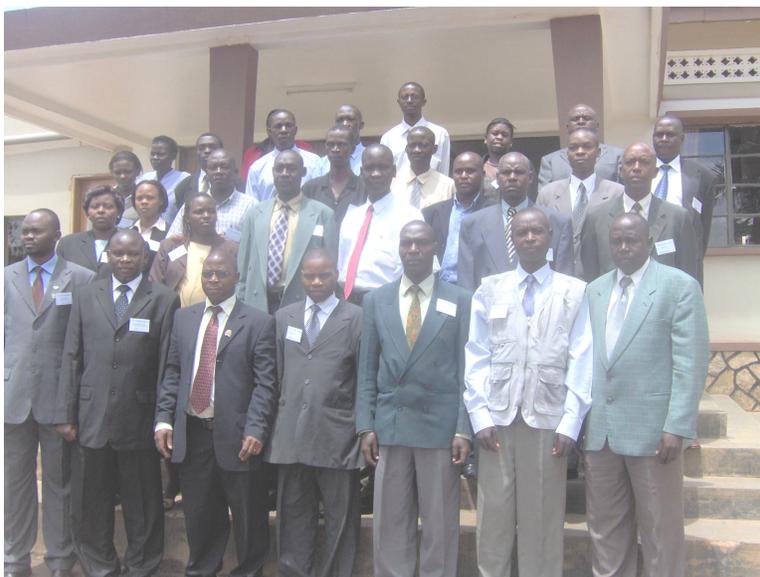


**REPORT OF THE PROCEEDINGS OF THE TRAINING  
WORKSHOP ON  
ENFORCEMENT OF ENVIRONMENTAL LAWS IN UGANDA  
FOR  
POLICE INVESTIGATORS AND STATE PROSECUTORS.**

**RIDAR HOTEL–SEETA MUKONO.**

**19<sup>TH</sup>-21<sup>ST</sup>, MARCH, 2006.**



***THE JOHN D. AND CATHERINE T. MAC ARTHUR FOUNDATION***



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*If we did little, we would do much*

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Of particular mention, are efforts of **Greenwatch** staff who worked tirelessly to ensure that the workshop was a success.

## **ACRONYMS**

|       |  |
|-------|--|
| ACODE | Advocates Coalition for Development and Environment    |
| CID   | Criminal Investigation Directorate                     |
| CIEL  | Centre for International Environmental Law             |
| EIA   | Environment Impact Assessment                          |
| ELI   | Environmental Law Institute                            |
| DEO   | District Environment Officer                           |
| DPP   | Directorate of Public Prosecutions                     |
| NAPE  | National Association of Professional Environmentalists |
| NEA   | National Environment Act                               |
| NEAP  | National Environment Action Plan                       |
| NEMA  | National Environment Management Authority              |
| UWA   | Uganda Wildlife Authority                              |
| WID   | Wetlands Inspection Division                           |
| WRI   | World Resources Institute                              |

## INTRODUCTION

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

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

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

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

Environmental law provides for three (3) major aspects of enforcement and compliance namely administrative, civil and criminal. As already noted above, a lot has been done administratively. A number of civil suits have been filed in courts of law for enforcement of environmental law and have been largely successful. The civil procedure is however long, expensive and complicated. Criminal aspects of environmental law have been largely un explored yet it has the greatest potential of effectively dealing with a wide range of environmental violations especially at grassroots' level. It has been determined by NEMA, **Greenwatch** and other civil society organisations that the reason hindering enforcement of environmental law through criminal procedure is lack of capacity.

Criminal law is enforced by the police, the prosecutors and the judiciary. **Greenwatch** and NEMA have since 2000 been conducting training of judicial officers in environmental law, both civil and criminal from the magistrates courts to the Supreme Court. The training for police investigators and state prosecutors has just begun. It is hoped therefore that once the police investigators and state prosecutors are trained in environmental law, it will enhance their capacity in investigating environmental crimes, prosecuting environmental offenders and consequently protecting the environment.

This training by **Greenwatch** in collaboration with NEMA, the **Criminal Investigation Directorate (CID)**, and the **Directorate of Public Prosecutions (DPP)** is geared towards this goal. This is the first of a series of training on enforcement of environmental laws in Uganda which are to be carried out over a period of three (3) years and funded by **the John D. and Catherine T. MacArthur Foundation**.

## About Greenwatch

**Greenwatch**'s mission is to increase public participation in the sustainable management and protection of the environment and to advocate for a legal and institutional frameworks that will enable them do so. Its objectives are:

- To promote public awareness on the protection of the environment through the use of sustainable conservation methods.
- To formulate policies that promote rational management of natural resources and sound environmental practices.

**Greenwatch** has engaged in strategic litigation as a means of encouraging public participation, access to information and access to justice in environmental issues. Greenwatch works closely with the National Environment Management Authority (NEMA), the lead agency in managing and coordinating environmental issues in Uganda and it also networks with the different Ministries in the Uganda Government related to the environment like Ministry of Lands, Water and Natural Resources, that of Energy and Mineral Development as well as other line ministries.

**Greenwatch** also works with like minded civil society organizations at the local, regional and international level. These include: the Advocates Coalition for Development and Environment (ACODE), Uganda Wildlife Society (UWS), Environmental Alert, National Association for Professional Environmentalists (NAPE), Lawyers Environment Action Team (LEAT) in Tanzania among many others.

**Greenwatch** has further worked closely with international institutions such as the Environmental Law Institute (ELI), World Resources Institute (WRI) and the Center for International Environmental Law (CIEL); all these institutions are based in Washington DC. The United Nations Environment Programme has also worked with Greenwatch on a number of programmes, and in particular developing the capacity of the judiciary in environmental law.

The Environmental Law Institute (ELI) has in the past provided support in form of funding and materials for training lawyers and the judiciary on environmental law, policy and access to justice while the World Resources Institute (WRI) has provided assistance to **Greenwatch** in the monitoring and compliance with the Environmental Impact Assessment (EIA) legislation.

## EXECUTIVE SUMMARY

The workshop was held from 19<sup>th</sup>-21<sup>st</sup> March 2006 at Ridar Hotel, Seeta and this report contains the workshop proceedings and the technical papers presented.

The workshop was attended by twenty three participants from the police force and State prosecutors from the Department of Public Prosecutions (DPP). The training was conducted and facilitated by resource persons from **Greenwatch, NEMA, DPP, Environmental Law Resources Centre and Wetlands Inspection Division (WID)**.

The aim of the workshop was to **enhance the capacity of police officers, investigators and state prosecutors in the enforcement of environmental laws** while conducting their duties.

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

The training workshop was officially opened by Mr. Richard Buteera, the Director of Public Prosecutions and attended by the Executive Director of the National Environment Management Authority (NEMA) Dr. Aryamanya Mugisha and the Executive Director **Greenwatch**, Mr. Kenneth Kakuru. The workshop lasted three (3) days and was closed by Dr. Gerald Sawula Musoke, the Deputy Executive Director NEMA.

During this period, the participants covered the following topics : the State of the Environment in Uganda which included an overview of the environment in Uganda, the major natural resources and what the state of the environment is; the legal and Institutional framework of environmental management in Uganda; history of environmental law; challenges in monitoring and enforcement of environmental laws which include lack of enough enforcement capacity and the need to transfer management and enforcement responsibility to local authorities and resource persons; Criminal aspects of Environmental Law; Criminal procedure or conduct of an investigation; evidential difficulties in prosecution of environmental offences; Prosecuting environmental crimes; what happens in court; and mainstreaming of environmental concerns into the policies, plans and programs of the Uganda police force.

The participants also engaged in a practical exercise to introduce them to what happens on the ground. Participants were also taken to a field trip to familiarize themselves with issues at the ground.

At the end of the workshop, it was evident from the presentations made by the resource persons, that both the participants and facilitators were satisfied that the objective of the workshop had been met. They recommended the need for more training and for the duration of the workshops to be increased.

## 1.0 OPENING REMARKS

### 1.1 Remarks from Mr. Kenneth Kakuru, *Director, Greenwatch*

Introductory remarks were made by Mr. Kakuru, the Director **Greenwatch** and also an advocate in private practice. He welcomed the participants to the workshop and commended them for finding time to attend the training for police officers, investigators and state prosecutors. He also commended the Executive Director NEMA, Dr. Aryamanya Mugisha and the Director of Public Prosecutions, Mr. Richard Buteera for accepting to preside over the opening ceremony.

He informed participants that **Greenwatch** was founded in 1995 with a main objective of promoting and enhancing public participation in the protection and management of the environment and support enforcement of environmental laws and standards. He noted that focus on enforcement should be the concern of every individual because it is too big a duty to be left to NEMA alone. The people themselves and each and every Ugandan citizen is best placed to protect the environment. He said this was in line with **Greenwatch**'s motto "if we all did little, we would do much." This would ensure we have a clean and healthy environment which each Ugandan citizen would enjoy.

He noted that the 1995 National Environment Statute (now the National Environment Act) and many other regulations governing environmental management were not known to many people. He further noted that although the legal and institutional framework for the protection of the environment was in place, there has not been any marked improvement in the environment.

He noted that the training is in response to the urgent need for enforcement of the law and training of police officers and state prosecutors was crucial in ensuring the success of enforcement.

He thanked the **John D. and Catherine T. MacArthur Foundation** for availing funds which made the training possible. He informed participants that **Greenwatch** with NEMA was to conduct a series of training for police officers over a period of three (3) years.

### 1.2 Remarks from Dr. Aryamanya Mugisha, *Executive Director NEMA*

In his remarks, Dr. Aryamanya Mugisha said NEMA was honoured to be a partner in this training workshop aimed at enhancing the capacity of police officers, and in particular investigators, and prosecutors in the enforcement of environmental laws. He welcomed the participants to the workshop and commended **Greenwatch** for taking up the initiative to foster the enforcement process which he added is NEMA's focus now.

He stated that it was a statutory duty for NEMA to produce a State of the Environment Report every two years and noted that at the launch of the Uganda Human Development

report, it was reported that the natural resources in Uganda have been depleted to a level where we are now depending on natural capital. He cited Kumi district as an area where there is rampant forest degradation. He further noted that in Uganda, wetland degradation and pollution are most rampant, hence the need for strict compliance with both established global and national laws.

*Below: Dr. Henry Aryamanya, Mugisha (standing) Executive Director, NEMA stressing a point while giving remarks at the Opening ceremony.*



He informed participants that since 1996, NEMA has conducted a number of workshops on environmental laws for the police force, magistrates and environmental officers. However, these have been mainly awareness raising workshops and did not focus much on enforcement, he remarked. NEMA was now looking at linking with possible international agencies for networking purposes and

also to learn from their experiences.

Dr. Aryamanya further noted that compliance and enforcement of environmental laws play a vital role in sustainable development and good governance. He noted that there is an increase in environmental violations in Uganda although NEMA is working to curb such violations using administrative measures to ensure compliance in areas like Ntungamo, Kampala and Mbale.

He emphasized the need to acquaint people with environmental laws because each of the Acts provides for regulations and penalties governing the environment and resource use. He underscored the importance of the workshop in bringing the police investigators, state prosecutors and attorneys together as their roles compliment one another.

He commended the efforts of **Greenwatch** in organizing the workshop and thanked the Mac Arthur Foundation for providing the funds. He also thanked the participants for attending the workshop which showed the importance they attached to environmental laws. (Detailed speech contained in annex 1)

### 1.3 OFFICIAL OPENING CEREMONY

#### 1.3.1 Remarks from Mr. Richard Buteera, *Director, of Public Prosecutions*

The Director of DPP Mr. Richard Buteera officiated at the opening of the training workshop for police investigators and prosecutors in enforcement of environmental laws.

Mr. Buteera said he was honoured to be invited to officiate at the opening of the workshop on enforcement of environmental laws, adding that enforcement and compliance of environmental laws will greatly increase if law enforcers and state prosecutors work together.

He emphasized the need for the public to understand that the laws are in place to protect their own environment hence there is need to raise public awareness. People need to know that protection of swamps has a positive impact on rainfall and climate. The public therefore needs to identify culprits and assist the law enforcers in this. He cited Article 39 of the Constitution of the Republic of Uganda which provides that, “Every Ugandan citizen has a right to a clean and healthy environment.” Citizens therefore need to work with prosecutors to ensure they get the right they are guaranteed in the constitution.

Mr. Buteera commended NEMA for involving the DPP in the training activities to build the capacities of state prosecutors and police officers to move forward with enforcement. Development needs to be environmental friendly hence a critical need for enforcement especially where Environmental Impact Assessment reports are not being adhered to.

***The Director, DPP, Mr. Richard Buteera , officiating at the opening ceremony of the training workshop; extreme right is the Director, Greenwatch, Mr. Kenneth Kakuru.***



He singled out the need for close cooperation between the prosecutors and investigators and urged the inclusion of magistrates because they handle cases together. He cited the drop in the levels of Lake Victoria as one of the regional problems experienced due to environmental degradation. He urged the participants to arm

themselves with the law and cooperate at all levels, nationally, regionally and internationally to ensure strict compliance to the laws.

The Director commended **Greenwatch**, the Directorate of Criminal Investigation Department, the training department of the Directorate of Public Prosecution and NEMA for coordinating the workshop. He acknowledged the contributions made by the John D. and Catherine T. MacArthur Foundation in providing funding for the training workshop. (Detailed speech contained in annex 2)

The workshop was then declared officially open.

## **DAY TWO: 20<sup>TH</sup> March 2006**

**9.00am**

### **1.4 Introductory remarks by Mr. Kenneth Kakuru**

Mr. Kakuru noted that it was essential to look at the state of the environment in Uganda, to see where we had been and where we are going. He stated that many of the problems are actually as a result of environmental problems that have not been addressed like those on distribution of resources for instance land distribution which may result into a land disputes, ownership disputes etc. The underlying cause of most conflicts is over natural resource control, use and ownership.

## **2.0 PAPER PRESENTATIONS**

### **2.1 The State of the Environment in Uganda**

*By Mr. Joseph Ogwal, Monitoring Officer, Wetlands Inspections Division.*

This presentation featured on what the environment is, what its components are, and what the general overview of environmental problems in Uganda is.

Environment in Uganda is made up of highlands, plateaus, rivers, wetlands, forests and mountains. Land use is distributed in various ways and subsistence farming takes the biggest proportion while settlement takes the smallest. These are the components of the environment. The major environmental resources in Uganda include forests like tropical forests, savannah, woodlands and plantations. Some of these are gazetted, others are in protected areas or national parks while the rest are on private and un gazetted lands. The National Forestry Authority is mandated to manage the Forest reserves which make up 15% of the total forest area. Other resources include wetlands, rivers, streams and lakes, wild life which includes plants and animal life which live and grow under natural conditions.

The colonial government set a good legacy on environmental protection and management because they placed protected areas under crown land. Environmental matters are not ranked seriously unlike politics yet it is critical to the growth of the country's economy. Threats to the environment which include population increase which leads to increase in demand for land, poverty, encroachment on wetlands and woodlands which is at an alarming rate, poaching, over harvesting of resources, over grazing and pollution.

The level of environment education and awareness is very low in Uganda. However good cultural practices like those in Buganda where clans are named after environmental resources like animals may influence the way they perceive the environment. The Uganda Constitution also recognizes the importance of the environment as a national instrument in poverty reduction, fighting disease. There is therefore need to balance development with environment.

He concluded his presentation by stressing the need to take into account the role of the political economy and the super structure (politics and religion) because political economy affects certain decisions being taken in regard to the environment. (The paper presented is contained in annex 3)

### **Discussions.**

Participants noted that land is a fixed asset but sought clarification on the state of the land as a resource in Uganda today as well as the state of other resources like water, wetlands and their management. Queries were also made on the causes of air and noise pollution and on the state of the environment in cities and what aspect of the environment needed urgent attention.

Participants were informed that forests in Uganda were being destroyed at a fast rate and the wetlands were decreasing from the previous 10-13%. It was also noted that there is massive poaching in the national parks, and the decrease in the waters of lake Victoria was caused by a number of factors like the construction of the power dam, deforestation and projects like flower farms and irrigation which use up a lot of the water. In the city, vehicles produce a lot of fumes which pollute the air.

Regarding the management of natural resources at district level, it was noted that the district officials like the District Environment officer, District Forestry Officer, District Environmental Committees under the decentralization process are mandated to manage the natural resources. The wetlands division had many departments and one of them specializes in awareness creation. It was noted that with regard to compliance to environmental laws, the central division and urban has been ranked lowest.

Participants were advised that one of the ways of mitigating land degradation is to implement regulations on the management of river banks and lakeshores. People destroy the environment by destroying the catchment areas. There is therefore need for the protection zones determined by the national laws.

Emphasis should therefore be on informing the public of the adverse effects of their actions like degrading catchment areas and the importance of buffer zones. There is therefore need to enforce compliance with the regulations by enforcing the law. Those degrading the river banks and lake shores should be brought to book.

## **2.2 Overview of the Legal and Institutional Framework**

*By Ms. Christine Akello, Senior Legal Counsel, NEMA.*

Ms. Christine Akello noted the importance of the different participants in the workshop. A brief history on environmental management in Uganda was given, focusing on the National Environmental Action Plan where different aspects of the environment were under different departments. The National Environment Management Policy was formed in 1994 and had specific policy objectives and included aspects of life, issues of conservation and preservation of the environment. It also included issues of intra generational equity and social equity.

Public awareness is important as people are able to recognise the importance of the resources which have various uses. Awareness links the value of the resources like land which is a key resource to the well being of humans. Key environmental principles included the right to a clean and healthy environment and food security and as a common policy.

NEMA works with lead agencies which are partners in managing the environment like Wetlands Inspection Division, the police force and Uganda Wild life Authority. The Constitution makes a provision for the environment and every citizen has a right to enforce the environment in courts of law. The natural resources belong to the public and the government holds them in trust for the people and therefore can not alienate them.

The two key principles in environmental management are the precautionary principle which recognizes the need to take precaution, plan effectively and monitor the activities and their effects before any catastrophe occurs. It involves carrying out an Environmental Impact Study, environmental auditing, standard setting and public awareness. The other principle is the polluter pays principle which includes use of restoration orders, use of performance bonds when one envisages great environmental harm will occur, record keeping and use of criminal law. Subsidiary legislation on environmental management include regulations including the hilly and mountainous regulations, wetlands management regulations, lakeshores and riverbanks regulations etc. which in addition to the principle laws create offences which are punishable and need to be taken into account.

The presentation was concluded by noting that environmental law does not only refer to the National Environment Act but other related laws as well such as the Land Act, Public Health Act etc. Public awareness is key to compliance but when people fail to comply, it needs to be clamped down. There is therefore need to present people with alternatives to avoid over degradation of resources by encouraging compliance to the law, especially voluntary compliance.(see annex 4 for details)

### **Discussion**

Participants observed that where NEMA authorizes a developer to undertake a project without an Environmental Impact Assessment study, law enforcers find it hard to enforce

the law in case of any violation. Participants were informed that such activities can be stopped by obtaining interim orders of injunction from courts of law and restoration orders which can be issued to undo some of the damage caused to the environment. In some instances political interference is high and presents a big challenge to the protection of the environment. However, no one has authority unless it is derived from the law. Parliament is in charge of making the law.

Participants were concerned that the law seems to be enforced selectively whereas there are many violators, one or two are singled out. They cited the case of Godfrey Nyakana whose house had been pulled down by NEMA in 2005.

NEMA clarified that Mr. Nyakana was one of the many developers whose house was located in a wetland. All the other developers had complied with NEMA regulations to stop construction in a wetland. As such his house was pulled down. Thus NEMA is not impartial or selective.

It was also noted that every land title is conditional but it is not a must that one has the right to use the land with disregard for the environment. Land use in every area is different. Plans need to be approved by Urban and Town planning authorities who also need to supervise it. The structure or activity can be closed if there is no compliance with regulations.

Participants discussed mining activities and it was noted that such activities require an EIA to be carried out. The mining carried out must therefore be in line with the EIA which also looks at how the community will benefit from such an activity as a whole.

It was suggested that NEMA creates more activities in rural areas to raise awareness in proper land management and access to natural resources. This is because the differences in land tenure systems lead to refusal to grant access to resources like wetlands as people close off access routes i.e. in Nakasongola district where land is fenced off with barbed wire leaving no corridors or access routes.

### **2.3 The History of Environmental Law**

*By Mr. Kenneth Kakuru, Director, Greenwatch.*

Mr. Kakuru began by stressing the importance of maintaining the environment we live in because it is the basis for life, hence destroying the environment means destroying life.

Because of the importance of the environment, man has had a tradition of relating to the environment starting from the Biblical times. In traditional African society they had developed customary environmental law to protect the environment and natural resources, for instance in Buganda, some forests were completely protected because they were said to be a home for spirits. They were sacred places because that is where ancestral spirits lived. He noted that the laws we inherited from colonialism were geared towards exploitation of natural resources and were not understood by the indigenous

people because the government owned the natural resources. Ownership of these natural resources was removed from the people and put in the hands of government. They put the resources under laws which were not for protection but for exploitation yet indigenous people who had protected these forests were being prevented from entering and using these forests.

The presenter stated that the problem is between people understanding the laws and how they relate to them and the use of the natural resources because our traditions and thinking are not at par with the laws we have. New laws like the Forest Act allow people to use the resources with in restricted limits. Resources are shared but in a more sustainable manner.

