



THE POLITICS OF INVESTMENT AND LAND ACQUISITION IN UGANDA

A Case Study of Pian Upe Game Reserve



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ACODE Policy Briefing Paper No. 7, 2004

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List of Acronyms

ACODE	Advocates Coalition for Development and Environment
CHA	Controlled Hunting Area
EIA	Environmental Impact Assessment
EIS	Environmental Impact Study
KSW	Kakira Sugar Works
NEMA	National Environmental Management Authority
PEAP	Poverty Eradication Action Plan
SI	Statutory Instrument
UWA	Uganda Wildlife Authority

1. Introduction

Over the last decade, the Government of Uganda has adopted a consistent pattern of considering protected areas as lands available for private appropriation especially when dealing with foreign private investments. The practice could negatively impact on the livelihoods of natural resource dependent communities and undermine Uganda's commitments to major regional and international environmental legal instruments¹. This pattern is well established with reference to a number of cases. For example in 1997, Government successfully degazetted Namanve Forest Reserve. In 2002, after unsuccessful attempts to degazette Butamira Forest Reserve, Government granted a land use permit to Kakira Sugar Works (U) Ltd., (KSW) to turn the Forest Reserve into a sugar cane plantation. In 2000, Government authorized the degazettement of a series of forest reserves on Bugala Islands of Lake Victoria. In all these cases, Government conducted itself as the proponent of the investment projects, trading wealth for fiction- a scenario that is tantamount to the abuse of the public trust enshrined in the 1995 Constitution.

This policy briefing paper has three specific objectives. First, it is intended to provide an independent legal analysis of the legal issues surrounding the proposed degazettement

¹ Uganda is a party to major global environmental agreements, including the Convention on Biological Diversity, 1992, the Lusaka Agreement, and the Algiers Convention, which commit Parties to establish a network of protected area systems for the conservation of nature and natural resources.

of Pian Upe Game Reserve. Second, by applying the nature, wealth and power analytical framework, we intend to show that politically motivated degazettement of protected areas for the wealthy and politically powerful people is the single biggest threat to the natural resources heritage of Uganda². And third, we seek to challenge what is slowly becoming a dominant thinking that protected areas are available to Government to “to dish out” to private and corporate interest in complete disregard of the beneficiary interest of the Ugandan people. We contend that the proposed degazettement of part of Pian Upe Game Reserve is consistent with this growing pattern of abuse of public trust. Fortunately, Government is increasingly recognizing the importance of maintaining the protected area system of natural resources. What is needed is more analytical work and advocacy to demonstrate the socio-economic and political relevance of these resources in sustaining rural livelihoods and achieving the policy objectives and targets set out in the Poverty Eradication Action Plan (PEAP).

² Vicky Luyima, et al., High Level Policy Dialogue on Nature, Wealth and Power: Balancing Nature, Wealth and Power Through the PEAP Revision Process. ACODE Public Policy Dialogue Series No.3, 2004

2. Background

Pian Upe Wildlife Reserve is one of Uganda's largest wildlife reserves with a total land area of 2,304 sq. km. It is located in Nakapiripit District in Karamoja region. The reserve stretches from the foothills of Mt. Kadam at the Kenya-Uganda border to Kyoga. The reserve is made up of a savannah and wetland ecological system in the north and south. The reserve is endowed with unique important wildlife species such as topi, hartebeest, eland, zebra, leopard, lion, buffalo, giraffe, bright's gazelle, and others. The reserve holds the last population of the roan antelope and ostriches, which are threatened by extinction in Uganda. The reserve is also a route for migratory species of birds from Europe. Millions of birds migrate southwards during winter and use Pian Upe wetlands on their way back and forth.

The area comprising Pian Upe Game Reserve is important for conservation of biodiversity. In terms of landscape, the area is characterized by dramatic and spectacular landscapes, comprising of the volcanic mountain of Napak, which is a water catchment area, the foothills of Mount Kadam, the inselbergs and hills adjacent on Greek River, and the grasslands and wetlands around Lake Opeta. The vegetation area comprises a mix of *Acacia seyal*, *depranolobium* and *Setaria* grassland, with dry *Hyparrhenia* grass savannah. In the South East, the dominant vegetation type is *Acacia-lannea-Combretun-Lonchocarpus* savannah with *Themeda* grassland. In 1960s the area was reknown for its large population of topi, hartebeest, eland, zebra, buffalo, giraffe, roan antelope, bright's gazelle, leopard, lion, and others. The wetland

of Lake Opeta outside the Reserve in the south is considered to be of great importance for bird conservation, and there have been calls at the international level to accord this area a higher-level protection³. This area is the only true wetland in Karamoja⁴.

Pian Upe was gazetted as a wildlife reserve in 1964 under S.I 220⁵ of 1964 [known as the Game Reserve Declaration (No. 5) Notice of 1964]. It is listed in the Sixth Schedule to the Game (Preservation and Control) Act⁶. Although the Game (Preservation and Control) Act was repealed by the Uganda Wildlife Statute⁷, the Sixth Schedule was saved by section 94(1)(a) of the Statute. Consequently, Pian Upe to date has a status of a wildlife reserve and forms part of the public trust resources protected under Article 237 of the Constitution and section 45 of the Land Act, 1998.

In spite of its protected status, access to the wildlife reserve and some of the resources that are important for livelihoods was guaranteed under the gazettment instrument⁸. In particular, the Karamajongo local communities continue to graze their cattle and get water from the swamps in the Reserve. The Reserve serves as a grazing area during the dry season. It is estimated that over 20,000 heads of cattle move to the Opeta area during the dry season mainly during the months of October - February, to the south of the Pian Upe Game Reserve and

³ Protected Area Systems Plan (PASP) 2002: Uganda Wildlife Authority (UWA), page 2.

⁴ Ibid.

⁵ See also the schedule attached to S.I No. 136 of 1965 (cited as Game Reserves Declaration (Amendment) Notice 1965).

