

**Sustainable Development  
Beyond RIO + 10**

**CONSOLIDATING ENVIRONMENTAL DEMOCRACY  
IN UGANDA THROUGH ACCESS TO**



**JUSTICE,  
INFORMATION &  
PARTICIPATION**

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**SUSTAINABLE DEVELOPMENT BEYOND RIO +10**

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to Justice, Information and Participation.**

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**Independent Assessment of National Experiences and  
Progress in Implementing principle 10 of the Rio Declaration in Uganda: Analysis and  
Recommendations.**

**Advocates Coalition for Development and Environment. Kampala, 2002**

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This study is an analysis of the independent assessment of Uganda's implementation of Principle 10 of the Rio Declaration. The Assessment was undertaken as part of The Access Initiative (TAI) based on a set of common indicators. Similar assessments have been undertaken in 9 other countries designed to measure national progress in promoting access to public participation, information and justice.

The Country Assessment was undertaken over an 8 month period. During the assessment, a series of case studies were selected upon which the indicators were applied. A team of researchers from ACODE and UWS undertook the assessment. The assessment covered selected national laws, policy process, institutions and selected industrial and public service facilities. We would like to acknowledge the support rendered to the team by various officials and individuals who were consulted or interviewed during the assessment. We are also grateful to the Country Advisory Panel for their individual and collective advice in conducting the assessment exercise.

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The analysis and interpretation of the data is the responsibility of the authors.

## **LIST OF ACRONYMS**

AC	Appeal Cases
ACODE	Advocates Coalition for Development and Environment
BPG	Butamira Pressure Group
CBD	Convention on Biological Diversity
CITES	Convention on Trade in Endangered Species of Fauna and Flora
DFR	Department of Fisheries Resources
DWD	Directorate of Water Development
GDP	Growth Domestic Products
IGG	Inspectorate General of Government
JSC	Justice of the Supreme Court
KCCL	Kasese Cobalt Company Limited
KSW	Kakira Sugar Works
LMOs	Living Modified Organisms
NEAP	National Environment Action Plan
NEMA	National Environment Management Authority
NWSC	National Water and Sewerage Corporation
SoER	State of the Environment Report
TAI	The Access Initiative
UHRC	Uganda Human Rights Commission
UNCCD	United Nations Convention to Combat Desertification
UNCED	United Nations Conference on Environment and Development
UNFCCC	United Nations Framework Convention on Climate Change
UWS	Uganda Wildlife Society
WSSD	World Summit on Sustainable Development

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# 1. Introduction

The World Summit on Sustainable Development (WSSD) due to take place in Johannesburg, South Africa in 2002 is yet another key milestone in the formulation of strategies for achieving global sustainable development. The Summit, also known as Rio + 10, is an important event in the growth of global environmentalism in at least three ways.<sup>1</sup> First, it is taking place a whole generation after the United Nations Conference on the Human Environment in 1972.<sup>2</sup> Second, the WSSD represents a decade of implementation of the commitments made by governments at the United Nations Conference on Development and Environment (UNCED).<sup>3</sup> Third, the WSSD is a fundamental opportunity for Governments and all other actors to work together to find practical ways of operationalizing sustainable development principles by focussing on both the substantive commitments, as well as the means of implementing already existing ones.

The summit, which is taking place at the Heads of State level, is seen as the first ever and truly multi-stakeholder meeting on sustainable development. Multiple interest groups, including governments, non-governmental organizations, industrial and business interests, trade unions, youth and women groups, will converge in Johannesburg from 24<sup>th</sup> August to 4<sup>th</sup> September 2002 to make new commitments and pledges on the required course of action to move towards achieving sustainable development.<sup>4</sup>

This report is a synthesis of findings from an assessment of Uganda's progress in the implementation of the commitments contained in Principle 10 of the Rio Declaration. The assessment was carried out under The Access Initiative (TAI).<sup>5</sup> TAI is an independent initiative by civil society organizations applying a set of common indicators to measure progress made by countries in implementing the obligations under Principle 10 of the Rio Declaration.<sup>6</sup>

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<sup>1</sup> The WSSD is being held 10 years after the United Nations Conference on Environment and Development (UNCED) (also known as the Earth Summit), which took place in Rio de Janeiro in 1992.

<sup>2</sup> Stockholm, 1972

<sup>3</sup> Rio de Janeiro, 1992

<sup>4</sup> In its General Assembly Resolution A/Res/55/1999 which mandated the preparatory process, the UN General Assembly called upon the WSSD to: identify major constraints hindering the implementation of Agenda 21; propose specific time-bound measures to be undertaken; and to identify institutional and financial requirements and sources to support the further implementation of Agenda 21.

<sup>5</sup> The Access Initiative (TAI) is a global coalition of public interest groups collaborating to promote national-level implementation of commitments to justice participation, access to information in environmental decision-making.

<sup>6</sup> Similar assessments have been undertaken in the following countries: Chile, Hungary; Indonesia, Thailand, Mexico, United States and South Africa.



## 2. Background

### 2.1 Principle 10 of the Rio Declaration

In 1992, leaders from 178 of the World's nations met in Rio de Janeiro, Brazil to set out an agenda that addresses environmental, economic and social challenges facing the world.<sup>7</sup> The United Nations Conference on Environment and Development (UNCED) produced a series of key instruments that have provided the basic framework for environmental governance in the post-Rio sustainable development agenda. The outcomes of the UNCED can be divided into three categories, largely based on the legal character of the respective instruments. First, the Conference generated a series of internationally binding legal instruments including the Convention on Biological Diversity (CBD), the United Nations Framework Convention on Climate Change (UNFCCC) and the United Nations Convention to Combat Desertification (UNCCD). Over the last decade, a series of Protocols have been negotiated and adopted providing for more binding commitments in the areas of greenhouse gas emissions reductions<sup>8</sup> and the transboundary movement of Living Modified Organisms (LMOs).<sup>9</sup>

Table 1: Selected Multilateral Treaties to which Uganda is Party Showing Dates of Signature and Ratifications

	<b>Date of signing</b>	<b>Date of ratification</b>	<b>Entry into force</b>
CBD	12 <sup>th</sup> June, 1992	8 <sup>th</sup> Sept., 1993	29 <sup>th</sup> Dec., 1993
UNFCCC	13 <sup>th</sup> June, 1992	8 <sup>th</sup> Sept., 1993	21 <sup>st</sup> Mar., 1994
UNCCD	21 <sup>st</sup> Nov., 1994	25 <sup>th</sup> June, 1997	23 <sup>rd</sup> Sept., 1997
Biosafety Protocol	25 <sup>th</sup> May, 2000	30 <sup>th</sup> Nov., 2001	Not yet in force

Second, the Conference adopted a comprehensive programme of action, Agenda 21, that details the various actions and the amount of resources required to achieve sustainable development.

Thirdly, the UNCED adopted two major political statements in the form of declarations of principles that would guide States towards achieving sustainable development. For example, the Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of all Types of Forests popularly referred to as the Rio Forest Principles contains a set of non-legally binding principles aimed at promoting the sustainable management of all types of forests.

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<sup>7</sup> The UNCED was convened in the aftermath of the launching of Our Common Future- the Report of the World Commission on Environment and Development (WCED) –established by UNGA Resolution: A/RES/47/190 of 1987

<sup>8</sup> The Kyoto Protocol.

<sup>9</sup> The Cartagena Protocol on Biosafety.

Chapters 40, 36, 28, 26,19, 15, 8 of Agenda 21 deal with access rights.

However, one of the most important outcomes of the UNCED was the overall political statement of the Conference, the Rio Declaration. In the preamble to the Declaration, the Heads of States and Government at Rio reaffirmed their desire to build upon the Declaration of the United Nations Conference on the Human Environment<sup>10</sup> “with the goal of establishing a new and equitable partnership through the creation of new levels of cooperation among States, key sectors of societies and people.” Principle 3 reaffirms the centrality of the right to development in equitably meeting the developmental and environmental needs of present and future generations.

Generally, the momentum created by the Rio Earth Summit coupled with the political and democratic reforms of the late 1980s and the early 1990s created tremendous opportunities for rethinking the development process. Agenda 21, the programmatic plan of action adopted at the UNCED and the Rio Declaration, the political statement of the conference as well as the various instruments adopted at Rio and its aftermath clearly emphasized the relationship between governance and achieving the objectives of sustainable development. New opportunities for implementing these new rules were not only created but States also committed themselves to providing the financial resources required for undertaking the necessary reforms.<sup>11</sup>

The Declaration sought to amplify the role of citizens at different levels in promoting sustainable development objectives. In Principle 10 of the Rio Declaration, the Heads of States and Government declared that:

*“Principle 10: Environmental issues are best handled with the participation of all concerned citizens, at the relevant level... each individual shall have appropriate **access to information** concerning the environment... and the opportunity to **participate in decision-making processes**. States shall facilitate and encourage public awareness and participation by making information widely available. Effective **access to judicial and administrative proceedings, including redress and remedy**, shall be provided.”*(Emphasis ours).

Principle 10 therefore represented a political consensus on three key governance issues that are important if citizens are to effectively contribute to sustainable development. These are the three pillars: access to information, access to public participation and access to justice; that form the basis of “The Access Initiative (TAI).”

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<sup>10</sup> See The Stockholm Declaration, 1972.

<sup>11</sup> Paragraph 4 of the Draft Plan of Implementation for the World Summit on Sustainable Development states that “good governance within each country and at the international level is essential for sustainable development. At the domestic level, sound environmental, social and economic policies, democratic institutions responsive to the needs of the people, the rule of law, anti-corruption measures, gender equality and enabling environment for investment are the basis for sustainable development...”. See Draft Plan of Implementation for the World Summit on Sustainable Development, Bali, Indonesia 27 May - 7 June 2002 (A/CONF.199/PC/L.5)

The post-Earth Summit trends fuelled an international movement to demand greater transparency and accountability from governments as well as international organizations and Trans-National Corporations with particular focus on the social and environmental impacts of their development and investment decisions and activities. As a result, the last 10 years following Rio have seen significant shifts in the roles government and non-government actors play in facing the challenges of environmental protection and Economic development. Particularly important in the changing international environmental governance landscape are attempts to formulate regional standards of conduct and practices promoting the governance norms enshrined in Principle 10.

In this respect, the European Union has become the first geo-political region to adopt a multilateral agreement under the *Convention on Access to Information, Public in Decision-Making, and Access to Justice in Environmental Matters*, generally known as the Aarhus Convention, signed by 35 European countries in 1998.<sup>12</sup> Also in 1998, the countries forming the East African Community became one of the first geo-political entities to incorporate the commitments in Principle 10 into a regional instrument. The Memorandum of Understanding on Cooperation in Environmental Matters between Kenya, Tanzania and Uganda is particularly instructive on issues of access to information, public participation and access to justice.<sup>13</sup>

## **2.2 Relevance of Principle 10 to Uganda**

In about 30 years since the United Nations Conference on the Human Environment, Uganda has signed over 10 multi-lateral environmental agreements.<sup>14</sup> These agreements have been implemented in different forms, including incorporation of various provisions into national legislation.<sup>15</sup> Some of the national laws provide for broad provisions regarding the application of international environmental conventions and treaties in Uganda.<sup>16</sup> However, this is in as far as international agreements, which bind States parties to those agreements are concerned.

On the contrary, international declarations such as the Rio Declaration are not legally binding *ipso facto*. They are mere expressions of political support to particular issues or processes and tend to simply represent political consensus on particular questions of importance to the parties. Consequently, the importance of the Rio Declaration and therefore the relevance of Principle 10 should be understood in the context of building an enabling environment for meeting the obligations contained in the more substantive legal and programmatic

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<sup>12</sup>The Convention came into force on 30<sup>th</sup> October 2001.