The other laws remained largely in the civil sphere i.e. laws on nuisance. Some laws are in the criminal sphere. The civil cases have become codified in the penal code and are now criminal offences although they traditionally did not fall under this. The Doctrine of Public Trust means resources should not be given to one person to the detriment of others but rather that the Government of Local Government holds in trust the natural resources for the citizens in Uganda.

The need to sensitize environmental officers in treating such cases as criminal to avoid it looking like a victimization issue was emphasised. People therefore need to know that environmental offences are a crime. Police officers have a right under the law to caution people. He noted the need for a new approach while enforcing the law i.e. educating the people.

He concluded his presentation by emphasizing the need to treat environmental offences as normal crimes.(details contained in annex 5)

## **Discussion**

Participants were challenged to adopt collective responsibility for the protection of our natural resources. Prosecution of criminal offenders could be by the state but individuals can prosecute through a procedure known as private prosecution. Lawyers at all levels are involved in the law making process. Aspects of compliance may shift to the public and other educators. Mr. Kakuru cited examples of cases where NEMA had been taken to court by civil society organisations like **Greenwatch**.

It was noted that there is need to widen the scope of consultation through use of media like radio stations or newspapers for sensitization.

It was also observed that the main problem was enforcement which could not be left to NEMA alone as it was just one organization. Rather, we should all work together to achieve a common objective. NEMA and Greenwatch have been working with district councils to help them enact by-laws regarding environmental management, protection and sustainable use. This was to help them put in place regulations that are stringent which they can enforce themselves. This was done in area like Tororo, Mbale, Bugiri Luwero and Rakai.

The main issue is how the laws can be taken from the various Acts and books into reality i.e. implemented.

Regarding the issue of smoking in public places, it was noted that people need to be aware of their rights and report those who infringe on them. The onus will then be on the public smoker to prove he/she was not breaking the law by smoking in public.

#### **2.4 Challenges in Monitoring and Enforcement of Environmental laws** *By George Lubega, Monitoring and Enforcement Officer, NEMA.*

In his presentation, Mr. George Lubega remarked that NEMA depends so much on enforcement agents like the police and investigators without whom they cannot achieve any success in their work to protect and conserve the environment. .

Enforcement is key in environmental issues and NEMA carries out enforcement through inspectors, negotiations with individuals to try and bring them to do the correct thing in regard to environmental management. Examples noted include use of compliance agreements with companies which spell out the roles of the companies and also the roles of NEMA, the polluter pays principle, environmental restoration orders and permitting and licensing facilities. Legal action is taken where necessary and when successful, it sends a strong signal as a deterrent to would be environmental offenders. Promoting compliance requires building confidence in a society and would necessitate publishing success stories.

Enforcement is also necessary to protect the environment and improve public health and build the credibility of environmental institutions. There is thus a need to apply and enforce the established standards to those who are polluting and those who are complying. The overall objective of enforcement is to change the behavior of the people to ensure compliance with the set laws and regulations. A good enforcement programme therefore needs to have a comprehensive plan and progress needs to be monitored to ensure compliance. The roles of key parties responsible for ensuring compliance need to be clarified to minimize friction, a realistic set of standards that are enforceable should also be set. Timely response to violations would also force people to comply.

It is important to develop laws and regulations that can be enforced and interpreted with reference to specific Acts. He noted that where there are provisions that can not be enforced, feed back should be taken back to the legislators. There is therefore need to identify the regulated community and set priorities based on the degree of environmental consequences.

The presenter noted that the poor linkage between the different institutions in environmental management is a challenge for proper monitoring and enforcement of environmental laws. With regard to this, NEMA has communicated to all districts that the District Environment Officers should sit on the Land boards when discussing issues pertaining to land and permit issuance. Lack of enough enforcement capacity on the

ground is also a big challenge. He noted that degradation like noise pollution takes place after working hours and that degradation in wetlands usually occur at night or on weekends when officers are not on duty. NEMA has been trying to sensitise the communities and empower them with correct information on environmental management. The main issue now is how to transfer management and enforcement responsibility to local authorities and to resource persons.(see annex 6 for detailed presentation)

*Below: One of the presenters, Mr. George Lubega, presenting his paper to the participants.*



## **Discussions**

In the ensuing discussion, participants opined that sensitisation should be extended to include members of parliament and ministers in order to try and minimize political interference

Participants were informed that the most urgent environmental problem that needs to be tackled in the country is the degradation of water catchment areas. This is very rampant in Kabale district where water catchment areas are used for growing crops like Irish potatoes. Restoration of water catchment areas should therefore be a priority. Other problems include solid waste management especially in municipalities, problem of enforcement in urban areas. Rural areas are more compliant than their urban counter parts. However NEMA has been working in all districts in the country specifically Mbarara, Mbale and Jinja to sensitize on proper waste disposal.

It was noted that the recent presidential directive halting eviction of people from forest reserves was misunderstood by the public to imply encroachment was not an offence. The presenter informed the participants that the directive required the concerned citizens to maintain the status quo.

Queries were raised regarding the emphasis placed by NEMA on enforcement rather than sensitization yet one of the most powerful tools in compliance is knowledge

In response to queries on selective enforcement and whether NEMA is utilising other arms of the law like the police in enforcement, Mr. George Lubega said that NEMA cannot go to enforce without a request from WID or the local government in the area. NEMA goes where they are required. He cited the example of Nakayima wetlands in Masaka where NEMA responded to requests from WID and Masaka Local government to evict those who were encroaching and degrading the wetland.

Enforcement is also done where there is a likelihood of impacting negatively on the environment and NEMA is presently carrying out sensitization campaigns in the country to create awareness among the public as a strategy to reduce environmental degradation and ensure compliance with environmental laws. NEMA uses the police where intervention is needed. However, it was noted that the police are poorly facilitated hence there is need to facilitate police officers to enable NEMA to effectively work with them.

Mr. Lubega also informed the participants that enforcement is crucial because people are now demarcating wetlands and this necessitates enforcement rather than sensitization in order to protect what is left of the fragile natural resource. Hence enforcement is overtaking sensitisation.

Article 237 2(b) of the Constitution remains valid on the issue of Public Trust where the government or local government is mandated to hold in trust and protect resources like wetlands, forests and any land reserved for ecological purposes for the common good of all citizens the Land Act, under Section 44 provides for the utilisation of land in accordance with other laws like the NEA. Participants were informed that those who developed land in wetlands and got a land title for that land before 1995 when the NEA was enacted need to be compensated if they are to be displaced.

## **2.5 Criminal Aspects of Environmental Law**

***By Mr. Vincent Wagona, Ag. Principal Senior State Attorney, Directorate of Public Prosecutions***

Mr. Vincent Wagona began his presentation by noting that the one aspect of protecting the environment which should be taken serious is to criminalize certain acts or offences. Other strategies used in environmental protection include inspections, compliance promotions, monitoring and civil litigation.

Although offences under both the Penal Code and the NEA are misdemeanors, the NEA provides a more effective approach to environmental protection because it includes the option or addition of a substantial fine and is therefore likely to be more deterrent. The NEA provides for various standards relating to air, water and discharge of effluent and noxious smells. Many of the offences carry a fine or imprisonment or both.

An EIA is carried out by a developer after the project brief has been approved by the Executive Director of NEMA and if it is determined that the project will or is likely to have negative impacts to the environment. It is the duty of the developer to comply with the standards set once the project has been approved. Environmental restoration orders are given by NEMA and failure to comply tantamounts to an offence for which one is prosecuted. Offences are also created in the area of record keeping. Failure to keep records of the amounts of wastes, by products and how far effects generated are complying with the NEA. Certain activities are allowed as long as a person has a permit which also has conditions attached.

It was noted that environmental law caters for anticipatory injury and provides for it unlike ordinary criminal law. Under ordinary criminal law, criminal responsibility is individual but under environmental law, those who are not even proprietors of the project can be charged. Environmental offences impose strict liability however, like any other criminal offence, causation has to be established. However there is need to consider the effect of conviction of an environmental offence.

The presenter concluded by informing participants of the current efforts that are in place to designate police officers as environmental inspectors who have various powers under the NEA.(detailed presentation contained in annex 7)

## **Discussions**

Participants raised queries on why Grade I Magistrates should hear environmental cases. It was established that Grade I or Chief Magistrates are the courts of first instance. Environmental cases have been designated at courts of first instance. It was noted that imprisonment may not be the best alternative in environmental offences. The best option would be restoration. However, imprisonment serves to deter others from committing these offences. A combination of both imprisonment and restoration was noted to be better in environmental management.

Participants were informed that all areas of environmental importance are free for inspection and access to information provided for under section 81 1(a) (i) and j of the NEA. It allows for environmental investigators to enter any land, premises or vehicle to determine whether the provisions of the NEA are being complied with.

Developers are supposed to take measures not to pollute the environment beyond the limits they have been allocated. When making arrests, there is no particular number of witnesses required before a case can be taken to court. Normally, the “prima facie” is what is considered. The purpose is to satisfy prosecutors that the case is valid. Before a case is taken to court, the prosecutors or police officers need to have the relative documents and facts to back up the matter for which they have gone before court.

## **2.6 Conduct of Investigation/ Criminal Procedure:** *By Doris Akol, Environmental Law Resources Centre.*

Ms. Doris Akol presentation focused on what is involved in the conduct of investigation and what the purpose of investigation is. She affirmed that the purpose of conducting investigations in environmental offences is to ensure successful prosecution of environmental cases.

Criminal investigation is the deliberate examination or inquiry of available evidence aimed at finding out whether or not and by whom a crime has been committed. Evidence includes statements of accused persons, judicial notices and admissions. Initiating the process of investigations may involve surveying the site to gather whatever type of information there might be. Investigation requires storage of samples taken and forwarding them to the relevant laboratories. Analysis of the samples should be followed by an interpretation coming out of it. Results got from the analysis have to be reported. Investigations must also involve follow up investigations.

The need for specific reporting to document when and how the offence was committed was noted, including who the parties involved are, whether there is a noticeable impact on the environment or eco system i.e. noise pollution. Information from other witnesses also ought to be documented and when dealing with an offender, his or her statement should be recorded.

The presenter noted that by virtue of the fact that the laws have made environmental offences crimes, offenders should be treated like other criminal offenders. It is the burden of the prosecution to prove that any evidence presented in court is authentic, whether its physical, documentary or statements made. When presenting evidence, the standard of proof (primary evidence) should be protected so that the evidence is not likely to be challenged. It must not be prejudicial and hearsay should be avoided. The need for proper storage of collected evidence was highlighted as this would preserve the integrity of the collected evidence.

In conclusion, the participants were cautioned against giving exhibits to un authorized people and ensure that a chain of custody is maintained by placing the evidence under the investigative teams secure at all times. She stressed the importance of labeling and marking for all intents and purposes to show what was already extracted from the scene.(refer to annex 8 for detailed presentation)

### **Discussions**

It was noted that there have been several convictions relating to environmental crimes although these have not been high profile cases. However, there are challenges to getting a conviction because magistrates sometimes leave cases pending for long which may frustrate the efforts of prosecutors.

It was also observed from their response that few of the participants had handled environmental cases. This is because most environmental offences are not reported to the Police. Emphasis should now be on sensitising people on their rights with regard to the environment. With respect to this, there is also need to sensitise Kampala City Council officials on proper environmental management, compliance and enforcement.

Participants recommended the use of stringent laws like those in the NEA because the fines adhered to under the Public Health Act are too low hence too lenient.

Participants noted that most cases start up as environmental cases but end up being diverted for instance, in some circumstances, attempts by police officers to arrest offenders are futile because the police end up being victimised.

It is important for police officers, NEMA and forestry authorities to forge linkages to work together for environmental protection rather than them being at logger heads.

In response to police officers request to have NEMA officials in all districts to guide them in environmental issues, police officers were urged to take an initiative in environmental cases rather than waiting for NEMA input. Police should therefore follow up cases of environmental degradation as other criminal offences that have been reported. Police officers and state prosecutors were cautioned against considering environmental offences trivial or difficult.

Participants noted the need for capacity building among police officers. Police was originally trained to deal with criminal matters but have been reluctant to deal with environmental offences like arresting those who smoke in public places. Police officers were challenged to become more vigilant.

**Greenwatch** and NEMA were tasked to encourage people reporting environmental offences to lodge their complaints with the Police and Directorate of Public Prosecutions to enable the Police carry out their activities effectively. Not many people can afford to take civil matters to court so there is need to inform people that where their environmental rights are being abused or infringed upon, such should be reported to the Police. NEMA was urged to take up a leadership role in enforcing environmental laws and liaise with other environmental offices as it has been doing with organisations like **Greenwatch** to ensure compliance. Participants were informed that NEMA is in the process of designating Police officers as environmental inspectors. It was reported from NEMA that there is limited financial capacity to publish materials for all police officers; rather the police training curriculum should include aspects of environmental management, protection and compliance.

The presenter noted that environmental offences are not given as much priority as other crimes. She encouraged the Police officers and state prosecutors to sensitise the people on lodging complaints against environmental offenders.

Participants were also informed that when dealing with environmental categories of offences, they can be divided into two: urban and rural cases. Urban cases refer to those

relating to development and to those relating to production. Such cases have records, are detailed and more complicated. They need to be broken up and have simple details dealt with first. For instance, whether the developer has a licence to operate and whether the licence complies with the Public Health Act or with issues on public safety.

It was noted that the problem of starting at the top with big developers creates fear which forces the big developers to hide under political protection leading to political interference and pressure which may disrupt the investigation. Rural cases focus on wetlands, deforestation and encroachment on forest areas. They are difficult to deal with because they involve a large number of people finding a source of livelihood in rural areas.

Mr. Kenneth Kakuru cited the regulation which banned smoking in public places. it opened the way for other cases dealing with a clean and healthy environment to curb activities which infringe on peoples rights. He cautioned police officers and state prosecutors on the need to be tactful when dealing with cases that have political interference. He encouraged the use of “name and shame” because big developers do not like bad publicity.

## **2.7 Evidential difficulties involved in Prosecution of environmental offences**

*By Ms. Doris Akol, Environmental Law Resources Centre.*

Evidence gathering and preservation is a critical step in prosecuting all cases including environmental cases. It is not always easy to gather evidence for investigation of environmental crimes because the evidence is not always obvious. This is because of the delicate nature of the evidence which makes it hard to preserve or store for instance evidence for noise pollution.

Most offences are of a continuous nature which poses a question of at what point in time does the evidence apply. It was noted that defining the ingredients of the offence may be difficult i.e. wetland degradation, is the offence the change in characteristics of the wetland, dumping or pollution? It may be hard to conclude that an environmental crime has been committed. The problem with environmental offences is they connote socio-economic aspects i.e. they may be the only source of livelihood for the offenders. In addition, there is unavailability of technology to analyse environmental evidence like air pollution. Proving intention and willfulness of environmental offences is not so easy to do.

The presenter also noted that the majority of our judicial officers may not quite understand the concept of an environmental offence. Proving beyond reasonable doubt (the standard of proof) is also difficult to show. She noted the need to amend the Evidence Act to allow certain evidences for instance presenting evidence in electronics format which is currently not allowed.

She concluded her presentation by recommending strategies to help in the conduct of a needs assessment. These include exposure to the different environmental laws on a frequent basis so as to know when an environmental offence has been committed and training in sampling techniques to be used at the crime scene. However, specialist training in these areas is costly especially given that some of the aspects are very scientific.(detailed presentation contained in annex 9)

## **Discussion**

It was noted that prosecutors and police officers need to understand what they are trying to prove when dealing with specimen charges. Participants were urged to know the Act under which they were applying and to understand the actual offence for which someone was being charged.

Participants were informed that civil society would like to see the creation of a specialized Police unit for the environment similar to the traffic police, narcotics, fraud or Interpol. Each of these special police squads were established to target a particular aspect of society and are specialized to allow police to deal with mischief effectively. This allows proper investigation, evidence gathering and sometimes prevents a crime before it occurs. However the way police officers commence their investigations and the way they look for evidence or commence prosecutions seem to differ. A specialized section of the police dealing with environmental crimes would be able to stop environmental crimes before being committed and apprehend the culprits. It would also make people comply with environmental laws, help in coordinating with other security agencies that deal in crime and it would be easy to fund because it is a specialized group with specific needs.

It was also noted that although environmental law cuts across almost all spheres of life and law, certain issue need to be dealt with by a special group like the commercial court, land division, criminal division and land tribunals.

Water catchment degradation was identified as the area where there is the most degradation hence it should be prioritized.

### **2.8 Prosecuting Environmental crimes**

*By Mr. Kenneth Kakuru, Director, Greenwatch*

In his presentation, Mr. Kenneth Kakuru said that the procedure for commencing an investigation starts with a complainant making a complaint to the police. The Police then investigate and get a lead from the information provided by the complainant.

Statements given provide documentary evidence. Other evidence is created by the police through dusting for finger prints, photographs and analyzing for evidence. Police can use their expertise to search for evidence and make a case against the offenders. He noted that environmental cases are not so difficult to investigate because they are usually committed

against the public rather than an individual. Police officers should therefore take the initiative, investigate and compile files or cases for instance take photographs of a house being constructed in a wetland etc.

The presenter stated that urban cases are easier to investigate because the area to cover is not so wide unlike the rural areas. Environmental cases will be easy to prosecute once it is proved that the person is degrading the environment, it is up to the offender to prove he/she has carried out an EIA, has a license or is complying with environmental regulations. Some of the environmental cases are anticipatory and result from whether the person is harming the environment or is likely to harm the environment for instance through storage of dangerous chemicals. The underlying cause of most crimes is environmental resulting from control and use of natural resources. When investigating crimes, it's essential to note if its underlying cause relates to the environment.

In some instances, members of the public may fear to give evidence. Health inspectors or town planners can therefore be used to provide evidence and save the public from having to be called as witnesses. The culprit should be charged and cautioned in order to note what his/her line of defense will be.



*A cross section of participants during one of the training sessions.*

## **2.9 What happens in Court?**

***Mr. Vincent Wagana, Acting Principal State Attorney, Directorate of Public Prosecutions.***

It was noted that police officers will be able to carry out proper investigations when they are designated as environmental inspectors. They will be able to make use of photographers and analysts who are working on request to make a surveillance of important areas so that police can observe why and how the crimes are being committed. There is need to pay attention in order to have sufficient evidence of what is being done.

Charges are preferred basing on the evidence on record. Regulations may provide a more specific offence on that record. It should also be noted that the accused will also come up with a defence; common defence claims include “an accident” in criminal law.

Sentencing should focus on deterring the offender and other people from committing similar offences and restoration to try and restore the environment. There is provision for fines and imprisonment and confiscation of equipment being used to degrade the environment can also be done.

## **Discussions**

Participants were informed that the onus is on the prosecutor to explain the law to the magistrate or Judge presiding over a particular case and how the developer’s actions contravene the law.

Police detectives/investigators were urged to liaise with the District Environment Officers in each district as these people work hand in hand with NEMA. Police officers can use them to ascertain that an environmental crime is being committed. Participants were also encouraged to take the initiative and consult environmental officers as well as to sensitise the community through the DEO’s offices. Community service can also be used as an alternative to imprisonment to enable the offender to restore the environment and to decongest the prisons.

### **2.10 Mainstreaming of Environmental concerns into the Polices, Plans and Programmes of the Uganda Police force:**

*By Mr. Ronald Kaggwa, Environmental Economist, NEMA.*

In his presentation, Mr. Ronald Kaggwa said it is relevant for environmental matters to be integrated in the prosecution process. He noted that many insecurity problems have their roots in environmental issues. Police have been handling violent crimes such as murder and robberies and have neglected environmental cases to NEMA alone. It is essential to draw a link with peace, security and the environment as well as to integrate conservation and sustainable use of the environment and natural resources.

Mainstreaming the environment implies recognition of the environment and taking deliberate actions. The problem needs to be recognized, plan a course of actions to take and then budget for the planned activities. The role of police officers includes:

- monitoring and enforcing compliance to environmental laws like effecting evictions from sensitive eco systems,
- develop enforcement strategies against environmental crimes,
- arrest environmental offenders,
- increase awareness of environmental crimes in the city and
- to mainstream the environment into their plans.

He noted that Uganda has got a poor compliance culture and so the police should arrest environmental offenders just like any other crime because environmental crimes have far reaching effects than other crimes i.e. they are transboundary and affect generations.

The presenter noted that a key principle of mainstreaming is understanding the impact of environmental crimes on public safety, security and development in general. Police officers should exploit their comparative advantage and see that they mainstream environmental activities, identify institutions like NEMA or Greenwatch to look at in the main streaming of environment and develop specific environmental plans. There is also need to identify resource requirements. When mainstreaming, there is need to look at the relationship between the environment, public peace, safety and security and how this relationship affects the maintenance of law and order. He noted that the impacts the police make on the environment through things like tear gas should be taken account of.

He concluded his presentation with recommendations on the way forward in mainstreaming environmental concerns. This includes

- sharing collected data with stake holders,
- developing an integrated plan of action,
- integrating environmental concerns into plans and policy of the police force and
- reviewing the police and plans regularly.

*(Detailed presentation in annex 10)*

## **Discussions**

Participants suggested that more seminars are needed to sensitise the police force. They stressed the need for joint training workshops for NEMA officials, District officials, police officers and public prosecutors to liaise with each other so that even the lower cadres of the police force are sensitised of the importance of compliance with environmental laws.

