other humanitarian/relief service), civil society can fully contribute to sustainable environmental management process. According to Uganda National Commission for UNESCO (2010), in the implementation of Environmental Sustainable Development (ESD), civil society can participate in: advocacy for policy reform and legislation for the public's engagement in education for sustainable development; adopting

¹³⁰ Ibid no 51

¹³¹ ibid

¹³² Ebua, V. B, Agwafo, T. E., & Fonkwo, S. N., (2011), Attitudes and perceptions as threats to wildlife conservation in the Bakossi area, South West Cameroon, Academic Journals, International Journal of Biodiversity and Conservation Vol. 3(12), 631-636

popular participatory learning and action; promoting community involvement at all levels of the ESD implementation; capacity building; research; networking and partnerships; and monitoring and evaluation.

Advocacy

Civil society organization and movements can do advocacy and fight for change on behalf the communities they serves. While challenging actions and programmes that are not environmental friendly, civil society has advocated for importance of environmental sustainability tirelessly. Civil society organizations can ‘push’ for environmental protection and climate change mitigation policies as they articulate and seek their visions of change through a multitude of mechanisms that include public advocacy, voter education, lobbying decision-makers, research, and public protests¹³³. Civil society supports and encourages local and international communities to demand for change of policies and actions that degrade their environments. For instance, here in Uganda, civil society was much involved in the 2008 Mabira saga where the public was opposing the government’s position of giving away Mabira forest to an investor. The civil society advocacy role has contributed to environmental management in most regions around the globe.

Lobbying

Civil society helps to ‘push’ peoples’ concerns in regard to environmental management and natural resource conservation. In most developed countries civil society organisations were originally created to fight powerful lobbies and developed as a counter-power because citizens in these countries are educated enough to be able to present their problems and defend their interests¹³⁴. According to Bird & Caravani (2009:5), civil society has a role to play in lobbying for greater openness by government, improving the transparency of natural resource allocation decision-making processes. Lobbying for the involvement of communities in agenda setting and public decision-making creates a political space for all people to push for their priorities and needs concerning the environment. For instance, in the recent incident of the dust from the sugar factories in Jinja and Rugazi, civil society played a role especially the media presenting local

¹³³ Sathaye, J., A. Najam, C. Cocklin, T. Heller, F. Lecocq, J. Llanes-Regueiro, J. Pan, G. Petschel- Held , S. Rayner, J. Robinson, R. Schaeffer, Y. Sokona, R. Swart, H. Winkler, 2007: Sustainable Development and Mitigation. In Climate Change 2007 :

¹³⁴ Banuri, T., Najam, A., & Odeh, N., (Eds.) (2002), Civic Entrepreneurship: A Civil Society Perspective on Sustainable Development , Volume 6, West Asia and North Africa Report , Gandhara Academy Press, Islamabad, Pakistan

peoples' concerns.

Awareness-raising and Information Dissemination Concerning Environmental Management

Local people require management knowledge to pursue sustainable development goals and objectives. The environment can be managed sustainably by creating public awareness and understanding of the principles of sustainable development drawing on the capacities and comparative strengths of the media and civil society (Uganda National Commission for UNESCO, 2010). Increased awareness and lobbying for more investment as preventive measures needs to be done (NEMA, 2010) in environmental management systems for sustainable development purposes. 'A population that has no information on the environment has neither the incentive to act nor the power to give impetus to government action'(UNEP, 2002). To change the perception and attitudes of indigenous people around protected areas, environmental education through sensitization should be encouraged. In pursuing education for sustainable development, the Decade of Education for Sustainable Development (DESD), which began in 2005, identifies that the civil society is responsible for public awareness raising, advocacy and lobbying, consultancy and input into policy formulation, executing DESD in non-formal set-ups, participatory learning and action, as well as for mediation between governments and people¹³⁵. Civil society organizations disseminate environmental information which is readily understood by the general public, the more likely it is that its message will be heard and its initiatives bear fruit. In that sense creating public awareness is not only central to capacity building, but is a capacity building exercise in itself (UNEP, 2002). Accessibility of information concerning environmental management can create an arena for local people to change their behaviours towards environment. They can change toward environmental conservation strategies rather than degrading it.