<sup>13</sup>Memorandum of Understanding between the Republic of Kenya and the United Republic of Tanzania and the Republic of Uganda for Cooperation on Environment Management.

<sup>14</sup>In the course of conducting the national assessment, no agency was able to provide a comprehensive checklist of multilateral environmental agreements that have been signed or ratified by Uganda. While the National Environment Management Authority (NEMA) referred our Assessment Team to the Ministry of Foreign Affairs, for over three months of going back and forth, we were unable to obtain this information.

<sup>15</sup> See for example, Part X of the Uganda Wildlife Statute (No.14 of 1996), which incorporates the provisions of the Convention on International Trade in Endangered Species of Fauna and Flora relating to trade in species and specimens (CITES).

<sup>16</sup> See section 107 of the National Environment Statute, No.4 of 1995.

documents of the UNCED.

Principle 10 of the Rio Declaration has particular significance for Uganda in the light of the socio-economic and political conditions that pertain in the country. Over the last 15 years, since the National Resistance Movement (NRM) Government took over power in Uganda, the economic and political context for environmental decision-making has changed dramatically. In the economic sphere, Uganda continued to register positive economic growth at an average rate of 6% according to official figures. Government has continued to implement a rigorous programme of privatization and investment promotion putting the private sector at the centre of economic decision-making. At another level, natural resources have continued to be the main stay of the economy. Forestry still contributes over 90% of the national energy requirements, while wildlife, minerals and fisheries continue to contribute significantly to the Gross Domestic Product (GDP).<sup>17</sup>

However, this socio-economic and political transformation has not helped in reversing the trends of decline in key natural resource parameters and increasing poverty levels. Large tracts of key ecosystems, including wetlands forests and water as well as wildlife habitats, have continued to decline.<sup>18</sup> First, in spite of the commitments under Principle 10, decisions over natural resource exploitation and use still continue to be made within the offices of government agencies and as a consequence vulnerable communities are often issued with eviction notices or denied Protected Areas.<sup>19</sup> New rules that affect the lives of resource dependent communities are being formulated, either with their limited participation or without adequate information to facilitate their effective participation. Communities are being pushed into marginal lands and deprived of their very basic livelihood needs by decisions that they cannot influence either because of poor rules of access to public participation, lack of relevant information or the absence of mechanisms for seeking justice and redress.

Secondly, promoting the norms of environmental governance is important for Uganda from a purely economic perspective. It is increasingly becoming clear that ***effective governance, based on transparent decision-making and public access to government decisions is the foundation of fair, legitimate and sustainable economic and development choices.*** Effective governance permits transparent, participatory and accountable decision-making; promotes the integration of social and environmental concerns in economic development decisions; and allows for the management of risk. Decision-making built on the three pillars of environmental governance (access to information, public

<sup>17</sup> It is estimated that wildlife, minerals and fisheries contribute to 28.8%, 4%, 56%, respectively

<sup>18</sup> 28.8%, 4%, 56% respectively.

<sup>19</sup> Cases such as the Butamira Forest Reserve presents one of the best examples. For details see, Tumushabe G., Mwebaza R. and Naluwayiro R.(2001). Sustainably Utilizing Our Natural Heritage: The Legal Implications of the Proposed Degazettment of Butamira Forest Reserve. ACODE Policy Research Series, No.4, 2001.

participation and access to justice) will not only give an opportunity to the public to make informed choices and influence decisions but will also create a stable and predictable investment environment for business.

Thirdly, promoting the norms of environmental governance contained in Principle 10 of the Rio Declaration will generate multiple effects by promoting democratisation, participation and accountability. Granting the rights of access to information can empower citizens to demand for their environmental and other rights, promoting access to public participation from an environmental perspective builds on democratic practices where effective mechanisms for remedy creates citizens' confidence to demand transparency and accountability. In effect, the three access rights help build citizenship and citizen responsibility.

**Case Study: Access to Government Documents on Economic Policy**

Generally, there have been significant improvements in providing information concerning economic policy. Many of the documents are published on the website of the Ministry of Finance, Planning and Economic Development ([www.finance.go.ug](http://www.finance.go.ug)). However, during this assessment we tried to explore whether this opening up was reflected in other key agencies dealing with economic policy matters. We opted to request for the Pug Push Strategy from the Uganda Investment Authority (UIA). One of our Research Assistants was asked to go to the UIA and request for the document. On the first trial she was asked to go back a second time. At the next "visit", she was asked to submit an official request for the document.

On 12<sup>th</sup> of December, 2001, the Advocates Coalition for Development and Environment (ACODE) wrote to the Executive Director of UIA requesting for the Big Push Strategy. We gave our reason that being a policy research and advocacy think tank, we needed this document for use by our researchers. In spite of the numerous follow-ups, UIA has never provided a copy of the strategy and has never officially responded to our request. We have estimated that the time we invested in seeking this document (commuting, staff time, letter writing and production, etc) could be in the area of approximately UGX800,000 or US\$400.

### **2.3 The Purpose of the Assessment**

This assessment was undertaken as part of a global initiative to assess the progress made by States in implementing the norms of governance agreed upon at Rio. The broad purpose of the assessment was to assess progress made by Uganda, map out implementation gaps and identify opportunities for further progress. The findings of the assessment and the outreach and advocacy activities arising from the assessment will form part of Ugandan civil society contribution toward national and global sustainable development by enhancing the ability of citizens and public interest organizations to demand more transparency and participation in making decisions affecting the environment. Such openness and the resulting inclusiveness would help to promote rights-based approaches to national economic development and poverty eradication. Compliance with principle 10 will contribute to steer national development endeavors in directions that enhance rather than undermine economic development, social development and environmental sustainability-the three pillars of sustainable development.

## **23. Analysis of Findings**

### **3.1 National Legal System Governing Public Access to Information, Participation and Justice in Environmental Decision-Making**

Under Principle 10 of the Rio Declaration, States committed themselves to grant their citizens the rights of access to environmental information, public participation in environmental decision-making and access to justice in environmental matters. The purpose of this part of the assessment was to establish what Uganda has done since 1992 to put in place an enabling legal and institutional framework for guaranteeing these rights. The indicators framework under this category was designed to address the following key questions:

- How are the three “access” rights treated by the national legal framework? Are they clearly articulated in the constitution, in major pieces of legislation or in precedent setting court decisions?
- Does the national legal framework acknowledge (or promote) the link between public participation in environmental decision-making and more general human rights and the principles of democracy?
- Does the national legal system support the implementation and the practice of these rights?

The assessment under this category was divided into three elements. The first element explores the degree of support for fundamental human rights and freedoms such as access to information, the right to association, the freedom of the press. The second element addresses the comprehensiveness of the national legal framework in supporting access rights. The third element addresses the inclusiveness of some legal definitions.

While considering the whole range of legislation providing for rights and freedoms, the indicator results for this assessment are based on a review of the following laws:

- The Constitution of Uganda, 1995;
- The National Environment Statute, No. 4 of 1995;
- The Press and Journalism Statute, No.3 of 1995;
- The Uganda Wildlife Statute, No. 14 of 1996.

These laws were chosen as representative samples because all of them contain either general or specific provisions incorporating the norms of environmental governance.

### 3.1.1 Degree of Support for Fundamental Human Rights and Freedoms

Generally, Uganda has made considerable progress in guaranteeing fundamental human rights and establishing the general legal framework for promoting access rights as envisaged under Principle 10. In particular, fundamental human rights provisions were articulated in the Bill of Rights under the 1995 Constitution. This Constitution provides for the right to freedom of speech and expression including freedom of the press and other media (article 29(1)(a); right to freedom of assembly and demonstrations (article 29(1)(d); as well as the right to freedom of association (article 29 (1)(e)).<sup>20</sup>

Also, article 39 provides that *“Every Ugandan has a right to a clean and healthy environment”*. This is reechoed in section 4 of the National Environment Statute, which also provides that *“Every person has a right to a healthy environment”*. Although the National Environment Statute predates the Constitution,<sup>21</sup> it is not clear how much the environmental rights provisions in the NEMA Statute informed the Constitution making process.<sup>22</sup> In practice, there are concerns that the Constitution actually restricts the enjoyment of the right to a clean and healthy environment since it refers to only “Ugandans” as being capable of enjoying that right. However, it may appear that the reference to “Ugandans” rather than “person” in the Constitution was simply an oversight on the part of the draftsman rather than a deliberate restriction.

In addition to these legislative developments, a number of institutions have been established to promote the enforcement of fundamental human rights and other rights. The Uganda Human Rights Commission and the Inspectorate of Government, established under the Constitution have furthered the process of institutionalizing these rights. Although these institutions have no track record of handling environmental rights cases, they demonstrate government commitment to the respect for fundamental human rights including the right to a clean and healthy environment.

Therefore, general finding of the assessment, in spite of the limitations that may affect the enjoyment of fundamental and other human rights and freedoms, show that there has been considerable legislative progress in this area in the 10 years after the UNCED.

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<sup>20</sup> The right to freedom of association has been one of the most controversial ever since the Constitution was adopted in 1995. This is because, article 269 has the effect of limiting the exercise of this right.

<sup>21</sup> The National Environment Statute was signed into law approximately five months before the coming into force of the 1995 Constitution.

<sup>22</sup> Available information indicates that the Ministry responsible for environment (then Ministry of Natural Resources) provided written and verbal contributions to the Uganda Constitutional Commission. Most of what is re-echoed in the Constitution is said to be a result of this interaction. (Comment by Dr. Frank Turyatunga)

### 3.1.2. Access to Environmental Information

Since 1992, Uganda has made tremendous progress in putting in place a legal and policy framework for promoting access to information. In fact, the first statements regarding access to environmental information were contained in the National Environment Statute, which incorporated the right of access to information.<sup>23</sup>

Similar statements regarding the right of access to environmental information were also incorporated in the National Environment Action Plan (NEAP), which was published in June 1994, one year before the enactment of the National Environment Statute.

It is important to recognize that the process to formulate the National Environment Action Plan started around 1992, the same year the UNCED was held. Consequently, the National Environment Statute which draws its provisions from the NEAP reflects the then emerging consensus regarding the relevance of access to information to environmental management.

#### **The NEAP, 1994 identified the following problems with respect to environmental information**

- ❖ Inadequate institutional mechanisms for the dissemination of information between the data source and potential users. The current arrangement for the dissemination of environmental information is at best ad hoc;
- ❖ Environmental information in Uganda has limitations with regard to availability, quality, coherence, standardization and accessibility which in turn impairs the country's ability to make informed decisions concerning its environment and development;

Section 86 of the National Environment Statute provides that "Every person shall have the right of access to any information relating to the implementation of this Statute submitted to Authority [the National Environment Management Authority] or to a lead agency". The section further provides that information requests under this section shall be by application and that access to information may also be granted upon payment of a prescribed fee (section 86(2)).<sup>24</sup> Proprietary information<sup>25</sup> is excluded from the categories of information to be granted under this section.

In September 1995, a few months after the enactment of the National Environment Statute, Uganda promulgated a new Constitution. Article 41 of this Constitution provides as follows:

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<sup>23</sup> No. 4 of 1995.

<sup>24</sup> Although the Statute was enacted and came into force about six years ago, NEMA has never prescribed any fees that may be required to access environment information. From a practical perspective, this could be both a blessing and a problem. It could be a blessing in the sense that one could argue that all information relating to the implementation of the National Environment Statute can be accessed free of charge. On the other hand, the absence of an instrument prescribing fees to be charged could be used by overzealous government officials to deny access to information.

