



PARTICIPATORY ECOLOGICAL LAND USE MANAGEMENT (PELUM) UGANDA



THE DRAFT NATIONAL CLIMATE CHANGE BILL

**Emerging Issues and Recommendations for
integration into the proposed law**





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Produced by:

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Preface



Who we are

Since 1995, PELUM Uganda has been working to improve the livelihoods of smallholder farmers and the sustainability of rural communities through fostering ecological land use management. We share skills and knowledge about good practices and techniques, through a broad network of likeminded organisations; undertake research and demonstration projects; and advocate for policies that better support smallholder farmers. Our mission is to enhance the effectiveness of members in promoting ecological land use management among farming communities through capacity building, research and innovation, networking and advocacy.

We are part of Cordaid's three partners that are implementing the Partners for Resilience (PfR) Phase II project that will run for 5 years having commenced in 2016. PfR II is contributing to building the resilience of communities by integrating climate change adaptation, disaster risk reduction and ecosystem management and restoration through integrated risk management.

Scope and Purpose of the Paper

Government of Uganda is in the process of developing the Climate Change Bill through the Climate Change Department under the Ministry of Water and Environment and the First Parliamentary Counsel. A draft Bill has been circulated among various stakeholders for input. We wish to commend the Ministry of Water and Environment, the Climate Change Department (CCD) and the First Parliamentary Counsel for taking the initiative to develop climate change legislation. This is long overdue in light of the international legal obligations assumed by Uganda and the existing national policies. Moreover, the impacts of climate change in Uganda are already being felt and an effective legal framework should be designed encompassing both mitigation and adaptation measures.

PELUM Uganda conducted an Integrated Risk Management (IRM) gap analysis of the Bill to ascertain the extent to which the core principles of IRM were adopted within the bill and make appropriate recommendations to cover the gaps. The gaps and the recommendations are contained herein. The purpose of the analysis is to inform the drafting process to ensure that such gaps are addressed before the Bill is passed into an Act of Parliament.

Emerging Issues and Recommendations

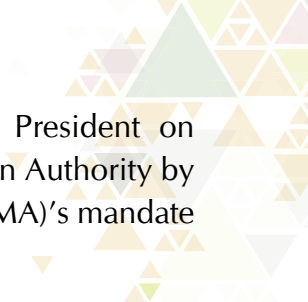
Issue: The Bill in Section 4 provides that the Kyoto Protocol should have the force of law in Uganda. However, it is important to note that the Protocol is expiring in 2020 and the Paris Agreement will accordingly succeed it. Inclusion of the Kyoto Protocol alone limits the domestic application of the Paris Agreement. This would mean that upon the expiry of the Kyoto Protocol, the Act will have to be amended to reflect the existing relevant international instrument, the Paris Agreement. The Bill makes no provision for application of the Paris Agreement yet Uganda is a party to the Agreement.

Recommendation: We recommend that the Bill should provide for the application of the Kyoto Protocol and any successor agreement to which Uganda becomes a party or as an alternative incorporate the Paris Agreement as well.

Issue: Section 6 (1) & (2) requires the CCD to prepare an annual report on climate change. However, there is no requirement to specify special measures and initiatives carried out to make the most vulnerable communities and persons resilient to effects of climate change. Vulnerable groups should always be given special attention to help them adapt to climate change.

Recommendation: The Bill should include a requirement that the annual report made by CCD should specify special measures and initiatives carried out to make the most vulnerable communities and persons resilient to effects of climate change.

Issue: Section 6(3) of the Bill creates an impression that the CCD will have powers to issue directives to various agencies for purposes of complying with climate change standards. Although this is intended to enable CCD implement its overall mandate as envisaged under the Bill, it is important to appreciate how impracticable it is for a government department to issue directions to lead agencies and in some cases Ministries. It is so likely that these directives will be undermined where the concerned agency or Ministry is of a high standing than CCD in terms of government setup/hierarchy.



Recommendation: In light of the recent directive by H.E the President on mushrooming agencies, the CCD should be elevated to a level of an Authority by slightly modifying Uganda National Meteorological Authority (UNMA)'s mandate or structure to accommodate CCD functions.