Empowerment and Capacity Building

In addition to awareness-raising, civil society plays a role in empowering and building capacity among local communities in order to take charge in managing their environment sustainability through local conservation programmes sometimes in line with government strategies. Banuri, Najam, & Odeh (2002:27) argue that in order for any development to achieve sustainability, the local communities have to be empowered by becoming actively involved in the process, and

¹³⁵ Nhamo, G., & Inyang, E. (2011), Framework and tools for environmental management in Africa, Council for the Development of Social Science Research in Africa (CODESRIA), Dakar, Senegal

taking charge of their lives. Civil society organizations have experts who bring unique knowledge and experience to shape policy and strategy, and identifying and building solutions and they are capacity builders who provide education, training (World Economic Forum, 2013). Lewis (2001) identifies 'technical assistance and 'provision of organizational assistance' as two forms of capacity building offered by civil society organizations directed to solving problems (p:183); in this case environmental management challenges. Civil society provides educational training and services concerning environmental management. According to Agenda 21, education was to be recognised as a process by which societies can reach their fullest potential, thereby improving capacity to address environmental and development related issues. The trainings can be related to how environmental assessments and audits are done, on better methods of how to people can meet their daily needs without harming the ecosystems, providing necessary skills in environmental and development management, among other programmes. Educational trainings (capacity building) and empowerment contribute to awareness-raising processes that aim at sustainable environmental management.

Resources Mobilization

Civil Society is increasingly becoming a major player in the implementation of government programmes and their main advantage is their capacity to reach the grassroots and to employ a variety of strategies to achieve desired results because they also have the capacity to mobilize resources for the implementation of various programmes (Uganda National Commission for UNESCO, 2010). Because of its networking/partnerships characteristic with the government, communities, the markets sectors, and donors, civil society can easily mobilize resources (such as human resources, financial resources, etc.) that can be used to efficiently and effectively to implement environmental management programmes whether for government or locally initiated and even at international level.

The 'Watchdog' Role and Monitoring and Evaluation

Civil society can influence and promote sustainable environmental management through policy analysis, advocacy and monitoring and evaluation of state performance in managing environment. It influences the state and the market in decision-making processes but also the government influences civil society operations. In many countries the state has not risen to the challenge of sustainable development, the private sector is not developed, and civil society is just emerging as a responsible, accountable and dynamic actor; therefore in this new paradigm civil society plays an important role as a watchdog of both the government and the private sector and

as a promoter of community participation. Civil society is seen as an increasingly important agent for promoting good governance like transparency, effectiveness, openness, responsiveness and accountability acting as watchdogs holding other stakeholders accountable for their actions towards environmental management through monitoring and evaluation process. These participate in environmental management processes like Environmental Impact Assessments (EIAs), Environmental Audits, and also through research to identify environmental management challenges.

Influencing Participation of Communities in Environmental Programmes

Civil society has a huge stake in promoting sustainable development at local (community) levels in many countries. As Banuri¹³⁶, argue, civil society is strong at the grassroots level and emphasize community participation and working in the field – particularly for sustainable development. Indigenous knowledge of environmental management can be tapped by involving civil society in sustainable development processes because civil society is close to local communities where the government rarely reaches. The main examples of traditional environmental management systems and practices include fallow cropping, minimum tillage and indigenous soil and water conservation practices, conservation and management of sacred grooves, traditional herbal medicines and health care and application of fire particularly in agriculture and pasture management (UNCST 2006; NEMA, 2010:15-16). By integrating community-based knowledge into national planning, civil society can help to close the gap between government policies and the needs (such as respect for the environment and the management of natural resources) of communities (Bird & Caravani, 2009:5). Civil society acts as a representative of communities and also enables local communities to take charge of development work; in this case, sustainable environmental management while using both local (indigenous) and formal knowledge.