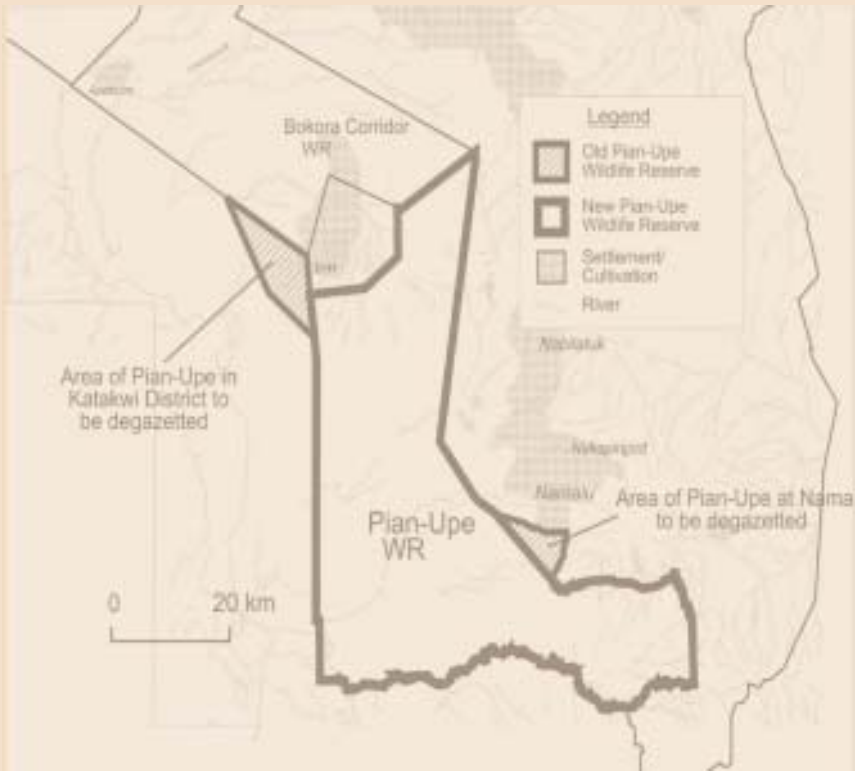
⁶ Cap 226 of the Laws of Uganda.

⁷ Statute No. 14 of 1996. See sections 94 and 26.

⁸ The Game Reserve Declaration (No.5) Notice, S.I 220 of 1964.

in East Teso Controlled Hunting Area (CHA)⁹. Generally, the resources in the Reserve are accessed by every one on permission from the authority responsible for the management of the reserve: Uganda Wildlife Authority (UWA).

Map of Pian Upe Game Reserve



Source: Uganda Wildlife Authority (UWA)

⁹. Supra.

3. The Illegality of the Process to Degazette Pian Upe

Until 1995 when the new Constitution of Uganda was promulgated, degazettement of protected areas was a simple process that could be executed by a Minister through a statutory instrument. Because of the continuous abuse of this statutory discretion during the 1970s and 1980s, the Constituent Assembly agreed to enshrine provisions in the Constitution to check this abuse. We therefore argue that the effect of Article 237(2)(b) of the 1995 Constitution read together with section 44 of the Land Act prohibits any form of alienation of the natural resources covered by these legal provisions. Indeed, any attempts at degazettement without changing these legal provisions is null and void.

It is not exactly clear when the Government of Uganda made a decision to consider the degazettement of Pian Upe Game Reserve in favor of allocating the land for private investment. Although the available information is scanty, this information suggests that since January 2003, efforts have been made to degazette part of Pian Upe Game Reserve amounting to 1,903 sq. km of land area. According to official correspondence from the Office of the Prime Minister¹⁰, this constitutes 75% of the current land area of the Reserve. In February 2003, the National Environment Management Authority (NEMA) gave its opinion to the Ministry of Trade, Tourism and Industry on the proposed degazettement.¹¹ In his communication, the

¹⁰See letter of May 15, 2003 from Prime Minister Apolo Nsibambi to Ambassador Bujeldain Abqalla, the Libyan Ambassador to Uganda (Letter Ref. ADM/239/309/01).

¹¹See NEMA/4.5, February 28, 2003. Accordingly, this letter was in response to a letter dated 13th February 2003 from M/S African Integrated Development Co. Ltd and another letter dated January 8, 2003 (UIA/ED/1/2003) from the Uganda Investment Authority. The researchers have not had access to these two correspondences.

Executive Director of NEMA brought to the attention of the Permanent Secretary of the Ministry of Trade, Tourism and Industry the legal requirements for an Environmental Impact Study (EIS) for any such proposed degazettement including any major change of land use.¹² NEMA correctly stated that “the submission of the terms of reference for an EIS by M/S African Integrated Development Co. Ltd, as a developer can only come after a decision has been taken on the proposed land use change based on the EIS done by the lead agency.” Lastly, NEMA gave its interpretation of the relevant provisions of the law, which confirms our earlier argument in the case of Butamira Forest Reserve¹³ and noted as follows:

Lastly, our understanding of the Constitution, the Land Act, 1998 and the Uganda Wildlife Statute, 1996 when read together is to the effect that alienation (for that matter degazettement) of a Game Reserve or National Park is not permitted. What the above laws permit is the issuance of permits, concessions or licenses in Game Reserves and National Parks, among the other reserved natural resources.

This particular case has also seen two major developments that relate to the issue of politically motivated degazettement of protected areas. First, unlike in the case of Butamira Forest Reserve where NEMA maintained a conspicuous silence¹⁴, in this case, it has risen to the occasion and even addressed itself to the matters of the

¹² See section 16 and 17 of the Uganda Wildlife Statute, 1996; section 20-23 and 3rd Schedule to the National Environment Statute, 1995; and the Environmental Impact Assessment Regulations, 1998.