Participants were urged to read the various Acts and note where changes need to be made to reflect the current situation on the ground. It was realized that they need to disseminate the information that they have acquired to cadres at lower levels. The state of the environment reports that are produced biannually by NEMA were said to be useful references during research.

Participants also observed that it was necessary to train police officers and equip them with skills to enable them handle environmental issues. Environmental training should therefore be streamlined in the police officers training curriculum as a more sustainable approach to handling environmental offences. It was suggested that a special office should be created which handles only environmental matters



*Another cross section of participants in one of the sessions.*

### **3.0 Live stimulation exercise**

#### **The moot**

During this session, participants were given a simulation exercise basing on real life experiences that they could come across in their day to day operations.

They were divided into three (3) groups and given a moot problem which they discussed and the results are as follows.(moot problem contained in annex 11)

**UGANDA POLICE**

**CHARGE**

UGANDA Vs PATEL VIRAN AGED 40 YRS, INDIAN B/MAN OF R.C.C

**STATEMENT OF OFFENCE**

- C1. Failure to prepare Environmental Impact Assessment c/s 97(b) and 103 of the Environmental Statute 1995.

**PARTICULARS OF OFFENCE**

Patel Viran on the 4<sup>th</sup> day of January 2006 at Lutembe beach, in the Kampala District failed to prepare Environmental Inspection Assessment.

**CONTINUATION OF OFFENCES**

2. Obstructing environmental officers in execution of his lawful duties c/s 96 (a) and 103 of environmental Statute 1995.
3. Refusal to comply with Environmental restoration order C/S 102 (a) and 103 of the Environmental Statute
4. Depositing substances on wetlands C/S 37 (1) (d) of Environment Statute 1995

**EVIDENCE REQUIRED**

1. Oral evidence
2. documentary –title
3. exhibits ( sample of murrum) from the scene
4. government analyzing report
5. photographs of the crime scene

**PUNISHMENTS**

1. imprisonment for 18 months or a fine of 18 million or both
2. Imprisonment for 12 months, or a fine of not less than 120,00 and not more than 12 million or both.

**Group 2**

**UGANDA POLICE**

POLICE FORM 53  
ENTEBBE POLICE STATION  
22.03.2006  
CRB 01/2006

**CHARGE**

UGANDA VS IRAN PATEL M/A AGED 45 YEARS, AN INDIAN NATIONAL  
RESIDENT OF SEETA IN MUKONO DISTRICT.

**STATEMENT OF OFFENCE**

CT I Failure to submit a project brief to NEMA contrary to section 97 (a) of the NEMA  
statute 1995

**PARTICULARS OF OFFENCE**

Viran Patel during the month of January 2006 at Lutembe beach in Wakiso  
District, failed to submit t NEA his project brief contrary to section 20 of the  
NEMA statute

CT II **STATEMENT OF OFFENCE**

Failure to prepare the E.I.A report C/S 97(b) of the NEMA statute

**PARTICULARS OF OFFENCE**

Viran Patel in the month of January 2006 at Lutembe beach in Wakiso District  
failed to prepare and avail E.I.A report to NEMA as required for by NEMA

MR. OBONYO ALEX. D/SP  
OFFICER IN CHARGE

-----  
MAGISTRATE

### **Possible offences**

1. Failure to submit a project brief to NEMA C/S 97(a) of the NEMA statute 1995
2. failure to prepare an EIA C/S 97 (b) of the NEMA statute 1995
3. failure to comply with a restoration order C/S 102 of the NEMA statute
4. hindering/obstructing environmental inspectors C/S 96 (a) NEMA statute

All against Viran Patel

### **The would be witnesses**

1. Joshua Obonyo
2. the two inspectors who had gone to the site and were chased
3. the tow planner
4. officials from NEMA
5. Jova Musoke
6. government analyst/chemist

### **Evidence required**

1. material (exhibits – murrum)
2. drums recovered from the scene
3. oral testimonies
4. reports (documentary evidence)

### **Possible defence**

1. claim of right
2. permission from UIA

### **Possible punishments**

1. imprisonment of 18 months or a fine of not less than 180,00 and not more than 18 million or both (section 97)
2. imprisonment of 12 months or a fine not less than 120,000 and not more than 12 million or both section 97 (a)
3. restoration order by court
4. community service
5. cancellation of licence

### **Group 3**

#### **Possible charges**

1. failure to submit a project brief to the lead agency NEMA C/S 20 of NEA 1995
2. Failure to prepare an EIA C/S 20 (3) of NEA of 1995
3. obstruction of Environmental Inspectors in execution of their duties C/S 96 (9) of NEA of 1995
4. failure to disclose information about management of waste chemicals or radioactive substances C/S 100(h) of NEA of 1995
5. failure to comply with environmental restoration order C/S 102(a) of the NEA 1995
6. Reclaiming or draining a wetland C/S 37 (1) (a) and 103

#### **Possible witnesses**

1. Environmental inspector
2. Mrs. Jovah Musoke
3. Johnson Obonyo
4. NEMA official who issued the restoration order.

#### **Evidence**

- i) A report fro government chemist
- ii) A copy of the restoration order
- iii) Photographs of the scene (Soco)
- iv) Oral testimony from witness.

#### **Possible Defenses**

- i) Claim of ownership i.e. land title
- ii) License for investment
- iii) A letter from the minister
- iv) Approved building plan

#### **Likely punishment**

- i) Imprisonment of a term not exceeding 1.8 months or a fine not less than 180,000 and not more than 18,000,000 or both
- ii) As above
- iii) Imprisonment for a term not less than 12 months or a fine not less 120,000 and not more than 12,000,000 or both
- iv) Imprisonment for a term not less than 36 months or a fine of not less than 360,000 and not more than 36,000,000 or both
- v) Imprisonment for a tern not exceeding 12 months or a fine not less than 12,000 and not more than 12,000,000
- vi) Imprisonment for a term not less 3 months or a fine not less than 30,0 and not more than 3,000,000 or both.

UGANDA POLICE

ENTEBBE POLICE STATION  
CRB 002/2006  
Date 21/3/2006

**CHARGE**

UGANDA Vs VIRAN PATEL M/A 50 yrs  
A RESIDENT OF MUYENGA

**STATEMENT OF THE OFFENCE**

COUNT 1 Failure to submit a project brief C/S 20 (1) of Environmental Act 1995

**PARTICULARS OF OFFENCE**

VIRAN PATEL on 4<sup>th</sup> January 2006 at Lutembe beach in Wakiso District failed to submit a project brief to a lead agency to wit NEMA.

COUNT 2

Failure to prepare an EIA C/S 20 (3)(a) of Environmental Act

**PARTICULARS OF THE OFFENCE**

Viran Patel on 4<sup>th</sup> January 2006 at Lutembe beach in Wakiso district failed to carry out an EIA on a project to check its impact on the environment.

COUNT 3

**STATEMENT OF OFFENCE**

Obstruction of Environmental Inspectors in execution of their duties C/S 96 (a).

**PARTICULARS OF THE OFFENCE**

VIRAN Patel on the 4<sup>th</sup> of January 2006 at Lutembe beach in Wakiso District obstructed environmental Inspectors in execution of their duties by chasing and threatening them.

COUNT 4

**STATEMENT OF OFFENCE**

1. Failure to disclose information about management of waste chemicals or radioactive substance C/S 100 of the NEA 1995.

**PARTICULARS OF THE OFFENCE.**

Viran Patel on 4<sup>th</sup> January 2006 at Lutembe beach in Wakiso District failed to disclose information about the management of waste chemicals to lead agency to wit NEMA

#### **4.0 Recommendations and way forward.**

It was resolved that:

- A special office/ unit be created which handles only environmental matters on the police force.
- The scope of consultation be widened to include the media both electronic and print media.
- Police liaises with District Environment Officers, NEMA and other authorities to forge linkages in environmental management and protection
- More sensitisation is needed and should be extended to include decision makers
- Kampala City Council officials be sensitized on proper environmental management, compliance and enforcement
- More stringent and deterrent laws need to be applied for environmental offences to stop would be offenders from degrading the environment
- More capacity building training workshops be conducted for police officers in other aspects of environmental management especially in rural areas
- Police to follow up cases of environmental degradation as other criminal cases that have been reported
- Environmental offences be lodged with the Police and the DPP
- Initiative should be taken by police officers and prosecutors to consult with environmental officers and sensitise the community through the DEO's offices.
- Joint training workshops for NEMA officials, District officials, police officers and public prosecutors be held to have very informative discussions from the mentioned stakeholders
- Environmental training be streamlined in the police officers training curriculum

## **5.0 CLOSING REMARKS**

### **Remarks by Mr. Kenneth Kakuru**

In his remarks, Mr. Kenneth Kakuru expressed his gratitude to the participants for attending the workshop. The purpose of the workshop was to train police officers, in particular investigators and state prosecutors on aspects of enforcement of environmental laws to enable them enforce environmental laws. The participants were commended for their punctuality and participation in the discussions held during the training sessions.

He reiterated the need to put emphasis on enforcement because of the environmental degradation that is rampant. The participants were informed that NEMA and Greenwatch have been involved in such trainings and sensitisation programs for judicial officers including magistrates and Judges, and that the essence of involving the enforcement officers was to complete the chain of how events should occur.

He urged the participants to use the information and knowledge they had acquired to bring about compliance with environmental laws when they report back to their stations.

### **5.1 OFFICIAL CLOSING CEREMONY.**

Dr. Gerald Sawula Musoke, the Deputy Executive Director NEMA officiated at the closing of the workshop. He said he was honoured to officiate at the closing of the workshop.

He noted that NEMA and Greenwatch have been working together for a long time to ensure environmental management and sensitise communities on compliance with environmental laws. NEMA attaches great priority to training as a way of capacity building and awareness creation.

He commended the organizers of the workshop which he said presented an opportunity for the various participants to meet their colleagues and interact and share experiences on the challenges they have met while dealing with environmental offences. He reiterated the need for development that takes into account environmental protection so that resources are used sustainably to avoid depletion.

Uganda has a very poor compliance culture as environmental crimes have thus become increasingly rampant and more complex. The participants were urged to use the skills and experiences acquired from the workshop to encourage and promote compliance and enforcement of environmental laws.

He expressed his sincere appreciation to Greenwatch and NEMA for organizing the workshop. He extended his gratitude to the participants for taking time off their busy schedules to attend the workshop. He also appreciated the dedicated efforts of the staff of Greenwatch for their efforts in making the workshop a success. (detailed speech contained in annex 12)

At this juncture the workshop was officially declared closed.

## **WORKSHOP EVALUATION**

At the end of the Magistrates training on environmental law, an evaluation of the workshop was done and the following aspects were realized;

**1 Convenience of the workshop timing.**

Most of the participants received their invitations on time.

**2. (a) Convenience of the venue**

The venue chosen was rated to be convenient

**(b) Rating of the venue**

The rating of the venue was good

**3. Reception on arrival by workshop organizers.**

Participants said they were well received by the workshop organizers

**4. Rating of the workshop program in terms of;**

(a) Topics- very good

(b) Duration- short

**5. Rating of the presentation on each topic by the Resource persons.**

**(a) State of the environment n Uganda.**

Fair

**(b) Overview of the Legal and Institutional Framework for Environmental Law.**

Good

**(c) Monitoring and Enforcement of Environmental Laws in Uganda.**

Good

**(d) Criminal aspects of environmental law.**

Good

**(e) Conduct of investigations/Criminal Procedure.**

Good.

### **DAY TWO**

**(f) Introduction to Environmental Law.**

Good

**(g) The Role of Investigators, NEMA, DPP, Courts in conducting environment Investigations.**

Fair

**6. Rating of the workshop materials**

(a) **Case book-** Very good

**7. Comments on whether expectations have been met.**

Participants were satisfied that most of their expectations had been met and suggested some areas of improvement.

Improvements suggested;

- (i) Need for more workshops\ follow up workshops
- (ii) More time
- (iii) Participants need to be involved in some presentations
- (iv) More sensitisation at regional levels
- (v) Invite and equal number of male and female participants especially when dealing with police officers.

**8. Comments on the need to hold another workshop on aspects of environmental law.**

- (i) Participants were of the view that another workshop on environmental law is necessary to internalize the concepts and discuss the cases.
- (ii) To evaluate achievements of the first workshop
- (ii) Because of the global trends in environmental management, there is need to

**9. Suggestions to improve on future training**

- (i) More time \ longer training
- (ii) Increase days of training and provide more presenters knowledgeable in human rights.
- (iii) Circulate enough literature/ photographs
- (iv) More sensitisation
- (v) Invite magistrates and other judicial offices for a joint workshop

**REMARKS BY DR. ARYAMANYA MUGISHA, EXECUTIVE DIRECTOR, NEMA AT THE OPENING OF THE TRAINING WORKSHOP TO STRENGTHEN THE CAPACITY OF POLICE INVESTIGATORS AND STATE PROSECUTORS TO ENFORCE ENVIRONMENTAL LAWS IN UGANDA.**

Distinguished guests, Greenwatch the organizers of this workshop, Ladies and Gentlemen.

NEMA is indeed honoured to be a partner in this important **workshop to strengthen and enhance the capacity of the Police and State Prosecutors to enforce and comply with environmental laws and requirements**. Since its inception in 1995, NEMA has been conducting a number of workshops on capacity building and enforcement of environmental laws. The Police force, environmental inspectors, lawyers, state prosecutors, magistrates and judges are some of the officials that have benefited from these trainings. A small number of other enforcement officers have also benefited from these trainings.

NEMA has also conducted related environmental courses in conjunction with Greenwatch for the District Environmental Officers under the Local Government, Civil society and Members of Parliament, among others.

We are faced with environmental degradation everywhere, nationally and globally. At the global scene, we are faced with effects of global warming e.g. climate change which have impacted on natural water sources to mention but a few. Regional reports indicate that severe and prolonged drought spells have killed livestock in many cattle corridors due to lack of pasture and water and also increased conflicts due to settlements from migrating communities. All these catastrophes, have led many of our citizens to demand strict compliance with global, regional and national environmental laws at all levels.

In addition, it is important that we develop and provide creative ways of harmonizing environmental interests with economic development within the context of enforcement. Successful approaches of economics and enforcement should be documented to raise awareness of those who think that the two are not complementary.

I also believe that compliance and enforcement of environmental laws plays a critical role in maintaining and strengthening the rule of law, good governance, and sustainable development.

As you are aware, capacity building, especially in the enhancement of skills for better enforcement of environmental laws, is a continuous process.

You may also be aware that environmental violations are increasing in Uganda. NEMA and the lead agencies in environment have been taking administrative measures to ensure compliance. There are instances, however, where we have to take stronger action to

enforce observance of environmental laws. That is why we need each of you – to participate in enforcement action, within your respective mandates.

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

This course is particularly important because it brings together the investigators and prosecutors. A chain of action must be established from the commission of the environmental offence to prosecution and sentencing.

Enhancing the capacity of the Police, especially to investigate and prepare files for environmental crimes is an important step that will take investigations of environmental crimes to a new level. I hope that this workshop will equip the investigators with skills of handling such crimes and to handle them expeditiously. I also hope that the state prosecutors will be equipped with knowledge and skills on how to conduct prosecutions involving environmental crimes.

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

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

Allow me to commend the sponsors of this workshop; the John D. and Catherine T. MacArthur Foundation for providing the financial support to make this training possible.

I thank you all.

**SPEECH BY MR. RICHARD BUTEERA, DIRECTOR, DIRECTORATE OF PUBLIC PROSECUTIONS AT THE OFFICIAL OPENING OF THE TRAINING WORKSHOP FOR POLICE OFFICERS, INVESTIGATORS AND STATE PROSECUTORS IN ENFORCEMENT OF ENVIRONMENTAL LAWS.**

Distinguished guests, the organizers of this workshop, Ladies and Gentlemen.

I am grateful to the organizers of this workshop for having invited me to open the workshop and for inviting our staff to participate in this workshop **on enforcement and compliance to environmental laws in Uganda.**

The Directorate of Public Prosecutions as an institution is interested in working with other stakeholders and the general public on issues of law enforcement and compliance not only on environmental laws but law enforcement and compliance with the laws generally.

Enforcement and compliance with environmental law will be greatly increased if the law enforcement personnel are well trained and work together in their operations.

We need to work together and share views and experiences. This will certainly increase our capacity to perform.

As we train the law enforcement officials, however, we should consider training and sensitizing members of the public and involve them in decision making.

The principle of Public participation in decision making processes at all levels in the management and enforcement of environmental laws is very important. Involving the public in decision-making makes them accountable for the decisions that they make. A basis for public involvement in environment decision-making is enshrined in the National Objectives and directive principles of state policy of the Constitution.

It is submitted that the majority of conflicts especially those involving natural resources would be solved simply by encouraging the public to participate in decision making processes. Voluntary compliance should also be encouraged to avoid costs of having to use enforcement authorities.

Public awareness and involvement in law enforcement is the key to success in the enforcement and compliance with environmental laws.

We need to work together and work hard to make the public understand the importance and usefulness of the Environmental Policies and laws that we seek to enforce.

The public should understand that the laws are in place to protect their own environment which has a direct impact on their health, economy and wellbeing.

People should be made aware that environmental laws for instance seek to prevent air pollution, environmental degradation, and that would be for the purpose of addressing public health issues. They need to be made aware that when law enforcement officers seek to protect swamps and forests that has a direct impact on rainfall, on water flow and the weather which impacts on their agriculture, food production, energy, and economic welfare for themselves, their families, as well as for National Economic Development.

I think it should now be easy to talk to urban dwellers about the importance of compliance with environmental policies and laws when you relate this to the current problems that our Towns are faced with water and electricity shortages..

When members of the public are aware of the relevance of environmental laws to their welfare, the work of law enforcement officers and institutions will be much easier.

With increased public awareness, members of the public will then report cases of non-compliance, they will be willing to assist in law enforcement and they will be willing to give evidence as witnesses. You need witnesses for Justice to be done in criminal cases.

When we prosecute cases of breach of environmental laws, the public should support us. Prosecuting these cases is being done on their behalf and in their interest. These are not just Government cases. They are cases prosecuted on behalf of the public. These cases are prosecuted in public interest. They cannot be properly prosecuted unless members of the public come forward to identify the defaulters and give evidence in court.

Article 39 of the Constitution of the Republic of Uganda (1995) provides: “every citizen has a right to a clean and healthy environment”. This right comes with a duty to protect the environment.

The citizens should work together with the law enforcement agencies therefore to ensure that the defaulters are dealt with in accordance with the law.

I emphasize that in enacting these laws all stakeholders should be involved. They should all again be involved in enforcement. Those in law enforcement should work together with those engaged to public training and sensitization activities and others involved in establishing the regulatory framework.

Section 4 of The National Environment Act establishes the National Environment Management Authority (NEMA) as the overall body, charged with the management of environmental issues. In summary, the authority in consultation with the lead agencies is empowered to issue guidelines and prescribe measures and standards for the management and conservation of natural resources and the environment. It is good that NEMA involves all other Agencies in its work programmes.

As you may have observed, environmental crimes become rampant with increased economic activities and development unless these are properly planned and controlled to have development that is environment friendly. Thus there is a critical and urgent need to enforce compliance with established environmental laws, regulations and standards. Capacity building of the Uganda Police Force and State prosecutors to enforce environmental laws is vital and must therefore be emphasized in ensuring prosecution of environmental crimes.

The Police investigators who initially handle these matters must be prepared to properly investigate and file them expeditiously. The state prosecutors on the other hand, need to be equipped with information and skills on how to conduct prosecutions in environmental matters. It is also prudent that a clear link between the prosecutors and the investigators is created in order for successful prosecutions to be conducted. In order to do this, we must be equipped with necessary knowledge and skills. This workshop, it is my sincere hope, will present the opportunity to acquire the necessary knowledge and skills.

At all levels, we see many signs that the environment is continuing to deteriorate, at the global level we see new problems such as climate change threatening even greater and more profound impacts. At the regional level, we see levels in the Lake Victoria waters continuing to drop bringing with it lots of problems including water scarcity, power shortage etc. These problems, and others at the regional level, have led many of our citizens to demand strict compliance with global, regional and national environmental laws, and regulations and rules, at all levels. We need to train and prepare ourselves for this.

It is therefore important that we recognize the role compliance and enforcement play in maintaining and strengthening the rule of law, good governance, and sustainable development. There also is a need to improve compliance and enforcement with environmental laws, at all levels. At the international level, for example, many multilateral environmental agreements have been negotiated. These agreements are critical for solving our shared national, regional and global problems. This workshop and other training opportunities should prepare us for such challenges.

I would like to thank all the organizations and individuals who have made this training possible. I wish to commend **Greenwatch**, the Training Department of the **Directorate of Public Prosecution (DPP)** and the Environment Unit of the **Directorate of Criminal Investigation** for organizing and coordinating this event.

Special thanks are extended to the **John D and Catherine T. MacArthur Foundation** for providing the financial support to make this training possible. We commend the **National Environment Management Authority NEMA** for the continued support.

**It is now my distinct pleasure and honour to declare this training workshop on enforcement and compliance of environmental laws officially open.**

I thank you all for listening to me and wish you fruitful deliberations.