<sup>25</sup> "Proprietary information" is defined under the National Environment Statute to mean "information relating to any manufacturing process, trade secret, trade mark, copyright, patent or formula protected by law or by international



“41(1) Every citizen has a right of access to information in the possession of the State or any other organ or agency of the State except where the release of the information is likely to prejudice the security or sovereignty of the State or interfere with the right to the privacy of any other person;

(2) Parliament shall make laws prescribing the classes of information referred to in clause (1) of this article and the procedure for obtaining access to that information.”

Read together, section 86 of the National Environment Statute and article 41 of the Constitution provide for three general exceptions to the general right of access to information. The provisions exclude information that may prejudice the security or sovereignty of the Republic of Uganda, information that may interfere with the privacy of other persons and information that is considered to be proprietary.

The Ugandan courts have had occasions to consider the implications of article 41 of the Constitution as far as access to information is concerned and in the light of the exemptions provided under this article and other pieces of legislation that predate the Constitution. In the case of the Attorney General Vs. Major General David Tinyefuza,<sup>26</sup> the then Chief Justice Wako Wambuzi while rejecting the claim of exemption by the Attorney General on the grounds of State security noted as follows:

“...The Constitution has determined that a citizen shall have a right of access to information in State hands. It has determined the exceptions in a manner that is inconsistent with the application of section 121 of the Evidence Act<sup>26</sup>, It is no longer for the Head of Department to decide as he thinks. That unfettered discretion has been overturned by article 41 of the Constitution. And now it is for the court to determine whether the matter falls in the exceptions in article 41 or not. And to do this the State must produce evidence upon which the court can act.”

In the same case, Hon. Justice Oder, J.S.C gave a very strong opinion as to the relevance of section 121 of the Evidence Act in the light of article 41 of the Constitution. He stated as follows:

“The right of access to information is new in the constitutional history of Uganda... The Evidence Act is an old vintage Statute of 1909. For this and other reasons I have given, I think that article 41 of the Constitution overrides section 121 of the Evidence Act...there is a long catena or chain of decisions in which warnings have been given by courts, of the menace which supposed privilege, implies to the individual liberty and private rights and to the potency of its abuse. It is this menace, which, in my view, article 41 sets out to limit. The right of access to information must include the right to use such information in a court of law in support of a citizen’s case.”

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<sup>26</sup> Constitutional Appeal No. 1 of 1997 (Unreported)

The reasoning of Hon. Justice Oder, JSC was cited approvingly in the case of Paul Kawanga Ssemwogerere and Zachary Olum Vs. the Attorney General.<sup>27</sup> In this case, the petitioners sought a court order to declare the Referendum and other Provisions Act illegal. The declaration was sought on the grounds that it was passed without quorum.

In conclusion, there appears to be growing evidence that the courts are interpreting the provisions of article 41 in a more pragmatic way so as to grant access to information rather than restrict it. However, soon after the judgment in the Ssemwogerere Case cited above, the Parliament enacted a law whose effect was to reverse the decision of the Supreme Court.<sup>28</sup> This law is also being challenged in the Constitutional Court on the ground that, among other things, it contravenes section 41 of the Constitution. Court is still yet to deliver its judgment.

While noting the progress that has been made with respect to granting the right of access to information, this assessment concludes that these provisions are inadequate within the meaning of Principle 10 of the Rio Declaration for the following reasons:

- The legislation to be enacted under article 41(2) whose effect would be to set the limits of the allowable exceptions, clarify procedures and provide for redress in case of denials has not been enacted six years ever since the Constitution came into force. These provisions remain broad and are subject to abuse by government officials;
- There are still laws that contain provisions that restrict access to information. While these laws have to be read subject to the relevant provisions in the Constitution, their presence on the Statute books is a potential “escape option” for officials not interested in granting access to information.
- Ever since the National Environment Statute was enacted in 1995, NEMA has not put in place any procedure for accessing the information referred to and neither has it prescribed any fees to be paid. Access to environmental information still depends largely on the good will of the government official concerned and therefore most of the problems envisaged by the NEAP have not been addressed adequately.

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<sup>27</sup> Section 121 of the Evidence Act, Cap 43 prohibits the giving of information derived from unpublished official records relating to affairs of State, without permission of the head of department concerned. In the same case cited above, Hon. Justice Oder, J.S.C gave a very strong opinion as to the relevance of Section 121 of the Evidence Act in the light of article 41 of the Constitution.

<sup>28</sup> The Referendum and Other Provisions Act. 1999

Laws Relevant to Access to Information in Uganda

Year	Comment	Section	Title	Text
1999		Article 9	Access to Information	Every person has the right to access information held by any body which is or has been performing public functions, subject to the provisions of this Act.
1999		Section 9	Right to Information	Every person has the right to access information held by any body which is or has been performing public functions, subject to the provisions of this Act.
1999		Section 9	Right to Information	Every person has the right to access information held by any body which is or has been performing public functions, subject to the provisions of this Act.
2000		Section 0	Right to Information	Every person has the right to access information held by any body which is or has been performing public functions, subject to the provisions of this Act.
1999		Section 9	Right to Information	Every person has the right to access information held by any body which is or has been performing public functions, subject to the provisions of this Act.
1999		Section 9	Right to Information	Every person has the right to access information held by any body which is or has been performing public functions, subject to the provisions of this Act.
2000		Section 0	Right to Information	Every person has the right to access information held by any body which is or has been performing public functions, subject to the provisions of this Act.
1999		Section 9	Right to Information	Every person has the right to access information held by any body which is or has been performing public functions, subject to the provisions of this Act.
1999		Section 6	Right to Information	Every person has the right to access information held by any body which is or has been performing public functions, subject to the provisions of this Act.
1999		Section 6	Right to Information	Every person has the right to access information held by any body which is or has been performing public functions, subject to the provisions of this Act.
1999		Section 6	Right to Information	Every person has the right to access information held by any body which is or has been performing public functions, subject to the provisions of this Act.
1999		Section 6	Right to Information	Every person has the right to access information held by any body which is or has been performing public functions, subject to the provisions of this Act.

Factories	1 9	6 4	Section	
Petroleum and	1 9	8 5	Section	
Agricultural (Registration Control)	1 9	3		
The	1 9	9 9	Section	
The Discharge)	1 9	9 8	Section	(n s l ) ( a p e r n o t w i s c p e n d i s i c c e S . 2 0 h a r g e ...
The Regulations.	1 9	9 8	Part	A c c e s s

It is important to observe that despite the existence of policy and legislation on access there is not much guidance for public officials to enable them make decisions as to whether to release information or not. In the absence of such guidance, the officials take the option of “playing safe”.

### 3.1.3 Access to Justice in environmental matters

Since 1992, there have been general improvements in the legal framework for access to justice. Until the enactment of the National Environment Statute in 1995, the system of environmental redress was largely based on the common law legal remedies such as nuisance<sup>29</sup>, negligence<sup>30</sup> or the rule in Rylands and Fletcher.<sup>31</sup> Many of the principles adopted in these early case precedents do not provide adequate redress for citizens when their rights under principle 10 have been denied. Environmental problems, that affect citizens’ rights, have changed fundamentally to render causes of action premised on these common law principles irrelevant. The spirit of Principle 10 therefore was to require countries to engage in legal and administrative reforms in order to comply with the new norms of governance that would assist countries to move towards achieving sustainable development.

Uganda High Court building in Kampala: Despite the progress in the legal framework for access to justice, the Judicial system is still inaccessible by poor resource dependent communities due to prohibitive legal fees and technical procedures.



<sup>29</sup> See *The Wagon Mound (No 2)*, (1967) A.C 617 (particularly the judgement of Lord Reid) In this case, the Privy Council held that reasonable foreseeability of the type of damage sustained was a requirement of liability in private nuisance, just as in negligence. In any case, nuisance has its origins in a remote past when straying cattle, offensive odours and property damage were causes of action capable of identification with individuals. It is therefore in doubt that such a concept can be adopted to deal with new ecological problems such as biotechnology.

<sup>30</sup> (1868) L.R. 3 HL 330.

<sup>31</sup> As late as 1993, claims for civil remedies founded on negligence were rejected as not conforming to the common law principle of “reasonable foreseeability”. See for example *Eastern Countries Leather (ecl) v Cambridge Water Company, (CWC)* 1993. In this case, the issue was whether the appellant company (ECL) was liable to the respondent (CWC) on account of damage suffered by reason of chemical contamination of water available for abstraction at CWS’s borehole. Reaffirming the decision of the Court of Appeal (Ian Kennedy, J.) the House of Lords held that the appellants (ECL) could not reasonably have foreseen that such damage would occur.

This assessment found that Uganda has made substantial progress in putting in place legal mechanisms for providing redress where citizens' environmental rights have been violated. This is in spite of the apparent inconsistencies between the Constitutional provisions and the relevant provisions in the National Environment Statute. The key legal provisions guaranteeing access to justice are found in Article 50 of the Constitution and section 4 and 72 of the National Environment Statute.

Section 4 of the National Environment Statute provides that "in furtherance of the right to a healthy environment and enforcement of the duty to maintain and enhance the environment, the Authority (National Environment Management Authority) or the Local Environment committee ... is entitled to bring an action against any other person whose activities or omissions have or are likely to have a significant impact on the environment..." This section seeks to broaden *locus standi* by giving powers to the Authority or a local environment committee to sue on behalf of an aggrieved person. However, it is Section 72 that establishes the broad right to citizens to seek redress in the pursuit of environmental protection. This section provides as follows:

"72(1) Without prejudice to the powers of the Authority...the court may, in any proceedings brought by any person, issue an environmental restoration order against a person who has harmed, is harming or is reasonably likely to harm the environment.

(2) For the avoidance of doubt, it shall not be necessary for a plaintiff under this section to show that he has a right of or interest in, the property, in the environment or land contiguous to such environment or land."

This section removes the traditional requirements for demonstrating sufficient interest in a case before the court could grant standing to sue. The Judgment of Hon. Justice Okumu Wengi in the case of one National Association of Environmental Professionals (NAPE) Vs. AES Nile Power Limited<sup>32</sup> reaffirms this position. In this case, the plaintiff sought a temporary injunction under section 72 of the National Environment Statute to stop the respondent from concluding a power purchase agreement with the Government of Uganda until an environmental impact Assessment for a power project of the respondent was approved. In his ruling, Hon Justice Okumu Wengi observed that section 72(2) "*appears to be the enactment of class action and public interest litigation in environmental law issues. This is because it abolishes the restrictive standing to sue and locus standi doctrines by stating that a plaintiff need not show a right or interest in the action.*"

On the other hand, article 50 of the Constitution provides as follows:

"50(1) Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened, is entitled to apply to a competent Court for redress which may include compensation;

(2) Any person or organization may bring an action against the violation of another person's or group's human rights".

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<sup>32</sup> Misc. Cause No. 268 of 1999 (Unreported).

This article of the constitution therefore opens up new avenues for enforcing the right of access to justice as envisaged in principle 10 of the Rio Declaration. However, there is still room for progress in the form of clarifying procedures and the types of remedies that may be available where the access rights under the Rio Declaration have been infringed upon.