¹³ Tumushabe, G.W., et al., (2001): Sustainable Utilizing our Natural Heritage: Legal Implications of the Proposed Degazettement of Butamira Forest Reserve. ACODE Policy Research Series, No. 4, 2001.

¹⁴ To date, NEMA has failed to respond to an ACODE request to have access to any information related to the environmental impact assessment for the Butamira Forest Reserve. ACODE has initiated legal proceedings against NEMA and the Attorney General of the Republic of Uganda challenging their decision to grant a land use permit to KSW . See Advocates Coalition for Development and Environment & Another versus the Attorney General & Another, Misc. Cause No. 100 of 2004.

illegality of the proposed government actions. The second development is the unanimity in the interpretation of the effect of Article 237(2)(b) of the Constitution and section 45 of the Land Act, 1998 by the National Environment Management Authority and the Attorney General.

In March 2003, the Permanent Secretary of the Ministry of Tourism, Trade and Industry sought a legal opinion from the Solicitor General about the proposed degazettement of Pian Upe Game Reserve¹⁵. In his advisory opinion¹⁶ Attorney General Francis Ayume (RIP), after addressing himself to the provisions of Article 237(2)(b) of the Constitution and section 45 of the Land Act, 1998, opined as follows:

The implication [of this position] is that government is trustee and as such its powers to deal with such natural resources are not absolute; rather they are subject to the interests and wishes of the people of Uganda. In fact, section 45(4) of the Land Act goes further to expressly prohibit Government or a local government from leasing or otherwise alienating any of the aforementioned resources. The effect of this is that any act of Government or a local government which ultimately results in the transfer of any of the natural resources specified in Article 237(1)(b) of the Constitution and section 45(1) of the Land Act will be unlawful.

The Attorney General confirms our analysis in the case of the proposed degazettement of Butamira Forest Reserve by arguing that the only way Government or a local government can deal with protected natural resources is by way of a permit, concession or license as stipulated in section 45(5) of the Land Act, 1998. But even then, he

¹⁵ See letter reference WC/121/02 of 31st March, 2003.

¹⁶ See letter reference MJ/AG/87 dated May 19, 2003.

rightly cautions that section 45(5) of the Land Act “does not vitiate the prohibition in sub-section (4), that is to say, not to lease out or otherwise alienate the aforementioned natural resources. In order for concessions, licenses, or permits to be lawfully granted, they must be in respect of a business related to wildlife management or one which has an impact on wildlife management and conservation areas. The proposed activity by the investor in commercial crop farming does not fit in what is envisaged in sub-section (5) of section 45 of the Land Act.”¹⁷

4. When Wealth and Political Power Confine the Rule of Law to Post Mortem

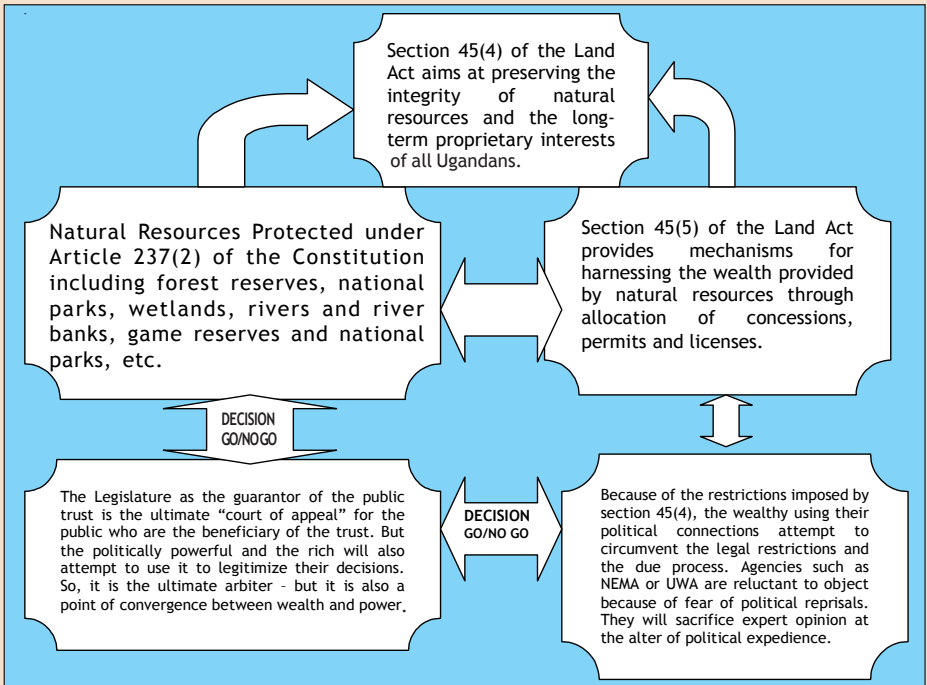
The ongoing process to degazette Pian Upe Game Reserve serves to underpin the role of wealth and power in influencing policy and administrative decisions over nature. One is therefore able to understand that in some cases, the wealthy and the politically powerful can change the course of decision making and hence confine the rule of law to the role of a post mortem. This can be discerned from the sequence of the decision making process.

In theory, the nature of the protection granted to the protected areas and other natural resources protected under the Constitution requires a more elaborate procedure when dealing with these resources. The procedures must entail two stages. First, it requires removing those resources from the ambit of the Constitution. This stage

¹⁷ It is important to note that the Attorney General’s opinion vindicates our position in the case of Butamira Forest Reserve where we have maintained that the change of land use by way of a permit is an illegal act that does not conform to the legal standard of protection of natural resources provided under article 237(2)(b) of the Constitution and section 45 of the Land Act.

would require a constitutional amendment¹⁸. The second stage would entail decisions over the change of land use and involve using the EIA process. Indeed, one can tenably argue that in the absence of influence of political power and wealth, it is unlikely that any Ugandan would have the benefit of circumventing the first process as we see in the case of Pian Upe.