## OVERVIEW OF THE LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING ENVIRONMENTAL MANAGEMENT IN UGANDA

*By Ms. Christine Echookit Akello, Senior Legal Counsel, NEMA*

### 1.0 INTRODUCTION

This paper discusses the legal and institutional framework for environmental management in Uganda. Issues of policy and the regulatory framework will feature in this discussion.

### 1.1 ENVIRONMENTAL POLICY

- **The National Environmental Action Plan (NEAP)**

In 1991 the Government started the NEAP process, a continuous in-country process based on local/popular participation aimed at providing a broad framework for integrating environmental considerations into the nation's socio-economic development strategy; The NEAP process favoured a prospective and inter-sectoral approach, noting the need to prevent pollution and also to have a co-ordinating mechanism to deal with environmental issues.

The NEAP process identifies major environmental issues and priorities through the process of review, analysis and consultation by using the following criteria:-

- (a) the urgency of the problem;
- (b) the potential of irreversibility of the environmental losses if no action is taken;
- (c) the expected benefits from addressing the issues considered; and
- (d) the degree of inter-relationship among issues.

Thus, the National Environmental Action Plan (NEAP) process provided strategies for addressing environmental concerns in the areas of policy, legislation, institutional reforms and new investments with the view of promoting sustainable development which maintains and enhances environmental quality and resource productivity to meet the needs of present and future generations.

To achieve this re-orientation, three key initial strategies were required. These included: (i) the revision and modernization of sectoral policies, legislation and regulations; (ii) the creation and establishment of an appropriate institutional and legal framework; and (iii) the establishment of an effective monitoring and evaluation system to assess the impact of policies and actions on the environment, the population and the economy.

- **The National Environment Management Policy 1994**

The Action Plan was closely followed by the adoption of the National Environment Management Policy (NEMP) for Uganda in 1994 which sets out the overall policy goals, objectives and principles for environmental management. Under the National Environment Policy the overall policy goal 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.”

### **Specific Policy Objectives**

Specifically, the policy seeks to meet the following objectives:

- ❖ Enhance health and quality of life of all Ugandans and promote long-term, sustainable economic development through sound environmental and natural resource management and use;
- ❖ Integrate environmental concerns in all development oriented policies, planning and activities at national, district and local levels, with participation of the people;
- ❖ Conserve, preserve and restore ecosystems and maintain ecological processes and life support systems, including conservation of national biological diversity;
- ❖ Optimise resource use and achieve a sustainable level of resource consumption;
- ❖ Raise public awareness to understand and appreciate linkages between environment and development; and
- ❖ Ensure individual and community participation in environmental improvement activities.

- **Key Environmental Principles**

Underlying these broad policy objectives are certain key principles which are intended to guide current and future policy development and implementation strategies:

- (i) Every person has a constitutional right to live in a healthy environment and the obligation to keep the environment clean;

- (ii) The development of Uganda's economy should be based on sustainable natural resources use and sound management;
- (iii) Security of land and resource tenure is a fundamental requirement of sustainable natural resource management;
- (iv) Long-term food security depends on sustainable natural resource and environmental management;
- (v) The utilization of non-renewable resources should be optimized and where possible their life extended by recycling;
- (vi) Environmentally friendly, socially acceptable and affordable technologies should be developed and disseminated for efficient use of natural resources;
- (vii) Full environmental and social costs or benefits foregone as a result of environmental damage or degradation should be incorporated in public and private sector planning and minimised where possible;
- (viii) Social and economic incentives and disincentives should complement regulatory measures to influence people's willingness to invest in sustainable environmental management;
- (ix) Priority should be given to establishing a social and economic environment which provides appropriate incentives for sustainable natural resource use and environmental management;
- (x) An integrated and multi-sectoral systems approach to resource planning and environmental management should be put in place;
- (xi) Regular monitoring and accurate assessment of the environment should be carried out and the information widely publicised;
- (xii) Conditions and opportunities for communities and individual resource managers to sustainably manage their own natural resources and the environment should be created and facilitated;
- (xiii) Effective involvement of women and youth in natural resource policy formulation, planning, decision-making, management and programme implementation management is essential and should be encouraged;
- (xiv) Increased awareness and understanding of environmental and natural resource issues by Government and the public should be promoted;
- (xv) Social equity, particularly when allocating or alienating resource use and property rights, should be promoted; and
- (xvi) Sub-regional, regional and global environmental interdependence should be

recognised.

- **Cross-sectoral Policy Objectives, Principles and Strategies**

These cover the following aspects:

- ❖ Strengthening land and resources tenure rights thereby improving land stewardship by rural and urban users.;
- ❖ Sustainable land use policy and planning;
- ❖ Environmental information generation and sharing to ensure dissemination of reliable information relating to environmental management issues such as biodiversity, soil conservation, fuel wood supply and demand, and pollution control;
- ❖ Conservation of biological diversity in relation to the pricing policy which should ensure that prices paid by resource users reflect the cost of resource replacement or rehabilitation;
- ❖ Water resources conservation and management to ensure provision of water of acceptable quality for all social and economic needs;
- ❖ Wetland conservation and management to ensure that they continue to provide socio-economic and ecological values and functions;
- ❖ Environmental economics and macro-economic policy planning to integrate into environmental planning, economic principles such as;
  - ✓ environmental accounting.
  - ✓ pricing mechanisms e.g. leases, management contracts, user fees, concession agreements, etc.
  - ✓ financial and economic sustainability.
  - ✓ use of economic incentives and disincentives e.g. taxes, user fees, to change people's behaviour.

**Policy makers and resource users are also required to understand the following principles:**

- ❖ Environmental impact assessment and monitoring to ensure that adverse environmental impacts can be foreseen eliminated or mitigated.
- ❖ Control of pollution and management of domestic and industrial waste and hazardous materials.
- ❖ Monitoring of the climate and atmosphere of the country in order to better

- guide land-use and economic development decisions, and better manage air pollution and greenhouse gas emissions.
- ❖ Management of population growth, health and human settlements in order to match people and resources in an economically productive, socially acceptable and environmentally sound manner.
- ❖ Gender integration at all levels of environmental and natural resource management.
- ❖ Environmental education, human resource development and research to ensure sustainable development and environmental protection.
- ❖ The significance of public awareness in environmental management.

### **Sectoral Policies**

The National Environment Policy also allowed for the formulation of sectoral or lower levels of government policies concerning environment and natural resources management. Some of the policies that have been formulated in conformity with the National Environment Management Policy include: the Water Policy 1995, the National Wetlands Management Policy 1996, the Wildlife Policy 1996, the draft National Soils Policy, Fisheries Policy 2000, Forestry Policy 2001 and several District Environment Management Policies from 2000 onwards.

## **2.0 INSTITUTIONAL FRAMEWORK FOR ENVIRONMENTAL MANAGEMENT IN UGANDA**

Before 1986, Uganda had no institution specifically responsible for environmental management. The environment was 'managed' at the sectoral level. In 1986, the Government created the Ministry of Environment Protection, charged with the responsibility of coordinating and enhancing natural resource management, harmonizing the interests of resource users, monitoring pollution levels, and advising the Government on policy and legislative reforms for ensuring sound environmental management. The Ministry was later absorbed into a Ministry of Water, Energy, Minerals and Environment Protection which in 1993 became the Ministry of Natural Resources. The responsibility for environmental management then shifted to the Department of Environment Protection (DEP), some sort of a downgrade from commanding a whole ministry. Consequently, the institutional framework did not give environmental management the authority and profile it deserved. Even when combined with the role of other sectoral institutions and civil society organizations the creation of DEP did not solve the ad hoc nature of environmental monitoring, coordination, supervision and management.

These institutional weaknesses were identified during the NEAP process. Subsequently, the National Environment Management Policy advocated for a new institutional structure, the National Environment Management Authority

(NEMA), the structure was provided for in the National Environment Act. NEMA is the principal agency in Uganda for the management of the environment with the express mandate to coordinate, monitor and supervise all activities in the field of the environment. NEMA is one of the highly placed institutions in the country which is expected to influence other institutions and the general public. Its concerns about the environment are voiced at high levels of decision-making and policy formulation and it has the necessary political approval.

An Inter-Ministerial Policy Committee (IPC), composed of 11 cabinet ministers, is the supreme organ of NEMA. It is chaired by the Prime Minister. The IPC provides policy guidelines, formulates and coordinates environmental issues in the country for NEMA, and liaises with the cabinet on issues affecting the environment generally. Furthermore, the IPC identifies and removes obstacles to implementation of environmental policies and programmes.

Another important institutional organ of NEMA is its board of Directors, which oversees the implementation and successful operation of policy and the function of NEMA. The Executive Director and Board Chairman are ex-officio members of the IPC.

The National Environment Act (NEA) establishes the Board, which is appointed by the Minister responsible for Environment with approval of the policy committee. The members of the board are appointed by virtue of their knowledge and experience in environment management. The principal role of the board is to oversee the operation, policy and to review the performance of the secretariat as well as to establish procedures for the management of staff.

The Board is given the mandate to appoint technical committees including those on:

- a) Soil Conservation;
- b) Licensing of Pollution;
- c) Bio-diversity Conservation;
- d) Environmental Impact Assessment.

The NEMA Secretariat

- This include the following:
- The Office of the Executive Director
- Policy, Planning & Information Department
- Environmental Monitoring & Compliance Department.
- District Support Co-ordination & Public Education Department.
- Finance & Administration Department.

Since NEMA is not an implementing institution, it must perform its duties through cooperation with other institutions. NEMA is horizontally linked to the

lead agencies in the environment sector. NEMA is also vertically linked to the local government structure, the private sector, and civil society.

Under the various sectoral policies and legislation there are lead agencies, which are coordinated by NEMA for purposes of addressing environmental issues. The Lead Agencies have the responsibility to develop internal capacity and contribute to sustainable environmental management, collect data and disseminate information, and promote environmental education and public awareness in their respective sectors. They also ensure enforcement, implementation, compliance, and monitoring of laws, policies and activities within their jurisdictions. The lead agencies are also expected to supervise, within their legal and administrative setup, the conduct of environmental assessments, set environmental standards and carry out inspections related to the environment.

NEMA links vertically with local governments. The Local Governments Act Cap.243, derived from the decentralization policy provides for the devolution of governance from the centre to the districts and lower levels. The District Council (DC) is the highest level of governance at sub-national level. One of its roles is to ensure the integration of environmental issues in the development planning process. The DC has direct linkage with the District Support Coordination Section in NEMA, which provides guidelines for the establishment of district environment committees in consultation with the district councils. Environment Committees are established at sub-county, parish and village levels, although the lowest level of government is the sub-county.

District environment committees are expected to ensure that environmental concerns are integrated in the district plans and projects, formulate bye-laws, promote dissemination of environmental information, and prepare the district state of the environment reports annually.

The NEA also creates the office of the District Environment Officer who acts as a liaison officer between NEMA and the District. This kind of institutional framework ensures that environmental resources are controlled and managed by communities for their own benefit on a sustainable basis.

### **3.0 THE LEGAL FRAMEWORK FOR ENVIRONMENTAL MANAGEMENT**

#### **3.1 THE CONSTITUTION OF UGANDA 1995**

The Constitution is the supreme law and it provides for environmental protection and conservation. The 1995 Constitution provides in the National Objectives and Directive Principles of State Policy, that the state shall promote sustainable development and public awareness of the need to manage land, air, and water resources in a balanced and sustainable manner for the present and future generations.

It further provides that the natural resources of Uganda are to be managed in such a way as to meet the development and environment needs of present and future generations of Ugandans. In particular, the state is required to take all possible measures to prevent or minimize damage and destruction to land, air, and water resources due to pollution or other causes.

The provisions of the Constitution protect property rights and other individual rights. Furthermore, the state is to promote and implement energy policies that will ensure that the people's basic needs and those of the environment are met. Above all, Article 39 of the Constitution entitles every Ugandan to a clean and healthy environment.

It is significant that this Article falls in Chapter 4 of the Constitution, on Protection and Promotion of Fundamental and other Human Rights and Freedoms. The fact that the right is all - encompassing, covering every Ugandan, and the fact that it is not limited in any way, favours a fundamental rights interpretation of the right. This means, therefore, that it is not only an individual right but possesses the qualities of a collective right. Article 20 (1) provides that 'fundamental rights and freedoms of the individual are inherent and not granted by the state'. As a fundamental right, it is inalienable and belongs to an individual by virtue of his /her being human.

- **Rights and Capacities**

Paragraph (2) of section 3 of the National Environment Act provides that:- Every person has a duty to maintain and enhance the environment, including the duty to inform NEMA or the local environment committees of all activities and phenomena that may affect the environment significantly.

For every right's holder, there is a duty 'to maintain and enhance the environment'. By enforcing their right the individual is actually performing their obligation to protect the environment.

Under Article 17 of the 1995 Constitution, every citizen has the duty to create and protect a clean and healthy environment.<sup>1</sup> The duty is participatory in nature - not to perform any act which may endanger the environment and also the duty to report to the relevant authorities.

The scope of Article 50 of the Constitution is wider than that of section 3(3) and (4) of the National Environment Act. Article 50 (1) provides that any person who claims that a fundamental or other right or freedom guaranteed under the Constitution has been infringed or threatened, is entitled to apply to a competent court for redress, which may include compensation. This Article empowers any person to enforce the right to a decent environment. In addition to individuals,

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<sup>1</sup> Clause (1) (j).

groups and third party organisations who may have an interest in the matter as members of the public, have *locus standi* to institute a suit. The only requirement is that the right as guaranteed in the Constitution has been infringed or threatened. This argument is in line with clause (2) of the same Article which provides that any person or organisation may bring an action against the violation of another person's or group's human rights.

The rights and duties to the environment should thus hinge upon the capacity of any person, notwithstanding the general rules relating to *locus standi*, to bring an action to stop potential or actual environmental damage.<sup>2</sup> Since environmental wrongs are most of the time general wrongs (wrongs *sui generis*) where it is difficult to prove personal injury to a personal right (*in personam*), it follows that the capacity of the public to enforce good environmental husbandry is limited.

That is why the liberal rules on *locus standi* have been applied to environmental issues. The complainant need not show that the defendant's act or omission has caused any personal loss or injury (Ss.3 (4) and 71 of the National Environment Act.)

The issue of concern about broadening the ability to bring an action (*locus standi*) is that it increases the number of possible litigants. This situation, however, has not arisen possibly due to the legal costs which may be involved.

- **The Doctrine of Public Trust**

Under Article 237 of the Constitution, the state, including local governments, is required to create and develop parks, reserves and recreation areas and ensure

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<sup>2</sup> The traditional view of *locus standi* is that no one can bring an action in the courts of law unless that person's right has been infringed. In the common law of negligence, for instance, it must be shown that the defendant owed a certain duty to the plaintiff and was in breach of that duty (Donoghue v Stevenson [1932] A.C. 563). In statutory law generally, it must be shown that the plaintiff has a cause of action against the defendant. (Auto Grage v Motokov [1971] E.A. 514 ; Ali Mustafa v Sango Bus Co. [1975] H.C.B. 93). Thus, if the plaintiff has not suffered a wrong at the hands of the defendant he or she can not sue. In other words, an individual has no *locus standi* in a common law court unless he or she can prove that he or she has sustained injury to his/ her rights as a person or against his / her property. There is, however, a trend to liberalise rules of standing throughout the world in spite of the traditional view of *locus standi*. Uganda has also started taking a stand on this matter.

conservation of natural resources and to promote the rational use of natural resources so as to safeguard and protect the bio-diversity of Uganda. The Doctrine of Public Trust is enshrined in the Constitution under Art. 237(2)(b). In accordance with this principle, the management of environmentally fragile resources such as natural lakes, rivers, wetlands, national parks, game reserves and forest reserves is vested in the state.

The Constitution also imposes a duty on the state to protect important natural resources; including land, water, minerals, oil, fauna and flora on behalf of the people of Uganda. Parliament has ably done this through the enactment of the National Environment Act, the Water Act, the Land Act, the Wildlife Act and the Local Government Act.

### **3.2 THE NATIONAL ENVIRONMENT ACT, CAP 153**

This Act establishes the National Environment Management Authority (NEMA) as the overall body, charged with the management of environmental issues. In brief, the Authority in consultation with the lead agencies is empowered to issue guidelines and prescribe measures and standards for the management and conservation of natural resources and the environment.

The Act outlines principles of environmental management, which principles are a reflection of what is in the NEMP.

#### **3.2.1 Management Measures under the Act**

The Act empowers the Authority in collaboration with Lead agencies to issue guidelines and measures relating to:

- (a) management of lakes and rivers;
- (b) management of lakeshores and riverbanks;
- (c) management of wetlands;
- (d) management of hilltops, hill-sides and mountainous areas;
- (e) conservation of biological resources;
- (f) management of forests;
- (g) planting of wood lots;
- (h) protection of the ozone layer;
- (i) waste management;
- (j) management of toxic and hazardous chemicals;
- (k) management of range lands;
- (l) land use planning; and
- (m) protection of natural heritage sites.

There are two major principles followed by the Authority when applying the various management tools that are contained in the Act. These principles are:

- a) The Precautionary/Preventive Principle;

- b) The Polluter Pays Principle.
- **The Precautionary Principle**

The Precautionary/Preventive Principle is implemented through the following tools:

### **Environmental Planning**

Environmental planning as defined in section 1 of the National Environment Act means both long-terms and short-term planning that takes into account environmental issues. NEMA is enjoined to prepare a National Environment Action Plan to be reviewed after every five years or less.<sup>3</sup> The plan shall cover all matters affecting the environment in Uganda and shall contain guidelines for the management and protection of the environment and natural resources as well as the strategies for preventing, controlling or mitigating any deleterious effects.<sup>4</sup> It shall also take into account district plans established under section 18 of the Act. Environmental planning ensures that development activities are harmonized with the need to protect the right to environment. It also ensures that environmentally – unfriendly activities will not be permitted and that those permitted shall be strictly controlled in accordance with established standards.

### **Environmental Monitoring and Impact Assessment**

Environmental Monitoring is defined in section 1 of the Environment Act as the continuous determination of actual and potential effects of any activity or phenomenon on the environment whether short-term or long-term.

Under the Environmental Impact Assessment Guidelines two systems of monitoring are specified as:-

- a) Self monitoring whereby the developers themselves are encouraged to monitor the impact of their activities and;
- b) Enforcement monitoring done by government agencies such as NEMA through environmental inspectors.<sup>5</sup>

### **Environmental Audit**

Environmental audit is defined in section 1 of the Environment Act as ‘the systemic, documented periodic and objective evaluation of how well environmental organisation, management, and equipment are performing in conserving the environment and its resources.’ Audits occur after the project has

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<sup>3</sup> Section 17(1) of the National Environment Act.

<sup>4</sup> id., section 18 (2)(a).

<sup>5</sup> section 23 (2) of the National Environment Act.

commenced and may lead to prosecution of offenders. Audits may also lead to the redesign of a project or the remodeling of its operations in order to avert possible disaster or other environmental damage that may go beyond regulatory compliance.

NEMA carries out continuous audits<sup>6</sup> with the help of inspectors, to ensure that industries comply with the requirements of the Environment Act. The problem, however, is that many industries were set up before the Act was enacted and environmental standards were not a key feature then. The result is that industry has had to adapt to the new policy under the Act and has to be willing to shoulder the cost of clean-up operations and also to adopt appropriate technology.

### **Environment Standard Setting and Licensing**

Licensing and standard setting is one of the most widely used tools of enforcement of environmental law. The environment Act provides for establishment of environment standards in part VI of the Act.

There are activities which require specific permits. These include the import, manufacture, and disposal of hazardous chemicals, wastes and substances. In order to control the environmental effects of these substances the law requires their classification and labeling.

In order to confront polluters, standards and regulations are being put in place, include the following:

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

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<sup>6</sup> Section 22 of the National Environment Act.

Standards setting ensures that licenses and permits are issued as a measure for the control of activities that may have deleterious or beneficial effects on the environment. Use of licenses and permits is prospective in that they emphasize the control of activities before they commence.

This requires that the licensing authorities should be environmentally conscious to avoid emphasizing the revenue collection aspect at the expense of environmental concerns.

### **Public Awareness and Participation**

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

### **Environmental Easements**

Under the Act, a person may apply to court for an easement to protect the environment. In view of the constitutional provision relating to rights to a clean and healthy environment and the capacity of any person to enforce that right notwithstanding that their specific rights have not been affected, this easement differs from the common law easement. It may be enforced by any body who finds it necessary to protect a segment of the environment although he may not own property in the proximity to the property subject to the easement.

### **The Use of Economic and Social Incentives**

The Act clearly provides that management measures should be carried out in conjunction with the application of social and economic incentives including taxation measures.

- **The Polluter Pays Principle**

Meeting the cost of conservation implies using various methods of raising finances and in particular, ensuring that polluters bear the cost of polluting the environment.

There are a number of existing methods under the National Environment Act and the regulations made under it. These include:

### **Performance Bonds**

It is known that there are some industrial plants, which produce highly dangerous or toxic substances and therefore have significant adverse impacts on the environment.

It is also known that some facilities may not be prepared to operate and comply with the environmental laws and requirements. Such plants may be required to deposit bonds as security for good environmental practice. Such deposits are refundable after such a duration when the operator has observed good environmental practice to the satisfaction of NEMA, failure to observe good environmental practice leads to confiscation of the bond

### **Environment Restoration Orders**

Where the person's activities affect the environment, the Authority or a court may issue a restoration order requiring the person to cease the activities or to restore the environment as soon as possible to its original state. The order may be given pursuant to an action brought by an individual or upon the initiative of the Authority.