This assessment found no evidence of existence of clearly identifiable administrative procedures for seeking redress. Even the National Environment Management Authority, which is required by its enabling legislation to establish administrative procedures for appealing against its decisions, did not have such procedures. Other sectors that were assessed, such as forestry and wildlife did not have such administrative arrangements. The assessment found that in a number of cases where citizens were unable to get redress from the courts, they opted to appeal to human rights and other oversight bodies such as the Uganda Human Rights

**Case Study: Parliament as an alternative forum for redress and remedy**

In the case of Butamira Forest Reserve, the Parliament of Uganda has been instrumental in providing an alternative forum for seeking redress and remedy. Over the last two years, the members of Butamira Pressure Group (BPG) representing tree permit holders sought to stop Government from terminating their permits and granting the Reserve to Kakira Sugar Works to expand its sugar cane plantation. The Pressure Group sought the intervention of then IGG, the UHRC and the Courts. After a lot of frustrations with these institutions including a court injunction that was withdrawn in mysterious circumstances, the BPG in conjunction with civil society advocacy groups filed a petition challenging the proposed degazettement. The Parliament handled the petition expeditiously and conducted a series of public hearings into the matter. Although the petition was decided in favour of granting government permission to hand over the Reserve to Kakira Sugar Works, the process was fundamental in the sense that it gave the petitioners an opportunity to be heard at the highest level of decision making. Parliament also recommended to Government that the dispossessed permit holders be compensated. The speedy handling and disposal of the petition contrasts sharply with the other institutions that have been handling this matter.



Butamira Forest: Local tree farmer groups were dispossessed of their tree farming permits in disregard of a court process

Commission<sup>33</sup> or the Inspectorate of Government.<sup>34</sup>

However, no evidence was found of cases where these bodies have provided a remedy for violations of access rights. One of the highly visible cases involves the proposed revocation of tree farming permits granted to local residents around Butamira Forest Reserve in favor of Kakira Sugar Works, a private company that wants to replace the forest reserve with a sugar plantation. During the course of this assessment,

<sup>33</sup> The Uganda Human Rights Commission is established under article 51 of the Constitution with responsibility to monitor compliance with the rights guaranteed under the Bill of Rights.

<sup>34</sup> The Inspectorate of Government is established under article 223 of the Constitution of Uganda, 1995.



it was established that although the Butamira permit holders appealed for the intervention of the Uganda Human Rights Commission (UHRC) and the Inspectorate of Government, there was no record that these agencies had responded to the plight of the applicants.

#### **3.1.4 Conclusions**

Generally, this assessment found that the national legal system governing public access to information, participation and justice in environmental decision making is inadequate. This is mainly because these rights are heavily qualified by a series of restrictions. Freedom of the press is still restricted by criminalization of certain statements as seditious while freedom of assembly is restricted by the very Constitution that prohibits political parties from associating and assembling freely. Access to information is limited by lack of clarity and extent of the exceptions both under the Constitution and the National Environment Statute while access to public participation is limited by the absence of a participation culture among government bureaucrats. Finally, while there have been legislative reforms to provide for more access to judicial and administrative processes, there are still considerable structural and institutional inhibitions, which are compounded by the absence of a dynamic social support structure to provide advice to disadvantaged and vulnerable communities. On the part of the public, the assessment found that their general lack of participation led to lack of demand for access rights.



### **3.2 Access to General Information about the Environment and Facility Information on Environmental Compliance and Performance.**

“In sustainable development, everyone is a user and provider of information considered in the broad sense. That includes data, information, appropriately packaged experience and knowledge. The need for information arises at all levels, from that of senior decision makers at the national and international levels to the grassroots and individual levels.”

(Source: Agenda 21, Chapter 40)

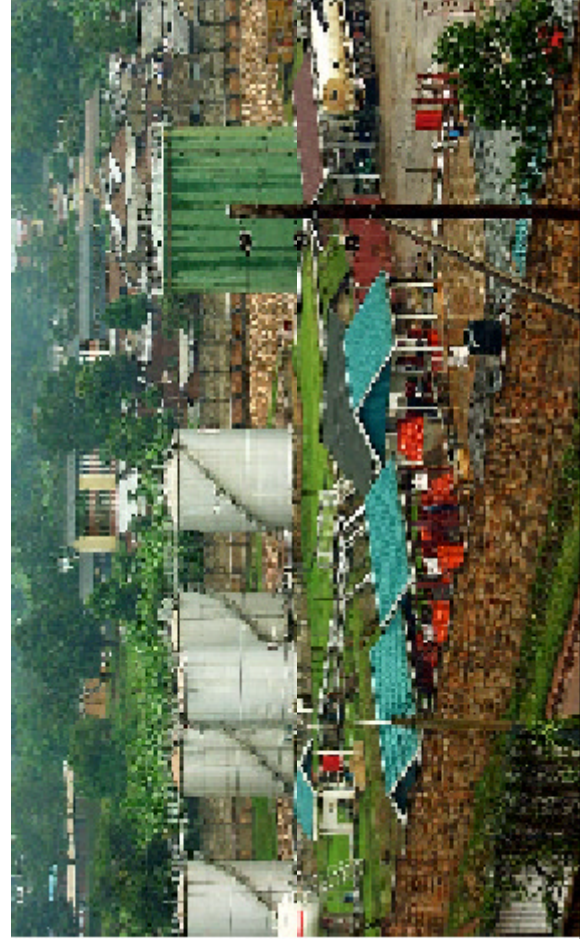
Both the Rio Declaration and Agenda 21 emphasize the relevance of information in achieving the objectives of sustainable development. The States and Governments noted in Principle 10 that at the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities in their communities, and the opportunity to participate in decision-making processes. Chapter 40 of Agenda 21 is dedicated to the actions that would be taken to provide information for decision-making by bridging the hitherto existing data gap and improving information availability.

Part II of The Access Initiative Indicators framework was designed to assess the extent to which, 10 years after Rio, Governments have made progress in making environmentally relevant information available to the citizens as envisaged in Principle 10. For purposes of this assessment, environmental information was divided into two broad categories: general information about the environment; and information about environmental compliance and performance of industrial facilities. The indicators framework for this part of the assessment is divided into four categories:

- Information related to a healthy emergency and / or accident emergency;
- Information from regular monitoring of air and/or water;
- Information from state of the environment reporting; and
- Facility level information on environmental compliance and performance.

The Uganda Pilot test applied the indicators framework on a series of case studies. For purposes of assessing the availability of information on health or accident emergencies, the assessment team chose the problem of fish poisoning around Lake Victoria, a cholera outbreak in Kampala city and the fuel depots located in residential areas in the Capital city Kampala. In 1999, some unscrupulous fishermen used toxic substances to catch fish in Lake Victoria—one of the largest fresh water lakes in the world shared between Uganda,

**TIME BOMB?:** Below (Left) a burning Petro Tanker and (Right) Top, Green Hill Acadamey with approximately 1,980 students and Below, Kibuli Secondary School with approximately 1,200 students are located metres away from fuel depots. There is no known emergency evacuation or response plan in case of a fire accident



Kenya and Tanzania. At the time, fish exports were almost surpassing coffee as Uganda's largest foreign exchange earner. As a result of this incident, the European Union, the largest market for Uganda's fish, banned the importation of fish from all the three East African countries. This was therefore a highly significant case for Uganda since it resulted into loss of approximately US dollars 30 million.<sup>35</sup>

#### **Case Study: Cholera Outbreak in Kampala**

In 1997, there was a cholera outbreak in several suburbs of Kampala, Uganda's capital city. The local authorities in those areas informed the city council authorities about the outbreak. Immediately, a team of 10 experts from the Kampala City Council Health Department was dispatched to investigate the reported incident. The Team made its report and submitted it to the Mayor of the City, the Town Clerk and the Ministry of Health.

On the basis of the report which confirmed the presence of the epidemic, the Ministry of Health responded by sending the Health Preparedness Team to support the local authorities in controlling the outbreak.

In addition, the following response measures were immediately put in place.

- A Panel comprising representatives from the district and Ministry of Health was set up.
- Divisions in Kampala also set up cholera task forces.

The various committees coordinated the provision of information to the public, mobilized and delivered the necessary medicine and medical personnel and isolation centres were established for confirmed cases. The teams also prepared, packaged and delivered information about the outbreak through a multi-media approach using radios, newspapers, posters, TVs and leaflets.

The Ministry of Health and Kampala City Council have well-established systems for disease surveillance, collecting and disseminating information as well as an elaborate health emergency response plan. In addition, Kampala City Council has an established health surveillance office which analyses epidemiological information collected from the health units and communities.

The second case chosen for this category of indicators is a hypothetical case involving fuel explosion from one of the fuel depots in Kampala. There are several fuel depots located in high residential areas in Kampala's industrial area. Some of these depots including Shell (U) Ltd are located in the vicinity of a secondary school with a population of over 800 students. The Uganda Pilot test wanted to establish whether there is any information provided to the residents of the area in case an emergency involving these depots occurred. The third case that was chosen for this category concerns cholera outbreak in many parts of Uganda including Kampala, a city with a population of over 1.5 million people and extremely poor sanitation levels in many of its suburbs. In September 1998 Communicable Disease Surveillance and Response (CDR) reported a total of 43911 cases of cholera and 1777 death.

#### **3.2.1. Information Related to a Health Emergence and /or Accident Emergence**

An analysis of the findings from the three cases generally shows that access to information in cases of accidents or environmental emergencies vary from sector to sector. These disparities can be looked at in different dimensions:

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First, the study found that it was easier to get information relating to health

<sup>35</sup>Personal Interview with Boaz Keizire, Senior Fisheries Economist, Ministry of Agriculture, Animal Industry and Fisheries. Entebbe, Uganda.



emergencies than from more economically sensitive sectors. The Ministry of Health, for example, has a very coherent system of generating and collecting epidemiological information from all over the country, repackaging it and disseminating it. The Epidemiological Surveillance Division of the Ministry of Health deals with all notifiable diseases and is responsible for tracking these diseases at the community level. There is a well-established response mechanism by the Ministry Headquarters where support to districts is required. In the case of the cholera outbreak, and other health emergencies such as Ebola, the Ministry of Health established task forces to plan and coordinate responses to the outbreak. For the regular disease tracking system, the information collected from the surveillance system is published and disseminated through a quarterly news bulletin. In cases of health emergencies, multi-media strategies are used to educate people about various options on how to avoid catching the disease as well as how to avoid its spreading.



Lake Victoria: The ban of fish exports to the European Union due to fish poisoning cost Uganda US\$ 36.9m (Ush. 54.243m) over a period of four Months.

Secondly, it was established during the study that other sectors such as fisheries were ill prepared for emergencies. In fact, until the fish-poisoning problem, no system ever existed in the Fisheries Resources Department to track accident or health related emergencies. In the aftermath of the fish-poisoning incident, the response of government was anything but short of coordination. Newspaper reports on the incident indicated that there was no agreement among the government officials and departments involved on the

scope of the problem. Consequently, much of the progress that has so far been made was largely responding to the fish-poisoning problem and may not give a good picture of the level of preparedness in cases of other emergencies such as oil spills.

### **3.2.2. Information from Regular Monitoring of Water Quality**

Chapter 18 of Agenda 21 addresses the management of fresh water resources. Fresh water is of paramount importance for the proper functioning of the earth's environment. Availability of clean water is a prime objective of many governments around the world. Yet the draft implementation of the World Summit on Sustainable Development recognizes that more than one billion people are without access to adequate water supplies, and 2.4 billion lack access to adequate sanitation.

Indicators under this category are designed to assess the extent of distribution and accessibility of water quality monitoring information as well as the comprehensiveness of monitoring effort.<sup>36</sup> Kasese Cobalt Company Limited (KCCL) and the National Water and Sewerage Corporation (NWSC) were chosen as cases for assessing the comprehensiveness of monitoring effort of water quality and the distribution and accessibility of monitoring information.

