EXAMINING ENVIRONMENTAL IMPACT ASSESSMENT AS A MODE OF IMPLEMENTING THE PRECAUTIONARY PRINCIPLE IN UGANDA

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DECLARATION

I, **NABUUMA HAWA,** Reg. No. **LLB 1153 -01024- 00729,** declare that this research report is my original work and has never been submitted to any institution of higher learning for any academic award.

Signature ..... **Date**...29th/06/19.....

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APPROVAL

This is to certify that this work was compiled under my supervision and is now ready for submission with my approval.

Signature..... **Date**.....

DR. TAJUDEEN SANNI

DEDICATION

I dedicate my work to my parents for the guidance, advice, support and inspiration rendered to me in my academic struggle.

May Allah bless you Abundantly.

ACKNOWLEDGEMENT

I thank the Almighty Allah for the guidance and insight He rendered to me during this research.

I would like to extend my gratitude and appreciation to my supervisor for the guidance and advice he rendered to me during my proposal writing and report compilation.

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May Allah bless you

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ABSTRACT

Recognizing the need for environmental protection, environmental management and control mechanisms have been evolving over time in various countries. Among which are the Environmental Impact Assessments (EIAs) and precautionary principle that also incorporate the social and cultural aspect. Uganda is faced with the dilemma of developing the resource whilst protecting the environment due to various mineral discoveries and the many economic activities; more so those related to agriculture, development and industrialization. This paper therefore examines the Environmental Impact Assessment as a mode of implementing the Precautionary Principle in Uganda basing on the legal and institutional framework, public participation and quality of the EIAs and implementation. It concludes that Uganda has not fully practicing the EIAs and this has created room for various individuals to exploit the loopholes identified to their advantage. Nonetheless it is possible to improve on the EIA system if National Environment Management Authority (NEMA) realizes the power it has through its legal mandate and also continues engagement of the public.

CHAPTER ONE: GENERAL INTRODUCTION

1.0. Introduction

This study will be initiated with the purpose of examining the environmental impact assessment as a mode of implementing the precautionary principle in Uganda focusing on institutions, governance and National Government Bodies' in-line with environmental protection in Uganda. [1]An environment impact assessment is a systematic examination conducted to determine whether or not the proposed project will have adverse effect or impact on the environment. In making an environmental impact assessment, the developer is required to pay attention to; ecological considerations with emphasis on biological diversity, sustainable use, ecosystem maintenance; social considerations with emphasis on immigration and emigration effects, social disruption, effect of culture and objects of cultural value, and effects on human health, land use; landscape and such other issues as laid down in in the First schedule to the EIA regulations.

In addition to the above, an environmental impact assessment provides a description of the project and the activities likely to be undertaken among other things laid down in regulation 14 and such matters as the Executive Director may deem necessary[2].

In 1995, Uganda enacted a National Environment Statute (now Act Cap 153) calling for Environmental Impact Assessment (EIA) for all development activities likely to negatively impact on the environment before they are implemented and the National Environment Management Authority (NEMA) was created and mandated to operationalize and implement this requirement. One of the principle provisions of the Act is the requirement that EIA should be administered by NEMA in consultation with Lead agencies, private sector and all other interested parties and communities likely to be impacted upon by development activities. In order to operationalize this requirement therefore, there was a critical need for NEMA to develop EIA capacity among other institutions and among other stakeholders at national, district and local levels if they were to play a meaningful role in EIA as provided for in the law[3].

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[1] *John Ntambirweki; Environmental Impact Assessment as a tool for Industrial planning. In proceeding of a workshop on Industries and Enforcement of environmental Law in Africa, pg 74-82. Kisumu, December 1987.*

[2] *Lalanath de Silva; "plain Talk: EIAs for the people"*

[3] *.NEMA; Environmental Audit Guidelines for Uganda, 1999.*

By 1995, however, this capacity was near nil. Thus, in order to make the EIA system work, the initial focus of NEMA's activities was to be on EIA institutional and capacity development. Among the elements of the Uganda EIA process that brought the necessity for institutional development and capacity building among other stakeholders was the need for stakeholder consultations during conduct of environmental impact assessment and the need for the EIA process to give opportunity for public involvement at all stages[4].

Prior to 1995, awareness on EIA was low and the status of institutional development for EIA was characterized by limited local EIA expertise, lack of specific responsibility for EIA among developers, sectoral government institutions and at district and local levels, limited NGO, civil society and public participation, and there was no formal institutional framework for EIA review and approval[5].

Over the recent years, however, a number of steps have been taken to develop institutional EIA capacity among various stakeholders and major achievements have included training of managers of the EIA process in sectoral agencies and local government levels and there has been an increase in local EIA expertise (Practitioners) with an Association of EIA Practitioners, the Uganda Association for Impact Assessment (UAIA) launched in June 2001. Public participation in EIA is now very evident and a number of civil society groups have emerged and play an advocacy role for EIA[6].

Notwithstanding the achievements made, there is still need to create more awareness and capacity among developers and other stakeholders to appreciate the value of EIA as a planning tool and not merely as a legal requirement. There is need to maintain political support for use of EIA at national, district and local levels and need for development of capacity for Strategic Environmental Assessment. There is also need to further develop approaches to ensure effective public participation in EIA, as well as need to create and strengthen regional and sub-regional EIA networks to complement national efforts for promotion of EIA.

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[4] *NEMA; Environment Impact Assessment Guidelines, 1997*
[5] *No. 4 of 1995, The National Environment Statute.*

[6]. *Kenneth Kakuru, Benedict Mutyaba, Brian Rohan& Anne Ziebarth; Roles and Best Practices of the Central Government of Uganda in Environmental Management, Aug, 1995.*

1.1. Background to the Study

The concept of EIA is not new in Uganda. Before the enactment of the National Environment Statute (NES) in 1995, EIA was not a legal requirement although there were some provisions that were contained in various enactments such as the Urban Planning Act and the Investment Code among others. These enactments provided opportunities to incorporate environmental considerations into development. However they have not been implemented in a way that promotes comprehensive assessment of environmental issues in planning and do not expressly tackle EIA but have provisions that embraced it[7].

Before the 1995 Constitution, there was no specific legal requirement for environmental impact assessments. Environmental safe guards were restricted to broad requirements in other legislation such as the Urban Planning Act and the Investment Code Act inter alia.

In the recent past though, EIA has become a formidable environmental management tool through pressure mounted on companies, industries to improve upon their environmental performance. It is increasingly required of a range of industrial and commercial activities; from small through medium to large-scale establishments. The concept of EIA is now incorporated in different legislation, some of which includes the Constitution of the Republic of Uganda, the National Environment Act, the Water Act, Wildlife Act[8]. The Third schedule to the National Environmental Act captures the general panacea of the developmental activities or projects for which an EIA is a prerequisite but it is important to note that the said schedule and Section 19 are subject to wide authority discretion in interpretation and amendment in respect of what activity does or does not fall therein[9].

And the concept of precautionary principle is the commonly accepted practice for avoiding environmental damage and achieving sustainable development. For instance, a factory that produces a potentially poisonous substance as a byproduct of its activities is usually held responsible for its safe disposal.

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[7] *John Ntambirweki; Environmental Legislation in Uganda; Review of existing Legislation and Formulation of an appropriate Legal Framework for present and future environmental management, NEMA/ IUCN, 1992, Kampala.*

[8] *Kenneth Kakuru, Benedict Mutyaba, Brian Rohan& Anne Ziebarth; Roles and Best Practices of the Central Government of Uganda in Environmental Management, Aug, 1995.*

[9] *NEMA; Environmental Audit Guidelines for Uganda, 1999*

This principle underpins most of the regulation of pollution affecting land, water and air. Pollution is defined in UK law as contamination of the land, water or air by harmful or potentially harmful substances.

The precautionary principle has also been applied more specifically to emissions of greenhouse gases which cause climate change.

The Precautionary principle was adopted in the Rio Declaration as an economic principle for avoiding environmental damage and achieving sustainable development.

The first mention of the principle at the international level is to be found in the 1972 recommended by the OECD Council on guiding principles concerning international economic aspects of environmental policies, where it stated that the principle to be used for allocating costs of pollution Prevention and control measures to encourage rationale use of scarce environmental resources to avoid destruction in international trade and investment is the so called Precautionary principle. It went on to elaborate.[10] 'This principle means that where there are are threats of serious or irreversible damage or lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation '. The principle was also reaffirmed in the 1992 Rio declaration, at principle 16, national authority should endeavor to promote the internalization of environmental costs and the use of economic instruments taking into account the approach polluter should in principle bear the cost of pollution with due regard to public interest.

The principle has fully been implemented in Uganda laws and policies in the areas of drinking water, Development and Sewerage treatment. Pollution is defined as any byproduct of a pollution or consumption process that harms or otherwise violates the property rights of others[11]. Thus, environmentalist such as Brenda defined a "polluter" far more broadly not as someone who is simply using his own property and resources in a way that offends the environmentalist because in such cases there are no victims to compensate, the payment goes to the government inform of a tax. In such cases the Precautionary Principle applies in a number of contexts from protecting endangered species to preventing pollution The tax will be paid either in the form of an emission fee or an excuse tax on the sales of products that are associated with pollution. In

[10] *B. Short, ibid Pg 79.*
[11] *B. Short, ibid Pg 81.*

other jurisdiction (develop countries) the tradable permits approach would first have the government established an overall acceptable level of emissions for an industry and would then distribute permits for that level of emission to companies within industries. The companies would then buy and sell this emission permits based on their needs to emit the pollutant. In so doing the polluters are made to pay for their polluting activities either through tax or through the purchase of permits from others in the industry. Pollution according to environmentalists such as Brenda Short means a contamination by a chemical or other pollutant that renders part of the environment until for intended or desired use. It is triggered by industrial and commercial waste, day to day activities. Some of the common pollutions (domestic) thus are air pollution, water pollution, noise pollution, solid waste pollution, contaminated land and dumping of waste materials (hazardous, nonhazardous). In addition, the sources of pollution include factories, industries, quarrying, power station, power lines, among others.