### **Record Keeping and Inspections**

Persons whose activities are likely to have a significant impact on the environment are required to keep records of the amount of wastes and by products generated by their activities and as to how far they are complying with the provision of the Act. These records are required to be transmitted annually to the Authority.

Inspections are carried out by gazetted inspectors who have very wide powers under the Act. They are empowered to take samples, seize any plant equipment or substance and close any facility. They can also issue Improvement Notices, which are legal notices notifying a person of an infraction and giving a time frame in which to make corrective measures or face further enforcement action

### **The Use of Criminal Law**

Criminal law remains a veritable instrument for the control of behaviour because of the natural tendency of people to fear the infliction of pain, isolation or economic loss. Therefore, the Act provides for serious penalties for infraction of its provisions. These include fines, imprisonment and forfeiture of property to the state. It is, however, recognised that criminal law cannot be the mainstay for the enforcement of law but is a necessary supplementary measure to the approaches outlined above.

### **Community Service Orders**

As an alternative to imprisonment and fines, persons committing environmental wrongs may be required to perform duties in the community as a reparation to the community for the wrong done. As far as the duty to maintain and enhance the environment is concerned, such a person could be required to remedy the environmental wrong he or she has committed. If they are not able to do so financially or otherwise, then they could be incorporated in the programmes of

NEMA and lead agencies, or of local environment committees and non-governmental organisations operating in the area where the harm occurred.

The Community Service Act,<sup>7</sup> therefore, needs to be applied to environmental wrongs as well, not only minor offences in the realm of criminal law. This is because the effect of environmental wrongs goes beyond the confines of the area in which the wrong is committed. In fact, it may have transboundary effects, and the wrong is best remedied by voluntary action of the offender and the society. In fact, NEMA has designed a community service programme which is intended to be applied in all districts.

Underlying these approaches is the polluter pays principle. The polluter should repair the damage they have caused either by making actual reparation or paying the necessary monetary compensation to society.

### 3.3 OTHER ENVIRONMENTAL LAWS

#### THE WATER ACT, CAP 152

The Water Act is one piece of Uganda's environmental legislation with key provisions to enhance sustainable development. It provides for the use, protection and management of water use and supply. Important aspects in the Act include the following: -

- (a) **Rights in water.** All rights to investigate, control, protect and manage water are vested in the government of Uganda, which is accordingly better placed to ensure that water resources are used sustainably.
- (b) **Planning for water use.** The Act establishes the water policy committee, an inter-sectoral body whose function, among others, is to co-ordinate the preparation, revision and keeping to date the comprehensive action plan for the investigation, control, protection, management and administration of water for the nation. Such planning may specify types of activities, development of works, which may not be done without the prior approval of the policy committee.
- (c) **Control on the use of water resources.** The Act provides for the use of permits to use and supply water. A person who has to construct or operate any works or engage in the business of constructing boreholes needs construction and drilling permits respectively as provided in the Water Resources Regulations, 1998. In addition, in order for a person to discharge waste into a water body the person has to acquire a waste discharge permit under the Water Waste Discharge Regulations of 1998 and the National

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<sup>7</sup> The Community Service Act, No 5 of 2000. And the Community Service Regulations No. 55 of 2001, specifying the nature and scope of work of a non-custodial nature that an offender may do in the community. See in particular sections 3, 4 and 5 of the Act and R. 12 of the Regulations.

Environment Standards for discharge of Effluent Regulations of 1999.

The permit system ensures that use of water is environmentally friendly and promotes sustainable development. These controls also ensure that water is not treated as a free good but as a good with a value to be paid for. This economic valuation of water is an important incentive for its conservation.

- (d) **Water Easements.** An easement is the right of a person over the land of another. Under the Water Act and Water Resources Regulations, an easement may enable a holder of a water abstraction permit to bring water to or drain water from their land over land owned or occupied by another person. In the same way, an easement may enable a holder of a waste discharge permit to drain waste from his land over the land owned or occupied by another person. The works for which an easement is granted have to be maintained and repaired so as to comply with development, which is sustainable.
- (e) **Control over water works and water use.** An authorised person may enter land for the purposes of inspecting works for the use of water. He may take samples and make tests to find out whether water is being wasted, misused or polluted or whether the terms of any permit are being met. Non-compliance is an offence.

All these aspects of the Water Act have the object of sustainable use of water resources. Waste, misuse and pollution resulting in unsustainable use of water are prohibited.

### **THE LAND ACT Cap. 227**

The Land Act provides for the tenure, ownership and management of land. Subject to Article 237 of the Constitution, all land in Uganda is vested in the citizens of Uganda and is owned in accordance with customary, freehold, mailo and leasehold land tenure systems.

Under section 43 of the Land Act, all owners and occupiers of land are to manage it in accordance with the Forest Act, the Mining Act, the National Environment Act, the Water Act, the Uganda Wildlife Act, the Town and Country Planning Act and any other law.

Like the Constitution, the Land Act 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.

### **THE INVESTMENT CODE ACT CAP. 92**

This law empowers the Uganda Investment Authority (UIA) to, among other things, attract and co-ordinate all local and foreign investments in the country to enhance economic development. Section 19(1)(d) 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. This is in line with the principle of sustainable development.

### **THE UGANDA WILDLIFE ACT, CAP. 200**

The Act was enacted in 1996 to provide for sustainable management of wildlife, to consolidate the law relating to wildlife management, establish a coordinating, monitoring and supervisory body for that purpose. It fundamentally changed the way wildlife is managed.

The protection of wildlife under the Act is seen from two perspectives conservation within conservation areas and conservation outside those areas.

The Act preserves community property rights. Local communities and individuals that have property rights in land within the protected areas will be permitted to carry on activities compatible with conservation of wildlife resources. It should also be noted here that the Act recognises and guarantees the historic rights of individuals and communities which were recognised in previous laws such as the National Parks Act, the Forests Act, and the Game (Preservation and Control Act).

The relevant functions of UWA for the purposes of wildlife protected areas and wildlife management areas are among others to preserve selected examples of biotic communities in Uganda and their physical environment, and preserve populations of rare, endemic and endangered species of wild plants and animals and to generate economic benefits from wildlife conservation for the people of Uganda.

The Act also contains provisions that provide facilities for studying the phenomena in the wildlife conservation areas for the advancement of science and its understanding. It enables wildlife to have full protection in wildlife sanctuaries notwithstanding the continued use of the land in the area by the people and the communities ordinarily residing there.

The Act restricts entry into wildlife protected areas without authority. Any person who enters contrary to the provisions of the Act commits an offence. This is one

way of controlling access to species in protected areas. In addition section 15 of this Act requires a developer desiring to undertake a project which may have significant effect on any wildlife species or community to carry out an EIA in accordance with the National Environment Act. Section 16 of the same Act obliges the Uganda Wildlife Authority in consultation with NEMA to carry out audits and monitor such projects that may have an impact on wildlife.

An important feature of the Act is the concept of wildlife use rights, which are tradable rights to hunt, farm, ranch, trade in or use wildlife for educational purposes. These wildlife use rights are transferable and in some cases, a transfer permit is needed especially for class A and class E. This kind of transfer is known as permitted transfer.

Wildlife use rights are not enjoyed in perpetuity and are not absolute. If there is non-compliance by a right holder with the terms of grant or any other sufficient reason, to which the grant of wildlife use rights was made or that it is expedient that a grant of a wildlife use right be revoked, it may be revoked subject to the conditions of the Act. However, such a holder of a wildlife use right may be entitled to compensation.

Outside protected areas, the Act provides measures for regulating and licensing professional trappers and hunters, and penalties for their non-compliance. It prohibits the taking of protected species so as to maintain their abundance.

By opening up the wildlife sector to popular participation, it is hoped that this new law will promote the conservation ethic and eradicate the view that wildlife is a property of nobody, which is available for taking and misuse.

### **THE MINING ACT 2003**

This Act vests the ownership and control of all minerals in Uganda in the Government and provides for the acquisition of mineral rights and other related rights. The Act requires every holder of an exploration licence or a mining lease to carry out an EIA of their proposed operations in accordance with the provisions of the Environment Act. A holder of such permit is also required to carry out an annual environmental audit and to keep records describing how far the operations conform to the approved environmental impact assessment. The Act also provides for environmental protection standards, environmental restoration plans and environmental performance bonds in accordance with the Environment Act (Ss. 108 – 112).

### **THE NATIONAL FORESTRY AND TREE PLANTING ACT, 2003**

This is an Act for the conservation, sustainable management and development of forests for the benefit of the people of Uganda and for the promotion of tree planting, among others. An EIA is required to be undertaken by a person

intending to undertake a project or activity, which may, or is likely to have a significant impact on a forest.

### **THE LOCAL GOVERNMENT ACT Cap. 243**

This is an important law for the enforcement of environment law given the policy of decentralization pursued by the government and the policy of environmental management at the lowest levels. The Local Government Act provides for the system of local governments, which is based on the district. Under the District there are lower local governments and administrative units. This system provides for elected councils.

The District Council is the highest political authority in the District. It has both legislative and executive powers to be exercised in accordance with the Constitution and Local Governments Act.

The Second schedule to the Act prescribes the functions of the Government that the District Council is responsible for. The following are the functions relevant to environmental management:

- (a) land surveying,
- (b) land administration,
- (c) physical planning,
- (d) forests and wetlands.
- (e) Environment and Sanitation
- (f) protection of streams, lake shores, wetlands and forests.

Under the district there are lower local government councils, which consists of: -

- A Sub-county Council
- A City Division Council
- A Municipal Council
- A Municipal Division and

#### ***Town Council***

These Councils have legislative powers. The District Councils have power to enact District Laws (Ordinances) while urban, sub-county division or village councils may, in relation to their specified powers and functions, make bye-laws not inconsistent with national statutes or the constitution. Through this method, it is hoped that the district and other lower local councils will effectively control and manage their natural resources and environment.

A few other environmental laws are listed in the schedule attached hereto.

## **INTERNATIONAL TREATIES**

Uganda has international obligations in the field of the environment which are imposed by operation of customary international law, treaties and general principles of law accepted by all nations. International standards have been used as pace-setters when setting national environmental standards.

Uganda's legal framework for environmental management takes into account the problems associated with transboundary resources such as shared lakes and rivers, aquatic biodiversity and the issues of migratory species of wild animals. Uganda is also signatory to a number of treaties that protect her sovereign territory from the illegal dumping of wastes or toxic substances as well as the illegal trade in genetic material, wild life and trophies.

## **CONCLUSIONS**

A recurrent theme in the laws discussed above is that of public participation in the sustainable management of the resources. This, however, still needs to be strengthened through vigorous public awareness programs. The importance of enacting Ordinances and bye-laws at the lower government levels cannot be over emphasised.

Another important issue that is reflected in the current environmental laws is expansion of the application of the Polluter Pays Principle to ensure compliance.

Environmental protection calls for a multi-sectoral approach. Public participation is a necessity for the sustainable use and conservation of natural resources.

I hope this paper has helped enhance your understanding of the environment and the role you, as an individual and as a member of the public, should play in environmental management.

## **SCHEDULE OF OTHE ENVIRONMENTAL LAWS**

1. The Plant Protection Act. Cap 31
2. Inland Water Transport (Control) Act Cap 356
3. National Agricultural Research Organisation Act Cap. 205
4. Agricultural Seeds and Plants Act Cap. 28
5. Atomic Energy Act Cap. 143
6. East African Community Act, 2001
7. The Prohibition of Burning of Grass Act Cap. 33
8. The Petroleum Act Cap. 149
9. The Petroleum (Exploration and Production) Act Cap. 150
10. The Animal Diseases Act, Cap 38

11. The Cattle Grazing Act. Cap. 42
12. The National Water and Sewerage Corporation Act, Cap. 317
13. The Fish Act Cap. 197
14. The Trout Protection Act Cap 199
15. The Town and Country Planning Act Cap. 246
16. The Public Health Act Cap. 281
17. The Penal Code Act Cap. 120
18. The Control of Agricultural Chemicals Act Cap. 29
19. The Rivers Act Cap 357
20. The Roads Act Cap. 358
21. Uganda National Bureau of Standards Act Cap. 237
22. Uganda National Council for Science and Technology Act Cap. 209
23. Vessels (Registration) Act Cap 362

## THE HISTORY OF ENVIRONMENTAL LAW

*By Kenneth Kakuru, Director Greenwatch*

### 1.1 THE HISTORY OF ENVIRONMENTAL LAW

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

### 1.2 Religious, cultural and historical roots

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

### 1.3 The Green revolution

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

### 1.4 The end of colonialism

The end of colonialism is perhaps the most important predicate condition, as this has allowed Africans to decide whether and how to utilize their natural resources, as well as to set their own priorities for public health and development.

### 1.5 The English Law of Tort

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

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

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

## 1.6 TRESPASS

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

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

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

## 1.7 NUISANCE

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

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

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

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

Nor is it a defence that the place from which the nuisance emanates is the best location the defendant can get on the best suitable for the purpose or that no other place is available for which less mischief would result. If no place can be found where the action causes no nuisance then it can only be carried out with the permission or agreement of adjoining proprietors or under the sanction on an Act of Parliament<sup>23</sup> Lack of negligence is no defence to an action in nuisance.

## 1.8 NEGLIGENCE

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

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

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

## 1.9 NONE NATURAL USER OF LAND

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

## 2.0 THE EMERGENCE OF ENVIRONMENTAL LAW IN UGANDA

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

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

## **2.1 THE RIGHT TO A CLEAN AND HEALTHY ENVIRONMENT**

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

## **2.2 THE EVOLUTION OF ENVIRONMENTAL LAW AND POLICY**

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

## **2.3 THE CONSTITUTION OF THE REPUBLIC OF UGANDA**

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

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

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

## **2.4 ENFORCEMENT OF ENVIRONMENTAL RIGHTS**

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

The enforcement of environmental rights takes many forms. Providing information is the simplest, the cheapest, at times the most effective way of enforcing environmental rights.

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

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

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

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

## **2.5 THE PRINCIPLES OF ENVIRONMENTAL LAW**

Listed below are the main principles governing environmental law;

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

## **2.6 THE PRECAUTIONARY PRINCIPLE**

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

When there is **certainty** regarding the risk of harm to the environment, a regulatory measure is preventive; when there is **uncertainty**, a regulatory measure is precautionary

The precautionary approach does not dictate specific regulatory measures, but determines the time at which regulator measures must be adopted

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

## **2.7 RECOGNITION BY NATIONAL COURTS**

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

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

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

## **2.8 POLLUTER PAYS PRINCIPLE**

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

## **2.9 RATIONALE**

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

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

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

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

## **3.0 USER PAYS POLICY**

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

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

### **3.1 PUBLIC TRUST DOCTRINE**

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

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

### **3.2 ACCESS TO INFORMATION**

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

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

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

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

### **3.3 ACCESS TO JUSTICE**

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

Sub section 2 provides;

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

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

Art. 50 of the Constitution of the Republic of Uganda

### **3.4 SUSTAINABLE DEVELOPMENT**

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

### **3.5 INTER-GENERATIONAL & EQUITY PRINCIPLE**

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

### **3.6 PUBLIC PARTICIPATION**

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

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

## THE CHALLENGES IN MONITORING AND ENFORCEMENT OF ENVIRONMENTAL LAWS IN UGANDA

*By: George Lubega Matovu, Natural Resources Management Specialist, NEMA.*

### 1. INTRODUCTION

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

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

The Government of Uganda accord high priority in the protection of natural resources. This is reflected in the Constitution, the Land Act, the Local Government Act, the Water Act and the National Environment Acts and the Regulations there under.

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

### 2. PRINCIPALS OF ENVIRONEMNTAL ENFORCEMENT

The Government of Uganda has taken stringent actions to protect public health from environmental pollution & protect the quality of the natural environment. Among the interventions has been the development of management strategies to prevent or control

pollution. Most of these strategies also involve legal requirements that must be met by individuals and facilities.

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

One of the primary goals of environmental enforcement program is to change human behaviour so that environmental requirements are complied with. Achieving this goal involves motivating the regulated community to comply, removing barriers that prevent compliance, and overcoming existing factors that encourage non-compliance

Two broad approaches are used to change human behaviour:

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

*What is Compliance?*

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

*What is Enforcement?*

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

Enforcement by NEMA usually includes:

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

### 3. IMPORTANCE OF COMPLIANCE & ENFORCEMENT

- (i) To protect environmental quality & public health - this only becomes a reality only if environmental requirements get results

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

#### 4. COMPONENTS OF A GOOD ENFORCEMENT PROGRAMME

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

#### 5. STRATEGIES FOR COMPLIANCE/ENFORCEMENT

- (i) Developing Laws and Regulations that can be enforced
  - Interpreting broad environmental laws with specific regulations
  - EIA Regulations; Wetlands, Riverbanks and Lakeshores Mgt; Hilly and Mountainous areas Mgt; etc
  - Providing feed back to legislatures to revise laws that are unenforceable
- (ii) Identifying the Regulated Community
  - Clearly understand who is required to meet what requirements
  - Set priorities based on degree of environmental consequences
  - Likely require inventory & information management system to keep track
- (iii) Promoting Compliance
  - Disseminating information about environmental requirements
  - Providing cleaner production information, education and technical assistance to regulated community
  - Building public awareness and support
  - Publicising success stories
  - Providing economic incentives & facilitating access to financial resources
- (iv) Permitting & Licensing Facilities

- A permitting system enables environmental requirements to be tailored to the circumstances of specific facilities
  - Requires the development of permit application procedures, processing of applications, issuing in coordination with other lead agencies
- (v) Monitoring Compliance
- Inspections by NEMA & LA's/Gazetted inspectors
  - Self monitoring, record-keeping and reporting to NEMA/Lead Agency
  - Community monitoring and citizen complaints
  - Sampling of environmental conditions (air, water, soil) in vicinity of facility
- (v) Timely Responding to Violations
- Every compliance & enforcement programme must develop a hierarchy of enforcement responses consistent with its social-economic & cultural situation
  - May involve taking administrative, civil, criminal actions meant to achieve:
    - ✚ Return violators to compliance
    - ✚ Impose sanction
    - ✚ Remove the economic benefit of non-compliance
    - ✚ Correct environmental damages
    - ✚ Correct internal facility management problems
  - Various types of enforcement responses: issuing administrative & legal notices; closing down facility or particular operation; revoking a permit; seeking compensation; fining; prison
- (vi) Gazettement and equipping of Environmental inspectors
- Section 80 of the NES 1995
  - 178 Inspectors currently Gazetted for two years
  - Some Inspectors are now equipped with portable equipments that are able to detect changes in environment
- (vii) Using the existing structures in the enforcement and technical assistance
- Local Governments
  - Government Departments (DWD, WID, etc)
  - Police
- viii) Development of Technical tools for the implementation of the laws and regulations
- Manuals
  - Guidelines

## 6. ENFORCEMENT MECHANISM AND IMPLEMENTATION TOOLS

### Category A - The Precautionary Principle Implementation Tools

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

(i) Environmental Planning

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

(ii) Environmental Monitoring and Impact Assessment

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

(iii) Environmental Audit

Audits occur after the project has commenced and may lead to prosecution of offenders. Audits may also lead to the redesign of a project or the remodeling of its operations. NEMA carries out continuous audits (S. 22) with the help of inspectors, to ensure that industries comply with the requirements of the Environment Act. The problem, however, is that many industries were set up before the Act was enacted and environmental standards were not a key feature then.

(iv) Environment Standard Setting and Licensing

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

(v) Environment Standards and Regulations

- The Environmental Impact Assessment Regulations No. 13 of 1998.
- The National Environment (Standards for Discharge of Effluent into Water or on Land) Regulations No. 5 of 1999.

- The National Environment (Waste Management) Regulations No. 52 of 1999.
- The National Environment (Hilly and Mountainous Areas Management) Regulations No. 2 of 2000.
- The National Environment (Wetlands, Riverbanks and Lakeshore Management) Regulations No. 3 of 2000.
- The National Environment (Minimum Standards for Management of Soil Quality) Regulations No. 59 of 2001.
- The National Environment (Management of Ozone Depleting Substances and Products) Regulations No. 63 of 2001.
- The National Environment (Control of Smoking in Public Places) Regulations No. 12 of 2004.
- The National Environment (Access to Genetic Resources and Benefit Sharing) Regulations No. 30 of 2005.

(vii) Public Awareness and Participation

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

(viii) The Use of Easements and Incentives

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

Category B - The Polluter Pays Principle Implementation Tools

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

(a) Performance Bonds

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

(b) Environmental Improvement Notice

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

(c) Environmental Restoration Orders

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

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

(d) Record Keeping and Inspections

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

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

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

## 7. CHALLENGES IN MONITORING AND ENFORCEMENT

- (i) First, there is the problem arising from failures at different institutional linkages for environmental management. Whereas for example wetlands are held in trust by Central Government or local Government for the common good of the people of Uganda, recent examples of wetland abuse have included cases where Local Authorities have been the very violators of these constitutional and legal provisions. Where this has happened, local authorities have indicated that they converted wetlands for the sake of providing their communities with economic growth opportunities and for fighting poverty. It is therefore a dilemma that the

very institutions entrusted with the protection of wetlands have in some cases not assisted the crusade for their conservation.