Policy Formulation and Implementation

Civil society groups can effectively participate in environmental management policy processes.. Environmental policies can succeed by ensuring the effective participation of civil society, local communities and indigenous peoples' in national programmes/processes on biodiversity conservation so that they are afforded the opportunities to influence decisions that impact on

¹³⁶ Banuri, T., Najam, A., & Odeh, N., (Eds.) (2002), *Civic Entrepreneurship: A Civil Society Perspective on Sustainable Development*, Volume 6, West Asia and North Africa Report, Gandhara Academy Press, Islamabad, Pakistan

their livelihoods. Civil society can 'influence' even if it cannot 'control' the policy processes because it draws the government's attention to neglected issues such as participatory development and the negative impact of market forces on sustainable development. The role of civil society in 'pulling' climate change mitigation policy is no less important because civil society can pull policy action by filling the gaps and providing policy services such as policy research, policy advice and, in a few cases, actual policy development; for instance, the Intergovernmental Panel on Climate Change [IPCC] assessment process itself is a voluntary knowledge community seeking to organize the state of knowledge on climate change for policymakers. It can influence the government to increase on budgetary expenditures on environmental management projects/programmes and policies.

Partnerships and Managing Relationships

Civil society can create, promote, and influence partnerships between all key stakeholders needed for sustainable environmental management. This is because civil society has a characteristic of effective networking in managing development interventions. For instance, newer types of relationships which are emerging are social action partnerships in which a private company works with an NGO as part of a government initiated multi-agency development programme on a social or environmental issue, or a problem-based alliance in which a partnership develops where a business brings in an NGO with specialized skills, such as the initiation of an ecotourism venture in an area known to the NGO. Partnerships between public and private actors can maximize impact by taking advantage of each partner's unique strengths and skill sets and the partnership programmes made can provide citizens groups with a lever for increasing pressure on both governments and industry to change in support of improved sustainability. Civil society organizations emphasize a multi-stakeholder approach and see the government and private sector as essential partners in sustainable development. Successful environmental management depends on the interactions between the government, market and the civil society bodies. They can all participate in Environmental Impact Assessments (EIAs) and hold dialogues to determine best measures on how to manage the environment e.g. through ecosystem conservation.

Civil society does environmental research, advocate and lobby for sustainable strategies to manage environment, support and encourage participatory management of environment by involving local communities, and provide resources especially financial to facilitate environmental management programmes at all levels. They also do capacity building and awareness-raising among local communities influencing the public for better natural resource

management strategies. By acting as watchdogs, civil society organizations, movements, and groups do monitoring and evaluation to ensure effectiveness and efficiency in managing the environment; they influence public to demand for transparency and accountability from government. Environmental management policies are very important in achieving sustainable development. This is why civil society is much engaged in participation in environmental policy processes to address environmental issues for agenda setting in policy processes and it does this as a representative of the public through organized forums. Partnerships and interactions are needed to create dialogues to discuss environmental management issues among stakeholders. And the civil society is playing a role of organizing, maintaining, influencing, and sometimes controlling such partnerships. By all means civil society is an import component/stakeholder in managing environment sustainably. However, we need to mote that civil society can successfully do its roles in pluralistic and democratic governments.

4.3.0 Role of the Public

Citizens are one of the nation's greatest resources for enforcing environmental laws and regulations. They know the country's land and natural attributes more intimately than a government ever will. Their number makes them more pervasive than the largest government agency and because citizens work, play and travel in the environment, each has a personal stake in its beauty, health and performance. Their day to day observation has given them access to the government could never obtain involving citizens in environmental enforcement. The right to a clean and healthy environment comes with it an obligation on the public to maintain and enhance the environment and inform the authority or the local environmental committee of all activities and phenomena that may affect the environment significantly¹³⁷. In the case of **Green Watch Vs Attorney General and another**¹³⁸ .it was held on a preliminary point of law that under article 50[2] of the constitution provides that concerned person or organization on behalf of groups or individual is not aware of his fundamental rights or freedom being violated. The above case illustrates that any person aggrieved by environment damages or destruction ,whether he is affected directly or not is entitled to access justice. This is a hard mark ruling towards preservation of natural environment in Kampala district.

¹³⁷ Section 3 NEA and section 5 of the national forestry and tree planting Act

¹³⁸ Article 126(2)(e) constitution

In brief the public has played the following roles

Collected information for use in enforcement of environmental law,
Participate in governmental regulatory or enforcement actions to ensure that
they are well informed and effective, approached courts when government is
unwilling or unable to act.¹³⁹

4.4.0 Role of the Courts

Article 50 of the Constitution provides that any person who claims that a fundamental or other rights or freedom guaranteed under this constitution has been infringed or threatened is entitled to apply to a competent court for redress which may include compensation. Courts therefore have a pivoted role to play in the enforcement of environmental laws and rights.

