

REVIEW OF THE NATIONAL ENVIRONMENT BILL 2017

CIVIL SOCIETY ORGANISATIONS' COMMENTS AND RECOMMENDATIONS SUBMITTED TO THE NATURAL RESOURCES COMMITTEE OF PARLIAMENT

March 2018

These comments and recommendations were generated and submitted from the constituent organizations that form the Civil Society Coalition on oil and gas (CSCO), and the Environment and Natural Resources Network (ENR-CSOs Network), and the Advocates Coalition for Development and Environment (ACODE) with support from the World-Wide Fund for Nature (WWF)



I. Introduction:

The Government of Uganda (GoU), through the National Environment Management Authority (NEMA), embarked on a process for amending the National Environment Bill since 2014. The process involved consultative interactions with key stakeholders (including Civil Society Organizations) at the national and local levels. Consultations resulted in generation of various views, from key stakeholders, for consideration into the Bill.

The Ministry of Water and Environment (MWE), with financial support from Development Partners, through NEMA, recruited consultants to facilitate the process. This initiative resulted in generation of several drafts of the Bill. Consequently, the Bill was tabled by the Minister at the 21st sitting of the 2nd Meeting of the 5th Session of the 10th Parliament of Uganda, which was held on the 20th December, 2017¹. In February 2018 the Sessional Committee on Natural Resources made an invitation to several stakeholders, the General Public, and other interested parties to present their views on the Bill and submit written comments to the Clerk of the Committee.

In response to this invitation, as key CSOs in the environment and natural resources sector organized under the auspices of the **Civil Society Coalition on Oil and Gas (CSCO)**² in Uganda, and the **Environment and Natural Resources Civil Society Organizations Network**³ (**ENR-CSO Network**), *we have reviewed and*

¹ Republic of Uganda, (2018): *Public Hearing on the National Environment Bill, 2017*. Call for Written Submissions, Clerk of Parliament, Kampala. Parliament of Uganda

² CSCO is a loose network of over 60-member organizations working on oil and gas related issues in Uganda. CSCO came into existence in 2008 to create, nurture and harness a shared civil society platform for promoting and strengthening CSO coordination, networking and advocacy in the oil and gas sector. The Network's shared Vision is "a well-managed oil and gas sector for the benefit of all Ugandans". The coalition is hosted by ACODE and managed by a steering committee elected by the General Assembly.

³ The **ENR-CSO Network** in Uganda was founded in **2009** as a loose network with a diverse membership of CSOs in environment and natural resources operating at national and sub-national levels. The Vision of ENR-CSO Network is "Uganda's natural



scrutinized the draft National Environment Bill, draft of 24th November 2017. We hereby jointly present our observations and comments for consideration by the Parliamentary Committee on Natural Resources.

We generally observe that the Bill is well written and comprehensive, and we are thankful to government technocrats, political leaders and non-state actors who have been involved in this process. The Bill covers most of the pressing environment and natural resources management issues, such as climate change, hazardous waste management, oil spills management and control, regulation of littering and plastics, and control of flaring and venting of associated gas (AG), among other environmental issues of national and international concern. The attempt to cross-reference the Bill with some other Acts is also appreciated.

However, we note that there are various issues in the Bill which require further articulation before passing it into law. These include:

- a) The need to expound on the Principles of Environmental Management;
- b) Cross-referencing of the following laws:
 - i. Water Act,
 - ii. Electricity Act,
 - iii. the Mining Act, and
 - iv. the Ratification of Treaties Act;
- c) Improving on the functions of the Ministers and the Authority;
- d) Improving provisions on public participation, especially in the processes of:
 - i. Environment and Social Impact Assessments (ESIA);
 - ii. Strategic Environment Assessments (SEA);
- e) Clear provisions on National Environment Fund, especially fund operationalization and management;

environment providing goods and services, on sustainable basis, for national socio-economic development.” The **Secretariat** of the **ENR-CSO Network** is at **Environmental Alert**.