KCCL is a cobalt plant, which extracts and processes cobalt from 2 pyrite stockpiles in Kasese District, about 400km from the capital city, Kampala. KCCL is a multiple facility engaged also in hydropower generation, cobalt processing and limestone quarrying. It was granted a permit to discharge waste water into the Rukoki River. The river provides water for domestic and livestock use and drains into Lake George, an important source



Kasese Cobalt Plant in Western Uganda: Facilities such as these are required by law to submit Information on water quality to Government agencies but no deliberate effort is made to disseminate to the public

<sup>36</sup> Section 26 of the National Environment Statute provides that the National Environment Management Authority shall, in consultation with the lead agency, establish (a) criteria and procedures for the measurement of water quality; (b) the minimum water quality standards for all the waters of Uganda; and (c) minimum water quality standards for different uses including drinking water, water for industry, water for agricultural purposes, water for fisheries, water for wildlife, and any other water use prescribed.



of fishery for eight neighbouring villages.

The assessment found that KCCL has a comprehensive water quality-monitoring programme covering physical and chemical parameters. Physical monitoring focuses on color, odour, conductivity and total suspended solids. Chemical monitoring focuses on the level of sulphate Nitrate, ammonia, potassium sodium, calcium, aluminum, lead, cobalt, nickel, copper, carbonate hydrogen chloride and total hardness. The quality of water is monitored on a daily basis using the Australian Standard of Water for Human Consumption. For example, the analysis looks at the level of chlorine in the tanks and National Environment Management Authority (NEMA) monitors the ph level of River Rukoki every two hours.

The KCCL permit requires the company to undertake regular and consistent monitoring of water quality parameters for at least 3 years. The company makes monthly reports from the monitoring efforts, which are submitted, to the NEMA, the Directorate of Water Development (DWD) and Kasese District Local Government.

Although KCCL produces monthly newsletters that are widely distributed, this assessment found that there



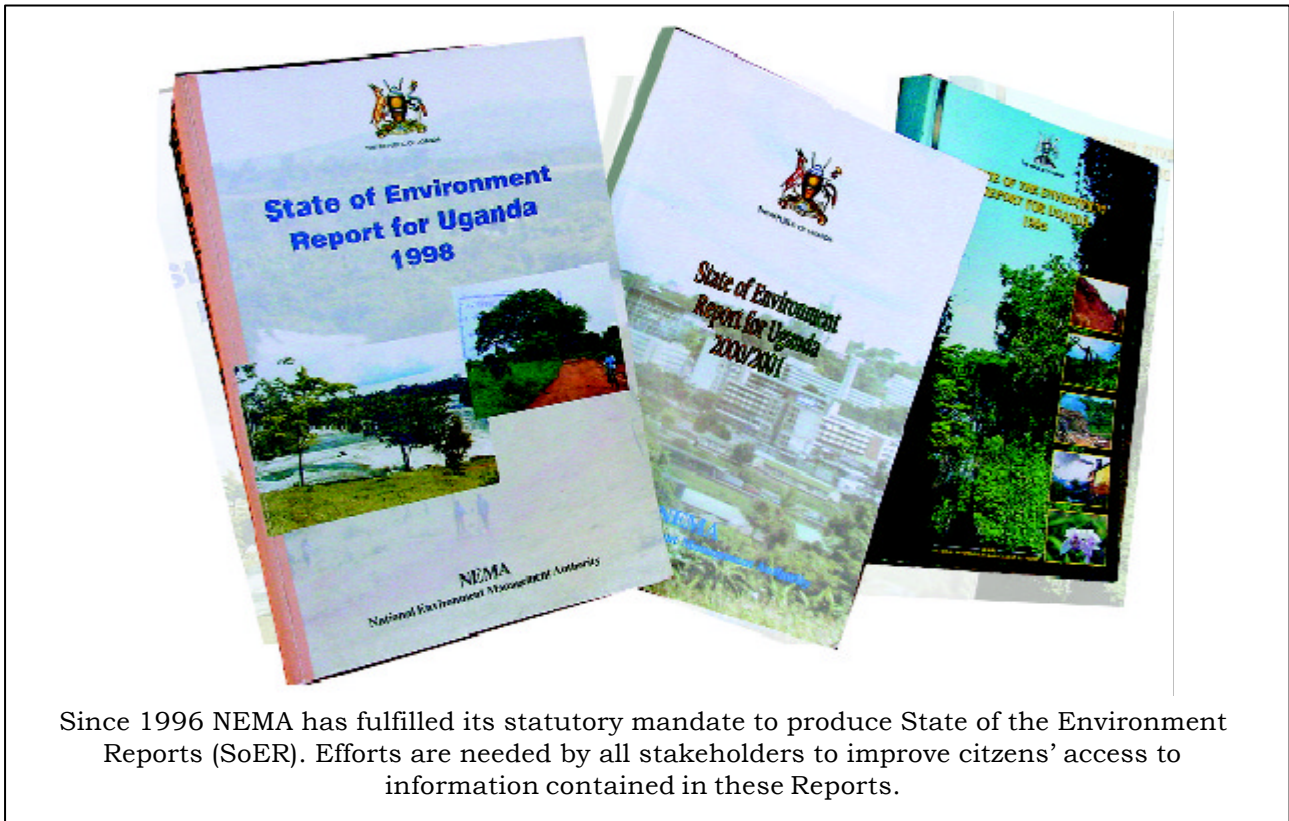
NWSC Water Purification Plant in Bugolobi:  
Many Agencies do not actively  
disseminate Information to Citizens

was no systematic effort to distribute water quality monitoring data to the general public. Consequently, the distribution is still limited to the oversight agencies mentioned above. About 4 months after the conduct of the fieldwork for this assessment, the Directorate of Water Department(DWD) published the first list of companies with wastewater discharge permits. However, both DWD and the NEMA do not have a practice of publishing water quality monitoring information.

The National Water and Sewerage Corporation (NWSC) is a semi-autonomous statutory government agency responsible for water distribution and sewerage management in Uganda. NWSC has a water quality-monitoring programme handling the entire system of water and sewage treatment. It has a treatment facility for water and sewage, carries out physiological and biological analysis and undertakes weekly checks on the quality of water. The corporation has 11 laboratories in different parts of the country. Although the Corporation produces regular reports on water quality, they are submitted to other government agencies such as NEMA and DWD and there is no deliberate effort to disseminate this information to citizens.

### 3.2.3 Information from State of the Environment Reporting

Under section 87(2), the National Environment Management Authority NEMA is required to publish a State of the Environment Report (SoER) every two years. Subsection (3) of this section provides that *“the State of the Environment Report shall in addition to other matters as may be prescribed, specify the main activities of the Authority (National Environment Management Authority) and the lead agencies regarding the protection of the Environment.”*



Since the Authority was formed in 1995, it has so far prepared and published three volumes of the SoER. The latest report (2001) which covers the period 2000/2001, was published in 2001, soon after the fieldwork for the Uganda Pilot test was completed.<sup>37</sup>

There have been considerable improvements in the quality of the State of the Environment Reports. This is mainly in terms of volume of the reports<sup>38</sup> as well as the level of analysis. The latest volume of the SoER is richer in both analysis and illustrations and uses scenario methodologies to predict future environmental problems and proposes possible response options. The 2000/2001 SoER includes projections over the next 25-years and examines four

<sup>37</sup>SoERs were also published in 1996 and 1998.

<sup>38</sup> The first SoER was published in 1994. The second volume which was published in 1996 had 271 pages, the third volume published in 1998 had 239 pages while the latest volume published in 2001 has 153 pages.

scenarios which have been included in the Uganda Vision 2025 Repound on Poverty Eradication. These are: flying crane scenario; the moribund scenario; the ostrich scenario; and the peaceful slumber scenario. While all the three reports are largely organized on a sector-by-sector basis, they also deal with cross cutting issues such as human settlements and poverty eradication.

NEMA prints 5000 copies of the report and distributes to the agencies on its mailing list which include public libraries, institutions of higher learning, all government departments, all districts and urban authorities and all mass media organizations. The reports are also available on sale at a cost of 18,000 Uganda shillings (US\$ 10).<sup>39</sup> It was established during the pilot test that most of the public libraries such as Makerere University Library, the NEMA Library and several others have restricted access either by account of entry fees or time.

The State of the Environment Report for Uganda is produced both in hard and electronic form. However, NEMA only posts the executive summaries of the reports on the World Wide Web.<sup>40</sup> Generally, there was no evidence found of efforts to produce a family of products from the State of the Environment Reports although press releases are prepared for the mass media to announce its release.

Finally, the production of the State of the Environment Report is a multi-stakeholder effort even though NEMA takes the coordinating responsibility as the agency mandated for its production. The Steering Committee for the state of the environment reporting is comprised of persons from other ministries and government departments other than NEMA, including Makerere University Institute of Environment and Natural Resources and development agencies such as UNDP and USAID.

#### **3.2.4. Facility Level Information on Environmental Compliance and Performance**

Industrial facilities all over the world engage in a broad range of activities that have significant implications for the environment, long-term sustainability of national economies and the health and well being of communities. Facilities engaged in the extraction, processing and manufacture of products often generate waste and pollute the biosphere. Government agencies spend a lot of money and staff time monitoring environmental compliance and performance requirements of these facilities. Facility level information is important since it would promote independent monitoring of industrial and other facilities hence reducing the costs on government agencies. Governments committed to promoting the right to a clean and healthy environment ought to promote access to facility level information.

Indicators under this category were intended to assess whether governments have put in place legislation requiring facilities to report on their activities, whether

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<sup>39</sup> At the current market exchange rate of US\$1:1740, this translates to approximately US\$10.34

<sup>40</sup> See [www.nemaug.org](http://www.nemaug.org)



or not there are standardized forms of reporting, management of data and its dissemination and use. For purposes of this Category, the Uganda Pilot Test analyzed existing environmental laws in order to establish whether the legal mandate for facility reporting existed. Kasese Cobalt Company Limited was also chosen to test the indicators on the practice of facility level information disclosure.



Mukwano Soap Factory in Kampala:  
Neither the Facility nor the Government provide  
Information about the polluting activities  
of the industrial facilities.

The National Environment Statute contains extensive provisions on facility level reporting for different kinds of information. *Section 78 provides that any person who carries out any activity, which has or is likely to have a significant impact on the environment, and any person carrying out any other activity prescribed by the National Environment Management Authority shall keep records relating to the following:*

- The amount of waste and by- products generated by the activity;
- The extent of his activities indicating the economic value of the activity on the area covered expressed in monetary value of the product per year;
- The observable effects of the activity on the environment;
- How far in the opinion of that person the provisions of this Statute have been complied with.

On the other hand, section 79(1) of the NEMA Statute requires that the records kept under section 78 should be transmitted to the Authority or its designated representative annually and received no later than a month after the end of each calendar year. NEMA has developed guidelines for facility level reporting which is used by agencies such as KCCL.

An assessment of KCCL provided no evidence of efforts to disseminate information from facilities. Many of these facilities generate data as a statutory obligation and neither the facility nor the National Environment Management Authority has a proactive policy to disseminate this information. However, NEMA indicated during the assessment that this information can be available on request.

### **3.3 Access to Participation in Decision-Making**

The concept of public participation has become increasingly central to sustainable development planning. In the 10 years after Rio, the demands for public participation have not come from the citizens *per se*, they have been re-echoed by multi-lateral development banks as well as donors. Because of these demands, public involvement in making decision affecting the environment, is increasingly becoming an important facet in national development discourse.