Article 126(2) (e) of the Constitution requires the courts in adjudicating cases of both a civil and criminal nature, the courts subject to the law do justice to all irrespective of their social or economic status, not to delay justice to award adequate compensation to victims of wrong (including environmental wrongs) and administer sustentative justice without undue regard to technicalities. These two sections have opened avenues for litigants to file actions involving environmental wrongs.

National Forestry Authority

Established under section 52 of the national forestry and tree planting Act as a body corporate.

The following pivotal roles have been carried on by authority

- a). It has in collaboration with the relevant ministry identified and recommends areas for declaration as central forest reserves and the amendment of those declarations.
- b) It has carried out or commissioned research for the purposes of conservation development and utilization of forests and for the conservation of biological diversity and genetic resources
- c) It liaises with the national environment authority in the protection of Uganda's forest resources, and the evaluation of environmental impact assessments undertaken in accordance with section 38.¹⁴⁰
- d) It has in conjunction with other lead agencies, Monitored and guided the development of tourist facilities in local forest reserve, private forests and other forests on private land
- e) It has carried out supervisory works; trained local government, officials in the implementation

¹³⁹ Article 50(2) constitution

¹⁴⁰ National forestry and tree planting Act

of the provision of this act relating to the planting, protection and conservation of trees and forests.

Wetlands inspection division

In 1989 the Uganda government established the National wetlands conservation and management programme [NWP] to develop policies and implementation strategies for the sustainable management of Uganda wetlands. WID's role in wetlands management can be seen as follows;

- a) Made an inventory for all wetlands that is location of the wetlands; type of fauna and flora; the soil and hydrological characteristics, the discharge and Composition of water the volume, flow and quality of water where possible; the existence, uses the density of population in the wetland catchments, drawing especially for those most dependent on the wetland.
- b). Carried out necessary for revision or correction of the inventory on wetland
- c). Registers change in the boundaries of wetlands on maps in the inventory
- d). It has convened meetings of local environment committees to be held within the vicinity of a wetland prior to making any decision affecting the wetland
- e). It publishes in every five years the inventory of wetlands reflecting the current state of wetlands included in the inventory
- f). It has in consultation with the executive director [of NEMA] granted temporary permits for the use of wetlands where there is need to use water pending a construction; where there is need to use water for emergency situations pending the availability or alternative sources of supply, where there is need for construction of a road, a building or other infrastructure; where a special research project requires the use of the wetlands for a certain period of time; or where there is an unforeseen delay in the use of these wetland pending the issuance of a permit
- g) It has liaised with and built capacity of other agencies and in particular local governments and national government agencies to deal with wetlands issues within their jurisdiction
- h) It has ensured integration of wetlands issues into policies and strategies of other sectors example agriculture; fisheries; water; industry; rural and urban planning
- i) It works at the national level in close cooperation with many other agencies, including; ministries, directorates, departments responsible for sectors affecting and affected by wetland (example NEMA, agriculture; trade and industry tourism forestry, water).
- j). Statutory and parastatal bodies concerned with wetlands [example

Uganda Wildlife Authority; National Water And Sewerage Corporation, Kampala City Council, Uganda Investment Authority] international and national NGOs].

Directorate of water development

The Directorate of Water Development (DWD) is responsible for providing overall technical oversight for the planning, implementation and supervision of the delivery of urban, rural water and sanitation services, and water for production across the country. DWD is responsible for regulation of provision of water supply and sanitation and the provision of capacity development and other support services to Local Governments, Private Operators and other service providers. DWD comprises four(4)Departments; Rural Water Supply and Sanitation; Urban Water Supply and Sanitation, Water Utility and Regulation and Water for Production.

Ministry of Water and Environment is mandated to ensuring sustainable management and conservation of water and environment resources for the good of the people of Uganda and the environment in general. To attain this mandate the Ministry decentralised into four regional Water and Sanitation Development facilities whose service delivery and funding mechanism focussing on provision of piped water supply and sanitation services in Small Towns and Rural Growth Centres through a demand responsive approach.