- f) Clear provisions on coordination of the activities of the Authority and Environment lead agencies
- g) Clear provisions on Environment Police Force-especially the recruitment and chain of command.

Further details on these key issues, observations and corresponding suggestions/recommendations are presented in the **Table** below for consideration.

2. Clause-by-Clause Comments and Recommendations

Matrix of Issues and Alternative Drafting Proposals

What National Environment Bill provides	Clause	Issue / Comment	Proposed suggestions for consideration in the National Environment Bill
PART I - Preliminaries			
Interpretation The bill provides for a number of definitions of terms and phrases used in the Bill.	<i>Clause 2</i>	A number of key terms and phrases used in the Bill are not defined, notwithstanding the fact that they are technical and ought to be defined to ease interpretation of the Bill.	<p>1. Environmental Easement <i>‘Environmental easement’ means paying landowners for not developing or exploiting parts of their property in order to preserve areas that are particularly important to the local ecosystem.</i></p> <p>2. Environmental Practitioner <i>"environmental practitioner" means an individual person or firm of consultants duly certified and registered to conduct environmental impact study</i></p>



			<p><i>or environmental audit;</i></p> <p>The other terms that should be defined are the following</p> <ol style="list-style-type: none"> 3. Special Conservation Area 4. Coercive Fine 5. Express Penalty 6. Circulative resources 7. Eminent Ugandan
Right to a decent environment	<i>Clause 3</i>	The Bill uses the phrase “Decent Environment”, something that is relative and can be defined or explained subjectively hence making it susceptible to abuse or misinterpretation	The phrase “Decent Environment” should be replaced with ‘ <i>a clean and healthy environment</i> ’ which is consistent with the wording of Article 39 of the constitution
The Principles of Environmental Management	<i>Clause 4(2)(1)</i>	There are some critical internationally recognized principles of Environmental Management that are not included	<p>The Principles that are not captured are:</p> <ul style="list-style-type: none"> • <i>Free, Prior and Informed Consent</i> <p>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.</p> <ul style="list-style-type: none"> • <i>Common but differentiated responsibility</i>

			<p>In view of the contribution to global environmental degradation and the fight against climate change, all states including Uganda have a common responsibility, which is to take measures to combat the environmental threats, but the measures taken vary from state to state based inter alia on the level of development of the state in issue.</p> <ul style="list-style-type: none"> • 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 in case the emergency is not contained by the lead agency • 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. • Ecosystem Bases Adaptation In implementing public and private projects, this principle of Environment management emphasizes the use of the approaches that
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			increase both the environment and people's resilience to impacts of climate change
Part II – institutional Arrangement			
Functions of the Minister	<i>Clause 6(1)</i>	Coordination of environmental institutions has been a big challenge leading to conflicts between the Authority and lead Agencies. The Bill does not expressly provide for the coordination role of the Minister	The minister shall ensure coordination and harmonization of roles, mandates and responsibilities of the Authority and relevant lead agencies within the ministry
This provision provides for the Mandate and Functions of the Authority	<i>Clause 8(2)(e)</i>	This clause provides for the key stakeholders that the Authority shall partner with in its functions including private sector, inter-governmental organisations, NGOs, cultural institutions, religious institutions, but leaves out academia. Academia is very relevant in research, and environmental education	Add the academia among the stakeholders to liaise with in this provision
	<i>Clause 8(2)(h)</i>	There is need for NEMA to Monitor, Inspect and Audit in collaboration with other	The Clause should read as follows: <u>In collaboration with other lead agencies</u> undertake and coordinate environmental