The 'precautionary principle in contemporary Uganda is evidenced in a number of legislation. It includes inter alia, the national environment Act, water Act, wildlife Act,[12] land Act, (Section 43 provides for utilization of land according to various laws including, the forest Act, the mining Act, the wildlife Act, among others), penal code Act,[13] fisheries Act, local government Act, investment Act, national forestry and tree planting Act, and a number of policies and regulations. The national environment Act establishes NEMA as the overall body and principal agency responsible for coordinating and monitoring all aspects of environmental management in Uganda. NEMA is mandated inter alia, to develop standards, laws and other measures in environmental management. In addition to management of natural resources, the Act contains provisions on the control of pollution. The Act provides for mechanisms to establish environmental standards and criteria for what is considered environmentally acceptable behavior and phenomena. Where a person wishes to exceed the standards, which have been set, such a person must apply for a pollution license under part VIII of the Act. The Authority or a court may issue a restoration order requiring the person to cease the activities or to restore the environment as much as possible to its original state if the person's activities are likely to affect the environment. It must be noted that restoration order under section 67 of the Act, can be enforced by the Authority even without a court order and at the cost of the person violating the

[12] *Cap 200*
[13] *Cap 120*

law. In Amooti Godfrey Nyakana Vs NEMA and 6 others restoration order was served on Nyakana by NEMA, the order required Nyakana to comply with the condition stated in the order, he failed to do so and his unfinished house was demolished. The court noted inter alia that, the purpose of the section (67) of the national environmental Act is to give NEMA powers to deal with and protect the environment for the benefit of all including Nyakana. The petition was therefore dismissed. Personal accountability in form of civil and criminal justice is another form of environmental conservation. Part XIII of the national environment Act creates environmental offences, among many other offences are, offences relating to environmental standards and guidelines and offences relating to hazardous waste, materials, chemicals and radioactive substance. The objectives of the water Act include the promotion of the provision a clean, safe and sufficient supply of water for domestic use to all persons. It also provides for provision for control pollution treatment discharge and disposal of waste. The water Act also makes provision for water permits. According to section 18, it is not allowed to construct or operate any works unless authorized to do so by a permit granted by the director. A holder of a permit is not permitted to cause or allow any 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 Act also provides for offences. Section 31 provides that a person commits an offence who, unless authorized by the Act, causes or allows waste to come into contact with any water, such a person may apply to the director for water for a waste discharge permit in the prescribed manner[14]. Under the Uganda wildlife Act, the objectives include inter alia, to provide for sustainable management of wildlife, the Act provides for protected species under a permit. The Act further creates a number of offences in the conservation areas. Such offences may be by way of imprisonment or fines or both. The Act creates what is known as wildlife use rights established under section 29. There are classified into categories ranging from class A-F, the wildlife use rights are granted upon application and prescribed fee. The national forest and tree planting Act[15] likewise prohibits certain activities including, destruction of forest produce among others. The Act requires a person to obtain license for any activities within the forest reserves. Such permits like, forest produce movement permit is granted payment of a prescribed fee. The mode of payment for such pollution is by way of prescribed fee, under section 58 and section 62 of the national

[14] *Section 29 water Act.*
[15] *8/2003.*

environment Act provides for pollution licenses, the licenses are granted according to volume of pollution say, the higher the pollution the greater the fee. The fee will then be used to conserve the environment. As to whether the fee is adequate to make good the damage caused is a different matter. There are other activities which require specific permits such as, the import, manufacturers and disposal of hazardous chemicals wastes and substance. For example, precautionary principle (also known as extended producer responsibility), (EPR) was traditionally a concept where manufacturers and importers of products should bear a significant degree of responsibility for the environmental Impacts of their products through the product of life cycle. The principle is thus an environmental policy that requires the costs of pollution be borne by those who cause it. In its original emergence the precautionary principle aims at determining how the cost of the pollution prevent and control must be allocated, all in all the polluter must pay. This principle underpins most of the regulation of pollution affecting land, water, air. Today the principle is generally recognized as a fundamental principle of international environment law which has widely contributed to the protection of environment globally. Under section 29 of the water Act, it provides that the holder of waste discharge permit to take measures at his own cost to install pollution control and to provide monitoring equipment. The protocol for sustainable development in lake Victoria Basin is also a treaty adopted in 2001 that calls for precautionary principle . It provides, a person that causes the pollution shall as far possible bear any cost associated with it. Under Uganda national water development report of 2005, as a way of implementation of the principle, comprehensive regulatory mechanisms have been established under the government levies a pollution charge on all major pollutants. This has encouraged potential polluters to invest on efficient onsite treatment system to reduce their pollution discharge and thus minimize pollution charges. For example Uganda clays factory, in order to mitigate the high cost, the polluters (clay factory) filled the holes created as a result of bricks and tiles production with water and planted trees and fish pond. In addition, gave neighbors free seed lines to plant around the factory. Therefore, forcing polluters to bear the costs of their activities is also said to enhance economic efficiency and therefore policies based on a polluter pays shall enable us to protect the environment without sacrificing the efficiency of a free market economy system.

The principle as it is commonly involved becomes a tool for those who seek to expand public sector control over the use of natural resources. The idea that polluters should be made to pay for

the damage that they cause pollution has a basic appeal to our sense of justice and fair play. It is just a simple extension of the idea that people should be held accountable for their actions. Proposals ranging from taxing the use of packaging materials such as glass and paper products, to establish tradable permit programs are evident of the principle.

In other jurisdictions, one way to adequately implement the precautionary principle is the introduction of assurance bond (money put up by the polluter to insure against a worst environmental impact). The bond would be recovered only if after sufficient time, it had been demonstrated that the technology process or product in question had been deemed safe as was reasonably accepted alternative, if damage occurred, the bond would be used for environmental restoration and to pay damage. It should also be noted that, in matters to do with environmental conservation individuals, and public interest groups look to the law and the courts to help prevent pollution, environmental damage or development of land. In Ismail Serugo Vs Attorney General[16] the court was emphatic that the right to present a constitutional petition was vested not only in the person who suffers the injury but also in any other person.

Bylaws also play an important role as far as pollution control is concerned. Introduction of fines by city court for littering the city is a good example. Under the fisheries Act[17], the Act provides for the protection of fish by regulating the size of the nets[18], prohibiting fishing methods, and makes provisions for conservation through the prohibition of fishing immature fish.[19] Recently the Uganda revenue Authority passed a policy on the import of motor vehicles whose life span exceeds seven years from the date of manufacture to pay more duty in addition to the statutory duty.

1.2. Problem statement

EIA has become an increasingly familiar environmental management tool as a result of pressure that is mounted on companies, industries to improve upon their environmental performance. It is now a common tool in the developed countries and is increasingly being applied in Uganda and

[16] *HCCS No 5 of 2003.*
[17] *Cap 197.*
[18] *Section 28.*
[19] *Section 27.*

other developing countries by foreign and local investors. It is applied to a range of industrial and commercial activities; from small through medium to large scale establishments.
Until very recently, assessments were mainly done by foreign consultants and the costs met by the developers. NEMA now has a technical team which is charged with providing EIA expertise for all projects.

Between 1995 to present, its admitted that the Government has made attempts to implement several measures in order to conserve the environment, despite legislations and policies in place, the environmental pollution is at its climax today. The introduction of statutory fees and criminal sanction are of no consequences, as it does not restore the environment to its original position. Although, the 'polluter pays' principles are evidenced in a number of legislations, its application in terms of conserving the environment is not as expected. The public have concerns over pollution emitting factories and industries being sited in close proximity to residential areas because of the possible risks to human health. There are also health fears regarding radiation from power lines and transmission station. Also NEMA as the lead agency has no capacity to detect the level of pollution and therefore ending up granting permits on a wrong assumption.

Most districts in Uganda now have environmental officers and committees charged with handling environmental matters in their jurisdictions. Some municipalities, Ministries and government departments have established environmental offices to handle environmental matters. Such environmental committees are also found in schools and institutions all over the country. This kind of awareness rising will greatly improve upon the efficiency and effectiveness of the EIA process, its monitoring and compliance in the country.

1.3 Purpose of the study

The study is aimed at examining the environmental impact assessment as a mode of implementing the precautionary principle in Uganda focusing on institutions, governance and National Government Bodies' in-line with environmental protection in Uganda.

1.4. Objectives of the study

a) To assess the Process of the Environmental Impact assessment in Uganda.
b) To assess the efficiency of the legal framework on controlling pollution in Uganda

c) To examine the costs and challenges covered in the implementation of precautionary principle

1.5. Research questions

a) What is the Process of the Environmental Impact assessment in Uganda?
b) What is the efficiency of the legal framework on controlling pollution in Uganda?
c) What are the costs and challenges covered in the implementation of precautionary principle?

1.6 Scope of the study

1.6.1. Content Scope

The research will cover all the critically analysis about the environmental impact assessment as a mode of implementing the precautionary principle in Uganda including the institutions, governance and government bodies in-line with environmental protection. The research will be conducted in Kampala which lies within the Kingdom of Buganda, in Central Uganda.

The study addresses the mode of implementing the precautionary principle in Uganda as a result of EIAs and the new obligations and duties that the National Environment Act imposes on the environment and natural resource utilization.

The legal frame work will comprise of mainly the National Environment Act, Cap 153 of 1995. The study examined the EIAs as a mode of implementing the precautionary principle in Uganda. As such it focused primarily on provisions that have an impact on environment and natural resource usage.

The study examined the relevant provisions of the NEMA that directly affect environmental users and analyzed how they affect project initiators and their relationship with outsiders. Particular attention was paid on the issues relating to compliance problems and the risks, dilemmas experienced by environmentalists when complying with the Environmental protection Law requirements.

Academic Researchers: they benefit from the study as it serves as a point of reference and a source of literature in their reviews while carrying out further studies on the topic under study.

The study will enable lawyers and government to know the due diligence they are required to have as according to the NEMA, the protection from liabilities given to them, the regulatory gaps in the NEMA when amending the Act so as to fill the loopholes in the law combating environmental misuse.

1.6.1 Geographical scope

The research will cover all the critically analysis about the environmental impact assessment as a mode of implementing the precautionary principle in Uganda including the institutions, governance and government bodies in-line with environmental protection. The research will be conducted in Kampala which lies within the Kingdom of Buganda, in Central Uganda.

1.6.2 Time scope

The study will take a period of 3 months; from February, 2019-June 2019.

1.6. Significance of the study

This study seeks to present and examine a review of the application of Environmental Impact Assessment (EIA) in Uganda since it became a requirement by virtue of the National Environment Act, Cap 153 of 1995. Important elements reviewed in the report are the development trends in application, institutionalization and EIA capacity development in Uganda since mid-1996. The report also highlights some positive interventions where EIA has been able to make a contribution towards sound environmental management. Also included in the report is an analysis of the challenges in the application of EIA so far, and highlights of some practical lessons so far learnt.

This study seeks to analyze the process of identifying, predicting, evaluating and mitigating the biophysical, social, and other relevant effects of development proposals prior to major decisions being taken and commitments made in terms of Environmental Impact Assessment by government bodies. Despite the fact that much has been written about the EIAs, majority of the existing literature focuses on either the experiences of the petroleum sector, or how the law affects specific aspects of some sectors. And Uganda being a low developed country that has to comply with the International Standards set by UNEP, it's unclear at its stage if its

environmental bodies are able to cope with the onerous requirements imposed by the [20]EPBC *Act 1999* (Cth) (EPBC Act) and National Environment Act, Cap 153 of 1995.

With this analysis, the most significant beneficiary are the environmental regulatory bodies like NEMA, NFA, NPA and Natural Resources Committee of Parliament since they are the ones majorly responsible for streamlining and coordinating environment management in the country, and effective forums for addressing mismanagement of natural resources. And they are the ones required by law to make major changes so as to comply with the new standards set by the National Environment Act, Cap 153 of 1995.

1.7. Methodology

This study used both qualitative and quantitative. Qualitative data relied on legal cases, statutes and policies. The recent Ugandan Environmental provisions and statutes that affect environmental protection that will be identified and analyzed. According to Leedy[21], this methodology is aimed at description.

Other useful sources of secondary information include guidelines, reports and various studies about Environmental Impact Assessment laws produced by various international and national bodies like NEMA, NFA, the UNCED, MEAs and UNFCCC on environmental protections, Regulations and Supervisory practices. Additionally, the regulations and guidelines issued by the NEMA will be taken into consideration.

Quantitative method will be through collecting data using interview guided questionnaires. It will be a cross sectional study. Sample size will be got using a sampling calculator and random sampling to select the study respondents.

Purposive selection will be used to get the respondents from the stakeholders, who will be operations managers at NEMA, NFA officials, NEMA field officers and legal officers in the legal department of NEMA. Discussions with various officials from the NEMA, NFA and

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[20] *At a Commonwealth (i.e. Federal) level, this was followed by passing of the Environment Protection (Impact of Proposals) Act 1974 (Cth) in 1974. The Environment Protection and Biodiversity Conservation Act 1999 (Cth) (EPBC Act) superseded the Environment Protection (Impact of Proposals) Act 1974 (Cth) and is the current central piece for EIA in Australia on a Commonwealth (i.e. Federal) level*

[21] *Established on 2001:148*

members of Environmental Parliamentary Commission will be made to gain a better insight into some legal issues and problems that have arisen due to implementing the EIAs.