Issue: Section 7(3) sets out the Composition of the Climate Change Advisory Committee. However, the membership of the Committee leaves out some critical players in climate change mitigation and adaptation such as cultural and traditional institutions, Ministry of Education and Sports, Ministry of Gender, Labour and Social Development (MoGLSD) , Ministry of Local Governments (MoLGs) and Uganda Investment Authority (UIA).

Recommendation: The Composition of the Climate Change Advisory committee should include a representative of the youth, cultural and traditional institutions, Ministry of Education and Sports, MoGLSD, MoLGs and Uganda Investment Authority.

Issue: Section 7(4) provides that the Committee is to be chaired by the Minister responsible for environment. We note that this is a technical committee entrusted with handling technical issues relating to climate change. The Minister is not necessarily a technical person on matters of climate change. In any case, the Committee is supposed to advise the CCD under the Ministry. It will be irregular if the Minister is the chairperson of the Committee which is supposed to advise his/her department.

Recommendation: The Committee should be chaired by a technical person and not the Minister. The title of the Committee should be changed from advisory committee to technical committee.

Issue: Section 11(5) provides for mandatory information that should be included in the Framework Strategy. Although it is inferred that reading subsections (2) and (5) together would lead to a conclusion that such information should include special measures and initiatives to address adaptation needs of the most vulnerable communities and persons including the elderly, the women and the resource dependent communities, it is important that this comes out clearly in subsection (5).




Recommendation: Section 11(5) should be amended to include special measures and initiatives to address adaptation needs of the most vulnerable communities and persons including the elderly, the women and the resource dependent communities.

Issue: Section 14 provides that the responsible officers of the sectors shall constitute a Forum referred to as the Multi sectoral Forum on Climate Change. The Forum is responsible for addressing climate change mitigation and adaptation matters that cut across all the sectors and in particular the Forum. We should however note that the responsible officers are adequately represented at the National Climate Change Advisory Committee. It is not clear what additional value will be introduced by the proposed Forum. Secondly, the Bill makes the Forum responsible to the National Environment Policy Committee, to which the National Climate Change Advisory Committee is responsible. This is likely to cause conflicting positions being communicated to the National Environment Policy Committee emerging from different representatives of the same institutions.

Recommendation: Because the responsible officers are represented on the National Climate Change Advisory Committee, we see no relevance of establishing a Forum with same representation. Accordingly, we recommend that the Multi sectoral Forum on Climate Change should be removed from the Act.

Issue: Although the Bill provides for development of ‘highly adaptive and productive crop varieties’ in the agriculture sector, it does not define the boundaries of such development. In respect to fisheries resources, the Bill advocates for promoting biological engineering and restoration of stress-tolerant organisms. These provisions constitute a potential opening for introduction of genetically modified organisms (GMOs) that will threaten the natural ecosystems and sustainable farming within smallholder farmers and are expensive.

Recommendation: The Bill should clearly define the highly adaptive and productive crop varieties that are anticipated to remove uncertainty that may lead to introduction of GMOs.



Issue: Overall, in climate change adaptation, the Bill pays less attention to promotion and encouragement of indigenous knowledge, indigenous adaptation measures, research and dissemination of innovations at local level. Traditional communities have developed adaptation strategies that suit their local circumstances and have proved to be effective. The bill also leaves out some critical sectors such as the oil sector in climate change mitigation and adaptation. It also pays less attention to public-private partnership in climate change mitigation and adaptation.

Recommendation: Climate change adaptation actions should include promotion and encouragement of indigenous knowledge, research and dissemination of innovations. The Bill should have provisions for climate change mitigation in the minerals and extractives sector (oil & gas and mining industry) and the Bill should also focus on public-private sector partnership in all climate change mitigation. It is currently limited to the energy sector.

Issue: The Bill is not clear on what will happen to Clean Development Mechanism (CDM) as provided for under the Bill upon expiry of the Kyoto Protocol. The financing mechanisms contained in the Paris Agreement and are not stated in the present Bill. Further the substantive provisions of the Kyoto Protocol are incorporated in the Act. It is therefore not necessary to further include the modalities of participation in the CDM in the principal legislation.