The Ministry of water and Environment is undertaking several programmes in the development and utilization of water resources for productive use in crop irrigation, livestock, aquaculture, rural industries and other commercial uses to improve people's livelihoods in rural areas through increasing the storage volumes for water for production

DWD has responsibly done the following in effecting the concept "wetland management"

- a). It has issued, varied and canceled water permits
 - a) Reviewed water sector legislation and regulations and developed water quality standards
 - b) Formulated national policies for water resource
 - c) Facilitated the development of community/water user organizations for water supply and Sanitation management, maintenance, water use regulations and monitoring of catchments, including wetlands.

4.5.0 Role of Parliament

Parliament has effectively implemented and put to use of article 24 of the 1995 constitution, where it is stated that, parliament shall by law provide for measures intended to protect and preserve the environment from abuse, pollution and degradation, to manage the environment from sustainable developmental and to promote environmental awareness.

Wetlands management.

Wetlands Management Department (WMD)¹⁴¹ is mandated to manage wetland resources and its goal is to sustain the biophysical and socio-economic values of the wetlands in Uganda for present and future generations. According to the wetland mapping exercise of 2008, wetland resources were noted to have reduced from 15% in 1994 to 10.9% of Uganda's area. Wetlands are a source of livelihood to the majority of Ugandans and hence directly contribute to National Development plan, vision 2040 and attainment of the Millennium Development Goals. However, wetlands are under a lot of pressure from conversion for industrial development, settlements, agriculture, sand and clay mining. Most of these degrading activities are perceived to be of greater importance than wetland conservation itself.

- i. The Ministry of Water and Environment (MWE) through the National Wetlands Management Project commenced demarcation of critical wetlands soon after the 2011 elections and so far the following has been done to ensure that the integrity of the wetland ecosystem is regained and maintained:

A total of 443.4 km wetland boundaries have been demarcated in 16 districts including Kampala, Jinja, Mbale, Gulu, Lira, Masaka, Bushenyi, Isingiro, Rakai, Kaliro, Bulambuli, Masindi, Arua, Mukono, Iganga and Wakiso districts. These are critical wetlands which serve as sources of the Municipal/Town council water systems and also as sink for waste water and sewage from the urban centres. Plans are underway to demarcate more 150km in Dokolo, Hoima, Kisoro, Pallisa, Wakiso, and Luwero districts in FY 2014/15 and complete the gazettelement of the wetlands for legal recognition. The demarcation has cleared claims of lack of knowledge on the wetland boundaries and enhancing enforcement interventions.

- A total of 689.2ha of degraded wetland sections restored in Kampala, Jinja, Mbale, Gulu, Lira, Masaka, Bushenyi, Isingiro, Rakai, Kaliro, Bulambuli, Masindi, Arua, Mukono, Iganga, and Wakiso districts. The restoration is aimed at securing and maintaining their hydrological, ecological and biodiversity integrity. This is contributing to increased

¹⁴¹ <http://www.mwe.go.ug/dept/wetlands-management-department>

catchment water discharge volume and thus enhancing and sustaining of Hydro Electric Power; water for production; Agriculture production; Tourism development, Construction potentials. In FY 2014/15 activities are on-going to restore more 120Ha of degraded sections of 06 wetlands in Pallisa, Dokolo, Hoima, Kisoro, Wakiso, and Luwero.

- An overall cumulative total of 05 Framework management plans for critical wetlands systems prepared in selected districts country wide. These are wetlands that are trans-boundary and therefore cannot be managed by only one District Local Government (DLG). The Management plans are used by the stakeholders in rationalizing the use of resource equitably among the stakeholders and helping in the effective management of trans-boundary wetlands in which the DLGs are allowed to federate under one institutional arrangement. This is helping in fostering a sense of shared responsibilities, with broader views and common management strategies for livelihoods enhancements. Plans are being implemented to develop and implement more 10 community based wetland management plans in FY 2014/15.¹⁴²

(ii) At the District Local Government level, using the funding under the Environment and Natural Resources (ENR) District Conditional Grants disbursed directly by Ministry of Finance, Planning and Economic Development (MoFPED) to districts on a quarterly basis, the following interventions have been conducted to ensure the integrity of wetlands in the respective Local Governments are secured and maintained. The following is the cumulative performance since FY 2011/2012 to 2014/15:-¹⁴³

