

**PARLIAMENT OF UGANDA**

**REPORT OF THE COMMITTEE ON NATURAL RESOURCES  
ON**

**THE NATIONAL ENVIRONMENT BILL, 2017**

OFFICE OF THE CLERK TO PARLIAMENT  
PARLIAMENT HOUSE  
KAMPALA - UGANDA

**November 2018**

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**ACRONYMS**

ACODE	Advocates Coalition for Development and Environment
NEMA	National Environment Management Authority
AFIEGO	African Institute of Energy Governance
CAN-U	Climate Action Networks Uganda
MEAs	Multilateral Environmental Agreements
NFA	National Forestry Authority
ULGA	Uganda Local Government Association
UMA	Uganda Manufacturer Association
UPMA	Uganda Plastic Manufacturer Association
SDGs	Sustainable Development Goals

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## 1.0 INTRODUCTION.

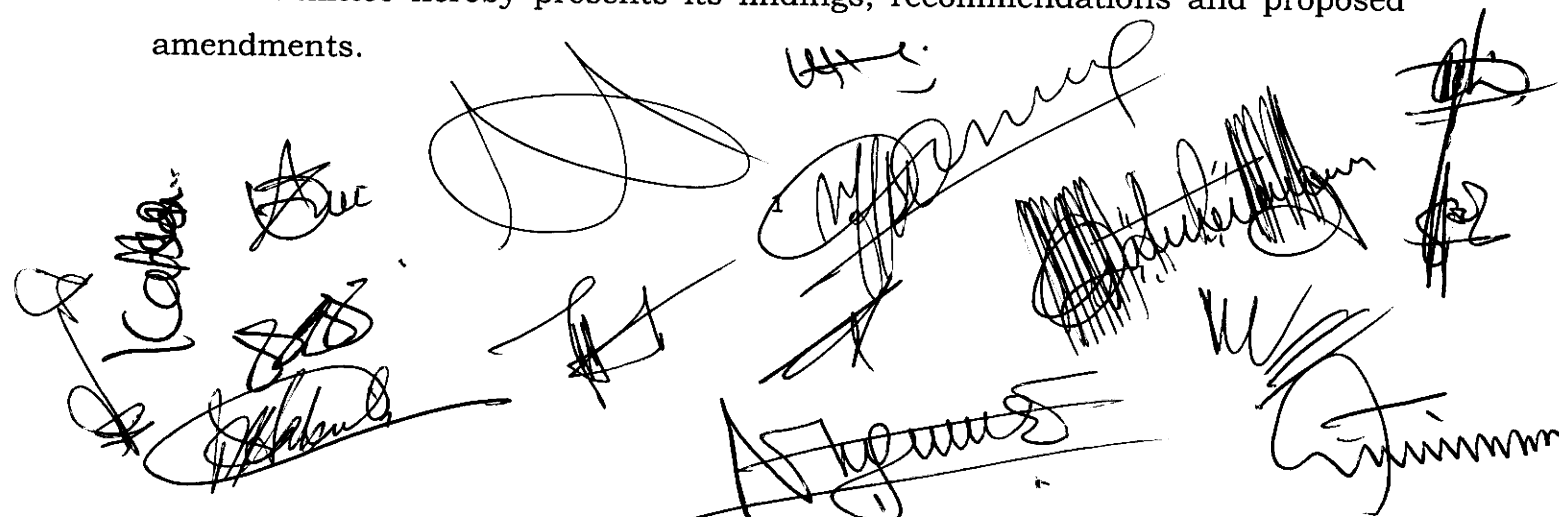
Rt. Hon. Speaker and Honourable Members, the National Environment Bill, 2017 was read for the first time on 20<sup>th</sup> December, 2017 and it was referred to the Committee on Natural Resources in accordance with Rules 128 of the Rules of Procedure of Parliament. The Committee on Natural Resources has examined the Bill in detail and therefore wish to present this report with observations and recommendations to this House.

## 1.1 METHODOLOGY

The Committee held consultative meetings, reviewed relevant literature, consulted relevant laws, and received written submissions from the following stakeholders:

- a) The Prime Minister and the Leader of Government Business
- b) The Ministry of Water and Environment;
- c) The Ministry of Trade, Industry and Cooperatives;
- d) The National Environment Management Authority;
- e) Climate Action Network Uganda (CAN-U);
- f) Advocates for Natural Resources and Development;
- g) Uganda Wildlife Authority; (UWA)
- h) The National Forestry Authority; (NFA)
- i) Ministry of Agriculture, Animal Industry and Fisheries;
- j) The Advocates Coalition for development and Environment (ACODE);
- k) The Uganda Local Government Association; (ULGA)
- l) Uganda Manufacturers Association ;(UMA)
- m) Kampala City Traders Association (KACITA);
- n) African Institute for Energy Governance (AFIEGO); and
- o) Uganda Plastics Manufacturers' Association (UPMA)

The Committee hereby presents its findings, recommendations and proposed amendments.