1.8. Arrangement of chapters

From that brief this paper seeks to assess the preparedness of Uganda to deal with EIAs. The paper relies on three aspects i.e. legislation and institutional frame work, Stakeholder participation and quality of EIAs and implementation to draw conclusions. This paper takes a qualitative approach by reviewing scholarly and Government publications, and other stakeholder websites to assess the adequacy and effectiveness of the EIAs. The rest of the paper is organized as follows;

Chapter 2 gives an overview of various sectors and their potential impacts in Uganda, Chapter 3 looks at the global out look of EIAs in both petroleum sector and oil sector, chapter 4 discusses the aspects mentioned in the previous paragraph and chapter 5 gives the conclusion and recommendations. Chapter 6 lists the references.

1.9. Literature review

This part summarizes the information from other researchers and authors who have carried out their research from several sources which are closely related to the theme and the objectives of this specific study. It will be guided by the specific objective of the study which is the environmental impact assessment as a mode of implementing the precautionary principle in Uganda.

According to the Ugandan author Christine EchookitAkello in her Journal about the *Successes and Challenges of Environmental Regulation in Uganda*[22] noted that the Environmental monitoring and impact assessment (hereafter referred to as EIA) processes, provided for under the framework law, have been useful tools in regulating activities which have or are likely to have deleterious impacts on the environment and an EIA database has been created to track this activities. The success of the EIA process is such that the number of EIAs has grown from 10 in 1996 to about 1,500 in March 2007. There is, however, need to maintain political support for use

[22] *Christine EchookitAkello, "the Successes and Challenges of Environmental Regulation in Uganda' 2007. Pg.3. Available at https://ssm.com/abstract=2931658.*

of EIAs at both central and local level and measures to improve public consultation. On the other hand, the challenge remains that of ensuring effecting monitoring and achieving compliance with environmental standards. In some of the recently approved projects such as the use of DDT for indoor residual spraying for malaria control and approval of environmental aspects for Bujagali hydro power development, [23]it has been sought to circumvent this challenge by creating joint monitoring teams. It is yet to be seen how well these teams will operate, given their multi-sectoral nature and the limited resources at their disposal.

According to the Ugandan author Matsiko Godwin Muhwezi in his Articles of '*Legal Requirements, Procedure and Practice for Environmental Impact Assessment in Uganda*[24] stated on Public participation in the environment impact statement that Modern environmental operations require the involvement of the public in all activities since the environment is considered a public good. The public demands that all activities be in accordance with good environmental practices. Failure to involve the public in impact assessment can result in increased costs to the developers. While seeking the views of the people, the developer is expected to publicize the intended project, its anticipated effects and benefits through the media in a language that the affected communities understand, hold meetings with the affected communities to explain the project and its effects in places convenient to the affected people and agreed by the local leaders. The Executive Director shall within ten days of receiving the comments of the Lead Agency invite the public particularly those most likely to be affected to submit written comments on the environmental impact statement if found to be complete and satisfactory. The invitation of the public to make written comments is published in a Newspaper having national and/or local circulation. The notice must state the nature of the project, its location, and the anticipated negative and positive impacts as well as the proposed mitigation measures to address the negative effects.

[23]*These projects were approved in December 2006 and April 2007 respectively.*
[24]*Matsiko Godwin Muhwezi, Legal Requirements, Procedure and Practice for Environmental Impact Assessment in Uganda. November 2015.Available at: https://www.researchgate.net/publication/309041968*

According to Warwick Gullett, (2000) in the study '*The Precautionary Principle in Australia: Policy, Law & Potential Precautionary EIAs*'[25] stated that Certainly risk assessment is necessary for the precautionary principle due to the need to identify and analyze the risks, costs and benefits associated with issues and projects. Yet a broader approach is necessary, one that would, for example, take into account cumulative effects and strategic planning. Specifically, a more explicit attempt to include uncertainty analysis is needed to make the existing, rather narrow focused risk assessment process truly precautionary. The need to consider uncertainty is not satisfied by the current practice of building pessimistic assumptions into risk assessments because the focus remains on risks, which are, by definition, outcomes that are identifiable and quantifiable, rather than largely unknown. Risk assessments are preventative, and the distinction between "prevention" and "precaution" is important. Prevention deals with avoiding an identifiable threat, whereas precaution is aimed at avoiding uncertain outcomes which may, or may not, be harmful (although there must be some reason to believe that harm may occur). The precautionary principle is innovative because it encompasses the preventative aspects of traditional regulatory approaches, but also justifies acting in advance of knowledge where outcomes are uncertain; that is, before a perceived threat becomes a known risk.

1.10 Conclusion

This chapter establishes the background information, statement of the problem, research questions, research objectives, importance of the study, scope of the study, research methodology and review of literature.

[25] *Warwick Gullett, The Precautionary Principle in Australia: Policy, Law & Potential Precautionary EIAs, 11 RISK 93 (2000).Available at: ttps://scholars.unh.edu/risk*

CHAPTER TWO
THE PROCESS OF THE ENVIRONMENTAL IMPACT ASSESSMENT IN UGANDA

2.0 Introduction

This chapter addresses the EIA process in Uganda. It looks at the constitution laws, articles and other relevant laws, environmental rights, audits among others.

2.1 Statutory law

Statutory law remains the most significant legal framework for the control of pollution and for environmental management and protection in Uganda. The main legal instruments for control of water pollution are the Water Act[26], the Public Health Act, and the Merchant Shipping Act. Air pollution is controlled through the PHA and the Factories Act. There is no statutory instrument on waste management.

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

2.2 The Environment Act[27]

2.2.1 Environmental Impact Assessment

Where a project has been determined under section 19(7) as requiring an environmental impact study, the developer shall, after completing the study, make an environmental impact assessment in the prescribed form and in the prescribed manner.

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[26] *NEMA Act Cap 153 Part VI S(25)*
[27] *Environmental Regulation Pt II S20*

An environmental impact assessment shall be made according to guidelines established by the authority.

In any case where the assessment is not requested by a lead agency, a copy of the statement shall be forwarded to the relevant lead agency and the authority.

The environmental impact assessment shall be a public document and may be inspected at any reasonable hour by any person. Consideration of the statement by the lead agency; obligation of the developer.

The lead agency which receives an environmental impact assessment under section 20 shall, in consultation with the authority, study it and if it considers it to be complete shall deal with it in the manner prescribed.

In executing the project, the developer shall take all practicable measures to ensure that the requirements of the environmental impact assessment are complied with.

2.2.2 Environmental Rights

The 1995 Constitution of the Republic of Uganda is the supreme law of the land and it contains rights. One of these is the right to a clean environment, it provides under article 39 that every Ugandan has a right to a clean and healthy environment. This provision has been subject of litigation in a number of cases in Uganda for instance in The Environmental Action Network ***(TEAN) v AG & NEMA, 97*** the petitioners sought for, and court granted, a declaration that smoking in public places violated the right of non-smoking members of the public to a clean and healthy environment guaranteed under article 39 of the constitution

2.2.3 Environmental audit

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

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

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

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

The environmental impact statement shall be made to the authority, the lead agency or any other person requesting it.

2.3 The Constitution of the Republic of Uganda 1995

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

2.3.1 National objectives and directives of state policy (NODPSP)

Objective XIII of the NODPSP is to the effect that the state shall take the important role in protecting natural resources of all forms on behalf of the people. Similarly Objective XXI encompasses state responsibility to promote a good water management system at all levels hence pollution is checked by this objective. In the nutshell, Objective XXVII embodies the responsibility of the state to promote, sustain development and public awareness to manage public resources on and beneath the earth's surface (environment).

S.106 of the NEA Article 17(1)(j)[29] places the obligation on the citizens to protect the environment therefore as agents of pollution they are halted. Article 39 provides for the right to a healthy and clean environment which also condemns environmental pollution in its constitutional

[28] *Article 287(2) of 1995 constitution of Uganda*
[29] *The constitution of the republic of Uganda 1995*

interpretation. Article 50(1) and (2) empowers the any person or organization to bring an action against violators of human rights including those touching the environment as was seen in the case of ***TEAN V BAT***[30]. Article 237 of the constitution[31] requires the Government or a Local Government as determined by Parliament by law, to hold in trust for the people and protect, natural lakes, rivers, wetlands, and other natural resources implying a duty upon the government to ensure that the same is not polluted for the common good of all citizens. In performance of this duty the government is to have regard to all policies as regard to land[32] Article 245(a)[33] empowers the parliament to enact laws for the protection of the environment against pollution.

2.4 The National environment ACT (2019)

It was enacted to provide for the management of the society to provide for the sustainable management of the environment and under S.8[34] the NEMA is established that the authority with the mandate to manage, monitor and supervise all activities on the field under the following provisions.

S.103[35] deals with air quality standards and provides with establishment of procedures for measurement of air quality and takes measures to reduce the existing source of air pollution by requiring use of new technology and redesign of plants and minimize the emission of greenhouse gasses to control air pollution.

S.25 provides for establishment of minimum water standards for all the water in Uganda for different users such as industrial use, domestic such as drinking, wild life, fisheries and other uses not prescribed. For this to be done NEMA has to consult the lead agency[36].

S.105 provides for the discharge of effluent water the standards which shall be set by authority but all water discharged should be of a quality standard to control pollution. Under S.4[37] the

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[30] *MISC. Application No. 444 of 2001*
[31] *The constitution of the republic of Uganda 1995*
[32] *Article 241(2) of the constitution of the republic of Uganda 1995*
[33] *Ibid, no 1*
[34] *National Environment Act 2019*
[35] *National environment Act cap 2019*
[36] *S.1 (gg) of the National Environment Act provides that a, "lead agency" means any Ministry, department, parastatal agency, local government system or public officer in which or in whom any law vests functions of control or management of any segment of the environment*
[37] *The National Environmental Wetlands And River Banks and lakes regulations*

main objectives of the regulation is to minimize pollution and control wetland degradation through setting up a committee to ensure protection of the environment hence a relevant control tool of pollution in wetlands.

S.104 deals with the control of standards of noxious smells for which the authority shall establish the minimum standard to the control of smell pollution and measurements or guidelines leading to abatement of obnoxious smells. The national environment (Noise Standards and Control) Regulations provide detailed noise standards pursuant of this provision.

S 106 deals with the standards of noise and subsonic vibration and all these have to be controlled with regard to the significance in the impact of the environment so as not to pollute it.

S.107 provides for soil standards and NEMA shall regulate the disposal of any substance on the soil and prohibit any practice that will degrade the soil and promote practices that will conserve. The National Environment (minimum standards for soil management of soil quality) regulation 2001 was made so as to regulate soil standards and control pollution.

S.108 provides for standards for minimization of radiation and NEMA shall create standards for minimization of such radiation to the society and control its exposure to other people and its effects too.

A nuclear power law[38] established the Atomic Energy control Board which is to be consulted for any issue regards to minimization of radiation.

S.109[39] provides for other standards such as construction materials, industrial products, solid waste disposal and such other activities that may pollute the environment.