Recommendations: Modalities for participation in CDM will be better dealt with by Regulations made by the Minister since the Kyoto Protocol is already incorporated under the Bill and it will be part of the principal legislation. When the Kyoto Protocol expires, new rules will be made to accommodate the existing arrangement.

Issue: The Bill seeks to amend Section 7 of the National Environment Act by adding responsibilities to the Policy Committee on Environment to advise on implementation of climate change policy. This proposed amendment causes considerable confusion in roles between this Committee and the Climate Change Advisory Committee. The proposed powers to advise are already given to Climate Change Department under Section 5(2)(c) of the Bill.

Recommendation: Powers to advise on climate change policy should only be given to CCD.

Issue: The Bill also creates a general penalty for offences not otherwise provided for under the Bill, that is, a fine not exceeding five hundred currency points (Ug. Shs. 10,000,000/-) or a term of imprisonment not exceeding two years or both. It is our considered view having regard to the seriousness and magnitude of the impacts of climate change, the proposed penalty is lenient and should be accordingly revised. Further the court is not given powers to make ancillary orders upon conviction.

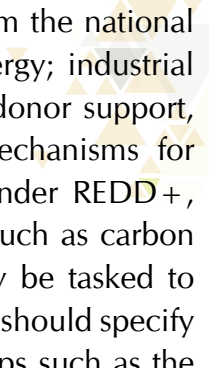
Recommendation: The general penalty for offences under the Act should be increased to a maximum of UGX 100,000,000 or imprisonment for not exceeding five years or both. Courts should also have powers to issue environmental restoration and other ancillary orders in addition to the imposing the fine or custodial sentence.

Issue: The draft Bill does not impose personal liability on directors of a corporation that commits offences under the Act. Although the interpretation Act defines a person to include a body corporate and therefore where an offence is committed by a corporation such corporation can be prosecuted, good practice demands that personal liability should be imposed on those persons who are the directing minds and will of the corporation for failing to take reasonable care to prevent the corporation from committing the offence.

Recommendation: The Bill should create personal liability for directors of a company which commits an offence under the Bill.

Issue: The Bill is silent on financing mechanisms yet according to the long title and the Climate Change Policy for Uganda, it is one of the objectives of the Bill. The Bill sets out a number of strategic directions that fall under sectoral work plans and this will involve additional cost due to the integration of climate change into the various sector plans.

Recommendation: The Bill should establish a special fund with independent governance structures and systems to finance climate change related activities at both national and local government levels. The sources of funds to this fund



should include public and private sources such as allocations from the national budget; private-sector investment particularly with respect to energy; industrial developments and technology transfer; multilateral and bilateral donor support, and support from international climate funds; market-based mechanisms for climate-related actions such as CDM, benefit-sharing schemes under REDD+, emissions-trading revenues and tax incentive and tariff schemes such as carbon tax. The Ministers responsible for environment and Finance may be tasked to come up with regulations for operation of this fund. The regulations should specify modalities for accessing the fund for example by vulnerable groups such as the elderly, women and children.

Issue: Although the Bill adopts a language that creates mandatory obligations on the part of responsible persons in various agencies by the using the word ‘shall’, it is silent on the enforcement mechanisms of the obligations so created.

Recommendation: There should be mechanisms for enforcing the obligations created under the Bill. Article 50 of the Constitution, Sections 3(2)&(3) and 71(2) of the National Environment Act and Section 5 of the National Forestry of Tree Planting Act are some of the examples where a legislation creates an enforcement mechanism. To enhance accountability, persons, whether affected or not should be given a right to bring an action and enforce the obligations created under the Bill where such a person feels that another a person or entity has acted in a manner that has or is likely to adversely affect efforts towards mitigation and adaptation. Courts should have powers to injunctive relief, orders of mandamus and compensation.



Conclusion

It is recognized that drafting a legislation whose implementation cuts across almost all sectors which are already regulated is not a simple task. PELUM Uganda therefore acknowledges and appreciates the efforts to come up with a draft Bill and if adopted, will be a positive step towards implementation of the climate change policy as well as the international and regional obligations assumed by Uganda. It is therefore important that the views and recommendations contained herein are given adequate consideration in the formulation of the Climate Change Bill.





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