## 1.2 THE OBJECT OF THE BILL

The object of this Bill is to repeal the National Environment Act cap.153 and replace it with a Law that conforms to existing Government policies and other relevant laws.

The specific objectives are to;

- (a) continue in existence the National Environment Management Authority established under that Act as a coordinating, monitoring, regulatory and supervisory body of all activities related to the environment;
- (b) provide for emerging environmental issues including climate change, the management of hazardous chemicals and biodiversity offsets;
- (c) provide for strategic environmental assessments;
- (d) address environmental concerns arising out of petroleum activities,
- (e) to provide for the management of plastics and plastic products;
- (f) to establish the Environmental Protection Force;
- (g) provide for the establishment of an Environmental Tribunal;
- (h) to provide for enhanced penalties for offences under the Act;
- (i) to provide for procedural and administrative matters; and for related matters.

In its current form, the existing law impedes the effective protection of the environment.

## 2.0 RATIONALE FOR THE LEGAL FRAMEWORK

Since the enactment of the National Environmental Act in 1995, there has been numerous environmental challenges that have emerged consequently necessitating adoption of environmental best practices. For example:

- (a) The discovery of oil in Uganda, with its attendant environmental challenges;
- (b) The escalation of climate change concerns such as drought, floods, storms, pollution and landslides that have had serious effects upon agricultural production, food security, nutrition, incomes, health and livelihood;

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(c) Technology advancement with the attendant challenges of managing e-waste;

(d) Unsound use of chemicals.

There is therefore need for radical changes in the law to address these emerging environmental challenges.

## 2.1 PROPOSED REMEDIES;

- 1) Strengthen the National Environment Management Authority (NEMA) as a regulator and other agencies involved in environmental management.
- 2) Address the funding gaps for environmental management including the National Environment Fund (NEF).
- 3) Provide for the Management of the Green Environment through;
  - (a) Special conservation areas, sustainable use and proper management of the environment and natural resources, including lakes, rivers, wetlands, forests, hilly and mountainous areas,
  - (b) Access and utilization of genetic resources, the environmental-health aspects of genetically modified organisms,
  - (c) Payment for ecosystem services and management,
  - (d) Climate change impacts on ecosystems.
- 4) Strengthen environmental planning at the national, district and departmental levels.
- 5) Control the use of hazardous chemicals and products in order to protect human health and the environment.
- 6) Prohibit pollution, provide for polluter's liability and to provide for environmental emergency preparedness.
- 7) Prohibit littering and provide for the management of waste in accordance with environmental best practices.
- 8) Establish environmental standards.
- 9) Make provision for environmental and social assessments.

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- 10) Provide for application and grant of environmental easements.
- 11) Provide for Environmental compliance and enforcement.
- 12) Provide for collaboration mechanisms with regional and international community and other issues incidental to this legislation.

### 3.0 GENERAL OBSERVATIONS AND RECOMMENDATIONS.

In scrutinizing the Bill, the Committee made some general observations and recommendations.

#### 3.1 THE RIGHT TO A CLEAN AND HEALTHY ENVIRONMENT.

Article 39 of the Constitution provides that "Every Ugandan has a right to a clean and healthy environment"<sup>1</sup>. The human right to a clean and healthy environment was recognized by the *Stockholm Declaration of the UN Conference on the Human Environment, 1972* where it states as follows;

*"Both aspects of man's environment, the natural and the man-made, are essential to his well-being and to the enjoyment of basic human rights -- even the right to life itself."*<sup>2</sup>

A clean and sustainable environment is a basic human right and one that every person has a right to and a responsibility to ensure for future generations.

Clause 3 of the Bill mirrors the constitutional provision and further mandates every Ugandan to create maintain and enhance the environment, including the duty to prevent pollution.

The Committee observes that the protection should further extend to all persons living in Uganda. In the same vein the duty to protect the environment and prevent pollution should not be limited to only Ugandans.