S. 80[40] is to the effect that the polluter of the environment is to bear costs for his actions further a license may be denied by the granting authority if the polluter is unable to compensate the

[38] *(Atomic Energy Act, Cap. 143) was passed by Parliament in 2008*
[39] *National Environmental Act 2019*
[40] *National Environment Act 2019*

victims of such pollution and clean up the environment in accordance with the precautionary principle[41].

S.81[42] provides that no person shall pollute or lead any person to pollute the environment contrary to any of the standards set in the act and no person shall either pollute exceeding the standards set out in the pollution license granted under S.60 of the National Environment Act cap 153.

S.82 provides for pollution licenses and for the same to be granted the and Environmental Impact study must be carried out in accordance with the act in order to determine the pollution likely to result and considerations necessary for its control whereby if the applicant fails to comply with the conditions given then the license will not be granted.

2.5. The EIA Process

The EIA process conforms to most international guidelines including those of Uganda's development partners and comprises project brief, screening, environmental impact study, decision-making, and monitoring and auditing. Ministry of Works, Housing and Communications Clauses 2.3.1 through 2.3.5 below give a brief description of the general requirements of the EIA process extracted from the EIA Regulations and the NEMA Guidelines.

2.5.1 Project Brief

A developer is required to prepare a project brief, giving relevant background information and description of the project for the consideration of NEMA. The EIA process normally begins once the developer has submitted the project brief to NEMA, who may forward a copy to the lead agency for comments. The lead agency is required to make comments within fourteen working days of receiving the project brief.

[41] *S.81 of the National Environmental Act 2019 and in line with Principle 3.9 of the National Environment Management Policy 1994*
[42] *National Environmental Act 2019*

2.5.2 Screening

The purpose of screening is to determine the extent to which an environmental impact study is required, and the screening process results in an environmental categorization of the project. The Environmental Impact Assessment Regulations, 1998 states that NEMA shall consider the project brief and the comments made by the lead agency. In effect, it is the lead agency that is responsible for the screening process and NEMA uses the results of the screening process for purposes of decision-making. NEMA must approve the screening and the resulting environmental category. The Regulations state the following regarding the decision making by NEMA.

- If Executive Director finds that the project will have significant impacts on the environment and that the project brief discloses no sufficient mitigation measures to cope with the anticipated impacts, he shall require that the developer undertakes an environmental impact study.
- If the Executive Director is satisfied that the project will have no significant impacts on the environment, or that the project brief discloses sufficient mitigation measures to cope with the anticipated impacts, he may approve the project.

If the screening process determines that the project is exempt from EIA (Category I), or that the project should be approved on the basis of already identified mitigation measures (Category II), the developer is awarded a *Certificate of Approval* by NEMA. However, if the project qualifies for a partial EIA (Category III) or full EIA (Category IV), NEMA shall notify the developer within 21 days of the submission of the project brief and the certificate is issued only after approval of the environmental impact study.

2.5.3 The Environmental Impact Study

The environmental impact study can be either a study with reduced scope, called an Environmental Impact Review (EIR), for Category III projects or a full Environmental Impact Assessment (EIA) for Category IV projects.

- **Scoping and Terms of Reference**

Scoping identifies the critical biophysical, socio-economic and cultural issues, which will need to be addressed by the EIR or EIA. It requires consultation with the relevant authorities and

stakeholders (such as affected communities) so that their inputs or comments can be taken into consideration.

The scoping exercise delineates the boundaries of the study area, identifies preliminary alternatives, suggests a schedule for the completion of the environmental impact study and for public involvement during the study, and identifies the full range of stakeholders who may be interested in or affected by the project. Thus, scoping assists in the planning of the environmental impact study and forms the basis for the terms of reference (ToR). The scoping and ToR are prepared by the developer and must be approved by NEMA.

Environmental Impact Study

During the environmental impact study, relevant data are collected and analyzed, the major impacts investigated in depth, mitigation measures developed for adverse and beneficial impacts and compensatory measures recommended for immitigable impacts.

All project alternatives are thoroughly examined. Impacts are quantified in terms of magnitude (major, moderate, negligible), extent (regional, local, site specific) and duration (long-term, medium-term and short-term). During the study, consultation must be undertaken with the relevant authorities, stakeholders, and affected and interested parties.

The findings of the environmental impact study are presented in an environmental impact review report (EIR report) in the case of a study with limited scope or an environmental impact statement (EIS) in the case of a full study. The report or statement must contain a description of the project site, surroundings, proposed activities, and of the significant environmental impacts and risks. The EIR report or EIS should discuss the project alternatives and recommend mitigation measures. It should also contain a monitoring and evaluation programme.

2.5.4 Decision-Making

The EIR report or EIS is submitted to NEMA for review and comments. NEMA invites stakeholders and the public to comment on the document. If the EIR report or EIS is approved, then a *Certificate of Approval of the EIA* is issued, following which a decision can be made to proceed with the project. If, however, the EIR report or EIS is not approved, then the project may be rejected or the developer may be asked to revise the proposed actions or develop other mitigation measures in order to eliminate adverse impacts. A *Record of Decision* is prepared whether or not the project is approved. NEMA shall make a decision within less than 180 days.

2.5.5 Monitoring and Auditing

During and after implementation of the project, the Environmental Impact Assessment Regulations 1998 requires that the developer carries out environmental monitoring in order to ensure that recommended mitigation measures are incorporated into the project design and that these measures are effective so that unforeseen impacts may be mitigated. The regulations further prescribe that after the first year of operation, the developer must undertake an initial environmental audit. The purpose of the audit is to compare the actual and predicted impacts, and assess the effectiveness of the EIA, as well as its appropriateness, applicability and success. Thereafter, NEMA may require additional audits to be made as circumstances warrant.

2.6 Other Legislations

2.6.1 Uganda Policy Framework for Industry Sector (2008)

The vision of the policy is to build the industrial sector into a modern, competitive and dynamic sector fully integrated into the domestic, regional and global economies. The policy objectives include the exploiting and developing natural domestic resource based industries such as petroleum and promotion of competitive industries that use local raw materials. The main features of this Policy Framework, drawn in line with objectives of PEAP, PMA and Strategic Exports Programme (SEP), among others are to: create a business friendly environment for private sector-led industrialization in which industries will develop, improve productivity and the quality of products through, inter alia, creativity and innovation and become more competitive in the global economy; improve infrastructure development for effective and efficient industrialization program; promote environmentally sustainable industrial development to reinforce national goals of long-term growth and development and promote safe work place practices in all industry sub-sectors.

2.6.2 Disaster Management and Preparedness Policy

The overall policy goal is to promote, in relation to disasters, prevention, preparedness, mitigation, response and recovery measures to be implemented in a manner that integrates disaster management with development planning. The policy provides for: land use planning to minimize degradation and conservation of the environment through rational exploitation of resources and integration of gender, education, training and public awareness and public

participation in disaster management and water resources conservation. With respect to oil exploration there is need to make provisions for disaster management and preparedness on matters such as oil spills, gas flaring, land use, resettlement of displaced people, compensation of lost investments and opportunities, among others should be taken into account. Hence there is need to do what is referred to as oil contingency planning.

2.6.3 The Uganda National Land Policy (2013)

The overall goal of the policy is to ensure efficient, equitable and optimal utilization and management of land resources for poverty reduction, wealth creation and overall socioeconomic development.[43] The policy has a number of objectives and relevant for oil exploration and production among which are the following: The policy seeks to ensure planned, environmentally friendly, affordable and orderly development of human settlements for both rural and urban areas including infrastructure development. The policy also aims at ensuring sustainable utilization, protection and management of environmental, natural, and cultural resources on land for national socioeconomic development.[44]Specifically on minerals and petroleum, the policy recognizes that article 244(1) of the constitution vests petroleum and mineral resources in the government on behalf of the Republic of Uganda. The policy however notes that the government as a trustee has not fully exercised an ethical relationship of confidence embracing principles of democratic governance, accountability and transparency.

In the policy statement, it is specifically emphasized that minerals and petroleum being strategic natural resources shall vest in the state for the benefit of all the citizens of Uganda. To peacefully achieve this, the policy lays the following strategies: to protect the land rights and land resources of customary owners, individuals and communities in the areas where mineral and petroleum deposits exist or are discovered; to allow to the extent possible, coexistence of customary owners, individuals and communities owning land in areas where mineral and petroleum deposits are discovered; to provide for restitution of land rights in event of minerals or oil being exhausted or expired, depending on the mode of acquisition; to guarantee the right to the sharing by land owning communities and recognize the stake of cultural institutions over ancestral lands with minerals and petroleum deposits, and adopt an open policy on information

[43] *Part 2.3 of the Policy, at 9*
[44] *Part 2.4, page 9*

to the public and seek consent of communities and local governments concerning prospecting and mining of these resources.[45] The policy further recognizes that Uganda faces a number of environmental problems including the degradation of natural resources such as forests, wildlife habitats, wetlands, fragile ecosystems, water catchment systems, river banks, water bodies as well as soil degradation and pollution of land, air and water. These are depleted or degraded through indiscriminate excisions, unregulated harvesting and encroachment for promotion of inapt investment.[46] In policy statements related hereto, the government undertakes to ensure that: natural resources are optimumly managed for the benefit of present and future generations; measures are taken to restore, maintain and enhance the integrity of natural resources; it enhances the effectiveness of the framework for environmental management; and that all land use practices conform to land use plans and principles of sound environment management, including biodiversity preservation, soil and water protection, conservation and sustainable land management. Therefore because oil and gas is a resource that occurs deep under the earth's crust, issues to do with the proper management of land come into play when analyzing the environmental implications of all activities at upstream, midstream and downstream stages of the oil production life cycle.

2.7. Conclusion

From the foregoing, it is clear that it is possible for the right to clean and healthy environment to be enjoyed in Uganda. The same is protected by the Constitution and has been judicially interpreted. There is however a need to reconceptualise the right to a clean and healthy environment by clearly defining it and according it the correct place in the human rights discourse. The right to a clean and healthy environment can be equated to the right to life. This is the bold declaration that must be made and captured in our legal framework so as to make it a reality. The law in relation clean and healthy environment is effective and related to the aspect of clean and healthy environment in Uganda. The law has been put in place but weak in implementation by the regulatory bodies.

[45] *Part 3.8, at 14-15*
[46] *Part 6.7, at 42*

CHAPTER THREE
EFFICIENCY OF THE LEGAL FRAMEWORK ON CONTROLLING POLLUTION IN UGANDA

3.0. Introduction

Efficiency basically means the results[47]. Examining the effectiveness of the law from the date of its enactment hence the question is whether it has met the purpose of the law or it is failing to do so. The following are the achievements of the legal framework in controlling of pollution Creation of NEMA. The creation of the National Environmental Management Authority as the corporate body to monitor all issues involving the environment has gravely helped to control pollution especially through the provisions of the national environmental act under S.57 which prohibits pollution and the a foregoing sections which are for granting of pollution permits[48].

3.1. Statutory law

Statutory law remains the most significant legal framework for the control of pollution and for environmental management and protection in Uganda. The main legal instruments for control of water pollution are the Water Act[49], the Public Health Act, and the Merchant Shipping Act. Air pollution is controlled through the PHA and the Factories Act. There is no statutory instrument on waste management.

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

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[47] *Websters Universal English Dictionary 2006 Geddes and Grosset*

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

[49] *NEMA Act Cap 153 Part VI S(25)*

3.2. Legal framework for pollution control in Uganda

a) Control of Water Pollution

Principle XXI of the National Objectives and Directive Principles of State Policy under the Constitution provides that the State shall take all practical measures to promote a good water management system at all levels. The state is also required to take possible measures to prevent or minimize damage and destruction to land, air and water resources resulting from pollution or other causes.[50] The parliament is required by article 245 by law to provide for measures intended to protect and preserve the environment from abuse, pollution and degradation.