The indicators under this part of the assessment are designed to measure how countries have implemented the commitments to grant citizens the right to participate in the process of making decisions that affect the environment. The indicators are designed to measure access to participation in three categories of decision-making.

- Access to participation in sector or regional policies, plans and programmes. For purposes of this category, the Uganda Pilot test selected the Forestry and the Fisheries Policy reform processes. The Forestry Policy was adopted in March 2001. The Fisheries Policy process was still ongoing at the time of conducting the assessment.
- Access to participation in decision-making concerning award of concessions, environmental permits and facility citing. Two cases were selected to test the indicators under this category. For forest concessions, Budongo Forest, which is a natural forest reserve located 210 km North West of Kampala, was selected. The Reserve is a natural forest with exceptional biodiversity including high quality mahogany trees. Budongo Forest is also considered the country's richest timber producer. The second case study is the Kasese Cobalt Company (KCCL), which has a wastewater discharge permit from the Directorate of Water Development (DWD).
- Access to participation in decision-making involving an Environmental Impact Assessment (EIA). For this category, the KCCL EIA process was selected to test the indicators.

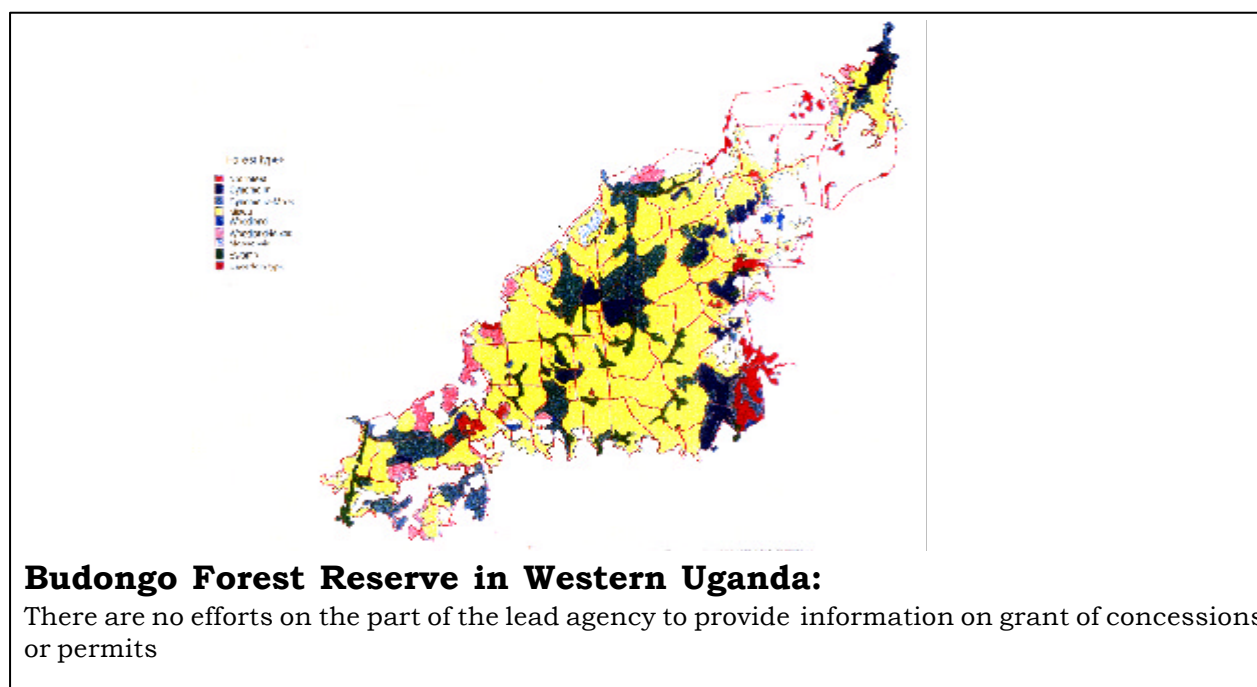
#### **3.3.1 Access to Participation in Decision-Making in Sectoral or Regional Policies, Plans or Programmes.**

Since 1992, the Government of Uganda has been increasingly acknowledging the need for public participation in the policy making process. Of recent, it has made attempts to involve civil society as well as conduct public consultations in the process of formulating new policies, plans or programmes. Extensive public consultations have been undertaken for major macro-policy processes such as the Poverty Eradication Action Plan (PEAP) and the Plan for Modernization of Agriculture (PMA). At the sectoral level, participation varies from sector to sector and from project to project. Increasingly, many government sectors are shedding off traditional institutional biases, and government officials and institutions are giving way to more open and responsive

attitudes towards public involvement. However, the concept of public participation is yet to be accepted as a right recognized in international and national law as well as practice.

- In order to assess the practice of public participation in decision-making in Uganda's sectoral policies, the Assessment Team (AT) chose to consider the recently concluded forestry policy-making process as well as the current fisheries policy-making process. Government has made an attempt to consult civil society groups during these processes and, therefore, they provide a basis by which access to decision-making can be assessed. The AT chose to apply the indicators to the following cases.
- Under Category B, the AT chose to measure access to decision-making in the awarding and management of concessions for forest exploitation. The case study was a concession awarded in the Budongo Forest Reserve. Income generated from forest concessions amounts to several million US dollars in revenue, and therefore, represents a significant source of income for Uganda and its citizens. The Budongo Forest Reserve was also chosen as a case study because it's one of few Reserves that have a management plan.

Concessions are governed by the Forest Act and Forest Rules. The Committee on Guidelines and Standards in Forest Department is responsible for the management of timber concessions in the gazetted forest reserves. Licences are granted to two categories of individuals/associations or companies – pitsawyers and sawmillers. The Forest Department conducts groundwork,



and after a computerised assessment and identification of mature trees for harvest in the concession areas, the public is invited by the Commissioner for Forestry to make applications for extraction. Accurate values on Uganda's performance on public access to decision-making in the awarding and management of concessions were assigned to each of the indicators.<sup>41</sup>

Under Category C, the assessment team applied the indicators framework to the Kasese Cobalt Company Limited (KCCL) EIA process in measuring public access to decision-making in the EIA process in Uganda. KCCL was a suitable case study because it probably provides Uganda's first opportunity to assess its EIA Regulations. Accurate values on Uganda's performance on public access to decision-making in the EIA process were assigned to each of the indicators under Category C.

The assessment found that authorities in Uganda do not include a public notice of their intention to prepare a policy. For example, the Forestry Policy 2001 was initiated and drafted by the Forest Department in 1996/97. The public was involved later during the regional consultations of the draft policy document. At this stage, extensive consultations were undertaken with various groups of stakeholders including local governments, the business and industry community, civil society organizations and other interest groups. Government made deliberate efforts to obtain comments from all the major stakeholders.<sup>42</sup>

Although there is no established legal or administrative requirement to give the public time to comment on national policies or plans in the case of the forestry sector process, the public was granted 31 to 60 days to provide written comments. The final Forestry Policy summarises the process used to obtain public input.

A summary document of the final policy can be obtained in more than one format from the line Ministry, and other Government institutions. The Forest Sector Co-ordination Secretariat

#### **Case: The Fisheries Policy Formulation Process**

The Department of Fisheries Resources (DFR) initiated the drafting of a national fisheries policy sometime in 1999. No communication was given to the public as far the process was concerned. The policy formulation process therefore remained an internal matter of the DFR. An initial draft was published in May 2000 and a draft Cabinet Memo was prepared to have the draft policy presented to Cabinet for approval. Advocates Coalition for Development and Environment (ACODE) wrote to the Commissioner for Fisheries protesting the manner in which the policy had been drafted and the lack of any public consultations and participation in the process. ACODE threatened to challenge the policy process as being in non-compliant with the Constitution and the National Environment Statute. No written response was provided in response to ACODE's protest. However, as a result of this protest, a national consultative meeting was organized for various stakeholders in Kampala. Subsequently, ACODE and the Integrated Lake Management Project organized a series of other consultative meetings. Although the DFR participated in these meetings, no efforts have ever been made by the Department to undertake an organized and well-planned public consultation process. At the time of the assessment, Cabinet had not approved the policy and there were no plans to subject it to a systematic public consultation process, as was the case of the National Forestry Policy.

<sup>41</sup> Indicator II.B.6.b was excluded because it was felt that it needed to be revised

<sup>42</sup> This included providing funding for a series of consultative meetings for civil society under the umbrella of the Uganda Forest Working Group (UFWG).

### **The Role of Bilateral Donors and International Financial Institutions in Promoting Access Rights.**

An assessment of various projects and policy processes supported by partners revealed a consistent pattern that demonstrates the fact that donors can play a constructive role in supporting the implementation of access rights. The following observations were made:

- ❖ **Participation in donor funded projects varies from project to project and programme to programme:** While there has been more rigorous and systematic public participation in the forestry policy or the land sector, the situation has been different with respect to the fisheries sector. In the former, donors even provided funds specifically to mobilize public participation;
- ❖ **Donors influence government practices:** Due to capacity and financial constraints and sometimes bureaucratic biases, there always more disincentives than incentives for government to encourage public participation. Donors play a key role in influencing government practices on participation rights. In our assessments, we found that many of the sectors that had significant donor support, they were more open to participation, were engaged in a systematic process of information generation, repackaging and dissemination compared to sectors that had no or less donor funding. The health sector and the forestry sector process represent the former case while the energy and mining sectors represent the later.
- ❖ Donors tend to emphasize more participation in macro-policy processes and less in specific FDI projects. There has been more participation in the PEAP, PMA and now in the central and local government budgeting process than in specific projects in the mining, fisheries or water sector.
- ❖ Finally, there is limited emphasis on public participation in designing bi-lateral support programmes.

published the policy statements in the March 2001 issue of their newsletter, *Branching Out*, which has a wide readership.

#### **3.3.2. Concessions or Permits**

Concessions, permits and licences are some of the key economic instruments through which investments can be undertaken in Uganda's protected natural estate such as forest reserves, national parks and others. Because of their economic potential, these instruments can often be abused if their allocation process is not open to public scrutiny.<sup>43</sup> The indicators framework was therefore designed to measure the extent to which the regulations and practices for awarding concessions, licences and permits provide opportunities for public input and consultation.

The assessment team found that the terms and conditions governing concessions could be obtained from the Forestry Department or from the District Forestry Officers by direct request within a week. It was also established that neither the Forestry Department nor the district forestry departments publish any notifications to award a concession in any public media. The assessment found that the Forestry Department instead sends names of approved licencees to the district forest officers who are under no legal

or administrative obligation to make the list available to the public.

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<sup>43</sup> For example, the renewal in 1998 of a permit to Kakira Sugar Works (KSW) over Butamira Forest Reserve, by the then Assistant Commissioner for Forestry, has been a subject of intense controversy. It is likely that if the process was open and subject to public participation, this controversy and the associated costs to Government, KSW and the local community could have been avoided.



The screening of permit applications is restricted to the Guidelines and Standards Committee. The Guidelines and Standards Committee bases its selection on criteria/guidelines developed exclusively by the Forestry Department and without any public consultation or participation. There are basically no consultations with any interest groups in the process of scrutinizing and awarding concessions.

There are generally two informal mechanisms that could be used by communities to submit their complaints regarding the concession. First, the licence holders have a disciplinary committee within their associations, which resolves the problems as they arise. The District Forest Officer is often involved in the Committee meetings. Secondly, the Committee on Guidelines and Standards can direct thorough written or oral complaints to the District Forest Officer who forwards the complaint to the Commissioner for Forestry for action. No record was found of any complaints filed to the Commissioner for Forestry during the assessment conducted under this study. A management plan for the Budongo Forest Reserve exists and can be obtained at a fee of USD 20 from the sectoral agency within 30 days.