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

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

(iii). There is the problem of enforcement of the legal requirements for protection of the environment and public health. Whereas it is now largely accepted that environment is important worth protecting, and whereas enforcement of environment regulations, is expected to be done through a hierarchy of enforcement levels from national (NEMA), Districts down to community levels, the enforcement capacity available at all these levels appears not to be able to match the widespread nature of the problem of environment degradation. In addition, while the responsibility for environment management has been vested under the local authorities, cases of local authority intervention on environmental management are still few, implying that even where local authority intervention would have been enough to stop abuses, such cases still continue to be referred to NEMA. It should be stressed that this state of affairs for a dispersed resource such as wetlands requires an enforcement and intervention mechanisms that is closer as possible to the community level if tangible results are to achieved.

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

Without an effective grassroots enforcement mechanism, it has been extremely difficult to control indiscriminate dumping of materials in wetlands along the roads and other remote areas by anonymous individuals such as truck drivers who probably view wetlands as “good” open space to dump in rather than drive long distances to designated dumping sites. Time and again, people living in and around wetland areas where marrum and waste dumping has taken place have indicated that the dumping is done by unknown truck drivers at awkward hours.

In addition to the above, there has also been a problem of wetland filling during holidays and awkward hours when those dumping probably have full knowledge that enforcement staff are not on duty. It remains an uphill task to prosecute these cases, and the affected wetlands can hardly recover their original state even if the culprits are required to restore them.

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

With the expansion of Central Government enforcement machinery not likely to happen in the foreseeable near future, it is plausible to believe that increased local authority and local community role on matters of wetland management, planning and enforcement, including stopping wetland abuse through community policing could be a more sustainable way to stem further degradation. However, there still remains a fundamental weakness in the sense that local authorities have not translated the authority vested under them for natural resources management into meaningful action as far as wetland resources are concerned. The approach adopted by the Wetlands Inspection Division for community wetland management planning is worthy support in this regard. However, lessons learnt from this approach are yet to be popularized to other communities.

- (v). Need to harmonize urban planning and land–use in general with modern wetland conservation goals.

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

- (vi). Poverty and wetland resources use relationship

Over the recent years, there appears to be increasing cases of activities being implemented in wetlands in the name of fighting against poverty. While some of these activities are out-rightly not compatible with wetland conservation nor wise use goals, their promoters have vigorously defended them as intended to assist in the fight against poverty. Activities such as brick making in wetlands which are done for economic gains have tended to give no regard at all to conservation nor restoration of the affected wetlands. It is probable that this attitude stems from the old perception that wetlands in their natural state are wasted land.

## THE CRIMINAL ASPECTS OF ENVIRONMENTAL LAW

*By: Vincent Wagona, Ag. Senior Principal State Attorney, Directorate of Public Prosecutions*

### INTRODUCTION

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

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

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

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

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

*Parts XVII provides for nuisances and offences against health and convenience*

*Part XXI provides for offences endangering life or health.*

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

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

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

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

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

### **OFFENCES AND THE LAW APPLICABLE**

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

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

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

There are various offences and penalties relating to:-

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

- Environment restoration orders (SS. 67, 72 and 101)
- Environmental Inspectors (SS. 79, 80 and 95)
- Record keeping (SS 77 – 78 and 97)
- Wetlands, lake shores and river banks (The National Environment (Wetlands, River Banks and Lakeshores Management) Regulations, 2000). See also the main Act.

### **Environment Impact Assessment**

The Act defines what an Environmental Impact Assessment is.

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

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

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

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

### **Environmental standards**

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

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

### **Waste management**

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

Every person is under a duty to manage wastes generated by his or her activities in such a manner that does not cause ill health to any person or damage the environment. No person is allowed to dispose of toxic and hazardous wastes into the environment unless he or she follows the law and the guidelines.

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

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

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

### **Pollution**

“Pollution” is defined in the Act.

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

### **Environmental restoration orders**

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

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

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

### **Environmental Inspectors**

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

Hindering or obstructing an environmental inspector, or failing to comply with a lawful order such as an improvement order issued by an Environment Inspector is an offence

attracting a term of imprisonment of not less than 12 months or a fine of not less than 120,000/= and not more than 12,000,000/=.

### **Record keeping**

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

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

### **Wetlands, lake shores and river banks**

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

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

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

### **Permits and licences**

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

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

## **LEGAL TECHNICALITIES AND PRINCIPLES RELEVANT TO THE PROSECUTION OF ENVIRONMENTAL CASES**

- **Environmental law caters for anticipatory injury or damage.** Even where a violation of the law may not necessarily result in any direct or immediate injury to person or property, failure to comply with the law is an offence. In such cases, the law seeks to guard against the danger or probability of injury or damage and thereby minimize it.
- **Environmental laws punish violations of the law provisions as such.** Unlike the traditional criminal offences under the Penal Code Act which prohibit specific acts and impose penalties for those acts, environmental statutes tend to provide for criminal penalties for violation of any of the provisions of the statute. That is

why S. 102 of the Act creates a general penalty for breaching any provision for which no penalty is specifically provided.

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

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

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

Examples of punishments from other jurisdictions:

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

## CONCLUSION

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

## ENFORCING ENVIRONMENTAL LAWS.

*By Mr. Kenneth Kakuru, Director, Greenwatch.*

### 1. INTRODUCTION

Uganda like many other countries is taking action to protect the environment from degradation and to restore and protect its natural resources. The country has developed laws and regulations and management strategies to do this. Most environmental management strategies involve legal requirements that must be met by individuals and facilities that cause degradation or harm to the environment natural resources. These requirements are an essential foundation for environmental and natural resource protection, but they are only the first step. The second essential step is *compliance-getting* the groups that are regulated to fully implement the requirements. Without compliance, environmental requirements will not achieve the desired results. Compliance does not happen automatically once requirements are issued. Achieving compliance involves efforts to encourage and compel the behavior changes needed to achieve compliance.

Successful implementation of environmental requirements requires significant effort and forethought. Changes in behavior have always been difficult to accomplish on both a societal and personal level. There is no magic formula for achieving compliance. There is merely trial, evaluation, and response to what works and does not work in a particular setting. Nevertheless, a reliable framework for designing enforcement programs has emerged based on the experience of countries such as the United States, the Netherlands, Canada, Norway, Sweden, and others.

### WHAT IS COMPLIANCE?

Compliance is the full implementation of environmental legal requirements. Compliance occurs when legal requirements are met and desired changes are achieved, e.g., processes or raw materials are changed, work practices are changed so that, for example, encroachment on forest reserves is stopped, reclaiming forests ceases, reduction in pollution, good management of solid wastes and soil erosion control.

The legal requirements are well-designed, then compliance will achieve the desired environmental results. If the requirements are poorly designed, then achieving compliance and/or the desired results will likely be difficult.

### ENFORCEMENT

Enforcement is the set of actions that governments or its agencies and other stakeholders take to achieve compliance within the regulated community and to correct or halt situations that endanger the environment or public health. Enforcement by the government usually includes:

- ❖ Inspections to determine the compliance status of the regulated community and to detect violations.
- ❖ Negotiations with individuals or facility managers who are out of compliance to develop mutually agreeable schedules and approaches for achieving compliance.
- ❖ Legal action, where necessary, to compel compliance and to impose some consequence for violating the law or posing a threat to public health or environmental quality.

Enforcement may also include:

- ❖ Compliance promotion (e.g., educational programs, technical assistance, subsidies) to encourage voluntary compliance.

Nongovernmental groups may also become involved in enforcement by detecting noncompliance, negotiating with violators, commenting on government enforcement actions, and where the law allows, taking legal action against a violator for noncompliance or against the government for not enforcing the requirements. In addition, certain industries such as the banking and insurance industries may be indirectly involved in enforcement by requiring assurance of compliance with environmental requirements before they will issue a loan or insurance policy to a facility.

In some countries, societal norms of compliance have been a powerful force compelling compliance with any form of legal requirement. A system that relies on social norms for enforcement may not be effective in every situation and may become vulnerable to abuse if societal norms break down over time. This possibility has stimulated new consideration internationally of the need for dedicated enforcement programs within government and nongovernmental organization. In Uganda, this is known as enforcing environmental law.

## **WHY ARE COMPLIANCE AND ENFORCEMENT IMPORTANT**

An effective compliance strategy and enforcement program brings many benefits to the public. First, and most important, is the improved environmental quality and public health that results when environmental requirements are complied with. Second, compliance with environmental requirements reinforces the credibility of environmental protection efforts and the legal systems that support them. Third, an effective enforcement program helps ensure fairness for those who willingly comply with environmental requirements. Finally, compliance can bring economic benefits to individual facilities and to the general public.

## **COMPONENTS OF A SUCCESSFUL ENFORCEMENT PROGRAM**

An effective enforcement legal program involves several components:

- ❖ Creating requirements that are enforceable.
- ❖ Knowing who is subject to the requirements and setting program priorities.
- ❖ Promoting compliance in the regulated community.
- ❖ Monitoring compliance.
- ❖ Responding to violations.
- ❖ Clarifying roles and responsibilities.

- ❖ Evaluating the success of the program and holding program personnel accountable for its success.
- ❖ Public participation
- ❖ Access to information
- ❖ Access to justice

These components form a framework within which to consider issues pertinent to any enforcement program, no matter what its stage of development. The response to these issues may differ depending on the nature and extent of the problem. Important to the success of all programs, however, is the need to address all elements of the framework. Each element is part of an interconnected whole and thus can influence the success of the whole program.

## **WHY ENVIRONMENTAL ENFORCEMENT PROGRAMS ARE IMPORTANT**

- ❖ To Protect Environmental Quality and Natural resources. Compliance is essential to achieving the goals of protecting the environmental natural resources envisioned by environmental laws. Natural resources and the environment will be protected only if environmental requirements get results. Enforcement programs are essential to get these results.
- ❖ To Build and Strengthen the Credibility of Environmental Requirements. To get results, environmental requirements and the government agencies that implement them must be taken seriously. Enforcement is essential to build credibility for environmental requirements and institutions. Once credibility is established, continued enforcement is essential to maintain credibility. Credibility means that society perceives its environmental legal requirements as necessary and meaningful and the institutions that implement them as strong and effective. Credibility encourages compliance by facilities that would be unlikely to comply if environmental requirements and institutions are perceived as weak. The more credible the law, the greater the likelihood of compliance, and the likelihood that other government efforts to protect the environment will be taken seriously. The greater the public participation in enforcement.
- ❖ To Ensure Fairness. Without enforcement, facilities that violate environmental requirements will benefit compared to facilities that voluntarily choose to comply. A consistent and effective enforcement program helps ensure that all parties affected by environmental requirements are treated fairly. The people will be more likely to comply if they perceive that they will not be economically disadvantaged by doing so. E.g. Solid waste disposal, noise and air pollution control and treatment of effluents.
- ❖ To Reduce Costs and Liability. Though compliance is often costly in the short-term, it can have significant long-term economic benefits to both society and the complying facility. The healthier environment created by compliance reduces

public health and medical costs, as well as the long-term cost to society of cleaning up the environment. Compliance benefits industry by reducing its liability and long-term clean up costs. Industry may also realize immediate economic benefits if compliance involves recycling valuable materials or increasing the efficiency of its processes. A strong enforcement program may also encourage facilities to comply by preventing pollution and minimizing waste, rather than installing expensive pollution control and monitoring equipment.

- ❖ Create a culture of compliance through public participation.
- ❖ Enhance environmental democracy.

## **HOW PROGRAMS MAY EVOLVE IN DIFFERENT CULTURES AND COUNTRIES**

Anyone involved in designing an enforcement program will face certain issues: How should a program begin? What elements are most important? How can the full range of responsibilities be handled with limited program resources? How should the program evolve over time as the program moves to new stages, as policymakers evaluate the success of previous strategies, and as technological and economic developments suggest new solutions? There are no standard answers. Each program must answer these questions for itself based on program resources and culture. This text provides a broad range of possibilities for the different elements of an enforcement program. Policymakers can select from these possibilities to design or modify a program so that it best serves the desired goals within the available resources.

Resources often limit choices. For example, ideally inspectors would be well-trained before they start to inspect. Due to limited resources and/or program priorities, many programs rely initially, if not predominantly, on on-the-job training. The challenge for every program is to make the most effective use of the resources that are available. This text presents many ideas for leveraging program resources to achieve broad results.

Finally, the effectiveness of an enforcement program will depend in part on the degree to which environmental quality is a national, regional, and local priority. Achieving compliance sometimes requires hard economic choices. Public and government concern for environmental quality provide an important foundation for enforcement programs.

## **CLARIFYING ROLES AND RESPONSIBILITIES**

As already noted above, enforcement frequently involves many different groups, including government agencies, citizens groups and nongovernment organizations, and industry associations. A key element in any enforcement strategy is defining the roles and responsibilities of the various groups involved.

- ❖ How should responsibilities for enforcement be divided among the various levels of government (national, regional, provincial, and local)? To what extent should a program be centralized (i.e., run at a national government level) versus decentralized (i.e., run at local government levels)?

- ❖ Which government agencies will be involved, e.g., environmental agencies, health agencies?
- ❖ Should there be separate enforcement programs for different environmental media (e.g., air, water, land) or one or more integrated programs covering several media?
- ❖ To what extent should a program make use of citizens and other nongovernment resources?
- ❖ To what extent should technical program staff and lawyers be integrated within a single organization?

## **DIVIDING RESPONSIBILITIES AMONG GOVERNMENT LEVELS**

A basic issue in developing enforcement programs is to what extent to centralize responsibilities for enforcement at the national level or decentralize them at more local levels. There are advantages and disadvantages to both centralization and decentralization. A national presence in enforcement helps ensure that at least minimum standards for environmental requirements are met; that the program is consistent and fair throughout the country; and that national resources are available to support enforcement programs. Involvement of provincial and local governments in enforcement is important because these levels are closest to the actual environmental problems and best able to efficiently identify and correct them.

Most environmental enforcement programs in different countries are decentralized to take advantage of (1) local knowledge of facilities and their operations, and (2) the greater information and knowledge about the problem available at the local level. Despite this bias toward decentralization, some programs are centralized because of a clear need for national involvement, e.g., to handle transboundary pollution problems, or where local competition to create favorable conditions for industry may lead to lax enforcement at the local level or where unique expertise concentrated at the national level is needed to implement the program. E.g. forest resources.

Roles and relationships between the central government and local governments can develop in many different ways, ranging from decentralization to centralization to various combinations of both approaches.

### **Parallel Responsibility with the Primary Role Delegated**

Most environmental programs in Uganda establish a relationship between the central and local governments. Usually, the central government formally approves the local environmental laws as meeting established standards for implementation. From this point on, the local government has the primary role for implementing the enforcement program, but the central government retains parallel authority and responsibility and can intervene if the state program is not meeting certain criteria, laws do not allow the national government to delegate responsibility to the states.

#### **Advantages of parallel system**

This system of parallel responsibility with the primary role delegated has several

advantages:

- ❖ Program Quality. The system maintains a continuous national presence. This helps ensure that certain minimum program standards are met across the country regardless of the resources and capabilities of the individual districts.
- ❖ Technical Capabilities. Because it is a national government agency, NEMA can often provide districts with technical capabilities that are not available at the district level.
- ❖ National Consistency. Involvement at the national level helps ensure that enforcement is practiced fairly and consistently across the country.
- ❖ Deterrence. Knowledge that the central government can and does become involved in certain enforcement actions helps contribute to deterrence.
- ❖ Fostering Competition. The central government routinely monitors and reports on progress and success in individual districts through State of Environment Reports published every two years. Results in individual states can easily be compared. This has resulted in a healthy sense of competition among some districts that has improved program success. Improved Program Effectiveness. Those closest to a problem are most likely to spot the problem and correct it in a timely manner. Shifting the primary responsibility for compliance monitoring and enforcement from the central to a more local district level helps improve program effectiveness. Sharing the Financial Burden. Delegating to district and local governments also relieves the government of substantial financial burden for enforcement programs.

### **Disadvantages**

- ❖ Parallel authority may lead to duplication of effort and confusion of roles.

### **Clarifying Roles and Responsibilities**

In order to avoid this, NEMA has to have a clear criteria for evaluating performance of its own and districts.

Most programs must:

- ❖ Clearly identify the regulated community and establish priorities for enforcement.
- ❖ Have clear enforceable requirements.
- ❖ Monitor compliance accurately and reliably.
- ❖ Maintain high or improving rates of compliance.
- ❖ Respond in a timely and appropriate way to violations.
- ❖ Use penalties and other sanctions appropriately to create deterrence.
- ❖ Maintain accurate records and provide accurate reports.
- ❖ Have sound overall program management.

### **ROLE OF OTHER GOVERNMENT INSTITUTIONS**

Several government institutions can have significant impact on the design and

operation of enforcement programs. Most significant are the legislative (lawmaking), executive (management and budget), and judicial (legal) institutions, as well as any agencies that have programs in areas related to the environment. The particular institutions and the nature of their impact will depend on the governmental infrastructure of each country.

Institutions with an impact will be those that:

- ❖ Identify the need for legislation.
- ❖ Create environmental laws.
- ❖ Determine budgets.
- ❖ Track program progress and success.
- ❖ Bring legal action.
- ❖ Oversee activities related to environmental management.
- ❖ Identify violators of the laws.

### **Legislative Institutions**

The legislative institutions probably have the greatest impact on program development. They create the laws that define the environmental goals to be met, the authority and flexibility to meet those goals, and the level of funding. Legislative institutions can become involved in policy and implementation decisions by issuing amendments to laws that impose certain duties on the executive institutions. The legislative institution can impose deadlines that executive institution must meet.

### **Executive Institutions**

The executive institutions are often responsible for identifying the need for legislation and for enforcing the legislation once it has been enacted. The executive institution is usually the environmental agency of the country or region. This agency may have its own administrative law judges. They provide an internal mechanism for enforcing administrative orders and appealing agency actions.

An executive institution may also supply the lawyers responsible for taking legal action against violators. If this institution is not the environmental agency itself, an interagency agreement can be important to define the conditions for services between the two executive institutions.

### **Judicial Institutions**

The judiciary is the institution responsible for interpreting the laws. They may also impose requirements on the executive, for example, by requiring that it use certain rulemaking procedures if it wants those rules to be upheld in court. Courts provide a forum for taking enforcement action, for prosecution, and for enforcing administrative orders (if the court is so authorized). Courts can also play a significant role in assessing sanctions.

## **Agencies with jurisdiction in Areas Related to Environmental Management**

Many government agencies may have authority in areas that affect or will be affected by environmental management. These include:

- ❖ Health-related agencies responsible for food safety, occupational health and safety, consumer products, pesticide use, etc.
- ❖ Natural resource management agencies, responsible for water, energy, minerals, forests, etc. Development of these resources can significantly effect pollution abatement.
- ❖ Land use planning agencies, responsible for community development, industrial siting, transportation, etc.
- ❖ Agencies that regulate industry and commerce.
- ❖ Agricultural agencies.
- ❖ Criminal investigation and enforcement agencies.
- ❖ Customs. (For example, in the Netherlands, Rwanda, the Customs Department is helping the Environmental Inspectorate by watching for and taking samples from imported materials that may violate the law such as prohibiting use of cadmium as a pigment or stabilizing agent in plastic.

Competition or conflict between two government agencies because of overlapping authorities can dilute the impact of both programs. Conversely, constructive cooperation can strengthen both programs through increased efficiency and by identifying gaps in regulatory programs. Approaches to achieving integration among related agencies include;

- ❖ Ad hoc joint efforts such as joint research programs.
- ❖ Formal review of each agency's proposals by the other.
- ❖ Review of proposals by reference.
- ❖ Establishing special councils that are independent of each agency.
- ❖ Establish an independent government entity or commission.

## **Police**

The police and other government personnel involved in identifying and apprehending criminals can be a valuable resource for detecting violations of environmental laws. The local police are serving as the inspection and enforcement arm of enforcement programs. To serve in this role, the police must be appropriately trained, provided with the necessary sampling equipment and have the technical support of environmental specialists as needed. The police should be responsible for surveillance and, in the case of simple environmental crimes, investigation. They can also play an important role in containing and fighting more serious environmental crimes, including organized environmental crime. Use of local police as inspectors has been very successful: the number of prosecutions has increased substantially in recent years, and the public image of the police has substantially improved.

## **ROLE OF NONGOVERNMENT GROUPS**

Several private organizations can have a critical influence on program success and efficiency. These groups may directly or indirectly influence enforcement. These groups can be valuable allies in efforts to improve environmental quality. Government enforcement programs will benefit by working with these groups wherever possible and appropriate.

### **Industry Associations**

Industry or trade associations such as UMA and National Chamber of Commerce and small scale industries track and publicize developments that may affect their members. They may try to influence environmental legislation or programs as they are being developed. They may also serve as valuable channels for disseminating information on requirements, methods of complying, and compliance activities. Their dissemination channels include newsletters, journals, databases, and conferences. Associations of firms that make pollution monitoring equipment or control devices have strong economic incentives to disseminate information about environmental requirements.

### **Associations of Government Officials**

These associations are nongovernment entities that provide a forum for government officials (e.g., mayors, governors) to work together in solving issues of mutual concern. Like industry associations, these groups track and publicize developments that may affect their members. These associations provide a resource for disseminating information and a forum for comment and recommendations concerning environmental management programs.