Figure 1: Interface between nature, wealth and power in the decision making process.



¹⁸. In fact, one could argue that even Government recognizes this point and this is the reason why issues of land acquisition for investment were included in the Terms of Reference for the Constitutional Review Commission.

It is therefore argued that both the National Environment Management Authority and the Learned Attorney General seem to have misdirected themselves on the right process of dealing with natural resources within the ambit of the legal provisions that they have rightly cited. In its opinion¹⁹ NEMA states that the right procedure to follow is for the lead agency to first undertake an environmental impact study focusing on the proposed change of land use. This statement implies that once the lead agency has undertaken the EIS and a decision has been made to change the land use of the area, the developer can go ahead and do an EIA for the proposed development. We would like to argue however that this can be a correct legal position only if you “vitiates” the prohibition in section 45(4) of the Land Act, 1998. As long as this prohibition exists and the only allowable application of such resources is by way of concessions, permits or licenses, “any act of Government or a local government which ultimately results in the transfer of ownership of any of the natural resources specified in Article 237(1)(b) of the Constitution and section 45(1) of the Land Act will be unlawful”²⁰.

On the other hand, the Learned Attorney General has opined as follows:

“The only other option (other than by way of concession, permit or license) for consideration is for the Minister responsible for wildlife to exercise his powers under section 94(2) of the Uganda Wildlife Statute to proceed to amend the Sixth Schedule to the Game (Preservation and Control) Act, by striking Pian Upe off the list of areas gazetted as wildlife reserves so that it ceases to be covered by Article 237(1)(b) of the Constitution and section 45(1) of the Land Act, 1998. The Minister does so by way of a Statutory Instrument with prior approval of Parliament signified by its resolution under section 94(2) of the Uganda Wildlife Statute, 1996”²¹.

¹⁹ Ibid. NEMA/4.5

²⁰ Per Learned Attorney General Francis Ayume. Ibid. Ref. MJ/AG/87.

²¹ Ibid. MJ/AG/87. The Learned Attorney General ends his letter by a caution that it would require a lot of lobbying to secure parliamentary approval.

We would like to differ from the Attorney General's advice for at least three main reasons, and argue that this only provides Government with some justification to continue with its attempt to circumvent the law protecting public trust properties in the country.

First, the ownership status of natural resources including game reserves is established and protected under Article 237(2)(b) of the Constitution. We have argued elsewhere that the high standard of protection provided for these resources under the Constitution was based on the proposals of the Ugandan citizens submitted to the Odoki Constitutional Commission²². In its report, the Odoki Commission recommended that "the Constitution should vest the ownership, control and right of exploitation of important natural resources including land, water, minerals, oil, and forests in the people of Uganda, ***with the State as the guarantor of the peoples' interest***"²³ (*emphasis ours*).

Article 237(2)(b) of the Constitution, in our view, is a social contract between the people of Uganda and the State to protect the resources mentioned there and guarantee their permanent availability for public users. Any derogation from that position without changing the provisions of this contract may be construed to amount to an abuse of the trust vested in the State by the people of Uganda. Contrary to the opinion of the Attorney General on this particular matter, the only option would be for the State to seek to alter that social contract by way of seeking an amendment to Article 237(2)(b) of the Constitution.

²². Tumushabe, G.W., et al. Ibid

²³. See Report of the Uganda Constitutional Commission, para 23.63 cited in Tumushabe, G.W., et al, 2001.

The second question is whether Parliament can change the status quo by amending section 45(4) of the Land Act, 1998. In its wisdom, Parliament sought to further the protection granted to natural resources under the Constitution by limiting the trust powers of Government under section 45(4). This restriction ought to be seen in the light of the findings and recommendations of the Odoki Constitutional Commission in which it recognized the concern by the people of Uganda that the State had previously used its position to abuse and misuse natural resources. Consequently, it is only Parliament, which can alter this position by way of amendment to section 45(4) of the Land Act, 1998. However, given the constitutional logic of Article 237, the only way that Parliament can make its actions legitimate is to go back to the substance of Article 237(2)(b) and address the social contract issues contained in that Article.

That brings us to the third reason which relates to the validity of an amendment to the Schedules to the Game (Preservation and Control) Act by way of a Statutory Instrument. It is argued that by section 45(4) of the Land Act, 1998, the powers of the Minister under section 94(2) of the Uganda Wildlife Statute (which is a 1996 legislation) were vitiated if the effect of such an amendment is to lease out or otherwise alienate any of the natural resources covered by Article 237(2)(b) of the Constitution and section 45(1) of the Land Act. To the extent that the revocation of the Schedules to the Game (Preservation and Control) Act by way of a Statutory Instrument would effectively amend substantive provisions of the Land Act and go against the spirit and constitutional logic of Article 237(2)(b), one finds the Attorney General's interpretation of the powers of the Minister under the Wildlife Statute untenable.

It is therefore pertinent that unless the social contract contained in Article 237(2)(b) of the Constitution between the State and the people of Uganda and the limits of exercise of trust authority imposed by Parliament under section 45(4) of the Land Act is revisited, the numerous acts of degazettement could amount to an abuse of trust powers and the due process of the law. The final disposition of this matter is therefore another test to the Government with respect to compliance with laws governing natural resources and the environment, adherence to the rule of law and promotion of good governance.

5. The Land Act: Restricting Abuse of Discretionary Political Power

As already argued above, section 44(5) of the Land Act sets the limits within which the State as a trustee of natural resources can deal with natural resources. Sub-section (5) of section 44 provides that “The Government or a local government may grant concessions or licenses or permits in respect of any natural resource referred to in this section subject to any law.” And it is under this provision that agencies charged with the management of protected areas can find “cover” against politically motivated degazettement of natural resources. In fact, any amendment to the Land Act whose effect is to remove or water down the effect of section 44(5) is like giving the politicians and their wealthy allies a “blank cheque”.