- The area/length of wetland boundary demarcated by Local Governments (LGs) stands at 589.3Km in the districts of Bushenyi, Kamwenge, Isingiro, Rakai, Kasese, Kabarole, Otuke, Amuru, and Wakiso.
- Area of degraded section of wetland restored by LGs is 3813.7ha in the districts of Buhweju, Kasese, Sheema, Amuria, Mbarara, Kabarole, Mubende, Hoima, Kisoro, Bukedea, Rukungiri and Bushenyi districts.
- Community based Wetland Management Plans prepared and implemented by the LGs are 69 in the districts of Masindi, Hoima, Gulu, Kole, Apac, Kabarole, Kasese, Oyam, Yumbe, Moyo, Rubirizi, Ntungamo, Kisoro, Mbarara, Bushenyi, Tororo, Lira and Kumi. Wetland management plans are developed to optimize the equitable access to wetland resources for income generation to all the local communities. The plans were prepared in close

¹⁴² <http://www.mwe.go.ug/dept/wetlands-management-department>

¹⁴³ <http://www.mwe.go.ug/dept/wetlands-management-department>

collaboration with the communities to ensure that communities are a party and involved in the management of the ecosystems.

- District Wetland Action Plans (DWAPs) totaling 62 in number have been prepared by LGs and integrated into the District Development Plans (DDPs) in Lira , Mbale, Kumi, Bushenyi, Rukungiri, Oyam, Mabarara, Adjumani, Ntungamo, Mubende, Kabarole, Hoima, Moyo and Luwero. Work is ongoing to complete the remaining 49 in FY 2015/16. Action plans ensure district and sub-county priorities and budgets for sustainable utilization of the wetlands resources.

The National Forestry Authority (NFA) is conserving all natural forests primarily as water catchment areas. There is also promotion of tree planting on the catchment area with indigenous species through the National Community Tree Planting Project. A number of trainings were also conducted in Manafwa and Bududa districts on the importance of tree planting to reduce on environmental disasters like the drought, floods and landslides.

CHAPTER FIVE

PROGRESS, RECOMMENDATIONS CONCLUSION

5.1.0 Progress

As a contracting party to the Ramzar Convention, the government of Uganda has taken a number of steps to implement the convention. These include; the designation of Lake George as a Ramzar, creating awareness at the national, districts and local level, inventory of wetlands data collection and research on values and functions, meanwhile more work is ongoing.

Government through wetlands inspection division in the ministry of water, lands and environment has been assisting communities in the development of community based wetlands management plans. This has been piloted in districts of Kumi, Pallisa, Kabale and Masaka. So far, 23 management plans have been developed and implementation of 10 of them is ongoing in the Rushebeya wetland in Kabale, Chahafi, Kandeche and Naruzinga in Bushenyi Nyoto in Kanungu, Olecho Kumi, Kyojja and Nabugabo in Masaka.

The Wetlands Inspection Division has also publicized wetlands resources use guidelines to provide guidance to those who intend to carry out regulated activities in wetlands. These include guidelines for wetlands edge gardening, for small holder paddy rice activity in seasonal wetlands for sand and clay mining areas and for the rehabilitation of sand and clay mining areas, for fish farming and seasonal wetlands.

Government has also started the process of gazetting of wetlands of critical importance for strict protection (that is, not to allow any human activity) starting with those in Kampala district. The process started with **Nakivubo** Wetland located in Nakawa division, and those will be followed by Kinawataka and **Kansanga wetlands**.

Research on critical wetland values such as purifiers of waste water has increased the understanding on their functions and values. In the case of Nakivubo wetland in Kampala; this increased understanding on the wetlands is one of the reasons why the process to gazette Nakivubo is being considered. There is the realization that without the preservation of the vital wetlands food control and water purification function, the quality of water for Kampala city on Lake Victoria, which is also the source of water treatment costs.

NEMA in collaboration with the lead agencies, districts and the police have also started with the exercise of evicting encroachers on wetlands and eventually restoring them to their original status. The process has been successfully carried out in the following areas; Nakivubo wetland, Namatala wetland – Mbale.