Accordingly, the *National Environment Act 2019* was enacted. Part VII thereof has provisions for the control of pollution. A person shall not pollute or cause any other person to pollute the environment contrary to any of the standards or guidelines prescribed by NEMA.

A person can only exceed the standards or guidelines if he is authorized by a pollution licence issued under section 80 of this Act.[50] The application for a pollution licence in respect of activities that pollute the air in excess of the prescribed standards are to be made to the technical committee on the licensing of pollution, which upon receipt of the application is required to inform the persons who are likely to be affected by the proposed activity of the applicant and invite them to make representations. The committee is also required to consider all representations by the relevant government departments, and then consider the application having regard to all the representations received by it.[51]

Under the *Water Act*, the Minister is given powers in any area to prescribe waste which may not be discharged; trades which may not discharge waste; or classes of premises or particular premises from which waste may not be discharged, directly or indirectly into any water except in accordance with a waste discharge permit.[52]

A person wishing to discharge waste may apply to the director for a waste discharge permit in the prescribed manner who, on receipt of an application, will give public notice of the

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[50] *National Environment Act See section 82*

[51] *See section 83 of National Environment Act.*

[52] *Section 28 of the Water Act*

application made in the prescribed manner. Any person with an interest in the outcome of an application may give notice of objection to the director. The director shall consider every application and objection to it and, after consultations with any persons or public authorities, which he or she sees fit, may grant the permit on such terms and conditions as he or she sees fit.[53] Section 31 specifically prohibits pollution. The section provides that a person commits an offence who, unless authorized under this Part of the Act, causes or allows waste to come into contact with any water; waste to be discharged directly or indirectly into water; or water to be polluted.

Regulation 4 of the *National Environment (Standards for Discharge of Effluent into Water or on Land) Regulations* provides that every industry or establishment shall install at its premises, anti-pollution equipment for the treatment of effluent chemical discharge emanating from the industry or establishment. The Anti-pollution equipment installed, has to be based on the best practicable means environmentally sound practice or other guidelines as the Executive Director[54] may determine.

Regulation 4 of the *Water (Waste Discharge) Regulations*[55] provides that no person shall discharge effluent or waste on land or into the aquatic environment contrary to the standards established under regulation 3 unless he or she has a permit issued by the Director. A person granted a permit has to ensure that the effluent or waste discharged conforms to the maximum permissible limits established under regulation 3; and has to be subject to such other conditions as the Director may specify. The *Penal Code Act*[56] provides under Section 176 that a person commits an offence if he voluntarily corrupts or fouls the water of any public spring or reservoir so as to render it less fit for the purpose.

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[53] *Section 29*

[54] *"Executive Director" means the Executive Director of the National Environment Authority appointed under section 105 of the National Environment Act 2019*

[55] *S.I 152-4*

[56] *Cap 120 Laws of Uganda 2000.* [87]
Cap 120 Laws of Uganda 2000.

b).Control of Air Pollution

The provisions of under part VII [57] This provision in effect creates a prohibition on air pollution .A person shall not cause pollution or initiate anything that may occasion a risk of pollution except in accordance with this act

The Act gives the minister powers to make regulations, on recommendation of the policy committee or the board prescribing all matters that are required or permitted by the Act to be prescribed or are necessary or convenient to be prescribed for giving full effect to the provisions of the Act.[58] In exercise of these powers, the minister passed the *National Environment (Prohibition of Smoking in Public Places) Regulations, 2003*. These Regulations prohibit smoking in public places and public means of transport.[59]

Under the *National Environment (Waste Management) Regulations*[60], a person who owns and controls a facility or premises which generates waste shall minimize the waste generated by adopting cleaner production methods like; improvement of production process through conserving raw materials and energy; eliminating the use of toxic raw materials; reducing toxic emissions of waste; monitoring the product cycle from the beginning to the end by-identifying and eliminating potential negative impacts of the product, enabling the recovery and reuse of the product where possible, reclamation and recycling and incorporating environmental concerns in the design and disposal of a product.[61] Under these regulations, industries are under a duty to treat their wastes.

C).Control of Soil Pollution

Section 107 of NEA makes provisions for establishment of soil quality standards. The *National Environment (Minimum Standards for Management of Soil Quality) Regulations, 2001* provide detailed soil quality standards. The purpose of these regulations is to establish and prescribe

[57] *Section 78 National Environment Act 2019*

[58] *Section 107 (1) of Cap 153 Laws of Uganda 2000, formally Section 108 of the National Environment Statute (1995).*

[59] *For judicial prohibition of smoking in public places, see TEAN v Attorney General and NEMA H.C M.A No.39/2001*

[60] *S.I No. 52/1999*

[61] *Regulation 5*

minimum soil quality standards to maintain, restore and enhance the inherent productivity of the soil in the long term; to establish minimum standards for the management of the quality of soil for specified agricultural practices; to establish criteria and procedures for the measurement and determination of soil quality; and to issue measures and guidelines for soil management.[62]

Regulation 12 provides that every person shall comply with the measures and guidelines for soil conservation for the particular topography, drainage and farming systems prescribed in the Fourth Schedule. A person who contravenes this commits an offence and is liable, on conviction, to a fine of not less than one hundred and eighty thousand shillings and not more than eighteen million shillings or to imprisonment not exceeding eighteen months, or both.

3.3. Pollution Control under the New Laws

In addition to the general laws prohibiting pollution, the new Petroleum (Exploration, Development and Production) Act, 2013 (hereinafter referred to as Upstream Act) and the Petroleum (Refining, Conversion, Transmission and Midstream Storage) Act, 2013 (herein after referred to as Midstream Act) have specific provisions creating liability for pollution.

Under the Upstream Act, a licensee and any other person who exercises or performs functions, duties or powers under the Act in relation to petroleum activities should comply with environmental principles and safeguards prescribed by the National Environment Management Act and other applicable laws. The licensee should ensure that the management of production, transportation, storage, treatment and disposal of waste arising out of petroleum activities is carried out in accordance with environmental principles and safeguards prescribed under the National Environment Management Act and other applicable laws. To effectuate the foregoing, the licensee is required to contract a separate entity to manage the transportation, storage, treatment or disposal of waste arising out of petroleum activities.[63] However the licensee shall remain responsible for sound waste management notwithstanding contracting the duty to another entity.[64]

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[62] *Regulation 3*
[63] *S.3(1) (2) and (3)*
[64] *Section 3(4)*

Under section 47, before opening a new area for petroleum activities, the minister is supposed to ensure that assessments and evaluations are carried out. In the evaluation above an assessment shall be made of the impact of the petroleum activities on trade, industry and the environment, and of possible risks of pollution, as well as the economic and social effects that may result from the petroleum activities.[65]

Section 88 requires a licensee to carry out petroleum activities in the licence area in a proper and safe manner and in accordance with the requirements of the applicable law, regulations and conditions stipulated by lawful authorities and best petroleum industry practices.[66] The licensee should take all reasonable steps necessary to secure the safety, health, environment and welfare of personnel engaged in petroleum activities in the licence area including- controlling the flow, and preventing the waste or discharge, into the surrounding environment, of petroleum, gas which is not petroleum or water; preventing the escape of any mixture of water or drilling fluid, and petroleum or any other matter; preventing damage to petroleum bearing strata in any area not covered by the licence; keeping separate, in a manner as the Authority may by notice in writing served on the licensee direct-each reservoir discovered in the licence area; and any source of water discovered in the licence area; preventing water or any other matter entering any reservoir through the wells, except when in accordance with properly approved plans and best petroleum industry practices; preventing the pollution of any water well, spring, stream, river, lake or reservoir by the escape of petroleum, water, drilling fluid, chemical additive, gas not being petroleum or any other waste product or effluent; where pollution occurs, treating or dispersing it in an environmentally acceptable manner; and warning persons who may, from time to time find themselves within the safety zone of any structure, equipment or other property, of the presence of the structure, equipment or other property and the possible hazards resulting from the petroleum activities of the licensee.[67]

Accordingly Part X creates liability for damage caused by pollution. This liability covers damage caused in Uganda whether or not a person causing damage has a licence and whether or not the person causing damage was at fault.[68]

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[65] *Section 47(2) and (3)*
[66] *Section 88(1)*
[67] *Subsection (2) (a) –(h)*
[68] *See sections 129-134*

Under the Midstream Act, a licensee is equally required to comply with environmental principles as prescribed under the NEA or any other applicable laws. In particular, the licensee should ensure that the management of transportation, storage, treatment or disposal of waste arising out of midstream operations is carried out in accordance with the environmental principles and safeguards prescribed under the National Environment Act and other laws applicable. The licensee is required to contract a separate entity for this purpose, though the licensee shall remain responsible for violations.[69]

Section 26 requires a licensee to carry out midstream operations in a proper and safe manner and in accordance with the requirements of the applicable law, regulations and conditions stipulated by competent authorities and best petroleum industry practices. A licensee shall take all reasonable steps necessary to secure the safety, health and welfare of personnel engaged in midstream operations including-controlling the flow and preventing the waste, emission or discharge of petroleum commodities or petroleum products into the environment; preventing the escape of any mixture of water, chemical or any other matter; preventing the pollution of any water well, spring, stream, river or lake by the escape of petroleum commodities or petroleum products, chemicals or any other waste products, discharges or effluent; where pollution occurs, treating or discharging the pollutant in an environmentally acceptable manner; and submitting to the Authority, before any midstream operation, a detailed report on the technique and method to be employed, an estimate of the time to be taken, the material to be used and the safety measures to be employed. Liability for pollution damage caused by midstream operations is provided for under Part IX.[70]

Therefore in light of the foregoing, one can conclude that Uganda has sound legal provisions for controlling pollution in the oil and gas industry. Notwithstanding the fact that penalties prescribed in the new laws are not deterrent enough and the unfortunate fact that compensation to the victims of pollution is not prescribed by the laws, these laws can nonetheless guide the sector to sound waste management. There are ongoing efforts to manage pollution although reports from the field show that measures so far adopted are inadequate. According to the Ministry of Energy, the operators were first advised to containerize their waste as a permanent

[69] *Section 3*
[70] *Sections 57-62*

waste management plan is developed.[71] The ministry has not yet published whether or not the plan for waste management has been developed. However the ministry confirmed that the oil spill contingency plan would be ready by 2011.[72] In the field however, reports indicate that soil quality has been compromised as in many places scrap materials have been abandoned, many former exploration and appraisal wells are still uncovered. For air pollution, because of the nascent stage of the industry atmospheric emissions are still negligible.

3.4. Legal framework in relationship to environment protection

3.4.1. International legal framework

International law is a system of principles, rules[73] that govern relationships between states and other internationally recognized problems such as pollution therefore international environmental law simply encompasses the corpus of international law relevant to environmental issues hence concerns the protection of global environment.

a) The Stockholm Convention on Persistent Organic Pollutants 2001: The objective of this convention is to protect human health and the environment from persistent organic pollutants as stipulated[74] of the convention. Since Uganda is a signatory to this treaty, it applies so as to enhance the fight against pollution in Uganda.

b) The Vienna Convention on the Protection of the Ozone Layer of 1985. Uganda acceded to this treaty[75] and is embedded into air pollution since its main objective is against human activities likely to endanger the ozone layer henceforth affecting the ozone layer likely to interfere with the environment.

c) The Montreal Protocol on Substances that Deplete the Ozone Layer. This was assented to by Uganda in 1988 as the Vienna convention on the protection of the ozone layer and it was bound by it[76]. It also controls the production and consumption of the most commercially and environmentally significant ozone depleting substances dealing with atmospheric pollution.