It is important to note that the three allowable instruments through which natural resources can be used have two important dimensions that conform to Article 237(2)(b) of the Constitution. First, the legal status of the trust property

remains intact and the investor is given user rights of a limited duration. On the contrary, we contend that degazettement destroys the proprietary interests of the beneficiary (the people of Uganda), disenfranchises them and diminishes any opportunities for access to those resources. This is because, after degazettement, the Government effectively becomes the land lord and will be able to allocate land as it wishes, and in some cases, as has been demonstrated in Kenya during the Moi regime²⁴, such land is used to buy political patronage and royalty - hence undermining democracy.

Secondly, because concessions, permits or licenses do not give absolute ownership and the land continues to vest in the original owner (the people of Uganda), Government is able to impose sustainable development conditions on the holder of such rights. Given that Uganda's natural resource is the foundation for economic growth and the basis of livelihoods for many rural people, the right to regulate how these resources are accessed and appropriated must remain a cornerstone of national policy and practice.

6. When degazettement becomes a political, rather than a policy process

It is important to observe that one of the biggest mistakes by the Government and why its actions could continue to undermine sustainable development and the rule of law is the handling of public policy issues as political issues. It should be noted that issues of land use change are within

²⁴ For a detailed discussion on this issue, see Veit, P. 1998. *Africa's Valuable Assets: A Reader in Natural Resources Management*. The World Resources Institute. Washington D.C.

the remit of public policy agencies such as the National Environment Management Authority, the Uganda Land Commission and the Uganda Wildlife Authority in the case of Pian Upe Game Reserve. However, it is apparent that these agencies are performing their statutory mandates under the undue pressure and influence of the political structures of Government.

This observation can be borne by the level of involvement of the Prime Minister's office in the instant case. In a May 15, 2003 letter to Ambassador Bujeldain Abqalla of Libya, in which he communicated the decisions of a meeting he convened on May 12, 2003, Prime Minister Apolo Nsibambi gave a detailed plan on how the degazettement process would be handled²⁵. First, he suggested that the Attorney General would give his legal opinion on the legality of degazetting the Game Reserve by 20th May 2003²⁶. He informed Ambassador Abqalla that the Minister of Tourism, Trade and Industry would prepare a Cabinet Memo which would be with the Cabinet Secretariat by September 1, 2003 and Cabinet would be expected to give its approval by 5th September 2003.

However, the most curious aspect of this process is the proposed involvement of the Movement Caucus. It was proposed that after Cabinet approval of the Cabinet Memo, the Minister of State for Investment²⁷ would ask the then Chairman of the Movement Parliamentary Caucus MP Lt. Kinobe "to arrange for a meeting of the Caucus so that Members of Parliament may fully understand and support

²⁵. At the time of preparing this briefing paper, the researchers have not had access to the proceedings of the said meeting.

²⁶. The legal opinion of the Learned Attorney General is contained in a letter dated a day before May 20th i.e. May 19th 2003 (See letter ref. ADM/239/309/01.)

²⁷. Minister Sam Kutesa is the Minister of State for Investment.

the project.” This approach would have the effect of politicizing what would ordinarily be a policy issue to be handled by institutions that have been vested with decision making responsibilities by Parliament. The involvement of any caucus of Parliament would only be necessary if Government realized that what it needs to do is to seek to alter the social contract embedded in Article 237(2)(b) by way of constitutional amendment.

As already discussed, the change of land use is purely a policy matter that ought to be based on very scientific and socio-economic considerations as enumerated in an environmental impact assessment. That EIA can be valid in the case of Pian Upe only after the trust-beneficiary questions highlighted above are addressed and in the advisory opinion of the then Attorney General Francis Ayume (RIP). Unless the constitutional position is altered, referring the Pian Upe issue to the Movement Caucus is like addressing it to a “wrong forum” and is a wholly inappropriate measure. It simply re-emphasizes our argument that unless political power is exercised judiciously, its alliance with the wealthy forces in society is a major threat to natural resources management in particular and sustainable development in general.

7. Stakeholder Analysis

Most often, the term stakeholder is used very loosely without a clear delineation of what is at stake. It is therefore important to critically analyze what is at stake in the case of the proposed degazettement of Pian Upe Game Reserve. Understanding what is at stake and applying the nature, wealth and power analytical framework

provides us an opportunity to analyze the stakeholders in a more delineated manner and enables us to see the interaction among these stakeholders. In our opinion the biggest issue at stake is the disenfranchisement of Ugandans who are the legitimate owners of Pian Upe Game Reserve. This is because degazettement of any protected areas has several implications.

First, degazettement effectively changes the ownership status of the land in question and hence changes the rules of access and appropriation. In this case, the Ugandan citizens and Government of Uganda become the losers. While a few individuals in position of political power and the investor may gain free or “subsidized”²⁸ access to land, the people of Uganda would be the net losers. Secondly, the successful degazettement of this reserve will set a bad precedent and send more signals to areas, which host these national assets to seek to degazette them. This result will be more serious as the population increases quantitatively but not qualitatively. We have argued that the case of Namanve Pre-Urban Forest Reserve, the proposed degazettement of forest reserves in Bugala Island and recently the case of Butamira Forest Reserve all point to a consistent pattern of Government acting enthusiastically to degazette protected lands to satisfy the curiosity of individual investors.

Thirdly, in all the cases cited, Government has demonstrated considerable readiness to undermine its own legislation by shifting “legal goal posts”. The business of securing land for private investments cannot be undertaken

²⁸. For example, in this case, the Ugandan taxpayer has to pay for the costs of the scoping exercise and, if degazettement is allowed, the taxpayer will also cover the cost of redrawing the boundaries of the Reserve.

on a reactive basis but should be based on proper research and follow established procedures. It must be done within the limits set by the Constitution and the Land Act. Doing it otherwise undermines respect for the law and creates room for “influence peddling” and corruption, and erodes confidence of the public in the public agencies that are charged with the task of managing these resources.