5.2.0 Conclusion

The research on the appraisal of the National Environment Management Authority in preserving Uganda's wetlands in Kampala district discloses that due to various laws or enactment. It has become difficult to effectively conserve the wetlands and not until these laws are consolidated into one chapter for example the Insolvency Act brought in parts of winding up companies in the Companies Act, there shall always be a problem of jointly appreciating the various laws.

There is need to sensitize the people about laws on wetlands since it involves both poor and rich and there is also need to check political interference that has led to poor results of conservation of wetlands on the ground.

5.3.0 Recommendations

After having analysed and observed the data after taking various recording, I there have recommended the following;

The natural environment is the source of all our raw materials while going into our daily business activities (social and economic) we use the environment and covenant. Its resources and natural services into those that directly support us. However, the problem is that all the systems can be damaged, over loaded, or prevented from meeting our needs. This is by our own choice, we can to a large extent determine our own quality of life, the condition of our natural resources and opportunities for future generations in Kampala.

Law reforms

There are good laws that have been put in place to protect and preserve wetlands, however, these laws are not provided for under a single Act and this has led to a lot of confusion especially on what legislation to be taken as applicable. Otherwise the National Environment Act has greatly been referred on whereas there are also different Acts providing for different organizations but aimed at protecting and preserving the wetlands for example, the (Constitution) under 245 provides for the protection and preservation under section 36 of the Environmental Act provides

for the management of the wetlands while giving NEMA authority to establish guidelines for the identification and sustainable management of wetlands.

The Land Act¹⁴⁴ provides for “holding in trust” for the people and the Wetlands under section 44(1) of the Land Act. However, the world holding in trust creates a lot of lacuna as through government is a trustee. It should therefore be noted that laws providing for wetlands are in several Acts. Therefore, there is need to reform the laws that should clearly spell out the terms used and their applicability also define under the Interpretations section and these laws should be consolidated in one Act (chapter) for ease reference other than looking at various Acts.

Need for Environment maintenance

This will involve maintaining and improving the resistance of environmental systems to guard against ecosystem degradation. It requires recognition of carrying capacity of environmental systems, preserving wetlands and employing the wisdom of traditional/local knowledge. This can also work better if maximum sustainable use and maximum sustainable abuse of the critical environmental measures is established.¹⁴⁵

Need to review the matter of security for cost in public interest litigation cases.

The issue of security for costs should not be left to the freedom of the presiding judge. The client Justine should issue rules directing the judiciary not to impose costs on public interest litigants, separate fees structures should also be developed in the interest of Natural Environmental Conservation.

The available court decision may not be always sufficient by environmental and human rights organization must publicize the court’s decision in the media, locally and internationally and demand its implementation. This requires hobbling with the legislature and the international community, especially where the decision implicates government officials.

Conflict in interpretation of preservation against conservation.

The Constitution under Article 2 provides for its Supremacy and Article 245¹⁴⁶ provides for protection and preservation whereby the intention of the makers of the constitution can be

¹⁴⁴ Section 44 Land Act

¹⁴⁵ The state of Uganda’s Biodiversity Report 2008 by NEMA.

¹⁴⁶ The 1995 Constitution of the Republic of Uganda.

interpreted differently to refer to making sure that something is in its original state. The National Environment Act provides for conservation which can be interpreted as supervision, management and use of wetlands in a way that ensures the highest social and economic benefits and therefore, the interpretation here is that; wetlands can be used and the extent to which they are used is not well defined and also the terminology for the present and future generation remains hanging in that they present having a right to the social and economic development can also utilize the wetlands to attain satisfaction for the present.

Therefore, there is need to revert to the constitution provisions of preserving the wetlands as this gives a balanced enjoyment to the wetlands that provides for a clean and healthy environment by maintaining the ecosystem that can be beneficial to the present and future generation. It is also noted that due to various acts providing differently under the interpretation, degradation of the wetlands becomes easy especially where the Act provides for a permit to use the wetlands without controlling and putting in checks and balances that are seen to be strict.