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[71] *Ministry of Energy and Mineral Development (2011) Environmental Management in Uganda's Oil and Gas Sector, at 7*
[72] *Ibid, at 8*
[73] *The can include jus Cogens*
[74] *Article 1.*
[75] *This was ratified in 1988*
[76] *Article 287 of the 1995 constitution*

d) United Nations Framework Convention on Climate Change of 1992 imposes an obligation on the state[77] to take precautionary measure and minimize the causes of climate change and mitigate its adverse effect.

e) Kyoto Protocol to the United Nations Framework Convention on climate change[78] also sets binding target for the limitation and reduction of greenhouse gas emissions such as carbons methane, sulphur helping to control pollution in Uganda.

f) The convention on wetlands of international Importance especially as water Fowl[79]. This was ratified in 1988 which basically called for the proper implementation of the principles of the convention. The import of this provision is to the effect that the environment should also be protected against pollution.

g) Basel Convention on Control of Tran boundary-movement of Hazardous Wastes and their disposal of 1989[80] whose global goal is to control human health and environment against adverse effects which may result from trans-boundary movement and management of hazardous wastes across borders and manage the disposal of wastes in an environmentally sound manner.

h) The Bamako Convention on the Ban of Importations into Africa and the control of the trans boundary movement and management of hazardous wastes within Africa of 1991. This convention enjoins the parties to strive to adopt and implement the preventative, precautionary approach to pollution. With these conventions and treaties that Uganda has ratified or is a signatory to, creates the international legal framework through which laws against the environment can be enforced in Uganda under the 1995 constitution[81] of Uganda. The National Environment Act[82] provides that where Uganda is a party to any convention or treaty, concerning the environment, it should take measures to domesticate in order to give it effect.

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[77] *Ratified in September 13th 1993*
[78] *This was discussed*
[79] *(RAMSAR convention)*
[80] *which Uganda ratified in 1999*
[81] *Article 287.*
[82] *Section 106.*

3.4.2. National Legal Framework in Uganda

The national legal framework was developed in consultation with the National Environment Management Policy which set out the guiding principles for controlling pollution under Policy 3.9 providing the guiding principles which include; minimization in the discharge of substances that can be harmful or where possible prevention, pollution minimization and prevention to be coordinated by a single agency, the adoption "polluter pays" principle, clear linkages between sectoral policies and adequate regulation of hazardous materials which potentially pollute the environment and also provides for strategies of how enforce the principle.

3.5. Efficiency of the Legal Framework on Controlling Pollution in Uganda

3.5.1. Action against pollution on wetlands

NEMA has taken a stand against pollution of wetlands especially swampy areas and river banks and lakes shores and for one to construct in such areas there is a stipulated distance which does not have to be occupied for example in *Amooti Godfrey Nyakana v NEMA*[83] the petitioner constructed a house in a wetland and it was destroyed by NEMA and he petitioned and in the holding the court stressed out the importance of controlling unauthorized activities on the environment and the role of authorities such as NEMA and struck out the case on ground that the petitioner was afforded the chance to be heard but he did not utilize it hence NEMA succeeded in the case.

3.5.2. Environmental Impact Assessment

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

[83] *Constitutional Petition NO.03/05*

3.5.3. Public Interest Litigation

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

Art 50(2) allows any person or organization to bring an action against the violators of another person's or groups human rights and by virtue of Art 39 every person has a right to live in a clean and healthy environment meaning this provision is setting out against polluters thus in British *American Tobacco v Environment Action Network Ltd*[84] an action was brought against BAT on grounds that smokers were polluting the society with smoke hence infringing on the right to a clean and health environment. This case point out that public interest litigation may be brought on environmental matters. The following have challenges faced by the law enforcement authorities and the inadequacies of the law effecting environmental laws.

3.5.4. Inadequate or nonexistent laws in certain areas

Solid waste or garbage which includes paper, plastic, glass, metal cans, food scraps, and yard trimmings, the greater proportion being degradable[85] and is one of the most visible forms of Soil pollution. Both open dumps and landfills may contain toxins that seep into the soil, ground water or flow into streams and lakes. The uncontrolled burning of solid waste creates smoke and other air pollution. Even burning waste in incinerators can release toxic chemicals, ash, and harmful metals into the air.

Environmental standards and laws on pollution management are still inadequate and/or non-existent in some areas. No adequate waste disposal facilities in place[86] despite the enactment of the National Environment (waste management) regulations[87] Authorities the legal violators.

Whereas for example wetlands are held in trust by Central Government or local Government for the common good of the people of Uganda, recent examples of wetland abuse have included cases where Local Authorities have been the very violators of these constitutional and legal provisions. Where this has happened, local authorities have indicated that they converted

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[84] *Art 50(2*

[85] *Example in Kawempe division municipal solid waste 33 percent is non-degradable while 67 percent is biodegradable (Ssembajjwe and Mukunya undated).*

[86] *Ibid, no 51*

[87] *Cap 152-2 of the laws of Uganda 2000*

wetlands for the sake of providing their communities with economic growth opportunities and for fighting poverty. It is therefore a dilemma that the very Institutions entrusted with the protection of wetlands have in some cases not assisted the crusade for their conservation.

Issuance of Land Title in wetland areas by the Central and Local Governments[88] Where as it is a constitutional and legal requirement that areas such are wetlands, riverbanks, lakeshores are held in trust by Government and Local Government for the common good of all the citizens of Uganda, there are coincidences where the very institutions that are charged with this responsibility are the very ones who alienate these wetlands and even issued land titles.

There is the problem of enforcement of the legal requirements for protection of the environment and public health. whereas enforcement of environment regulations, is expected to be done through a hierarchy of enforcement levels from national (NEMA), Districts down to community levels, the enforcement capacity available at all these levels appears not to be able to match the widespread nature of the problem of pollution. the responsibility for environment management has been also[89] vested under the local authorities, but cases where local authority intervention on environmental management are involved are minimal, implying that even where local authority intervention would have been enough to stop abuses; such cases still continue to be referred to NEMA.

In 2003, in *GREENWATCH VS AG*[90] court issued a judgment banning the use of polyethene bags but the society still uses this today which shows the laxity in enforcing environmental laws against pollution.

The "anonymous", "holiday" and "awkward hour" dumping syndrome and noise pollution without an effective grassroots enforcement mechanism[91], it has been extremely difficult to control indiscriminate dumping of materials in wetlands along the roads and other remote areas by anonymous individuals such as truck drivers who probably view wetlands as "good" open space to dump in rather than drive long distances to designated dumping sites. Time and again,

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[88] *For example the Ntinda Industrial area is a wetland*

[89] *Challenges in Monitoring and Enforcement of Environmental Laws in Uganda George Lubega Matovu-Natural Resources Management Specialist - NEMA 11*

[90] *Misc. Cause No.140/2002.*

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

people living in and around wetland areas where marrum and waste dumping has taken place have indicated that the dumping is done by unknown truck drivers at awkward hours. It remains an uphill task to prosecute these cases, and the affected wetlands can hardly recover their original state even if the culprits are required to restore them[92].

3.5.5. Poverty and wetland resources use relationship.

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

Activities such as brick making in wetlands which are done for economic gains have tended to give no regard at all to conservation nor restoration of the affected wetlands so as to control pollution[93] Corruption. NEMA which is mandated to evict people who are polluting wetlands have ended up favoring the rich and evicting the poor due to illegal considerations advanced to protect the interests of the rich, for example Ntinda industrial area where Britania and pharmaceutical industries have been constructed on wetland areas.

3.5.6. Cases of Private Remedies on Nuisance

In the case of *Moore v. Nnado*[94] where as a result of the noise from the adjoining bar's stereogram, a neighbor was compelled to seal up his louvers with plywood, and spend most of the time in the backyard of his house, the court held that the defendant's misfeasance was actionable.-

In *MKO Abiola v. F.O Ijoma*[95], where noise from neighboring farm, coupled with the odour that came there from was unbearable, the plaintiff called for the court's intervention and he was compensated. - In *Tebite v. Nigeria Marine Co. Ltd*[96], the plaintiff, a legal practitioner, complained that the noise and smell made by the defendant while carrying on the business of boat building and repairing was interfering with the enjoyment of his law chambers. The court

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[92] *Ibid, no 55*
[93] *Challenges in Monitoring and Enforcement of Environmental Laws in Uganda George Lubega Matovu -Natural Resources Management Specialist - NEMA 13*
[94] *(1967) FNLR 156*
[95] *(1970) 2All NLR 268*
[96] *(1971) 1 UILR 432*

found on evidence that the area, though a mix of commercial and residential area, the noise and smell generated by the defendant amounted to substantial interference with the plaintiff's comfort and convenience and awarded damages and injunction to restrain the defendant.

3.6. The National Environment Act

The National Environment Act of 2019 sets out the general legal framework and policy objectives for the sustainable management of the environment in Uganda. It encourages the participation by the people of Uganda in the development of policies, plans and processes for the management of the environment as well as the equitable use of natural resources for the benefit of present and future generations.[97] To co-ordinate and supervise all activities in the field of the environment the National Environment Agency (NEMA) was established under the Act as the principal agency for the management of the environment in Uganda.[98]

The functions of the NEMA comprise the gathering and dissemination of information on the environment and natural resources, the publication of relevant data on environmental quality and resource use as well as the organisation of public awareness and education campaigns in the field of environment.[99] The NEMA is tasked to exchange information with other Ugandan, foreign, international and non-governmental agencies, co-ordinate the management of environment information with other government agencies and local authorities and advise Government on existing information gaps and needs.[100]

In collaboration with education and regional authorities NEMA is also responsible for educational campaigns on the environment aimed at schools and the general public.[101] The NEMA shall publish a State of the Environment Report every two years.[102] Any person who carries out any activity which has or is likely to have a significant impact on the environment

[97] *Section 122 of National Environment Act 2019*
[98] *Sections 123 National Environment Act 2019*
[99] *Sections 128 National Environment Act 2019*
[100] *Section 129 National Environment Act 2019*
[101] *Sections 148 National Environment Act 2019*
[102] *Section 147 National Environment Act 2019*

shall keep records relating to resulting waste and byproducts, their effects on the environment and financial implications.[103]

These records shall be transmitted to the NEMA annually and be used as a basis for the preparation of the state of the environment report.[104]

According to section 146 of the National Environment Act people have "freedom of access to any information" relating to the implementation of the Act submitted to NEMA or any other government institution or official with legal management or control functions related to the environment. Access shall be granted "on the payment of a prescribed fee" but "does not extend to proprietary information which shall be treated as confidential". The Act further outlines the basic steps and requirements of the Ugandan Environmental Impact Assessment (EIA) process.