### **Professional and Technical Societies**

Specialized professionals advise both government officials and the regulated communities on compliance issues. Their societies therefore have a strong incentive to track and disseminate information on regulatory developments. They may also try to influence regulatory decisions and compliance strategies they disagree with. In the United States, some of these societies independently develop industry standards.

### **Trade Unions and Workers' Councils**

Enforcement programs can have substantial impact on workers. For example, workers are generally members of the local community and would benefit by the improved environmental quality that may result from enforcement actions. Conversely, enforcement actions that result in substantial process changes or shut down of an operation may result in some unemployment. Consequently, workers will have strong feelings and opinions in some enforcement situations. Most countries have associations or groups that represent the interests of workers. The participation of Workers' Councils or other groups that represent workers at a particular facility will be important to success of enforcement actions at that facility. Trade unions or other organizations that represent workers at a regional or national level may become involved in development of

requirements and policy for enforcement. Individual workers may also report violations by their facilities to authorities.

### **Universities**

Some universities are important centers for environmental professionals and may function much like the professional societies described above in supporting and influencing enforcement programs.

### **Insurance Companies**

In many countries, private citizens can sue industry for personal injury or property damage caused by certain types of environmentally related activities. In theory, insurance companies that end up paying the cost of the suit should have an incentive to educate their clients about environmental requirements and assist them in compliance. These companies are therefore a potential ally for government agencies running enforcement programs.

### **Public Interest Groups**

Citizens can play a major role in shaping and implementing environmental enforcement programs. With a stake in environmental quality, citizens may seek to influence environmental legislation and enforcement programs through lobbying efforts. Usually these efforts are coordinated by public interest groups. These groups may collect and publicize data on environmental quality and compliance levels in an effort to influence program priorities. If monitoring data collected by the program are made publicly available, these groups may track the data and, if the law allows, file citizen suits against the environmental agency for not doing its job, and/or against individual violators for violating the law.

Public interest groups also play an important role in disseminating information to regulated communities and to citizens who are concerned about environmental quality. Citizens may also play an important role as environmental watchdogs, spotting violations occurring on a local level that may escape notice by enforcement officials. Public interest groups can be an important means of enlisting citizen involvement.

### **Use of Independent Contractors to Supplement Government Personnel**

Private firms may be able to provide more faster and cost-effective services than government agencies. Enforcement officials may therefore contract some of their responsibilities to private firms. One issue in using contractors is ensuring the quality of their work.

Private companies have proven to be a valuable resource for inspection in the Netherlands during personnel shortages and work backlogs. Clear agreements are made about how the activities are to be carried out and how violations will be reported and responded to. Any official action in response to a violation is taken by authorized government inspectors. This combined public/private approach has often been effective,

and efficient, and can produce faster results than a solely public approach. Dutch government officials have been careful to provide adequate, competent leadership and to clearly define the "private" inspectors' authority. This approach is also used in many U.S. programs.

## **THE BASIS FOR COMPLIANCE AND ENFORCEMENT**

One of the primary goals of an environmental enforcement program is to change human behavior so that environmental requirements are complied with. Achieving this goal involves motivating the regulated community to comply, removing barriers that prevent compliance, and overcoming existing factors that encourage noncompliance.

Many factors listed and described below, affect compliance. Which factors are operating in any particular regulatory situation will vary substantially depending on the economic circumstances of the regulated community, on cultural norms within the community and nation as a whole, and sometimes on the individual personalities and values of managers within the regulated community.

In any environmental situation several of the factors described below will influence the behavior of the regulated community. For this reason, environmental enforcement programs generally will be most effective if they include a range of approaches to changing human behavior. The approaches described in this text fall into two categories: (1) promoting compliance through education and incentives, and (2) identifying and taking action to bring violators into compliance. In some cultures, these two approaches are referred to as "carrot" and "stick." Different programs will place different emphasis on these two approaches depending on the culture and the particular regulatory situation. However, experience with enforcement programs does suggest that some form of enforcement response may ultimately be essential to achieve widespread compliance.

## **FACTORS AFFECTING COMPLIANCE**

### **Deterrence**

In any regulatory situation some people will comply voluntarily, some will not comply, and some will comply only if they see that others receive a sanction for noncompliance. This phenomenon - that people will change their behavior to avoid a sanction - is called *deterrence*. Enforcement deters detected violators from violating again, and it deters other potential violators by sending a message that they too may experience adverse consequences for noncompliance. This multiplier or leverage effect makes enforcement a powerful tool for achieving widespread compliance. Studies of and experience with enforcement show that four factors are critical to deterrence:

- ❖ There is a good chance violations will be detected.
- ❖ The response to violations will be swift and predictable.
- ❖ The response will include an appropriate sanction.
- ❖ Those subject to requirements perceive that the first three factors are present.

These factors are interrelated. For example, to create an appropriate level of deterrence, a more severe sanction may be needed for violations that are unlikely to be detected. Conversely, a less severe sanction may be sufficient if violations are likely to be detected and response can therefore be relatively swift.

Because perception is so important in creating deterrence, *how* enforcement actions are taken is just as important as the fact that they are taken. History has many stories of small armies that successfully beat larger forces by giving the impression that they were a formidable fighting force. Similarly, enforcement actions can have significant effects far beyond bringing a single violator into compliance if they are well placed and well publicized.

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## **FACTORS AFFECTING COMPLIANCE**

### **FACTORS MOTIVATING COMPLIANCE**

#### **BARRIERS TO COMPLIANCE AND FACTORS ENCOURAGING NONCOMPLIANCE**

##### **ECONOMIC**

- ❖ Desire to avoid a penalty.
- ❖ Desire to avoid future liability.
- ❖ Desire to save money by using more cost-efficient and environmentally sound practices.
- ❖ Lack of funds.
- ❖ Greed/desire to achieve competitive advantage.
- ❖ Competing demands for resources.

##### **SOCIAL/MORAL**

- ❖ Moral and social values for environmental quality.
- ❖ Societal respect for the law.
- ❖ Clear government will to enforce environmental laws.
- ❖ Lack of social respect for the law.
- ❖ Lack of public support for environmental concerns.
- ❖ Lack of government willingness to enforce.

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<sup>1</sup>Another major goal of an enforcement program is to correct any immediate and serious threat to public health or the environment posed by pollution (e.g., a chemical spill that is contaminating a drinking water supply, discovery of toxic or explosive chemical wastes in an area accessible to the public).

<sup>2</sup>*Sanction* is used in this text to mean any adverse consequence imposed on a violator.

## **PERSONAL**

- ❖ .Positive personal relationships between program personnel and facility managers.
- ❖ Desire, on the part of the facility manager, to avoid legal process.
- ❖ Desire to avoid jail, the stigma of enforcement, and adverse publicity.
- ❖ Fear of change.
- ❖ Inertia.
- ❖ Ignorance about requirements.
- ❖ Ignorance about bow to meet requirements.

## **MANAGEMENT**

- ❖ Jobs and training dedicated to compliance.
- ❖ Bonuses or salary increases based on environmental compliance.
- ❖ .Lack of internal accountability for compliance.
- ❖ Lack of management systems for compliance.
- ❖ Lack of compliance training for personnel.

## **TECHNOLOGICAL**

- ❖ Availability of affordable technologies.
- ❖ Political will and committment
- ❖ Inability to meet requirements due to lack of appropriate technology.
- ❖ Lack of political will.
- ❖ Technologies that are unreliable or
- ❖ Political interference.

Change may also be motivated by economic considerations. The regulated community may be more likely to comply in cases where enforcement officials can demonstrate that compliance will save money (e.g., achieving compliance by recycling valuable materials instead of discharging them to the environment may yield a net profit), or when the government provides some form of subsidy for compliance. Conversely, the higher the cost of compliance, the greater may be the resistance to compliance in the regulated community. Some facility managers that may want to comply might not do so if they feel that the cost of compliance would be an economic burden to their operations.

To remove economic incentives to violate the law, the monetary penalty for a violation would, ideally, at least equal the amount a facility would save by not complying. This deters deliberate economic decisions not to comply, and it helps treat compliers and noncompliers equally.

### **Institutional Credibility**

Each country has its own social norms concerning compliance. These norms derive largely from the credibility of the laws and the institutions responsible for implementing those laws. For example, the social norm may be noncompliance in countries where laws have historically not been enforced, either because the law is unenforceable or because the institutions responsible for enforcement have lacked the

political power or resources to enforce. There may also be a resistance to enforcement in countries where recent regimes have imposed laws against the will of the citizens. It may take longer for enforcement programs to build credibility in these countries.

Strategies to build credibility will vary. In some cultures, aggressive enforcement will provide credibility. In others, it may be important to have an initial period of promotion and encouragement to create a spirit of cooperation, followed by a well-publicized shift to more aggressive enforcement to signal that there will be consequences for noncompliance. In other cultures, a mixed approach at the outset may be most successful.

The government's will to enforce environmental laws - that is, to affirmatively promote voluntary compliance and identify and impose legal consequences on those who do not comply voluntarily - indicates and influences social values. Not enforcing a law tends to express a value that compliance is not important. A goal on the part of the government to bring a majority of the regulated community into compliance sends a message that compliance is important and helps build a social norm of compliance.

### **Social Factors**

Personal and social relationships also influence behavior. Moral and social values may inspire or inhibit compliance. For example, in some situations, facilities may voluntarily comply with requirements out of a genuine desire to improve environmental quality. They may also comply out of a desire to be a "good citizen" and maintain the good will of their local communities or their clients. Facility managers may also fear a loss of prestige that can result if information about noncompliance is made public. Conversely, compliance will likely be low in countries where there has been little or no social disapproval associated with breaking laws and/or damaging the environment.

Successful personal relationships between enforcement program personnel and managers of regulated facilities may also provide an incentive to comply. On the other hand, a desire to avoid confrontation may prevent program personnel from pursuing the full range of enforcement actions they may need to take to ensure compliance. Also, an enforcement official's objectivity may be compromised if he or she becomes too familiar with the facility's personnel and operations. Oversight visits by an independent enforcement official can help monitor for and prevent this potential problem. The relationship factor can be incorporated into a compliance strategy through such means as providing technical support to regulated groups and enhancing the interpersonal skills of compliance personnel. Social respect for environmental requirements can be improved by finding industry leaders who agree to set a well-publicized example of compliance, and by firm and visible enforcement of environmental requirements (particularly if the initial focus is to correct noncompliance that is posing significant and clear risks to the environment and/or public health).

### **Psychological Factors**

Several psychological factors, common to human nature, may affect compliance rates. One of these is fear of change - the belief that familiar ways of operating are safe and new ways are risky. Closely related to this is inertia. Many people tend to naturally

resist change because of the perceived effort it will require to enact the change. Both promotional efforts to publicize the benefits of compliance and the perception and reality of consequence for noncompliance play an important role in overcoming inertia.

### **Knowledge and Technical Feasibility**

Besides being motivated to comply, regulated groups must have the *ability* to comply. This means they must know they are subject to requirements, they must understand what steps to take to create compliance, they must have access to the necessary technology to prevent, monitor, control, or clean up pollution, and they must know how to operate it correctly. A lack of knowledge or technology can be a significant barrier to compliance. This barrier can be removed by providing education, outreach, and technical assistance.

### **IMPACT ON PROGRAM DESIGN**

As mentioned earlier, which of the factors described above will influence behavior in a particular environmental situation will depend on the culture and situation. An environmental enforcement program will be most effective if its design is based on an understanding of the factors that are operating. Such understanding will enable policymakers to determine the optimal strategy to motivate and enable compliance, and to discourage noncompliance. For example, in cultures where there is a tendency to ignore both requirements and requests for voluntary behavior changes, creating deterrence may be the most important component of program design. Conversely, in countries where there is a social norm of compliance, activities to promote voluntary compliance may be very effective. In situations where financial constraints are the main barrier to compliance, some form of economic support or advantage to the regulated community would likely have great impact.

Whatever factors are influencing behavior, they will almost certainly change over time. Thus, flexibility to review and revise the program design is key to long-term effectiveness.

## **THE CONDUCT OF INVESTIGATIONS / CRIMINAL PROCEDURE**

**By Doris Akol, Environmental Law Resources centre.**

### **A: Introduction**

In order to successfully prosecute an environmental criminal case, the government has to prove, beyond a reasonable doubt, that a corporation or person knowingly violated an environmental Act containing criminal sanctions.

The objective of this paper is to give general guidance on criminal investigations. For purposes of this discussion, we will consider the following definitions.

“Criminal investigation” means the deliberate examination or inquiry of available evidence aimed at a finding of whether or not and by whom a crime has been committed.

“Evidence” denotes the means by which any alleged matter of fact, the truth of which is submitted to investigation, is proved or disproved and includes statements by accused persons, admissions, judicial notices, presumptions of law, and ocular observations by the court in its judicial capacity.

### **B: Conduct of Investigations**

An investigation, in the context of these guidelines, is a means to establish the correctness of suspected abuses of environmental laws. If the evidence warrants, an investigation can also lead to entering into compliance agreements or a possible prosecution. The conduct, management and control of investigations must be in compliance with policies regulating criminal investigations, keeping in mind the duty to act fairly, the public interest and the promotion of the integrity of the environment.

Investigators at all levels, whether in NEMA, Local Councils, the Uganda Police, or other lead agencies are responsible for conducting investigations seeking assistance or guidance where necessary, and reporting findings of such investigations within the policy regulating criminal investigations.

In investigating environmental crimes, the environmental inspector plays a key role gathering scientific and technical evidence and also in making the necessary reports. Environmental inspectors and other competent personnel play the role of expert witnesses in court proceedings. Even when the Police handle the investigations, environmental inspectors still play a crucial role in the chain of evidence. The experience, wisdom, and concerns of both legal and technical staff involved in enforcement are important. Since environmental matters are sometimes a question of visual impression, the use of proper photographs can be used in proving a case of violation.

### **Investigative steps**

The investigation of a suspected environmental crime is initiated with the reporting or discovery of a possible offence. It proceeds through the data-gathering and evaluative steps of:

- acquiring the initial report and all relevant data from eye witnesses or observers;
- surveying the site, evidence gathering and collecting data and samples;
- the storage/forwarding of samples for analysis;
- Analysis and interpretation of data and the results of sample analysis;
- Reporting the results of the analysis; and
- Follow-up investigations and initiating other actions.

### **Reporting the Crime**

The Police or environmental inspector may act on his or her own initiative or may act on information received from the public, a district environment officer, any lead agency, NEMA, or any government official.

### **Receipt of initial reports/information**

On receipt of the initial report or information regarding a suspected environmental crime, the investigation officer shall file the case and give it a police reference number or a designated form. The investigation officer is expected to obtain the following key information:

- Physical location of scene of the alleged crime/environmental incident(s)
- Date and time of the incident(s).
- Details regarding notification of the incident(s)
- Parties involved.
- Noticeable impact on the environment/ecosystem

The investigator must also document information encompassing his or her observations and actions at the crime scene. Information includes locations, appearances, and conditions of all persons and items noted, and should communicate scene conditions, statements and comments made by victims, suspects and statements and comments made by witnesses and the actions of other personnel.

### **Dealing with the Suspected Offender.**

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

All environmental offenders are arrestable by virtue of the fact that breach of environmental laws means commission of an offence. However, discretion would be allowed to arresting officers depending on the nature of the offence committed. The gravity of the offence committed will determine whether or not the suspected offender shall be detained or released, and if he is released, the conditions for his release. A suspect may be released unconditionally, on caution or on Police Bond.

**NB:** While criminal procedures would normally apply to environmental offences, by their very nature and depending on the gravity of the offence committed or its impact on the environment, environmental offenders need not be handled as criminal suspects particularly in terms of questioning techniques and incarceration.

### **C: Evidence**

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

These steps include where necessary sampling, exhibit identification, transportation, physical and chemical analysis, and exhibit storage. If care is not taken to properly preserve evidence and maintain the chain of custody in every step of the investigative process, then the evidence may be inadmissible at trial.

### **Gathering Evidence**

There are three types of evidence: physical, human, (obtained through witness statements or interviews) and documentary (including photographic media). Physical evidence may include solids, liquids, or gases. Documentary evidence includes all documentation developed by the investigator. Evidence gathered at a crime site will typically involve interviews, visual observations, measurements, samples, paper documents and records.

The investigative file should contain records of interviews, photographs, video-recordings, sketches, correspondence, field notes, chain-of-custody records and other pertinent records such as calibration records and laboratory test reports.

### **Witnesses**

- i. Ascertain and obtain valid identification from potential witnesses and separate identified witnesses from each other and from others present.
- ii. Document witness identification(s).

### **Preservation of Evidence**

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

For physical evidence to be truly useful its integrity needs to be preserved and the investigator, before moving anything should record the exact location of the evidence at the scene, its time of collection and its status using measurements, sketches, photographs or videography where appropriate.

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

## **Search Warrants**

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

### **D: Conclusion.**

#### **Managing the Investigation - Points to Note**

1. When established procedures are used to collect evidence, it is often easier to defend the scientific reliability and legal acceptability of the procedures.
2. Witness interviews should be recorded along with other field activities such as sampling and environmental measurements.
3. When assisting in the execution of a search warrant, the investigative team should ensure that the evidence collected is authorized by that warrant. Each person collecting evidence could ultimately be called as a witness later.
4. Marking, labeling, preservation (if appropriate) of exhibits should all be part of the permanent record of the crime scene visit.
5. Chain-of-custody records should include a standard form documenting the delivery and the receipt of each exhibit. Personnel handling the exhibits are recorded from the initial contact at the crime scene through each exhibit transfer until the exhibits are received in the laboratory. Under chain-of-custody procedures, exhibits are to be under the control of the investigative team at all times. The location of each exhibits from the time of collection through the time of laboratory analysis, should be documented.

## EVIDENTIAL DIFFICULTIES IN PROSECUTION OF ENVIRONMENTAL CRIMES

By Doris Akol, Environmental Law Resources Centre

### Introduction:

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

However, it is not always easy to gather evidence in the investigation of Environmental crimes. Sometimes, the evidence is not always obvious. This is because by their nature, the evidence in environmental crimes is not always typical.

Hereunder is an enumeration of the common difficulties that may be experienced in the process of evidence gathering in investigating environmental crimes which the investigator should be aware of and prepare for.

#### 1. Delicate nature of the evidence,

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

#### 2. Transient nature of the offence

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

#### 3. Defining the ingredients of the offences

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

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

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

## **5. Chain of custody issues**

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

## **6. Unavailability of technology to analyse environmental evidence,**

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

7. Proving intention and wilfulness for non strict liability offences e.g. S 99(g) of the NEA
8. Dearth of experts to testify as to the commission of an environmental offence vis a vis accepted levels e.g. for air / noise pollution

Many of the concepts in environmental enforcement are new to us. As a result we still suffer form a serious shortage or presence of experts who can make conclusions on evidence gathered or who can present expert evidence in courts.

9. Relatively low knowledge base in enforcement agencies and JLOS institutions of environmental laws and offences created thereunder in addition to the relatively low priority attached to environmental offences as opposed to e.g. crimes such as theft, rape, obtaining money by false pretences, embezzlement etc
10. Standard of proof of beyond reasonable doubt is difficult to meet to obtain a conviction.

## **11. Inadequate evidence laws.**

The existing version of the Evidence Act is seriously deficient in allowing the submission of certain types of evidence. E.g. Amendment of Evidence Act is crucial to allow certain evidence e.g. electronic evidence that shows certain pollution limits have been exceeded may currently be inadmissible.

## **Recommended Strategies**

The conduct of a needs assessment and enhancement for targeted persons in investigations and prosecutions of environmental crimes on the following issues;

1. frequent exposure to the different sectoral environmental laws and offences created by those laws
2. various environmental sectoral standards to improve recognition of when an offence has been committed

3. Analysis of evidence for those in the laboratories
4. Sampling techniques for the crime scene
5. Evidence gathering and preservation technologies
6. Improving the availability of photographic equipment to facilitate photography and videography in evidence gathering
7. Inclusion of environmental law and offences in the Uganda Police Training Syllabus

**MAINSTREAMING ENVIRONMENTAL CONCERNS INTO THE POLICIES,  
PLANS AND PROGRAMMES OF THE UGANDA POLICE FORCE**

**By : Kaggwa Ronald, Environmental Economist, NEMA.**

**Introduction**

Not long ago, police and environment personnel were regarded as strange bedfellows, not only in this country but the world over. With police handling violent crimes such as murders, robberies and rapes, while environment agencies such as NEMA are busy solving environmental problems. This is attributed to the different cultures, priorities, limited sharing of information between the two institutions among other factors. You will probably agree with me that times have changed and it has been increasingly realized that environmental crime is a threat to public safety and security.

Therefore, the Police as the institution mandated to maintain law and order and in particular the CID, the principle agency responsible for investigating all criminal cases in the country including those of environmental nature, has a central role to play in containing environmental crimes. To effectively play this role environmental concerns must be fully mainstreamed into the policies, plans and programmes of the Uganda Police Force.

**What is environmental mainstreaming?**

Environmental Mainstreaming occurs when conservation and the sustainable use of environment and natural resources is integrated into different levels of government, institutional or establishment legislations, policies, plans and programmes and relevant actions are taken at the national, sectoral, local and community levels to support their implementation.