Creation of centralized agency, there are many agencies advocating for wetlands and confirmed by different legislations. These NEMA is guided by the National Environmental Act¹⁴⁷ while the Kampala Capital City Authority is guided by the Kampala Capital City Act.¹⁴⁸ The town and country planning Act, also the Local Government Act, while the National Environment (wetlands, River banks and lake shores) regulation 2000 cuts across the board. The researcher noted that due various legislations conferring upon different authorities. It has led to poor implementation of the conservation of the wetlands for example, under the Town and Country planning Act. City Authority is to plan for the housing yet it's now evident that the houses constructed are not properly planned for and even those who submitted plans and were approved did not enforce the plans as KCCA embarked on breaking down Arcades that defined the plans. Furthermore, KCCA issues land titles including titles wetlands whereas NEMA only issues permits.

The Factories Act¹⁴⁹ also through providing for environment does not monitor the enforcement since most of these industries are located within the wetlands with the emerging conflicting roles. It's therefore important to streamline an agency that is directly in charge of wetlands under

¹⁴⁷ NEMA Act

¹⁴⁸ KCCA Act

¹⁴⁹ Factories Act

the Environment body. It should be noted that URA has ably managed charged with the responsibility of collection but with different arms.

Therefore, environment body also need to be consolidated into a single agency charged with environmental issues where wetlands shall from a department and further to note are the conflict in issuing wetlands permits.

There is urgent need to ensure vertical and horizontal institutional coordination to ensure harmonious and concrete decision making processes.

There is also need for continuous awareness of all sectors of the public about the threats of wetlands degradation and all the available policies and laws.

There is a need to view the land tenure system and improve agricultural practices so as to increase production of land; this would reduce encroachment open wetlands for agricultural land.

There is need to improve public participation in all projects so as to ensure that projects in wetlands incorporate the concerns of the communities that are affected by the projects.

There is need to limit political interference so that decisions regarding w wetlands use are made based on technical aspects rather than political intents.

The government needs to increases its funding to NEMA and district authorities to enable them implement the tools of sustainable wetlands management.

The government also needs to increase human capacity at all levels of the implementation of these tools.

Demand driven research is critical for understanding natural resources, since wetlands are still being degraded under the current legal framework, there is need to do research to assess gaps and overlaps in the law.

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APPENDICES

Appendix A

Appendix B

Appendix C

APPENDIX A

OBSERVATION GUIDE

The research had to observe the following;

- 1- The effect of environmental laws on wetlands
- 2- How the impact has been addressed
- 3- The progress of NEMA in preserving wetlands in Kampala district.
- 4- The demean our of the respondents while responding to questions.

APPENDIX B
INTERVIEW GUIDE

Respondents' identifications /particulars;

Names.....

Occupations.....

1. What do you understand by environment?
2. What is the importance of protecting the environment?
3. Are you aware that wetlands naturally form part of the environment?
4. What are wetlands?
5. Are there any laws protecting wetlands mismanagement?
6. If yes, do you know any of such laws?
7. How has it [law] been effective in addressing mismanagement of wetlands?
8. Has anybody in this area ever instituted a case in courts of law or any other authority in respect of wetlands mismanagement?
9. What recommendations do you suggest in respect of promoting proper wetland management in your area?

APPENDIX C
GENERAL QUESTIONNAIRE

The researcher is a student of law at Kampala international university. He is carrying out a research on, "*Wetlands Management: the Effectiveness of the Law Governing Wetlands*," in partial fulfillment of the requirements of the award of LLB [Hon.] degree. Please help to fill this questionnaire as honestly as you can.

The information you will give shall be used strictly for this research.

Respondents' identifications /particulars;

.....
.....

- i) Names
- ii) Occupations

1- Are you aware of any laws governing wetlands management and their effects on wetlands

2- If yes, please give a brief outline of the said laws and their impact?

.....
.....

3- In your opinion, have the above mentioned laws been effectively addressed issues to do with wetlands mismanagement?

.....
.....

If not, please give reasons why?

.....
.....

4- What steps should be taken to address wetlands mismanagement?

.....
.....
.....
.....

5- Have you ever taken any of the steps outlined in five [5] above?

.....

6- If not, what hindered you?

.....

7- What should be done to enforce these laws in addressing wetlands mismanagement?

.....

.....

8- Is there need for new laws to govern wetlands?

.....