The case of the proposed degazettement of Pian Upe Wildlife Reserve therefore represents a complex set of stakeholders with varying and to some degree irreconcilable interests. These interests are irreconcilable unless all the stakeholders regard the law as the basic framework within which to resolve the issues. In this section, stakeholders are identified in the light of their roles and the current nature of their involvement in the proposed degazettement process. Consequently, taking into account the issues raised here and without claiming to be exhaustive, the following table summarizes the key stakeholders and the nature of their interests in the case of the proposed degazettement of Pian Upe Game Reserve.

Stakeholder	Issue
The local communities in Karamoja	Their interests may vary depending on occupations and therefore need to address potential conflicts between pastoralist Karamojong and cultivators. Communities may also be excited about the degazettment in the hope that they will get access to land or get jobs as a result of the investment. However, the issue of degazettment of some of the protected areas in Karamoja has been on the table for a while but it is only after M/S African Integrated Development Co. came on the radar screen that we see degazettment being pursued with such vigor. Degazettment is therefore no guarantee that the Karamojong will get access to degazetted land.
Government of Uganda Office of the President	The exact interests of the Office of the President are not clear at the moment.especially since wildlife management falls under the Ministry of Tourism, Trade and Industry. What is clear though is that several of the correspondences seen during the process of writing this brief are copied to various Principal Private Secretaries and Advisors to the President. We can only note that President Museveni is on record vouching for many investment projects and this could account for his officials keeping him informed of what is going on with respect to the process of degazettment.
Parliament of Uganda	The Parliamentary Committee on Tourism, Trade and Industry will probably have the first opportunity to scrutinize the proposed Statutory Instrument. Its recommendations to the plenary of the House may determine how Parliament conducts itself in future with respect to constitutional issues, the management of natural resources and the discharging of the trust responsibilities vested in the State under Article 237(2)(b) of the Constitution. Equally important is the Movement Caucus. Will it make a political decision to handle a purely policy matter? Or will it rise to the occasion and give the right guidance to Government? In the final analysis, the final decision rests with the House and its constitutional duty to guarantee the fulfillment of the social contract under Article 237(2)(b).

Stakeholder	Issue
Statutory agencies	<p>The key agencies are the National Environment Management Authority (NEMA), the Uganda Wildlife Authority (UWA) and the Uganda Investment Authority (UIA). While UIA is the main proponent of the project, UWA has statutory responsibility to discharge the trust responsibilities vested in the State with respect to wildlife management. UWA's big dilemma should be how it can abuse that statutory responsibility vested into it by the peoples' representatives in Parliament and facilitate the reduction in the size of the wildlife protected area estate without addressing outstanding ecological and legal issues raised in this briefing paper. For its part, NEMA's role is to promote sustainable development, provide oversight over environmental management and supervise and consider EIA's submitted to it by proponents of projects. Its biggest challenge is to determine the lowest common legal denominator as to when it should consider an EIA. For example, will it proceed to consider the EIA in the event the legal process has been abused and thereby condon an illegality?</p>
Administrative agencies and departments of Government	<p>The individual role of these agencies is not necessarily clear - but Cabinet will provide the limelight for the degazettment process to proceed.</p>
Civil society organizations	<p>A number of civil society organizations are involved in this case. Notable are the Advocates Coalition for Development and Environment (ACODE) and Uganda Wildlife Society (UWS). The main stake of these organizations is to promote compliance with existing natural resources laws, ensuring a level playing field for access to land and natural resources and building a strong foundation for democratic governance by challenging government institutions to exercise their powers and responsibilities within the limits set by the law.</p>
International NGOs	<p>CARE, CITES</p>
Donors	<p>To date, there has been almost every other agency of Government responsible for natural resources management. Currently, the World Bank provides the bulk of funding for the operations of the Uganda Wildlife Authority and the National Environment Management Authority. Other donors such as DFID, NORAD, the European Union, etc. provide substantial support towards the management of the natural forest estate. These donors have a stake in how the resources they have invested in with their taxpayers' monies will be dealt with at the national level.</p>

Stakeholder	Issue
The Libyan Government	As already indicated, one of the letters seen by the research team preparing this brief was addressed to the Libyan Ambassador in Uganda. At this stage, it is not clear what his stake or interest is in this matter. Could he be vouching for a Libyan company or could he be a shareholder in the company? When the time comes to debate the proposed degazettment instrument, it may be useful for the Ambassador to appear before the relevant committee of parliament to provide additional insights about the nature and scope of his or her Government's interests.
M/S Africa Integrated Development Co. Ltd.	This company is stated in some of the correspondences available as the proponent of the proposed investment. However, very little is known about the company or its shareholders. It is nevertheless known to be owned by Libyan or Italian businessmen or both. At the Registry of Companies, there is no record of this company. Consequently, until now, we consider this company to be fictitious but it is the one that is supposed to receive and develop 1,903 sq. km of the land to be degazetted from Pian Upe Game Reserve.
The people of Uganda	All said and done, it is the interest of the people of Uganda which is at stake. Wildlife protected areas together with other natural resources constitute part of our national heritage. They are scattered all over the country and what decision is made with respect to one of them may affect the decisions we make with respect to the others in the future.

8. What are the implications of the proposed degazettement?

If the attempts to degazette Pian Upe Game Reserve were successful, this degazettement would have a series of far reaching implications. For purposes of this policy briefing paper, we will analyze the potential implications along the nature, wealth and power framework.

8.1. Environmental law enforcement and compliance

Over the last 17 years of the NRM Government, there has been tremendous progress in developing environmental legislation and establishing and building institutions to promote effective environmental management. The National Environment Management Authority (NEMA), the Uganda Wildlife Authority (UWA) and recently the National Forestry Authority have been created during this period. Although these institutions have made significant efforts to discharge their mandates in the areas of environmental law compliance and enforcement, they are still “suffering” because they lack the independence to do their work. The current political involvement in degazettement of Pian Upe can only have the effect of further weakening these institutions and undermining efforts to achieve effective law enforcement and compliance.