Finally, the current forestry legislation does not provide an alternative for administrative review procedures to challenge the validity of the award process. The interviews conducted with some of the licence holders reflected the lack of information or knowledge of other licence holders operating in the same reserve. The exclusion of the public in the formulation of criteria coupled with the failure to publish a list of licence holders on a notice board at the District offices in close proximity to the concession area curtails the public from challenging an award decision.

### **3.3.3. Environmental Impact Assessment**

The intention to carry out an Environmental Impact Assessment (EIA) is officially announced and published by the government at least once in the mass media no less than 30 days before initial contact with potentially affected parties.<sup>44</sup> The project proponent or its consulting firm holds at least one meeting with potentially affected parties to outline the future EIA process.

The final EIA includes an executive summary highlighting the findings and recommendations. All EIA reports make an attempt to discuss substantive issues raised by the public during the consultation process or the written comments.

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<sup>44</sup> Regulation 19 of the Environmental Impact Assessment Regulations, 1998.

### **3.3.4. Conclusions**

Public involvement in the policy-making process, awarding and management of concessions as well as the EIA process is initiated at the latter stages of these processes. The public does not receive notification of the intent of any sectoral agency to develop a policy or award a concession. Although notice of intent to carry out an EIA is given to the public, effective participation by the public in the EIA process generally occurs only after the draft EIA report has been produced.

Thus policies tend to inherit the political agendas of the period in which they are drafted and their concepts often tend to be donor driven, concessions usually do not benefit the communities within which they are granted, and EIA processes often simply serve as rubber-stamps for projects that have prior approval to commence. Public participation at the early stages of policy-making, concession awarding and EIA processes would therefore be ideal and more representative of the needs and concerns of the general population and/or affected communities.

### **3.4 Efforts to Build Capacity of the Public for Meaningful Participation in Environmental Decision-Making.**

Part four of the Assessment is divided into three categories. Category I indicators are intended to measure the efforts by selected government departments to support the practice of public participation. Category II measures the existence of public interest groups and an enabling environment for these groups to support the practice of access. Category III is intended to measure sources of general understanding of environmental problems by the public.

For purposes of the Uganda Pilot Test, three government departments were selected to test the indicators in category I. These are the National Environment Management Authority (NEMA), the Directorate of Water Development and the Department of Fisheries Resources (DFR).

#### **3.4.1. Degree of Institutional Support for Public Participation**

The Uganda Pilot test found that there is very limited institutional support for public participation in environmental decision-making. For all the departments to which the indicators were applied, it was found that administrative information to facilitate access to public participation was lacking. No information is publicly available about mandate, point of contact or procedures for making administrative claims. The officers interviewed during this

assessment noted that the departments are ready to provide information upon request. However, in some of the cases, the public may not even know which institution or department to contact for particular information requirements. There are generally no programmes for building the capacity of staff to support access to participation by the public. Public officers receive general training although the training is not specifically tailored to support access and participation rights. The Uganda Pilot test also found no evidence of established administrative mechanisms for hearing administrative claims where access rights have been denied.

### **3.4.2. Conditions and Capacity of an Independent Sector to Support the Practice of Access**

Although public interest groups have been operating in Uganda as NGOs, there are considerable restrictions to their operations. The NGO Statute of 1989 provides for the registration of NGOs in the country and the NGO regulations enacted thereunder requires recommendation from the local council of an area where the organization is to operate from. The recommendation has to be approved vertically through the local council structure and vetted by the Internal Security Organization (ISO). Since 1989, these registration requirements have been compounded by a series of administrative requirements that NGOs have to go through before registration. During the assessment, the team found cases when it had taken about a year to register. Consequently, the amount of transaction costs involved in forming and registering NGOs seems to be a significant prohibition to the formation and growth of public interest organizations.

## **4. Summary of Findings**

### **4.1: Progress in Implementation of Principle 10 Commitments**

In the foregoing sections, we have presented a detailed analysis of the Ugandan Pilot test. Generally, the findings show significant progress in a number of areas especially in developing relevant legislation. The assessment also found that in practice, there is more implementation of the right of access to participation in decision making, moderate implementation of the right of access to information, and less of access to justice. The overall summary of findings is presented in the table below.



## Summary of Progress Achieved in Implementing Principle 10 Access Rights

Access to information	Access to public participation	Access to justice
<ul style="list-style-type: none"> <li>➤ Access to information provisions incorporated in the National Environment Statute;</li> <li>➤ Access to information incorporated in article 41 of the Constitution;</li> <li>➤ The MoU on the Environment signed by Uganda Government in October 1998 has elaborate provisions on access to information;</li> <li>➤ Requirement that NEMA publishes a State of the Environment Report every 2 years;</li> <li>➤ The Environmental Impact Assessment Regulations requires that the EIS be distributed to selected public libraries and they are public documents;</li> <li>➤ The NEMA Statute also requires the Authority to make rules and regulations regarding various environmental parameters such as pollution, toxic substances, etc.</li> <li>➤ A number of court decisions have also tried to extend these provisions although the position is still not yet settled as to procedural rules and administrative remedies available in cases of denials;</li> </ul>	<ul style="list-style-type: none"> <li>❖ The right to public participation is now fairly well articulated in various policy and legal documents including the National Environment Policy, 1994, the National Environment Statute, 1995 and the Plan for Modernization of Agriculture, 2000;</li> <li>❖ Civil society organizations are increasingly being represented in key policy making organs such as the NEMA Board and the PMA Committees.</li> <li>❖ The promulgation of the EIA process strengthened the legal requirements for public participation in project design and decision making;</li> <li>➤ The stage at which participation is enlisted varies from sector to sector and project to project</li> </ul>	<p>Both the National Environment Statute and the Constitution, 1995 have attempted to broaden locus standi including granting rights to citizens groups to sue on behalf of groups and individuals whose rights have been or are being threatened;</p>

However, the following general conclusions can be made from the overall assessment.

- Government sectors/programmes that have significant donor funding seem to be more systematic in generating and disseminating information and have a more open policy of information disclosure. These sectors or programmes are also more effective in engaging the public in the decision-making processes. This is evident when processes like the forestry policy formulation process and the PMA process is contrasted with processes such as the fisheries policy.
- Information on the social sectors such as health, is more easily accessible compared to information on the economic sector. While there was a coherent and systematic process of generating and disseminating information in the health sector for example, in cases such award of concessions or drinking water quality, there was no semblance of any effort to involve the public or disseminate information. Assessment found that the fuel depots in Kampala did not have any emergency response plans, did not actively disseminate information related to emergencies and were reluctant to disclose any information related to their operations.

- The sectors that have strong presence of policy focused civil society organizations (CSOs) are increasingly opening up compared to other sectors. In the forestry sector for example, there was a more progressive tendency to open up to public participation compared to other sectors such as mining and energy. According to the Uganda Forest Working Group records, there are approximately over 50 CSOs engaged in forestry related activities. No record was found of CSOs engaged in policy issues in the mining sector and there are generally few CSOs engaged in the energy sector at a policy level.
- Generally, other than legislative progress, there is minimal progress on the implementation of the right of access to justice. Access to justice is still limited by lack of clarity of the concept of '*locus standi*', prohibitive litigation fees, absence of clear administrative mechanisms for seeking administrative redress, and the absence of social support networks to promote access rights.

#### **4.2: Bridging the Gaps: Towards a Multi-Stakeholder Partnership**

As the process leading to the World Summit for Sustainable Development (WSSD) continues, States including Uganda, are beginning to recommit themselves to the access principles as enumerated in Principle 10 of the Rio Declaration.<sup>45</sup> In order to engage in a further process for the full implementation of Principle 10 commitments, it is necessary to identify the gaps, set recommendations of what should be done and who should be responsible. The ultimate objective is to design a new partnership based on mutual recognition of complementary roles of Government, civil society, donors as well as business and industry.

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<sup>45</sup> See Commission for Sustainable Development (CSD), Bali, June 2, 2002.

<sup>46</sup> The current framework provisions in the National Environment Statute and the Constitution do not adequately address access to information issues. They do not lay down procedures for information requests, time limits for responses or remedies for denial of access.

**BRIDGING GAPS AND ACCELERATING IMPLEMENTATION OF ACCESS RIGHTS: FRAMEWORK FOR DESIGNING STAKEHOLDER OBLIGATIONS AND COMMITMENTS**

Implementation Gaps	What needs to be done	Nature of responsibility or commitment			
		Civil Society Organizations	Government	Donors	Business & Industry
Absence of specific freedom of information legislation. <sup>47</sup>	Enact a freedom of information Act; Repeal obsolete laws.				
Absence of guidelines for access to environmental information	Develop and publish a public guide to access to information on environmental matters.				
Absence of designated public officials to handle information requests and therefore persons requesting for information can be tossed from office to another;	Designate public officials in key ministries who should address public information requests.				
Limitations of information infrastructure in the form of computers and associated software, internet connectivity, and costs of information generation, repackaging and dissemination leading to supply constraints.	Establish public referral centers in selected ministries. These should have up-to-date technology for generating, repackaging and disseminating information				
Information about policy processes, strategies and plans are not readily available.	Require announcement of any policy process or plan at least 60 days before the commencement of the process.				
Increasing emphasis and use of technical assistance in key policy processes works against participation.	Integrate access principles in technical assistance programmes.				
The limited levels of awareness among local people means that they cannot demand for participation as of right;	Create awareness among district based CSOs about the access rights.				
Environmental Impact Statements are distributed to limited public libraries and these libraries have cumbersome procedures and restrictions on access;	<ul style="list-style-type: none"> <li>▪ Load EIA Reports on the internet;</li> <li>▪ Publish executive summaries in news papers;</li> <li>▪ Prepare public dialogues on the EIA reports</li> </ul>				
Public interest law groups are still very young and do not have adequate outreach programmes to provide legal and advisory services to communities;	Strengthen public interest law groups and legal aid programmes.				

<sup>47</sup> The current framework provisions in the National Environment Statute and the Constitution do not adequately address access to information issues. They do not lay down procedures for information requests, time limits for responses or remedies for denial of access.

There are no programmes to raise awareness on access to justice and other environmental procedural rights issues leading to demand constraints.	Develop outreach programmes on access rights through mass media and other media.				
Judges, lawyers and other judicial officers do not receive continuous training on access rights and this affects enforcement and compliance.	Design and implement a coherent training on access rights and integrate it into the training programme for the judiciary.				
Existing human rights organizations do not adequately articulate access rights as human rights issues.	An outreach programme for promoting access would need to encourage these CSOs to integrate access rights into their regular programmes.				
Since 1992, there hasn't been any independent monitoring mechanism for measuring progress.	<ul style="list-style-type: none"> <li>▪ Endorse the elements of a public participation system developed by The Access Initiative.</li> <li>▪ Endorse the concept of independent monitoring.</li> </ul>				
Public participation is weakest at the local government level than at the national level.	Build capacity for implementing access rights within local governments and local CSOs.				
Absence of guidelines for submitting administrative claims to NEMA and the nature of redress available.	Develop and adopt guidelines for submitting administrative claims.				
Absence of a reward mechanisms	Establish and institutionalize a reward system for compliance and exemplary performance.				
There are no programmes for media to address access rights.	Lobby media houses and interest them to support promotion of access rights.				