		agencies and not in isolation.	monitoring, inspection and audits.
Composition of the Board	<i>Clause 10(5)</i>	The clause provides for membership of the Board which includes an eminent Ugandan. There is no clarity on criteria for nomination of eminent Ugandan.	The Bill should provide a subsection for the criteria selection and appointment of an eminent Ugandan
Functions of the Board	<i>Clause 13(1)(h)</i>	The section provides for appointment of the Director “or” Deputy. This means that the Board can appoint one of the two, whereas both positions have to be filled	The word “or” should be replaced with “and”
The appointment of Technical Committees	<i>Clause 19</i>	As opposed to what is in the Current Act, the Bill does not expressly state some of the key technical committees that have to be established. While it may not be necessary to mention in the Bill committees, as many of them may be constituted as and when need arises there are critical committees that should be provided for.	Without prejudice to the discretion of the Ministry, the provision should specifically provide for: <ul style="list-style-type: none"> 1. A technical committee on Environment, Social, Economic and Human Rights Impact Assessment 2. A technical committee on petroleum and other extractives 3. A technical committee on soil and water conservation 4. Environmental agencies and MDs Coordination Committee
	<i>Clause 23(2)</i>	The Bill provides that the	The word “appointed should be replaced by the

Environment Protection Force		Environmental Protection Force shall comprise of persons appointed by the Minister in consultation with Uganda Police Force. The word “ appointment ” is not appropriate in the circumstances.	word “recruited” The force should be recruited and not merely appointed
	Clause23(3)	Provides that the person appointed under sub section (2) shall be trained by Uganda Police Force. The word “ appointment ” is not appropriate in the circumstances.	It is proposed that it should be replaced with the word,” recruited ”
	Clause 23(4)	The clause provides that the Minister may by statutory instrument “ on the recommendation of ” the Uganda Police Force	Under 23(4) the making of statutory instrument should not be “on recommendation of” but “In consultation with” Uganda Police Force police Authority
Composition on Urban, district and Local Environment Committee	<i>Clause 25</i>	NGOs play a critical role and are not represented at this level. There is also constitution of the Board is not gender sensitive, and if	There should be NGO representation on the composition of Urban and District Environment committees. and representation of women on the three committees

		there are no women occupying the offices provided, there will be no women representation.	
Institutional Coordination	Part II	<p>Part 11 deals with institutional arrangement. It provides for key institutions but it does not deal with institutional coordination. Lack of institutional coordination and mandate overlap are some of the key challenges that have undermined environmental management in Uganda</p> <p>The Bill does not explicitly provide for the coordination or and inter-agency forum to foster corporation and coordination among the various lead agencies so as to achieve integrated environmental Management.</p>	The Law should establish a coordination committee comprised of all the Lead Environmental Agencies including NEMA, UWA, NFA and other MDAs that handle the environment, and periodically meet and dialogue on sector concerns and challenges. We propose establishment of this committee.
PART III – Funds of the Authority and the National Environment Fund			
Administration of the National	<i>Clause 32(1)</i>	The NEMA Board may not be in position to manage the	The proposal is to have the following clauses (sub-clauses) in the Bill:



Environment Fund		Fund adequately, given the so many other functions that the board has to play. Looking at other successful cases of management of Funds, we believe this role has to be assigned to an entity, whose sole responsibility is fund mobilization and management	<ol style="list-style-type: none"> 1. The Minister in consultation with the Board shall constitute a Fund Manager/Fund Management Entity to manage the National Environment Fund independently. 2. The Minister shall direct the Fund Management Entity to maintain accounts which shall be audited annually by the Auditor General. 3. The Fund Manager shall submit to the minister, once in every six months, a report on the operations of the Fund, giving such information on the affairs of the fund as the minister shall specify in writing. 4. The Minister shall submit an annual report to parliament on the performance of the fund
	<i>Clause 32(2)</i>	Given the evolving nature of environmental threats and environmental management, other states are currently investing in extensive research and this is an area that should be supported by the Fund.	<ol style="list-style-type: none"> 1. The Fund should support research in the field of environment. The funds shall be used to facilitate research intended to further the requirements of environmental management, capacity building, environmental publications and scholarships. 2. The Fund should also support innovations for environmental conservation and management by the

			public and private sector.
PART IV – Environmental Planning			
State of Environment Report	<i>Clause 45</i>	The Bill provides for preparation of a report, but there is need for this report to be presented to parliament for accountability purposes.	The Minister should present this report to parliament when it is prepared after every three years
PART V – Management of the Green Environment			
Authority Making Regulations and guidelines	Clauses 61 – 65 70(2) & (3)	Besides the regulations, there is, in most environmental cases, the need to also have guidelines. The Bill should also provide for the making of guidelines	The provisions should read that “regulations and guidelines ”, in consultation with NEMA
PART VI – Sound Management of Chemicals and Product Control			
Prohibited	<i>Clause 69</i>	There are other chemicals	Review schedule 5 to capture all the banned