Therefore environmental mainstreaming in the Police implies incorporating environmental concerns in the planning process, policy formulation and programmes of the police and taking relevant action including budget to support their implementation. To the Police Force it implies understanding the public safety-environmental implications of not taking the right actions and adapting the core activities of the police force with the realities of those issues.

**Roles and Responsibilities of the Police in Environment Management**

- Detection and investigation and causing prosecution of environmental crimes in courts of law;
- Monitoring and enforcement of compliance to environmental laws, regulations and standards such as effecting evictions from sensitive ecosystems like wetlands, river banks and lake shores;
- Developing enforcement strategies against environmental crimes;

- Arresting of environmental offenders, just like other criminals;
- Increasing awareness of environmental crimes in the country and their threat to public peace and security;
- Sensitizing and raising the awareness of all the Uganda Police staff on general environmental issues including environmental crime as a threat to public safety;
- Strengthening National and International linkages in Environment and Natural Resource Management and exchanging information with NEMA, the Directorate of Public Prosecution (DPP), and other partner organizations;
- Mainstreaming environmental concerns in the planning process, policy formulation and implementation of the Uganda Police Force programs;
- Developing guidelines for investigation and prosecution of environmental crimes

### **Key Principals of Mainstreaming**

- (i) Understanding / being aware of the impact of environmental crimes on public safety and security and the development process in general;
- (ii) Identifying focused entry points;
- (iii) Working within existing structures and strategies;
- (iv) Working to your comparative advantages;
- (v) Identifying and working through strategic partnerships; i.e. NEMA, NGOs, Local authorities, Communities, the public etc.
- (vi) Developing environmental specific plans (what is the environmental plan of the police force?);
- (vii) Identify resource requirements; and
- (viii) Mobilize resources and implement planned activities

### **Key questions to ask in mainstreaming environmental concerns in Police**

To help the Police Force to determine how and where environmental issues should be addressed in her policies, plans and programmes, the following key questions have been raised;

- (i) What is the relationship between environment and public peace, safety and security?
- (ii) How does this relationship affect the maintenance of law and order?
- (iii) Is this relationship understood and addressed at all levels of activity in the police force?
- (iv) What is the current environmental performance of the Uganda Police?
- (v) What are the main environmental impacts of Police activities in the country?
- (vi) What are the environmental impacts of not acting?
- (vii) How can the environmental impacts of the Police activities be taken into account?
- (viii) What opportunities exist within the Police framework to enhance sustainable environmental management?

- (ix) How might the ignoring of environmental concerns undermine the vision, objectives and the targets of the Uganda Police (maintenance of law and order)?
- (x) What are the environmental impacts of the current policies, plans and programmes of the Police Force?

Appropriately addressing these questions will give a way forward to the challenge of maintaining a safe and secure environment in an integrated and sustainable manner to serve the needs of the present and future generations in the Police Force.

### **Way forward**

While we recognize that there are differences in our mandates (NEMA, Greenwatch and the Police) we also realize that we have so many common concerns regarding threats to the environment, public safety and security and thus shared goals. It is therefore important that we work more closely together in defining problems, identifying solutions and implementing joint initiatives.

- We need to develop an integrated plan of action in order to ensure that social, economic, environmental and technical dimensions are taken into account in the maintenance of public safety and security and investigation of crimes.
- Need to develop a sustainable surveillance and monitoring system in the field of environmental management. Monitoring indicators should be developed and popularized to track changes and to assess the effectiveness of our interventions. We should therefore intensify our efforts to gather environmental crime related data, exchange and share information.
- It has become widely accepted that ‘indicators of enforcement’ will play a key role in ensuring that the management of the environment is sustainable. Therefore, it is of critical importance that you strengthen the environmental information management system (storing, processing and dissemination of data to all users).
- Need to integrate environmental concerns in the plans and policy formulation of the Police. We also need to regularly review these policies, plans and institutional frameworks to ensure relevance and adherence to our shared goals.
- In your crime investigation function you need to keep abreast with best environmental practices. To tackle the specifically environment-related grievances, the preparedness and capacity of the police force to fight environment specific violations and crimes need to be developed.
- The curricula of the Police Training Colleges need to be expanded to include environmental concerns.

## **Indicators of Environmental Mainstreaming into the Uganda Police Force**

The extent of environmental mainstreaming can be assessed basing on the following monitoring indicators;

- Curriculum in the Police training colleges having environmental concerns/issues;
- Percentage of the Police budget allocation to environmental concerns;
- Police personnel specifically designated to handle environmental concerns;
- Creation of specialized units in the Police force handling environmental issues e.g. environmental squad, environmental desk etc;
- Number of environmental crimes reported to police, investigated and prosecuted in courts of law;
- Number of Police Officers who have attended environmental awareness and capacity building workshops and seminars;
- Number of environmental management capacity building initiatives organized by the Police;
- Creation of an environmental data bank in the Police.
- Environmental concerns being incorporated into the Police training

## **THE MOOT**

On 4<sup>th</sup> January 2006, Mr. Joshua Obonyo, the ECO- World learnt from New Vision, that Mr. Viran Patel intends to develop at Lutembe beach on the shores of Lake Victoria, He is a director of a Kenya-based multinational million project. Whereas the New Vision reported that Government had ‘passed’ the project but no EI has been carried out at all. And the company is already reclaiming the wetland by filling it with murrum. It intends to create a big hotel garden.

The Uganda Investment Authority had already granted the investment license and construction was to start immediately. The government had granted the company a 999 year lease title although part of the land is in a forest reserve and wetland, and which is a habitat for migratory birds.

NEMA is not happy with the project and sent tow inspectors who were chased and threatened by the company offices.

Nevertheless, NEMA issued a restoration order requiring the company to stop construction and restore the wetland.

The company ignored the order.

The company has brought on the site several drums of chemicals labeled “Petroleum Product; Danger.”

The company has refused to disclose information as to what the drums contain. But they are for use in the construction process.

On 15<sup>th</sup> February, **ECO-world** visited the project site and carried out interviews with local people. The community was not happy with the project. They fear they would lose access to firewood, honey, medicinal plants etc. a women’s group called **Twekambe** headed by **Mrs. Jovah Musoke** as Chairperson with its 150 registered members, that had started selling tree seedlings feared they would lose business. Other women groups that had started a handicraft business from materials obtained from the wetland had the same fears. However, others are happy with the project especially men as they ope to seek employment from the projects.

Tourists had started coming to the area to watch birds, butterflies and were buying local fruits, vegetables and handicrafts. The forest reserve is the only one where migratory birds from Europe rest on their journey to and from the south. It is their only breeding place in East Africa.

The fence of the site is at the shore it self.

Never the less, Mr. Patel insists he has an Investment license, a land title, approved building plans and a letter from the Minister of Lands and Environment authorizing him to construct the Hotel.

The government spokesperson has said the Hotel is required urgently. As it has to be read before 2007 Commonwealth Summit.

Joshua Obonyo has come to Police and reported this case.

Advise on necessary steps required to stop this project.

1. What possible charges and against who/
2. Who would be the witnesses?
3. What evidence is required to prove the offences?
4. What are the possible defenses available to the accused?
5. What are the possible punishments the offender is likely to get if convicted?
6. Draw a charge sheet
7. Compile summary of evidence

**CLOSING REMARKS AT THE TRAINING WORKSHOP TO STRENGTHEN THE CAPACITY OF POLICE INVESTIGATORS AND STATE PROSECUTORS TO ENFORCE ENVIRONMENTAL LAWS IN UGANDA.**

**By Dr. Gerald Musoke Sawula, Deputy Executive Director, NEMA.**

Distinguished participants, the organizers of this workshop, Ladies and Gentlemen.

I am deeply honoured to officiate at the closing of this training workshop on enforcement of environmental laws.

I am aware that this workshop was organized by Greenwatch in conjunction with DPP and CID. NEMA and Greenwatch have been working in concert with one another for a long time now and this is one of the areas in which that partnership has continued.

I am made to understand that the workshop was intended to, inter alia, enhance and strengthen your capacity and skills in enforcing environmental laws. I hope it has presented you with the opportunity not only to acquire new skills but also to share your experiences and knowledge in enforcement of environmental laws..

Constant provision of training in new areas such as enforcement and compliance with environmental laws is a challenge, in view of commitment of time, finances and human resources. But it is rewarding when you see that enforcement of environmental laws is stepped up and the country's natural resources are conserved, for our own benefit and for the benefit of future generations.

I commend the organizers of this workshop for giving the police officers involved in environmental crime detection and investigators, state prosecutors and attorneys the opportunity to come together in a setting like this and update their knowledge, in addition to sharing experiences in environmental enforcement.

You may be aware of the environmental problems this country faces and the antecedent conflicts that arise there from. Issues of survival drive the poor to exploit natural resources unsustainably. Encroachment of protected areas and wetland, among others, is of great concern, as is the perceived conflict between development and environmental management.

It is my sincere hope that the skills and experience you have gained during this workshop have broadened your understanding about the dangers we face if the environment is not well managed. Your skills and commitment is crucial for the enforcement process to succeed. I therefore urge you to put in practice what you have learnt.

I also urge you to take back all the materials and the knowledge acquired through this workshop and not only put them to good use but also share them with other enforcement officers so that together, we are better equipped to handle complex environmental matters in an efficient and expeditious manner.

In conclusion, I would like to express my sincere appreciation to the organizers of this workshop, Greenwatch, and the John D. and Catherine T. MacArthur Foundation for sponsoring this workshop. I wish to give special appreciation to the staff from Greenwatch and the Training Department of the DPP, the Environment Desk of CID, for their dedicated efforts in making this workshop a success. I urge them to continue with the good work. I do thank the staff of NEMA and the various facilitators of this workshop for sharing their experience and expertise with you.

I also wish to extend my thanks to you the participants for being able to find time from your busy schedules to attend this important workshop and for your most able participation and interaction during the proceedings.

Lastly, I wish you all safe journey back to your respective stations.

With those few remarks, **IT IS NOW MY PLEASURE TO DECLARE THIS WORKSHOP OFFICIALLY CLOSED.**

## LIST OF PARTICIPANTS

| No  | Name                  | Designation & address                |
|-----|-----------------------|--------------------------------------|
| 1.  | Bavenkuno Moses       | D/SGT<br>Mayuge                      |
| 2.  | Kyazike Justine       | D/W/IP<br>Kamuli                     |
| 3.  | Ochola George         | D/IP<br>Masindi                      |
| 4.  | Pule Johnan           | D/AIP<br>Soroti                      |
| 5.  | Obong W               | D/IP<br>Entebbe                      |
| 6.  | Kolyanga Henry        | D/SGT<br>Mpigi                       |
| 7.  | Opit Samuel           | D/AIP<br>Kiira Road                  |
| 8.  | Orukode Joseph        | D/SGT<br>Pallisa                     |
| 9.  | Ochan Geoffrey        | D/SGT<br>Masindi                     |
| 10. | Butamanya             | D/SGT<br>Lugazi                      |
| 11. | Ebiot Vincent         | D/AIP<br>Kabarole                    |
| 12. | Malinga Jasper        | D/SGT<br>Nakapiripirit               |
| 13. | Kamukugize Stephen    | CID<br>Kampala                       |
| 14. | Nanyonga Josephine    | State Prosecutor<br>Buganda Road     |
| 15. | Semalembe Simon Peter | Principal State Attorney<br>Kampala  |
| 16. | Kerwegi Sarah         | Senior State Attorney<br>Kampala     |
| 17. | Agola Betty           | State Attorney<br>Kampala            |
| 18. | Niyonzima Vincent     | Resident State Attorney<br>Mubende   |
| 19. | Namatovu Josephine    | Resident State Attorney<br>City Hall |
| 20. | Yoga Oyende           | Resident State Attorney<br>Sironko   |
| 21. | Kigwana Simon         | State Prosecutor<br>Arua             |

|     |                     |                               |
|-----|---------------------|-------------------------------|
| 22. | Bakibinga Angela    | State Prosecutor<br>Entebbe   |
| 23. | Opio George William | State Prosecutor<br>Kapchorwa |

### Resource persons/ Facilitators

|    |                          |   |
|----|--------------------------|---|
| 1. | Kenneth Kakuru           | Director Greenwatch   |
| 2. | Richard Buteera          | Director DPP  |
| 3. | Kaggwa Ronald            | Environmental Economist, NEMA   |
| 4. | Dr. Gerald Sawula Musoke | Deputy Executive Director, NEMA   |
| 5. | Doris Akol               | Environmental Law Resources Centre                                      |
| 6. | Ogwal Joseph             | Wetland Inspection Division   |
| 7. | Vincent Wagona           | Ag. Principal Sen. State Attorney<br>Directorate of Public Prosecutions |
| 8. | George Lubega            | NEMA  |
| 9. | Akello Christine         | Senior legal Counsel (NEMA)   |

### Secretariat

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

**ENFORCEMENT OF ENVIRONMENTAL LAW TRAINING PROGRAMME  
FOR POLICE OFFICERS, INVESTIGATORS AND PROSECUTORS.**

**19<sup>th</sup> -21<sup>st</sup> MARCH 2006**

**RIDAR HOTEL – SEETA**

**PROVISIONAL PROGRAMME**

| <b>TIME</b>   | <b>ACTIVITY</b>  | <b>DESCRIPTION</b>  | <b>FACILITATION/<br/>RESOURCE<br/>PERSON</b>   |
|---|--|---|--|
| <b>DAY ONE : SUNDAY, 19<sup>th</sup> March,2006</b> |  |   |  |
| 3:00p.m-<br>onwards                                 | Arrival of participants at Ridar Hotel   | Check- in   | <i>Greenwatch</i>  |
| 7:00 pm   | <b>Dinner</b>  |   | <b>Hotel Management</b>  |
| 8:00 p.m  | Opening remarks  | <i>Remarks from Director,<br/>Greenwatch<br/>Remarks from Executive<br/>Director, NEMA</i>  | <i>Mr. Kenneth Kakuru<br/>Director, Greenwatch<br/>Dr. Henry Aryamanya<br/>Mugisha Executive<br/>Director NEMA.,</i> |
| 9:00 pm.  | Official opening ceremony  | <i>Official Opening Remarks</i>   | <b>Mr. Richard Buteera,<br/>Director, Directorate of<br/>Public Prosecutions.</b>                                    |
| <b>DAY TWO MONDAY : 20<sup>th</sup> March 2006</b>  |  |   |  |
| 8.00-8:15   | Registration   | <i>Handouts</i>   | <i>Greenwatch</i>  |
| 8:15-8: 25  | Introductions  | <i>Participants</i>   |  |
| 8:25- 8:50<br>a.m.                                  | State of Environment in Uganda   | <i>Overview of environmental<br/>problems<br/>The relationship between<br/>sound environment<br/>management and Security<br/>The concept of<br/>conservation against<br/>sustainable development<br/>Challenges</i> | <i>Mr. Ogwal Joseph,<br/>Monitoring Officer,<br/>Wetlands Inspection<br/>Division</i>                                |
| 8:50- 9:20  | <b>Discussions</b>   |   |  |
| 9:20 -9:50<br>a.m                                   | Overview of the legal and Institutional framework for Environmental management in Uganda | <i>National legal framework<br/>Institutional framework<br/>Difference between<br/>environmental laws,<br/>regulations and permits<br/>Practice and procedure</i>   | <i>Christine Akello,<br/>Senior Legal Counsel,<br/>NEMA.</i>   |

| <b>TIME</b>           | <b>ACTIVITY</b>  | <b>DESCRIPTION</b>   | <b>FACILITATION/<br/>RESOURCE<br/>PERSON</b>   |
|-----------------------|--|--|--|
| 9:50-10:20            | <b>Discussions</b>   |  |  |
| 10:20-10:40           | <b>TEA BREAK</b>   |  |  |
| 10:40- 11:<br>10 a.m. | Brief Introduction on environmental law                                  | <i>Brief History of environmental law<br/>Sources of environmental law<br/>Environmental law as a distinct discipline from tort law<br/>Locus standi</i>   | Kenneth Kakuru   |
| <b>11:10-11:30</b>    | <b>Discussions</b>   |  |  |
| 11: 30-<br>12:00      | Challenges in Monitoring and Enforcement of Environmental laws in Uganda | <i>Monitoring tools<br/>Enforcement mechanisms and tools<br/>Components of a good enforcement programme<br/>Importance of enforcement programme<br/>Framework of enforcement<br/>Challenges in enforcement</i> | <i>Mr. Lubega George,<br/>Monitoring and Enforcement Officer,<br/>NEMA</i>                         |
| <b>12:00-12:20</b>    | <b>Discussions</b>   |  |  |
| 12.20 –<br>12:50p.m.  | Criminal aspects of environmental law                                    | <i>What are criminal aspects of environmental law<br/>Legal technicalities relevant to criminal prosecution under environmental law<br/>Overview of environmental offences</i>                                 | <i>Mr. Wagoona Vincent, Ag.<br/>Principal State Attorney<br/>Directorate of Public Prosecution</i> |
| 12:50- 1:20<br>p.m.   | <b>Discussions</b>   |  |  |
| <b>1:20- 2:20</b>     | <b>LUNCH BREAK</b>   |  |  |
| 2.20 – 2:50<br>pm     | Enforcing Environmental Laws   | <i>Importance of enforcement and compliance<br/>Components of a successful enforcement programme<br/>Roles by different actors,</i>  | Mr. Kenneth Kakuru   |

| <b>TIME</b>          | <b>ACTIVITY</b>   | <b>DESCRIPTION</b>   | <b>FACILITATION/<br/>RESOURCE<br/>PERSON</b>                  |
|----------------------|---|--|---|
|                      |   | <i>CSOs, Police, Courts,<br/>government, judiciary</i>   |   |
| 2:50-3:20            | Conduct of Investigations/ Criminal Procedure                             | <i>Key Principles for presenting evidence: Is evidence relevant, prejudicial?<br/>Types of evidence<br/>Practicalities of gathering and adducing evidence<br/>Conduct, management and control of investigations of criminal environmental offences<br/>Nature of offences<br/>Preparation of investigation reports<br/>Gathering and documenting evidence<br/>Dealing with offenders</i> | <i>Ms. Doris Akol,<br/>Environmental Law Resources Centre</i> |
| 3:20-3:50pm          | <b>Discussions</b>  |  |   |
| 3:50 – 4:20pm        | Prosecutions  | <i>Applicability of criminal principles<br/>Who prosecutes<br/>Culpability<br/>Selection of charges</i>  | Mr. Vincent Okwang<br>In Charge, Environmental Unit, DPP.     |
| 4:20 – 4:40          | Evidential difficulties involved in Prosecution of environmental offences | Delicate nature of offence<br>Transient nature of offence<br>Standard of proof   | <i>Ms. Doris Akol,<br/>Environmental Law Resources Centre</i> |
| <b>4:40-5:00</b>     | <b>Afternoon Tea Break</b>  |  |   |
| <b>5:00-5:25</b>     | <b>Discussions</b>  |  |   |
| <b>5:40pm</b>        | <b>Field Trip</b>   |  |   |
| <b>7:30- 9:00 pm</b> | <b>DINNER</b>   |  |   |
|                      | <b>END OF DAY TWO</b>   |  |   |

| DAY THREE:             | TUESDAY 21 <sup>ST</sup> MARCH,2006.   |   |  |
|------------------------|--|---|--|
| 8.20 a.m.-<br>8.50a.m. | Prosecuting environmental crimes   | <i>Presenting evidence at Trial<br/>Sentencing environmental offenders<br/>Sentencing in environmental prosecutions: fines, prison and beyond</i> | Kenneth Kakuru   |
| 8.50 - 9.20 a.m.       | <b>Discussions</b>   |   |  |
| 9.20 – 9:50            | Mainstreaming Environmental Concerns into the Policies, Plans and Programmes of the Uganda Police Force. |   | <b>Mr. Ronald Kaggwa, Environmental Economist, NEMA</b>      |
| 9:50 – 10:20           | <b>Discussions</b>   |   |  |
| 10:20-10:40            | <b>BREAK TEA</b>   |   |  |
| 10.40-<br>11:10a.m.    | <b>Practical Exercise: Initiating the investigation</b>  |   | <i>Mr. Kenneth Kakuru</i>                                    |
| 11.10-12:00            | <b>Discussions on practical exercise</b>   | <i>Participants break into groups</i>   |  |
| 12.00-<br>12:30 p.m.   | Presentations from Group Discussions   | All Participants  | <i>Mr. Stephen Kamukugize chairing</i>                       |
| 12:30- 1:00            | Plenary of group presentations   |   | <b>chairing : Mr. Simon Semalemba<br/>Mr. Kenneth Kakuru</b> |
| 1:00-2:00              | <b>LUNCH BREAK</b>   |   |  |
| 2.00-2:20 p.m.         | <b>Wrap up and Recommendations</b>   | <i>Way Forward</i>  | <i>All Participants</i>                                      |
| 2:20-<br>2:40pm        |  | <b>Presenting of certificates</b>   | <i>Dr. Sawula Musoke, Deputy Executive Director, NEMA</i>    |
| 2:40 -<br>3:00pm.      | <b>Official Closing</b>  | <b>Closing Remarks</b>  | <i>Dr. Sawula Musoke, Deputy Executive Director, NEMA</i>    |
| 3:30 pm                | <b>Afternoon Tea Break</b>   |   | All  |
| <b>4:00 p.m.</b>       | <b>DEPARTURE</b>   |   | <b>All</b>   |