As can be seen from the glaring gaps presented in the table above, the further implementation of Principle 10 requires a concerted effort from all stakeholders. With the ever-limited financial and human resources, Government cannot achieve the full implementation of the access rights on its own. Civil society organizations, donors and industries must take a share in the implementation process.

## Appendix 1: Trends in Policy Reform Processes Since Rio with Particular Reference to Public Participation

Document	Year	Relevant Statements
National Environment Policy for Uganda	1994	Among the objectives of the policy on public participation in environmental management is to involve land and resource users in environmental planning, implementation, monitoring and evaluation at all levels and empower them to manage their natural resources.
National Policy for the Conservation and Management of Wetlands	1995	Government will raise public awareness and understanding of resources and actively encourage participation of the public, local government authorities and institutions. This recognizes that implementation of this policy depends on whether it is realistic in terms of social acceptability and technical feasibility. Pp.9
The National Environment Statute	No.4 of 1995	Among the principles of environmental management is “to encourage the maximum participation by the people of Uganda in the development of policies, plans and processes for the management of the environment”. (Section 3(2)(b)).
The Uganda Wildlife Policy	1999	The over all aim of the Uganda Wildlife Policy is to promote the long term conservation of the country’s wildlife and biodiversity in a cost-effective manner which maximizes the benefits to the people of Uganda. ———In support of that goal Government will encourage a range of participator approaches such as empowering the people to participate in the conservation and management of the country’s natural resources, and related decision-making processes that affect their livelihoods.
The National Water Policy	1999	The policy objective of the policy is states as “To manage and develop the water resources of Uganda in an integrated and sustainable manner so as to secure and provide water of adequate quantity and quality for all social and economic needs of the present and future generations with the full participation of all stakeholders.pp.8
The Draft National Fisheries Policy	2000	The guiding principles of the policy are stated as follows in relevant parts: <ul style="list-style-type: none"> <li>• Fisheries development will include the active participation of women and the youth. There will be equitable representation in decision-making, shared responsibilities and benefit sharing by all groups;</li> <li>• The policy supports public participation in the management of the fisheries resources and ensures equitable sharing of benefits. This will ensure respect for traditional cultures and knowledge, access to resources, and due regard to gender and equity.</li> </ul>
The Uganda Forestry Policy.	2001	<ul style="list-style-type: none"> <li>• Collaborative partnerships with rural communities will be developed for the sustainable management of forests;</li> <li>• Develop a supportive legal basis for devolved decision-making, enforcing regulations, arbitration and accountability;</li> <li>• Develop robust community institutions to ensure transparent decision-making, the adequate representation and participation of women, men and vulnerable groups and the equitable sharing of forest benefits and responsibilities.</li> </ul>
The Draft National Soils Policy for Uganda (Undated)		Encourage land users to participate in soil conservation by ensuring long-term interests in the programme as conservation practices are quite expensive in terms of capital and labour requirements and may produce beneficial results after a few years.
Plan for Modernization of Agriculture [September 2000 Version-Final]	2000	While it will continue to co-ordinate, direct and facilitate the provision of basic services, Government will continue to support the empowerment of organizations, targeting women, youth and local communities and also ensuring their participation in agriculture modernization. NGOs, CBOs and the poor will be involved in the process of planning, implementing, and financing and delivery of services especially at local levels of Government.

**Appendix 2: Status of implementation of Principle 10 from The Access Initiative Pilot Test Countries**

<b>Indicator</b>	<b>Weak Performance</b>	<b>Intermediate Performance</b>	<b>Strong Performance</b>
Constitutional guarantees to access to information	The constitution does not guarantee the public's right to information: <b>Chile, United States</b>	The constitution does not guarantee the public's right to information, but interpretations of the right to free speech and press include the right to information: <b>India, Hungary</b>	The constitution guarantees the public's right to information: <b>Indonesia, Mexico, South Africa, Thailand, Uganda</b>
Freedom of Information Acts (FOIAs) or equivalent legislation	Neither FOIA nor equivalent legislation is in place: <b>Uganda</b>	FOIA or equivalent legislation is in legislature: <b>India, Indonesia</b>	FOIA or equivalent legislation is in place: <b>Chile, Mexico, Hungary, South Africa, Thailand, United States</b>
Access to environmental information provisions	No special provisions exist governing access to environmental information, or access to different types of environmental information is treated in separate laws: <b>Hungary, India, Uganda</b>	<i>No value offered; only two indicator choices were "strong" and "weak"</i>	Provisions for access to environmental information are in place: <b>Chile, Indonesia, Mexico, South Africa, Thailand, United States</b>

<b>Indicators</b>	<b>Weak Performance</b>	<b>Intermediate Performance</b>	<b>Strong Performance</b>
Constitutional guarantees to public participation	Constitution does not refer to right to public participation in decision-making: <b>Chile, Hungary, India, Indonesia, Mexico, South Africa, United States</b>	<i>No value offered; only two indicator choices were "strong" and "weak"</i>	Constitution guarantees the right to public participation in decision-making: <b>Uganda, Thailand</b>
Comprehensiveness of notice and comment in different types of decision-making processes	Types of policy- and project-level decisions requiring public notice and comment are not specified: <b>Indonesia, Thailand</b>	Types of project-level decisions requiring public notice and comment are specified, but types of policy-level decisions are not: <b>Chile, Hungary, India, Uganda</b>	Types of both policy- and project-level decisions requiring public notice and comment are specified: <b>Mexico, South Africa, United States</b>
Public notice and comment requirements for EIAs	No requirements for public notice and comment for EIAs: <b>Thailand</b>	EIAs require public notice and comment at final stage: <b>Hungary, India, Indonesia, Mexico, Uganda</b>	EIAs require public notice and comment at various stages: <b>Chile, South Africa, United States</b>

<b>Table 5.2 Enabling Conditions: Quality of Legal and Regulatory Framework</b>			
<b>Indicators</b>	<b>Weak Performance</b>	<b>Intermediate Performance</b>	<b>Strong Performance</b>
Inclusiveness of mandates for public agencies to disclose environmental information	It is unclear what agencies are responsible for disclosing information: <b>Indonesia</b>	A specific agency is charged with disclosing environmental information, while other public agencies are excluded from such obligations: <b>Chile, Hungary, United States</b>	All public agencies at national, regional, or local levels are obliged to disclose environmental information: <b>India, Mexico, South Africa, Thailand, Uganda</b>
Government obligations to maintain public information systems about the environment	No regulations exist: <b>Indonesia</b>	Regulations exist but define only two of the following: responsible agencies, information products, regularity, mode of distribution, recipients, procedures: <b>Chile, Hungary, India, Mexico, Thailand, Uganda</b>	Regulations define responsible agencies, information products, regularity, mode of distribution, recipients, procedures: <b>South Africa, United States</b>
Comprehensiveness of the definition of environmental information in the public domain	It is unclear what information is in the public domain or wide discretionary power is given to officials: <b>Hungary, South Africa, Thailand, United States</b>	Environmental information in the public domain includes two or three of the following information types: status and quality of the environment, measures affecting the environment; licenses for use of natural resources and the environment; evaluations concerning the environment: <b>Chile, India, Indonesia, Mexico, Uganda</b>	Environmental information in the public domain includes all of the following information types: status and quality of the environment, measures affecting the environment; licenses for use of natural resources and the environment; evaluations concerning the environment: <b>None</b>
legal interpretations of “the public” and “the public interest”	There is no definition of the public or the public interest in legal frameworks: <b>Chile, India, Indonesia, Thailand Uganda</b>	The public and the public interest are defined broadly in the constitution, but supporting legal regulations almost always restrict definition to persons affected or harmed by an action or a decision : <b>Mexico</b>	The public and the public interest are broadly defined: <b>Hungary South Africa United States</b>

*Source: Access Initiative National Team Reports*



<b>Table 5.3 Enabling Conditions for Access to Justice: Accessibility of Institutional Infrastructure</b>			
<b>Indicator</b>	<b>Weak Performance</b>	<b>Intermediate Performance</b>	<b>Strong Performance</b>
Diversity of mechanisms for access to justice	Courts of law are the only mechanisms by which citizens can seek access to justice:	Citizens can seek access to justice via both courts of law and administrative means, but one of these is not fully developed or easy to use: <b>Chile, Hungary, India, Indonesia, Mexico, South Africa, Thailand, Uganda</b>	Citizens can seek access to justice via both courts of law and administrative means, and both mechanisms are well-developed and easy to use: <b>United States</b>
Administrative review for national, regional, and local policies, strategies, rules, and plans	Implementing or sectoral agencies have no process in place to consider problems and concerns raised by affected parties after policy comes into force: <b>Chile, Hungary, Indonesia, Mexico, Thailand, Uganda</b>	<i>No value offered; only two indicator choices were “strong” and “weak”</i>	Implementing or sectoral agencies have a process in place to consider problems and concerns raised by affected parties after policy comes into force: <b>India, South Africa, United States</b>
Judicial review process for national, regional and local policies, strategies, rules, and plans	Sectoral or regional laws and regulations governing selected cases do not include an explicit statement on judicial review procedures to address challenges to the policy decision: <b>Chile, Hungary, India, Mexico, Thailand,</b>	Sectoral or regional laws and regulations governing selected cases do include an explicit statement on judicial review procedures to address challenges to the policy decision: <b>Uganda</b>	Sectoral or regional laws and regulations governing selected cases include an explicit statement on judicial review procedures and indicate that affected parties or public interest groups may invoke judicial review: <b>Indonesia, South Africa, United States</b>
Review and standing processes for project-level decisions, including EIAs	Administrative review procedures do not exist to address challenges to the validity of a decision-making process OR the review procedures prohibit parties not participating in the process from invoking a challenge: <b>Chile, Mexico, Indonesia, Thailand, Uganda</b>	Administrative review procedures do exist to address challenges to the validity of the decision-making process and to establish <i>when</i> parties not participating in the process may invoke a challenge: <b>India, United States</b>	Administrative review procedures do exist to address challenges to the validity of the decision-making process and establish <i>when as well as how</i> parties not participating in the process can invoke a challenge: <b>Hungary, South Africa</b>

Source: Access Initiative National Team Reports



<b>Table 5.4 Enabling Conditions for Access to Justice: Cost of Justice</b>			
<b>Indicator</b>	<b>Weak Performance</b>	<b>Intermediate Performance</b>	<b>Strong Performance</b>
Affordability of fees for processing administrative claims	Administrative fees for processing claims and grievances on environmental issues are prohibitively high: <b>South Africa, Uganda</b>	Administrative fees for processing claims and grievances on environmental issues are significant: <b>Hungary, Thailand</b>	There are no administrative fees for processing claims and grievances on environmental issues, or fees can be waived for individuals or public interest groups: <b>Chile, India, Mexico, United States</b>
Affordability of litigation fees	Fees for environmental cases are prohibitively high: <b>Hungary, South Africa</b>	Fees for environmental cases are significant: <b>Indonesia, Thailand, United States</b>	There are no fees for environmental cases, or fees may be reduced or waived for individuals or public interest groups: <b>Chile, India, Mexico, Uganda</b>
Affordability and accessibility of independent legal representation	No affordable, independent legal representation is available to the public: <b>Chile,<sup>a</sup> Mexico</b>	Affordable, independent legal representation can be found in the capital: <b>Hungary, India, Uganda</b>	There is a network of affordable, independent legal representation operating in different parts of the country: <b>Indonesia, South Africa, Thailand, United States</b>
a. Chile does not charge administration and litigation fees, but the cost of legal representation in Chile is estimated to be more than 50 percent of the average Chilean's annual income.			

*Source: Access Initiative National Team Reports*

Adopted from the Access Initiative global report.

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