The Environmental Impact Assessment Regulations of 1998 further specify the rules and procedures for carrying out an environmental impact study. The Regulations provide that "[t]he developer shall take all measures necessary to seek the views of the people in the communities, which may be affected by the project". For this purpose the Regulations prescribe a minimum standard of activities to proactively facilitate access to information about the proposed development.[105]

3.7. Environmental Inspection

NEMA is given powers to designate as many officers as it deems fit from duly qualified public officers, whether by name or by title of office, to be environmental inspectors within such local limits as may be specified in the notification in the gazette.96 An environmental inspector may, in the performance of his or her duties under NEA or any regulations made there under, at all reasonable times and without warrant enter on any land, premises or vehicle to determine whether the provisions of this Act are being complied with; require the production of, inspect, examine and copy licenses, registers, records and other documents relating to this Act or any other Act relating to the environment and the management of natural resources; make examinations and inquiries to discover whether this Act is complied with; take samples of any

[103] *Section 141 National Environment Act 2019*
[104] *Section 147 National Environment Act 2019*
[105] *Regulation 12 of the Environmental I*

article or carry out periodic inspections of all establishments within the local limits of his or her jurisdiction which manufacture, produce as by-products, import, export, store, sell, distribute or use any substances that are likely to have a significant impact on the environment, to ensure that the provisions of this Act are complied with; carry out such other inspections as may be necessary to ensure. that the provisions of the Act are complied with; seize any plant, equipment, substance or any other thing which he or she believes has been used in the commission of an offence against this Act or the regulations made there under; close any manufacturing plant or other activity which pollutes or is likely to pollute the environment contrary to this Act for a period of not more than three weeks; issue an improvement notice requiring the operator of any manufacturing plant or other activity to cease any activities deleterious to the environment which are contrary to this Act; and cause a police officer to arrest any person whom he or she believes has committed an offence under this Act.

3.7.1. Forests

The National Forest and Tree Planting Act of 2003 consolidated the law relating to the forest sector and trade in forest produce. The Act aims to contribute to the conservation, sustainable management and development of forests for the benefit of the people of Uganda. Its objectives include increasing public participation in forest management, creating greater awareness for the benefits of forest cover and "to guide and cause the people of Uganda to plant trees".[106]

The law provides for the establishment of different categories of forest reserves with the involvement of local communities. In order to designate a central or local forest reserve a notice must be published in the government gazette, print media and "any other media that is likely to draw the matter to the attention of all interested persons". Local communities shall be consulted through public meetings and other means and an environmental impact assessment must be carried out. The notice must identify the location of the reserve, summarize the proposed management plan and "invite written comments and representations".[107] The same procedure applies if the government intends to amend or revoke the declaration of a forest reserve.[108]

[106] *Section 2 of the National Forest and Tree Planting Act*
[107] *Sections 7 &10 National Forest and Tree Planting Act*
[108] *Sections 8 & 11 National Forest and Tree Planting Act*

The formal requirements for declaring an area as a community forest (or amending such declaration) are less stringent. Following approval by the District Council and consultations with the local District Land Board and the local community a community forest may be established. The order made to this effect "shall be published by posting outside the office or other meeting place of the local government".[109]

Management plans for forest reserves and community forests shall be drawn up and revised every five years in consultation with the local community. They contain a description of "all matters relating to the forest" including the measures for sustainable development and "the involvement of local communities in the management of the resources". "A management plan shall be disseminated to the local community."[110]

The law prescribes a number of other information obligations. A person intending to undertake an activity that may have a significant impact on a forest shall undertake an environmental impact assessment.[111] Through the media the Minister shall notify the public of the existence of plant and livestock pests or diseases.[112] In respect of private land trees may be declared protected. But before making such an order the authorities need to "take into account the views of the affected communities".[113] The government is further required to put together an inventory of all forests in Uganda.[114]

The Act established the National Forest Authority (NFA) as the principal organ responsible for its implementation. It explicitly tasks the Authority to promote innovative approaches for local community participation in the management of central forest reserves.[115] In consultation with the local authorities it may establish Forestry Committees to advise on the "ideas, desires and opinions of the people in the respective areas on all matters relating to the conservation and use

[109] *Section 17 National Forest and Tree Planting Act*
[110] *Section 28 National Forest and Tree Planting Act*
[111] *Section 38 National Forest and Tree Planting Act*
[112] *Section 36 National Forest and Tree Planting Act*
[113] *Section 31 National Forest and Tree Planting Act*
[114] *Section 37 National Forest and Tree Planting Act*
[115] *Sections 52 & 54 National Forest and Tree Planting Act*

of" and "assist local communities to benefit from the central forest reserves".[116] Section 91 addresses the right to access information.

3.8. Environmental monitoring

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

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

[116] *Sections 62 & 63 National Forest and Tree Planting Act*

CHAPTER FOUR
COSTS AND CHALLENGES OF IMPLEMENTING PRECAUTIONARY PRINCIPLE APPLICATION

4.0 Introduction

In the implementation of the Precautionary Principle in Uganda in the bid to protect the environment and the realization of the right to a clean and healthy environment in Uganda there are certain hindrances that have to be surmounted. In this section we shall discuss these costs and challenges on implementation of the Precautionary Principle in Uganda.

4.1 Challenges in monitoring and enforcement

First, there is the problem arising from failures at different institutional linkages for environmental management. Whereas for example wetlands are held in trust by Central Government or local Government for the common good of the people of Uganda, recent examples of wetland abuse have included cases where Local Authorities have been the very violators of these constitutional and legal provisions. Where this has happened, local authorities have indicated that they converted wetlands for the sake of providing their communities with economic growth opportunities and for fighting poverty. It is therefore a dilemma that the very institutions entrusted with the protection of wetlands have in some cases not assisted the crusade for their conservation.

4.1.1 Issuance of Land Title in wetland areas by the Central and Local Governments

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

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

Wetlands Inspection Division for community wetland management planning is worthy support in this regard. However, lessons learnt from this approach are yet to be popularized to other communities.

4.1.4 Need to harmonize urban planning and land–use in general with modern wetland conservation goals.

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

4.1.5 Poverty and environmental resources use relationship

Over the recent years, there appears to be increasing cases of activities being implemented on environment in the name of fighting against poverty. While some of these activities are out-rightly not neither compatible with environmental conservation nor wise use goals, their promoters have vigorously defended them as intended to assist in the fight against poverty. Activities such as brick making in wetlands which are done for economic gains have tended to give no regard at all to conservation nor restoration of the affected wetlands. It is probable that this attitude stems from the old perception that wetlands in their natural state are wasted land.

4.1.6 Inadequate awareness of rights to clean and healthy environment

The need for public awareness on environmental rights and obligations is essential if the right to a clean and healthy environment is to be observed, respected, protected, promoted and eventually enforced through the institutional mechanisms. It is indeed true that one cannot enjoy, protect, fulfill or enforce a right which he is not aware, since for a person to be able to complain about violations of the right to a clean and healthy environment, he must not only be aware of the right,

but also of the mechanisms and institutions through which such right is enforced or protected. [117]The citizenry must therefore be educated on their rights and of the mechanisms that are available in the vindication of these rights. Civic education is also necessary if the public is to participate meaningfully in the management, protection and conservation of the environment. [118]This will raise awareness among the citizenry of their rights vis-à-vis their duties to protect the environment for ecological reasons.

4.1.7 The formulation of the right to a clean and healthy environment

This may pose a challenge in environmental protection. The right to a clean and healthy environment as captured in the constitution is anthropocentric. It is human-centered. The entitlement is individualistic with no corresponding duties on the right-holders to conserve and protect the environment for its intrinsic worth. It is provided that every person has the right to a clean and healthy environment including the right to have the environment protected for the benefit of present and future generations and to have obligations relating to the environment fulfilled.[119]The right puts human beings at the fore front.

4.1.8 Problems in enforcing environmental law and ensuring environmental rights for legal aid beneficiaries

Legal aid beneficiaries are entitled to, representation by counsel in order to lodge a complaint, to conduct negotiations or during legal proceedings. All of these activities shall be provided at no cost, and be followed-up, monitored by the state legal aid center, lawyers, or legal counselors.

The aim of providing legal aid services for the poor and marginalized groups is to protect their rights and interests, and to improve their legal knowledge. It also aims to avoid needless loss of business. Thus, legal aid plays an important role in raising people's awareness on environment, and poverty eradication. Environment is closely linked with poverty, thus poverty can induce vulnerable communities (who are heavily dependent on local natural resources) to increase use

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117 B. Kiromba Twinomugisha, "Some Reflections on Judicial Protection of the Right to a Clean and Healthy Environment in Uganda" op.cit.

[118] See Article 69 (1) (d) of the Constitution.., op.cit
[119] Ibid, Article 42.

of natural resources, causing over exploitation and the exhaustion of these resources. Poverty will lead to the lack of investment and over dependence on environment.

4.1.9 Violations of Environmental Law

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

Environmental laws also have relevance to product design in the form of emissions control, environmentally friendly materials, and energy-efficient electronic devices. They have relation to tax laws in the form of incentives for activities intended to benefit the environment, like fuel efficient vehicles and the installation of solar panels. They affect housing codes in the form of requirements for insulation, heat transfer through windows, and non-polluting construction materials. In other words, environmental laws are all around us and affect nearly every aspect of our daily lives in one way or another.

4.1.10 Policy Framework

Formulating land development policies and legislative measures in Uganda has been influenced to a great extent by its political history and continued colonial legacy. The effects of the multi ethnic, religious and diverse cultural structure of Mukono society should not be disregarded. Uganda's environmental management policy was apparent in the NEMA, where it declared its aims to balance the goals of socio-economic development and maintain sound environmental conditions. These policies guided the formulation of environmental protection measures to promote sustainable development in order to meet the changing needs of rapid development in the society.

4.1.11 Overlapping Functions between Environmental and Planning Agencies

There are problems of overlap in prescriptive and enforcement jurisdiction, since environmental concerns often cut across numerous natural resource sectors and environmental regulation is organised.

A planning authority can consult any authority, department, person or body before determining an application for planning permission. [120]However, they are not required to strictly follow the opinions of other authorities. The planning authority may choose to ignore the recommendations of the NEMA and other government agencies.

4.1.12 Lack of Resources

Enforcement of rights to clean and healthy environmental heavily relies on the allocation of resources in terms of personnel and funding necessary to carry out the enforcement functions. For instance there is little point in employing a deterrence style of enforcement if there are insufficient personnel to investigate and prosecute offenders. Shortage of skilled and experienced professionals in both the public and private sectors is a common phenomenon in Uganda as in most other developing countries. The planning and environmental department officials trained in the physical, biological and social sciences, needed to implement the environmental protection techniques, are not available.

4.1.13. Other challenges that are encountered while enhancing the rights to clean and healthy environment

The realization of rights to clean and healthy environment may also be hampered by a lack of capacity, both in terms of staff and resources. The effective enforcement of environmental legislation and policies is contingent upon the availability of competent staff and adequate financial resources. In the previous constitutional dispensation, the appointment of competent staff to implement environmental legislation and policies was more often than not wanting.

The environment and its resources are to be protected through the measures contemplated therein not necessarily for its ecological value but for the benefit of human beings, the present and future generations. The environment cannot be protected for its own sake. Even though Article 69

[120] *George Lubega Matovu, 2006*

addresses certain aspects of the environment this is not necessarily for purposes of protecting the natural heritage for its own sake but it is for the benefit of man. Nevertheless, Article 70 gives the court the power to make any order, or give any directions to prevent, stop or discontinue any act or omission that is harmful to the environment and to compel any public officer to take measures to prevent or discontinue any act or omission that is harmful to the environment[121]. There is no guarantee here that the environment will be protected for its own sake. The same is left to the discretion of the judge who may or may not make the orders as sought. The temperament of the court, its appreciation of environmental law and practice and the kind of evidence presented before it will largely determine the orders that will be made.