Chemicals in schedule 5		that have been banned by international conventions for which Uganda is a party e.g. the Stockholm Convention. It lists banned chemicals.	chemicals in the various Multi-Lateral Environmental Agreements (MEAs). Some of these include: Stockholm Convention listed substances: Alpha HCH, Beta HCH, chlordecone, hexabromobiphenyl, OctaBDE (hexabromodiphenyl ether and heptabromodiphenyl ether); lindane, pentachlorobenzene, PFOS & PFOSF, PentaBDE (tetrabromodiphenyl ether and pentabromodiphenyl ether), endosulfan, hexabromocyclododecane, hexachlorobutadiene, pentachlorophenol, polychlorinated naphthalenes, decabromodiphenyl ether, short chain chlorinated paraffins.
Coverage of Mercury	<i>Clause 73</i>	The Bill does not explicitly provide for the coverage of other substances which pose as a big a threat as mercury given their proliferation in the country.	While the Bill regulates the use of Mercury, there are other dangerous chemical elements like: <ul style="list-style-type: none"> • Lead • Cyanide • Arsenic • Polonium
Management of Plastics and Plastic Products	75	The clause provides for regulation of importation, manufacture, use and reuse of certain plastics.	The provision seeking to regulate the manufacture, use or re-use of categories of plastics is proper and rightly placed in the Bill.

		In the case of <i>Greenwatch Vs AG & NEMA, Misc. Cause No. 005 of 2011</i> court declared that the continued manufacture, distribution, use of <i>Kavera</i> that is below 30microns violated the right to a clean and healthy environment and the responsible body should expeditiously ban the <i>kavera</i> . However, there has been concern by the private sector on this provision being arbitrary and anti-development	
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PART IX – Establishment of Environmental standards

Environmental standards	<i>Part IX Clauses 102-108</i>	The Bill lists existing quality standards but does not provide for other standards that are in existence e.g. water quality standards and abstraction limits	The Bill should also provide for: <ul style="list-style-type: none"> 1. Water quality standards, and 2. abstraction limits, among others
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PART X – Environmental and Social Assessments

Purpose of Environmental	<i>Clause 109</i>	Public participation in Environmental and Social	The Bill does not provide for public participation in the process of ESIA.
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and Social Impact Assessment (ESIA)		assessments. Participation of key affected persons by the project, in an ESIA is even more essential for the projects to get social license to take off. Where as the Law as it is, provides for public participation, the Bill is silent in that respect.	The Bill should provide for 109(2) to retain the position ss.19(8)(c) and 20(5) of the current Act to provide that: a) <i>The ESIA process shall be open to public participation especially among those most affected by the project in the assessment, and</i> b) <i>the ESIA report shall be a public document and may be inspected at any reasonable hour by any person.</i>
Responsibility of the Developer	<i>Clause 110(3)</i>	The Bill provides only for Environmental and Social Impact Assessment, where as there are other emerging areas like Human Rights, and economic risks. Some projects eg the EACOP project has already adopted the approach and it should be provided for in the law. <i>The UN Guiding Principles on Business and Human Rights make this approach a requirement to ensure that states and companies prevent and address human rights abuses.</i>	The Bill should also capture, Economic and Human Rights Impact Assessment. <u><i>Clause 110(3) should read as follows: The developer shall use and integrate environmental, social –economic and Human Rights risk assessment in the project design.</i></u>

