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ENVIRONMENTAL REGULATION IN UGANDA: SUCCESSSES AND CHALLENGES

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INTRODUCTION

This paper discusses environmental regulation in Uganda: Successes and Challenges. The policy framework, the constitution, the framework environmental law, various sectoral environmental laws and regulations, provide a framework for environmental regulation in Uganda. More than ten years since the framework law was enacted, the country has faced numerous challenges but has also registered some successes. I shall here below outline policy considerations that informed the law and then discuss a few provisions of the framework law and the sectoral laws that were harmonised with the framework law. I will also discuss the successes and challenges in environmental regulation, using a few provisions.

1

ENVIRONMENTAL POLICY

1.1 The National Environmental Action Plan (NEAP) and the National Environment Management Policy (NEMP)

Between 1991 to 1994 the Government of Uganda developed a National Environment Action Plan (NEAP).¹The NEAP provided a framework for addressing gaps in environment management as well as a strategy for integrating environment into the national socio-economic development.²One of the outcomes of the NEAP was the formulation of the National Environment Management Policy (NEMP) of 1994.

The overall Goal of the NEMP is sustainable social and economic development which maintains or enhances environmental quality and resource productivity on a long term-basis that meets the needs of the present

generations without compromising the ability of future generations to meet their own needs. This policy goal has informed subsequent policies such as the 2004/5-2007/8 Poverty Eradication Action Plan (PEAP) and the Plan for the Modernisation of Agriculture (PMA). The Policy provides strategies to guide and assist decision makers and resource users in determining priorities in the national context and also at the sectoral, private sector and individual level. It provides for integration of environmental concerns in national socio-economic development planning process, avenues for inter-sectoral cooperation, and comprehensive and coordinated environmental management. As a result, environmental management is now a key criteria for national socio-economic development decisions.

The Policy also recognised the need for sectoral policies in addressing the specific concerns of the identified environmental sectors. It therefore provided a framework under which several sectoral policies were developed. These include the 1995 Water Policy, the 1996 National Wetlands Management Policy, the 1996 Wildlife Policy, the 2000 Fisheries Policy, the 2001 Forestry Policy and several district environment management policies from 2000 onwards.

In addition, the policy provided a basis for the formulation of a comprehensive environmental legal framework under the 1995 Constitution and the National Environment Act.³It also provided a framework for multi-sectoral approaches to resource planning and management of natural resources. These approaches found expression in the various environmental and development policies and in legislation such as the Uganda Wildlife Act,⁴ the Water Act,⁵ the Land Act,⁶ the National Forestry and Tree Planting Act,⁷ among others.

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

2 See National Environment Act, note 1 above, section 18 (2)(a).

3 See National Environment Act, note 1 above.

4 Uganda, Uganda Wildlife Act (1996), Cap. 200, Laws of Uganda - 2000 edition (Uganda Law Reform Commission).

5 Uganda, Water Act, Cap.152, Laws of Uganda - 2000 edition (Uganda Law Reform Commission).

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

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

2

LEGAL FRAMEWORK FOR ENVIRONMENTAL REGULATION

The laws discussed below have continued to promote the concept of conservation of natural resources and sustainable development. This section will briefly discuss the successes and challenges in the use of a few environmental regulatory tools.

2.1 The 1995 Constitution of Uganda

The constitution has provisions for enhancing conservation and management of the environment and natural resources. Objective XIII of the National Objectives and Directive Principles of State Policy and article 237(2)(b) of the constitution pronounce the public trust doctrine.⁸The content and scope of this doctrine is being tested in the Government efforts to study possible change of land use for parts of the Central Forest Reserves comprised in Mabira Forest and Bugala Island in Kalangala district. It is envisaged that in the near future a public interest action may be filed in the courts to define this doctrine and the role of the state as public trustee.

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

2.2 The framework environmental law and its linkages to sectoral legislation

The National Environment Act,⁹ enacted in 1995, is the framework law on environment. It provides for sustainable management of the environment and established the National Environment Management Authority (hereafter referred to as NEMA) as the principal government agency for the management of the environment. NEMA is mandated to coordinate, monitor and supervise all activities in the field of the environment.

The framework law had the impact of triggering amendment, enactment and harmonization of sectoral laws on environment. The affected laws include the National Forestry and Tree Planting Act¹⁰ with a provision on EIA; the Land Act¹¹ under which all owners and occupiers of land are to manage it in accordance with the National Forestry and Tree Planting Act, the Mining Act, the National Environment Act, the Water Act, the Uganda Wildlife Act, the Town and Country Planning Act¹² and any other law; the Investment Code Act¹³ section 19(1)(d) of which makes it an implied term and condition of every holder of an investment license to take necessary steps to ensure that the operation of their business enterprise does not cause any injury to the ecology or the environment; the Uganda Wildlife Act¹⁴ sections 15 and 16 of which provide for EIA, audits and monitoring of projects that may have an impact on wildlife; the Mining Act,¹⁵ sections 108 to 112 of which require EIA, environmental audit, environmental protection standards, environmental restoration plans and environmental performance bonds in accordance with the National Environment Act; and the Local Government Act,¹⁶ the second schedule of which outlines environmental management areas for which district councils are responsible.

8 Like the Constitution, the section 44 (1), (4) and (5) of the Land Act thereof enshrines the public trust doctrine and provides that the government or local government holds in trust and protects for the common good of all citizens of Uganda certain environmentally sensitive areas such as natural lakes and rivers, ground water, natural ponds and streams, wetlands, forest reserves, national parks and any other land reserved for ecological and touristic purposes. Accordingly, under the Land Act, Government has no powers to lease or otherwise alienate any natural resource mentioned above but may only grant concessions or licenses or permits in respect of that natural resource. *See* Land Act, note 6 above.