8.2. Non-compliance with existing laws on wildlife undermines governance

The continuing attempts by Government to “bend” the laws on protecting public trust properties constitute an assault on good governance and democratization. Like we

have argued elsewhere²⁹, politically motivated degazettement of protected areas in favor of specific individuals whether natural or corporate undermines public confidence in institutions of environmental governance. It is also important to note that the mishandling of Butamira Forest Reserve Inquiry resulted in the change in membership of the Parliamentary Committee on Natural Resources and put the credibility of the Committee and the House at stake. The case of Pian Upe presents another challenge to the elected peoples' representatives to see whether they will ensure that laws are implemented impartially and fairly or whether we will continue to shift legal goal posts in favour of specific individuals and selected investors with particular connections to political authorities. The apparent strong involvement of the political structures in what would otherwise be a purely policy matter erodes public confidence in government institutions and undermines good governance.

8.3. The permit system is being misused

It is argued that until the permit awarded in the case of Butamira Forest Reserve is challenged and rescinded, it has set a bad precedent in dealing with resources of a trust nature. As already argued above, natural resources protected under Article 237(2)(b) and section 45 of the Land Act, 1998 are not supposed to be alienated or otherwise leased out. The use of a permit in this case is a deliberate attempt to circumvent the protection granted with respect to these resources. The instruments provided for in section 45(5) of the Land Act are essentially to be granted for activities consistent with the status of the

²⁹. See Tumushabe, G., et al. *Supra*.

protected area. Awarding a permit to drain Lake Victoria and use it as a golf course or turn a forest reserve into a sugar cane plantation is a gross abuse to the wisdom of the framers of the 1995 Constitution, the legislature which enacted the Land Act and the due process of the law.

9. Government should consider other options other than degazettement

When considered in the overall context of national sustainable development, there are three broad options available to Government when considering how to deal with natural resources such as Pian Upe or other such resources.

First, it should be recognized that Government has been making efforts to attract private investments into the country as a strategy to promote development, create jobs and modernize the country. However, in its pursuit of this noble objective, Government faces acute shortage of land that can be made available to investors. It is perhaps for this reason that Government is turning to natural resources and other protected resources as a way of addressing the problem of land shortage for investment.

Although Government recognizes this problem, it is attempting to solve it in a rather reactive manner, parceling a chunk of land for investor X here and another chunk for investor Z there. It is becoming evident that Government does not have a clear understanding of the amount of land that it requires for investment nor does it have a strategy for securing that land. What Government should do is to estimate the land that will be required for

private investment projects in the country over a period of time and then consider various strategies for securing that land. If the only option available is to get this land from protected areas, it should then pursue the process of amending Article 237(2)(b) of the Constitution. Ad hoc approaches to address this issues as is exemplified by current attempts to degazette part of Pian Upe and other cases cited in this brief undermines the rule of law, diminishes the confidence of the relevant public agencies and creates room for corruption and abuse of authority.

The second option is for Government to have faith in its policies and consider these resources as part of our natural heritage that have to be utilized on a sustainable basis based on the principles of responsibility, accountability and equity. In his 1996 Election Manifesto, President Museveni spelt out the vision of his Government as far as environmental management is concerned. He wrote that:

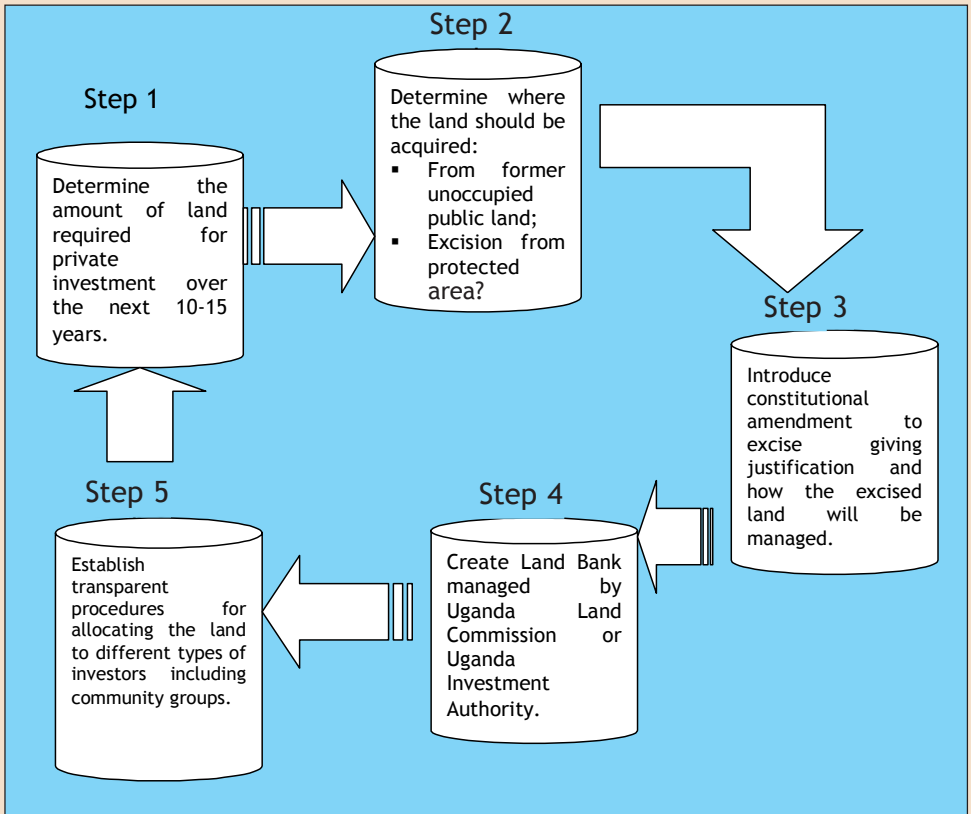
The government policy on the environment is to encourage rational and sustainable use of natural resources in order to preserve them for the future generations. Soils will be protected, forests and wetlands will be conserved and restored, and fish stocks will be exploited using acceptable equipment on a sustainable basis. This will continue to be the policy of my government towards the environment³⁰.