Even though the state is under Article 69[122] obligated to do certain things with respect to the environment, Article 42[123]is silent on the role of individuals and other private persons in protecting the environment. The right to a clean and healthy environment under the constitution is distinguishable from section 3 of the Environmental Management and Coordination Act[124]. Section 3 of the said Act states that every person is entitled to a clean and healthy environment and has the duty to safeguard and enhance the environment. Section 3 under EMCA imposes certain duties on every person to safeguard and enhance the environment. The constitution does not impose such an individualistic duty on the right-holders.

Administrative bureaucracy is likely in the process of the implementation of environmental rights as there are jurisdictional overlaps. This is due to two levels of government which are distinct and interdependent. Both levels of government are instrumental in the implementation of environmental rights, since they have concurrent and exclusive jurisdiction on environmental matters. Ambivalent administrative bureaucracy is also likely to be experienced in the process of the implementation of environmental rights by both levels of government. As already stated, environmental legislation is currently administered by several agencies established by national legislation. With the institution of counties, it is expected that more environmental agencies will soon be created. This may lead to a duplication of efforts, the splitting of resources and unnecessary bureaucracy.

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[121] *Ibid, Article 70 (2) (a) and (b)*
[122] *The 1995 Constitution of Uganda*
[123] *Ibid 172*

[124] *150 Act No. 8 of 1999., op. cit*

The lack of political will by the leadership in either level of government to implement the laws and policies of the other level may cause bureaucracy to be increased. For example, political representatives at the counties may be reluctant to enforce "unpopular regulations" from the national government for fear of destroying their political base. It must be emphasized that political support is crucial for the effective implementation of environmental rights.

4.2 Suggestions to improve implementation and Enforcement of clean and healthy environmental rights

Until recently, economic growth had failed to give sufficient attention to social and environmental effects thus resulting in increased poverty and environmental degradation. The challenges faced by most states irrespective of whether it is a developed or developing nation is to accelerate a fair increase of income and promote access to financial resources and cleaner technologies, to join economic growth with improvement of the environment and social well-being. At the same time, it should not be forgotten that not all natural resources are renewable as such it could be finite if not utilized properly. The challenge gets tougher when we take into account the rate of population growth and the need to resolve social inequalities, inherited from colonialisation. Rational economic growth and social justice must be the objectives of planning and implementation of different stages in the process of sustainable development.

Policies and strategies for the improvement of the environment require continuous strengthening of an institutional and legal framework with official environmental standards besides subscribing to numerous international treaties. Nevertheless efforts in terms of enacting codes of regulations, as a basis to define secondary standards to facilitate updating and improving the regulations as well as it enforcement must be continuous and not carried out on an ad-hoc merely to address an immediate need only. The environmental protection legislation must focus on conservation of natural resources rather than merely focusing on corrective measures. This law must include prevention of environmental damage by development activities, for planning environmental policies. It must include amongst others, the development planning process to focus on features of land and natural resources, environmental impact assessment to prevent negative impacts of production activities and construction works, and the management plans for protected areas.

The government must be prepared to promote active public participation to assure successful implementation of environmental policies and legislation. Most countries realize the importance of public participation in development planning since this will instill a sense of belonging and ensure adherence by the general public. The law can only be effective if there is concurrence at all the strategic level of the government i.e. the local, state and federal government in prevention of pollution and restoration of the environment. The Federal government must be given more powers in dealing with environmental problems rather than leaving it to the discretion of the states in order not to encroach the powers of the powers in dealing with land and natural resources as enshrined in the Constitution.

The aspect related to overlapping of powers between the environmental protection agencies can be resolved by establishing one-stop center at the Federal government level to implement environmental protection measures as well as enforcing of regulations. There must be a clearly defined environmental policy that is enforced not only by legal mechanisms, but also through adoption of different mechanisms, that operate as part of the economic performance of the nation as well as part of a code for social responsibility.

4.3 Conclusion

It is clear from the foregoing discussion that the 1995 Constitution has initiated a paradigm shift in the implementation of rights to clean and healthy environmental in Uganda. In contrast to its predecessor, the Constitution strengthens the enforcement of environmental rights, as it significantly expands the scope of fundamental rights as well as their enforcement mechanisms. This notwithstanding, the process of implementing environmental rights in the country faces numerous challenges, as discussed in this section. These challenges, however, are by no means insurmountable.

CHAPTER FIVE
FINDINGS, CONCLUSION AND RECOMMENDATIONS

5.0 Introduction

This chapter discussed the findings, conclusion and recommendation

5.1 Findings

As observed the various legislation, rotate around protecting human health and the environment against adverse effects resulting or likely to result from human activities which modify or are likely to modify the ozone layer. These measures, if implemented can contribute positively in the realization of the human right to clean and healthy environment. However, since they are only recommendations, they require political goodwill from the States for their implementation.

In addition, adoption of cleaner technologies in such areas as transport, energy production and food production can be an effective preventive measure. Scientific knowledge is also useful in helping the citizenry adopt healthy lifestyles for a better, cleaner and healthier environment. It is common knowledge that the public, mostly around urban areas, also greatly contribute to the violation of the right to clean and healthy environment mainly through pollution and other activities that lead to degradation of the environment. This does not however mean that the rural folk are excluded. They also contribute to degradation through such means as production methods that lead to degradation, over-exploitation of the limited resources, deforestation, overstocking, amongst others.

5.2. Conclusion

Evidence shows that a number of chemicals that may be released into the air or water can cause adverse health effects. The associated burden of disease can be substantial, and investment in research on health effects and interventions in specific populations and exposure situations is important for the development of control strategies. Pollution control is therefore an important component of disease control, and health professionals and authorities need to develop partnerships with other sectors to identify and implement priority interventions.

Developing countries face major water quantity and quality challenges, compounded by the effects of rapid industrialization. Concerted actions are needed to safely manage the use of toxic chemicals and to develop monitoring and regulatory guidelines. Recycling and the use of biodegradable products must be encouraged. Technologies to reduce air pollution at the source are well established and should be used in all new industrial development. Retrofitting of existing industries and power plants is also worthwhile. The growing number of private motor vehicles in developing countries brings certain benefits, but alternative means of transportation, particularly in rapidly growing urban areas, need to be considered at an early stage, as the negative health and economic impacts of high concentrations of motor vehicles are well established. The principles and practices of sustainable development, coupled with local research, will help contain or eliminate health risks resulting from chemical pollution. International collaboration involving both governmental and nongovernmental organizations can guide this highly interdisciplinary and intersectoral area of disease control.

Many of the policies are dated and many fragmented. Many of them were not formulated with contributions from informed masses nor based on nationally generated baseline data, but on adapted guidelines and standards approved by the appropriate system of the United Nations, thereby compromising socio-economic and climatic differences. Participation of the people in policy formulation and implementation is lacking.

In practice the provision and management of environmental data held by the state is subject to financial, technical and political constraints. The legal framework on access to environmental information in Uganda is still under construction and existing governance structures do not sufficiently promote accountability and transparency. The culture of secrecy within government bodies, the remaining distrust of civil society organizations and media as well as the politics of patronage remain substantial challenges for a fair and equitable management of natural resources.

On this backdrop the list of possible recommendations to address shortcomings could be overwhelming. Information technologies can greatly facilitate record management, open governance and data availability at all levels while training programmes raising the awareness for existing rights and obligations would build civil competencies and capacity across society

and government institutions. But in view of the array of needs and the general lack of resources prioritization is difficult.

In the following sections the report therefore outlines potential areas of activities before making a small number of specific, simple and what should be realistic recommendations. Recognizing the limitations of this report in terms of potential impact, the recommendations focus on a few measures which could be implemented with limited resources within the existing framework of law, policy and institutions.

5.3. Recommendations

5.3.1. Access to government information

The legal regime on access to information could be improved through a revision of the 2005 Access to Information Act clarifying provision, extending its scope of application and regularly publicizing information that has been disclosed pursuant to a request.[125] Alternatively or in addition the right to access information under the National Environment Act or the Forest and Tree Planting Act might be further strengthened and elaborated through subsidiary legislation that goes beyond the general law. In the United Kingdom, for example, there is a distinct set of rules to access environmental information the Environmental Information Regulations (which do not differ substantially from the general freedom of information law).

Equally the existing legal gaps in the oil and petroleum legislation should be closed. New provisions will provide an opportunity to not only put in place equitable arrangements for the sharing of benefits but also to involve stakeholders meaningfully. In this respect the new oil and gas policy may not go far enough. It remains particularly vague on the anticipated involvement of local communities and civil society as to future benefit sharing structures and related decision making processes. In large parts the criticism and proposals formulated by ACODE in relations to the draft of the policy remain valid.[126]

In absence of a stronger general law, new legal provisions should require civil servants in general to act openly and be responsive. Exceptions to disclosure of information should be narrow and

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[125] *See above FN 87 with reference to the various recommendations contained in the analysis of the Uganda draft bill(s) by the Commonwealth Human Rights Initiative and Article 19*

[126] *Arthur Bainomugisha, Hope Kivengyere amd Benson Tusasirwe, Escaping the oil curse and making poverty history, ACODE Policy Research Series, No 20, 2006 available at www.acode-u.org/pubs.htm*

carefully drafted. In addition, the increased utilization of the existing law and subsequent applications for judicial review could help to clarify provisions and gradually strengthen their value.

However, a focus on law reform may neglect the fundamental challenges encountered by the Ugandan society at large. If there is a lack of knowledge, capacity and structures to demand and enforce rights, any freedom of information legislation is in danger of being perceived as just another alien Western concept promoted by donors and inadequate for developing countries.[127] No matter how good the legal framework eventually may be, it is only one step in promoting open governance. The experience in Uganda and elsewhere indicates that passing a law without addressing larger questions of secrecy achieves very little.[128]

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

In order to strengthen the existing legal framework on access to environmental information and make it more relevant in practice, it appears necessary to extend the reach of the existing provisions. The current situation could be characterized by uncertainty and a degree of confusion about their implementation. But this also provides an opportunity for government as a whole (possibly through a Presidential decree) or individual ministries to initiate subsidiary legislation

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[127] *George W Kanyeihamba, Commentaries on Law, Politics and Governance, Oh Uganda! Series Book 1, Kampala, 2006*
[128] *Toby Mendel, Parliament and Access to Information: Working for Transparent Governance, Conclusions of a Commonwealth Parliamentary Association – World Bank Institute Study Group on Access to Information, held in partnership with the Parliament of Ghana, 5-9 July 2004, World Bank Institute, Washington, 2005 with examples from Commonwealth Countries*

under, for example, the National Environment Act[129], the National Forestry and Tree Planting Act[130] or the Access to Information Act[131].

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

5.3.2. Generating and disseminating information

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

Public bodies should therefore publish information beyond current legal requirements on the internet. This includes information related to their functions, the type and form of records held, relevant laws and policy documents, audited accounts, services to the public, achievements and so on. In a country like Uganda where even senior civil servants often find it difficult to obtain official documents and hold on to their hard copies with a vengeance, it would be unrealistic to expect the general availability of reports, studies, EIAs, gazettes or laws in print. But as a result of advances in information technology it should be possible to maintain basic websites for all

[129] *Section 108 National Environment Act*
[130] *Section 92 National Forestry and Tree Planting Act*
[131] *Section 47 Access to Information Act*

public institutions, which provide meaningful information in electronic format and are regularly updated.

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

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

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

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

5.3.3. Government capacity

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

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

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

Additional drivers will be required to gradually build the capacity within government to transform from a relatively secretive top-down institution to a more open service orientated one. This may entail the inclusion of additional indicators (on, for example, access to and dissemination of information) in reports measuring government performance and the

endorsement of aspirational international standards such as those embodied in the Aarhus Convention which is now open to global participation.

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