9 *See* National Environment Act, note 1 above.

10 *See* Forest Act, note 7 above.

11 *See* Land Act, note 6 above.

12 Uganda, Town and Country Planning Act, Cap. 246, Laws of Uganda - 2000 edition (Uganda Law Reform Commission).

13 Uganda, Investment Code Act, Cap. 92, Laws of Uganda - 2000 edition (Uganda Law Reform Commission).

14 *See* Uganda Wildlife Act, note 4 above.

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

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

3

SUCCESSSES AND CHALLENGES OF REGULATORY PROVISIONS OF THE FRAMEWORK ENVIRONMENTAL LAW

Environmental planning as a tool of environmental management is intended to ensure that development activities and exploitation of natural resources for different purposes are harmonized with the need to conserve the environment. The publication of national state of environment reports assist in providing the much needed information for planning purposes, resource allocation, national and institutional budgetary processes. However, challenges to environmental planning both at national and district level do exist and these include: population size, growth rate, structure and distribution that negatively impacts on fragile ecosystems like wetlands, rivers banks, lakeshore, hilly and mountainous areas; high dependence on fuelwood for cooking, leading to increase in deforestation¹⁷ and land degradation; soil erosion and land degradation due to poor farming methods;¹⁸ and inadequate funding for the environment sector which is still heavily dependent on the ever decreasing support from development partners/donors, thereby calling for mechanisms to make the sector self sustaining.

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

2007. There is, however, need to maintain political support for use of EIAs at both central and local level and measures to improve public consultation. On the other hand, the challenge remains that of ensuring effecting monitoring and achieving compliance with environmental standards. In some of the recently approved projects such as the use of DDT for indoor residual spraying for malaria control and approval of environmental aspects for Bujagali hydro power development,¹⁹ it has been sought to circumvent this challenge by creating joint monitoring teams. It is yet to be seen how well these teams will operate, given their multi-sectoral nature and the limited resources at their disposal.

The other challenge relates to environmental auditing of the many industries that were set up before the coming into force of the framework law. Bringing those industries to comply with environmental standards has been very slow and laborious and takes numerous visits of environmental inspectors, several compliance schedules and agreed benchmarks intended to achieve gradual compliance. The issues that usually come up relate to the cost of clean-up operations and adoption of appropriate technology.²⁰

The use of economic and social incentives as an approach to environmental regulation has provided a basis for payment of fees, levies and charges under the permit and license system.²¹ The disincentives approach was also used in the 2002-2003 National Budget to impose tax of 50 per cent (later reduced to twenty per cent), on polythene carrier bags. It was equally used in the 2006-2007 National Budget to impose an environmental tax on imports of second hand clothing and motor vehicles of more than 10 years from the date of manufacture. In addition, local administrative units in districts such as Mukono, Iganga and Kamwenge have applied the incentive/disincentive approach in the

17 Causes of deforestation also include land conversion to agriculture and unsustainable harvesting, urbanization, industrialization and institutional failures.

18 Uganda Human Development Country Report - 2005 reports that the annual economic value of soil nutrient loss is estimated at United States dollars 625 million. This leads to loss of soil fertility and decline in agricultural productivity. See United Nations Development Programme, Uganda Human Development Country Report 39 (Geneva: United Nations Development Programme, 2005).

19 These projects have been approved in December 2006 and April 2007 respectively.

20 For instance, Uganda Breweries, makers of beer in Uganda, spend US\$ 7m in effluent treatment.

21 For example, permits under the Water Act, Cap. 152, Laws of Uganda - 2000 edition (Uganda Law Reform Commission), licences under the National Environment (Standards for Discharge of Effluent into Water or on Land) Regulations S I No. 5 of 1999 and the National Forestry and Tree Planting Act, 2003 (Uganda Printing and Publishing Corporation).

collection of charges, levies and user fees within their jurisdiction. It could be argued, however, that the use of incentives should go hand in hand with valuing natural resources, considering the cost that development activities have on the environment and calculating the contribution of the environment sector to the gross domestic product (GDP), among other factors.

NEMA, in collaboration with its development partners, has started some work along the lines of valuing natural resources. However, a lot still needs to be done in this and related areas.

Enforcement provisions include the use of environmental restoration orders, improvement notices and inspections. NEMA has successfully used these enforcement measures usually after attempts at achieving compliance have failed.²² Although recourse to court is provided for and is urged, NEMA prefers to use the above mentioned regulatory tools at its disposal, taking into account the fact that in some instances environmental awareness is not high enough to warrant use of enforcement measures, the cost of compliance may be prohibitive thereby calling for a longer compliance schedule, and poverty impacts on how the local people use natural resources thereby calling for poverty alleviation interventions, among other factors.

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

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

²² There is still a problem of the poor compliance culture of Ugandans. The general lack of respect for established environment authorities/institutions and laws coupled with political interference undermine compliance as a mechanism for environmental regulation.

4 CONCLUSIONS AND RECOMMENDATIONS

As shown above, the basis for environmental regulation in Uganda is well established. What needs to be done is to garner support for more funding to the environment sector to facilitate environment management activities including law enforcement and public awareness, information and training programmes. There is also need to: create and strengthen partnerships at community, local, national, regional and international levels; step up efforts in ensuring compliance with environmental law; continue effective restoration of degraded ecosystems; and provide effective checks and balances to harmonize development objectives, poverty alleviation and conservation interests for well informed trade-offs.

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