PART XIII – Environmental Tribunal			
Jurisdiction of the tribunal	Clause 150(2)	<p>The Bill provides for a short time within which one should lodge a complaint to the Tribunal once a party is dissatisfied with the action or decision as provided for under clause 150(2)(e). In other jurisdictions such as Kenya, the time is even longer.</p> <p>It is also not clear whether the Tribunal will work in circuits and will registries across the country.</p>	<p>The time within which to lodge a complaint should be increased from “30 days” to “45 days”</p> <p>This Part XIII should also make it clear whether the Tribunal will work in circuits and will have registries across the country.</p>
PART XVI – International Obligations			
Assessment of the environmental implication of treaties	Clause 168	<p>The provision 168 on international obligations is so limited. It only provides for consultation with the Authority before the treaty is signed if it has environmental implications. It does not provide for domestication and</p>	<p>Create a new clause on Domestication and implementation of MEAs.</p> <p>(1) The may <i>initiate legislative proposals for consideration by the Attorney General, for purposes of giving effect to treaty, convention or agreement in Uganda or for enabling Uganda to perform her obligations or exercise her rights under such treaty, convention or agreement; and</i></p>

		<p>periodic assessment of implementation of MEAs. There is need for a new provision on domestication of Environmental treaties. Uganda has ratified many MEAs but most of them are never domesticated notwithstanding the fact that Uganda is a Dualist states in international Law.</p> <p>There is also no clear follow up on the implementation of these treaties, whereas some have stringent state obligations that have to be complied with.</p>	<p><i>(2) The Minister shall assess the implementation of MEAs and annually report to parliament on progress of the implementation.</i></p>
International Corporation in Environment Management	169(3)	<p>The Bill seems to limit the role of international corporation to the National Focal Point. We have witnessed cases of people without the relevant expertise being allowed to negotiate very technical and scientific agreements. Uganda has many</p>	<p>The provision only provides for “National Focal Point” and leaves other measures for implementation of Multilateral Environmental Agreements.</p> <p>This Sub-clause should read that “...establish mechanisms including inter alia a National Focal Point, for the coordinated implementation of MEAs...”</p>

		Environmental Lead Agencies and MDAs that have to also participate in international corporation to benefit from the different expertise that they bring on board.	
PART XVII – Offenses, Penalties, Fees, Fines and other Charges			
Penalty on Non-disclosure of information	<i>Clause 190</i>	There have been cases when members of the general public request for information from the Authority and it is arbitrarily withheld.	It shall be an offense for an officer to withhold information that is neither proprietary nor confidential in nature.
Use of “May” is discretionary and, in some cases, the Bill should use “shall”	<i>Clause 198(2)</i> <i>Clause 62(On GMOs)</i>	<i>Clause 198(2) and Clause 62(On GMOs) provides for making regulations. The opening sentence is that the Minister “may”</i> The use of the word “May” means it is discretionary for the Minister or the Authority to act. However, there are certain things that ought to be mandatory hence the recommendation for the use of “Shall” in selected provisions	The Bill should categorically use “shall” in these clauses.
PART XVIII – General Provisions			

Repeal and Saving of certain provisions	Clause 200(6)	The clause provides for repealing of Finance Act of 2009, but this was repealed by the 2015 Public Finance Management Act	<ol style="list-style-type: none"> 1. In the first place the numbering of the clause should have been 200(8) and not 200(6) as the case is. 2. Secondly, it repeals a section in the Finance Act of 2009 and is hence redundant. The subsection should be dropped
Other General Comments			
Cross-referenced Laws		There are some relevant statutes that were not cross-referenced	<ol style="list-style-type: none"> 1. Water Act, 1997 2. The Electricity Act, 1999 3. Public Finance Management Act, 2015 4. The Mining Act, 2003 5. Ratification of Treaties Act, 1998

3. Conclusion

It is important to note that the country has moved into an era of mega infrastructural and other development projects. Projects such as oil and gas production, mining projects, mega road construction projects, industrialization and allocation of land plantations in ecologically sensitive areas to investors for development projects, are increasing the pressure and threat to the environment. A strong environment management law is therefore important to balance development and environmental conservation.