<sup>1</sup> Article 39 of the Constitution of Uganda

<sup>2</sup> Stockholm Declaration of the UN Conference on the Human Environment, 1972

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**Committee recommendation**

**The Committee recommends that protection should extend to all persons living in Uganda and that they have the duty to protect the environment and prevent pollution.**

**3.2 THE RIGHTS OF NATURE.**

For a very long time, laws have only been permitting hence treating nature a property. For the right to a clean and healthy environment to be guaranteed, the environment should be recognized as a right holding entity. Although the 1995 Constitution and the National Environment Act 1995 provides that every Ugandan has a right to a clean and healthy environment; and the Constitution further commands the state to protect important natural resources including water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda<sup>3</sup>. The above legal position does not provide for nature to hold, enjoy and enforce its rights. This means giving universal rights to both humans and nature to enjoy a clean and healthy environment. This legal right focuses on the idea of legal standing (often described as the ability to sue and be sued), which enables “nature” to go to court to protect its rights.

Legal rights are not the same as human rights, and so a “legal person” does not necessarily have to be a human being. Corporations, for example, are also treated in law as “legal persons”, as a way to endow companies with particular legal rights, and to treat the company as legally distinct from its managers and shareholders. Therefore, the same practice should apply to nature.

The Committee notes that the rights of nature have been recognized in other Countries for example

- 1) In India the Ganges and Yamuna Rivers were granted legal rights in 2017. The High Court of the State of Uttarakhand in India declared that ‘the Rivers Ganga and Yamuna [are] legal person with all the

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corresponding rights, duties and liabilities of a living person<sup>4</sup>. Subsequently an environmental activist has reported the 'murder' of the Ganges and Yamuna Rivers to the police, on the basis that the rivers were too polluted to be considered 'alive'.

- 2) New Zealand enacted the Enacted Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 that granted legal rights to the Whanganui River<sup>5</sup>. The River is the source of spiritual and physical sustenance with inalienable connection with health and well-being of the Awa Tupua community.

### Committee Recommendations

- a) **The Committee recommends that giving nature legal rights means the law recognizes "nature" as a legal person, thus creating rights that can then be enforced. The rights of nature would grant nature its legal recognition, enjoyment of rights and ability to enforce its rights.**
- b) **The Committee recommends that specific natural resources be identified and given the rights of nature so as to enhance their conservation.**

### 3.3 PRINCIPLES OF ENVIRONMENTAL MANAGEMENT

The Stockholm and Rio Declarations have provided the engine of environmental law development at global, regional and national levels. The concepts and principles of sustainable development wrap up several principles, in fact a third of them into the totality of the concept of sustainable development.

These principles include the following;

- (i) **The Precautionary Principle** - Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a

reason for postponing cost-effective measures to prevent environmental degradation

- (ii) **Polluter Pays Principle** - The polluter should, in principle, bear cost of pollution, with due regard to the public interest
- (iii) **Access to Environmental Justice, Information, Public Participation**
- (iv) Environment impact assessment as a national instrument shall be undertaken for proposed activities that are likely to have a significant impact on the environment and are subject to a decision of a competent national authority.
- (v) **Rio principles, notably 1, 3** as well as several treaties and declarations refer to the responsibility to protect and improve the environment for present and future generations.

The Bill in clause 4 mandates the Authority to ensure that the principles as set out in 4(2) are observed.

The committee observes that clause 4(2) for the most part captures the principles as set out in the declarations. However the Committee observed that some critical internationally recognized principles of Environmental Management are not included under clause 4(2), and therefore should be incorporated.

These are as follows:

**(i) Prior and sufficient consultation**

This principle requires that persons who are bound to be impacted by a project should be given adequate information about the project before the commencement of the project so as to enable the affected persons to participate or support the project from an informed point of view.

**(ii) Notification in case of emergency**

In case of an environmental emergency such as a disaster of any magnitude, the lead agencies should notify other relevant agencies and departments so as to guarantee the availability of support.

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**(iii) The Human Rights Based Approach**

This principle requires that the processes of environmental management and human development should have due regard to international human rights standards and operationally directed to promoting and protecting human rights.

**(iv) Ecosystem Based Adaptation**

In implementing public and private projects, this principle of Environment management requires the use of the approaches that increase both the environment and people's resilience to impacts of climate change. Planning and implementation should consider the entire eco-system.

**(v) Gender and Equity**

**Recommendation**

**The Committee recommends that the above principles be included under clause 4 (2).**

**3.4 THE NATIONAL ENVIRONMENTAL FUND**

Clause 31 of the bill continues in existence the current The National Environmental Fund (NEF).

Under clause 32, the Fund is proposed to support the;

- (a) Management of sensitive and fragile ecosystems;
- (b) Critical environmental restoration activities;
- (c) Support the review and follow up of compliance with environmental and social impact assessments and environmental audits
- (d) Functions of the Environmental Tribunal; and
- (e) Environment and natural resources management.

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