In his 2001 Election Manifesto, President Museveni again reiterated the above commitment by declaring that “My government’s policy on the environment is to ensure rational use of natural resources while at the same time ensuring the sustainability of the resources for the future³¹.”

³⁰. Museveni, Y.K., 1996. Tackling the Tasks Ahead: Election Manifesto, 1996.

³¹. Museveni, Y.K., 2001. Consolidating the Achievements of the Movement: 2001 Election Manifesto. January, 2001

FIGURE 2: Procedure for Excising Land from Protected Areas



Tumushabe, G., 2004

It may be argued that these election promises have continued to be the cornerstone of environmental policy development of the Museveni Government. All the policies that have been promulgated by Government recognize the centrality of natural resources in Uganda's quest for economic renewal and sustainable development. They place strong emphasis on protecting forest reserves, wildlife protected areas, wetlands and riverbanks, fisheries

resources, etc. What is intriguing though is that the two political terms of President Museveni as elected President have been characterized by a series of unfulfilled promises and broken commitments. Environmental management institutions including the National Environmental Management Authority remain grossly under funded or unfunded at all, more land from protected areas has been officially expropriated during this period than under any previous regimes, and Government has been consistent in sending out mixed signals with regard to conservation and development.

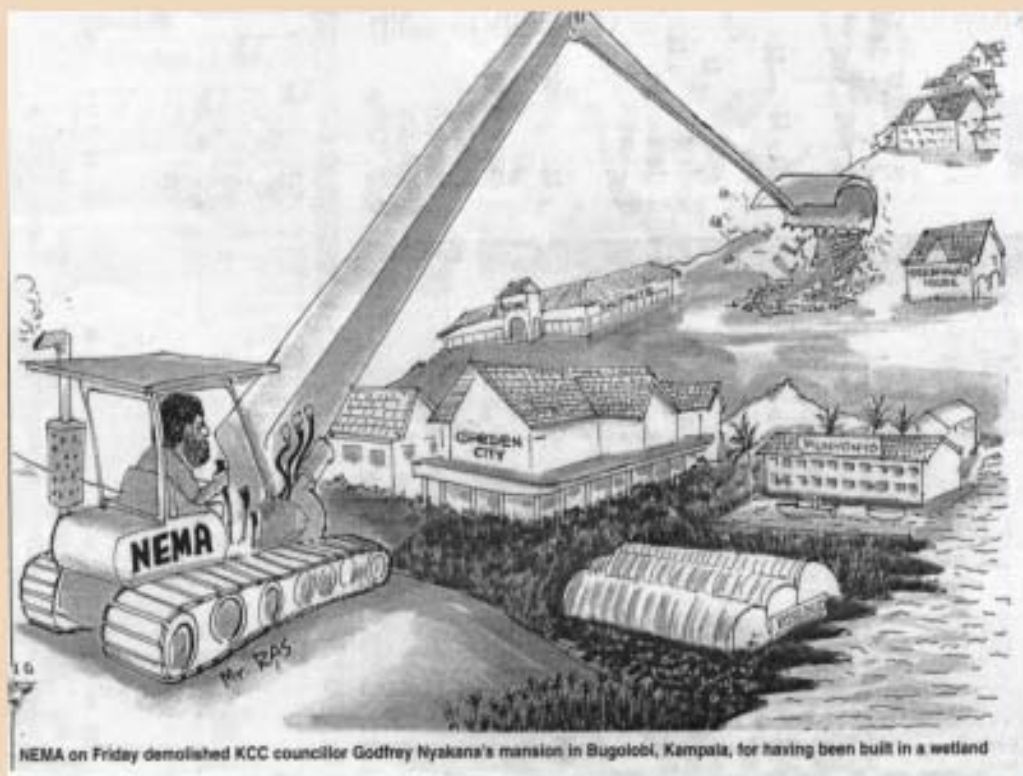
What is needed therefore is for Government policy makers and practitioners to take advantage of the President's electoral promises to promote those actions that support the President's vision on environment and natural resources. For example, more targeted investments in areas such as tree farming, wildlife ranching and other nature based enterprises would not only fulfill the President's election pledges to the people of Uganda, such investments would also strengthen Uganda's long-term economic development aspirations and build peoples' confidence in electoral processes. Committing to one thing and doing something else neither promotes sustainable development, nor does it build confidence in Government.

10. Conclusion

In this policy briefing paper, we have argued that both the proposal to degazette Pian Upe Game Reserve and the procedure being followed is not only flawed but also contrary to existing laws. Further, all that is being done goes against the spirit of the 1995 Constitution. We have noted that this proposal conforms to a consistent pattern where government is continuously turning to protected area lands to secure land for private investors in disregard of its trust responsibilities as set out in the Constitution. Unless this pattern is halted and a more strategic approach adapted to addressing current land shortage problems, the practice undermines environmental law enforcement and compliance and contradicts the policy commitments and electoral promises of President Museveni's Government to the people of Uganda. Securing land for private investments as noble as it is should not compromise the objectives of sustainable development and should be achieved within the limits of the rule of law. Building a national consensus on the various options that could be pursued requires more policy discussions to provide appropriate foundations for future decision making in this area.

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NEMA on Friday demolished KCC councillor Godfrey Nyakana's mansion in Bugolobi, Kampala, for having been built in a wetland

Timely law enforcement and continuous public education by NEMA could save Nature, avoid destruction of property and undesirable political consequences.

Source: 'The New Vision' of Monday, January 10th, 2005.



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