

Access to environmental information in Uganda



Access to environmental information in Uganda Forestry and oil production

Christoph Schwarte

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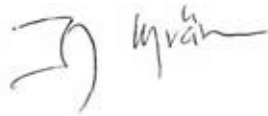
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Foreword

Access to environmental information is becoming increasingly important, especially in countries where people rely heavily on natural resources. International norms can make a significant difference in this respect, by pushing public authorities towards better environmental governance. FIELD is committed to the progressive development of international law and its effective implementation at the national and local level.

FIELD has been involved in environmental law reform projects in different African jurisdictions as well as the international negotiations on climate change, biodiversity and trade. The report draws on these diverse experiences and analyses the Ugandan law and its implementation in the wider international context. It takes into account lessons learnt in other jurisdictions and uses a set of universally applicable indicators. We hope it will generate further discussions between civil society organizations and government - not only in Uganda.

A handwritten signature in black ink, appearing to read 'Joy Hyvarinen', with a stylized initial 'JH' to the left.

Joy Hyvarinen
Director, FIELD

Acronyms

ACODE	Advocates Coalition for Development and Environment
AFIEGO	Africa Institute for Energy Governance
BUCODO	Budongo Forests Community Development Organisation
CHOGM	Commonwealth Heads of Government Meeting
DDT	Dichloro-Diphenyl-Tichloroethane
EIA	Environmental Impact Assessment
EIN	Environment Information Network
EIS	Environmental Impact Statement
EMPAFORM	Empowering Civil Society for Participatory Forest Management in East Africa
EU	European Union
GTZ	Deutsche Gesellschaft für Technische Zusammenarbeit
IUCN	International Union for the Conservation of Nature
MoPS	The Ministry of Public Service
NEMA	The National Environment Agency
NFA	National Forest Authority
NGO	Non-governmental Organisation
NHS	National Health Service
PROBICOU	Pro-biodiversity Conservationists in Uganda
PSA	Production Sharing Agreements
PSRP	Public Service Reform Programme
SEA	Strategic Environmental Assessment
TAI	The Access Initiative
UK	United Kingdom
UN	United Nations
UNDF	The Uganda Nile Discourse Forum
UNECE	United Nations Economic Commission for Europe
USD	United States Dollar
UWS	Uganda Wildlife Society
WHO	World Health Organisation

Contents

I. Summary.....	1
II. Background	3
1. Principle 10 of the Rio Declaration.....	3
2. Access to environmental information	6
3. Uganda	8
4. Methodology	11
III. The regulatory framework.....	13
1. General.....	13
2. Environment	15
3. Forests	19
4. Oil and petroleum	21
IV. Focus group discussions.....	24
1. Pro-biodiversity Conservationists in Uganda	24
2. Ugandan Wildlife Society and Uganda Nile Discourse Forum.....	26
3. Advocates Coalition for Development and Environment and the African Institute for Energy Governance	28
4. Greenwatch	29
5. Budongo Forests Community Development Organisation (BUCODO).....	31
Summary.....	32
V. Assessment.....	34
1. Access to government information.....	34
2. Generating and disseminating information	37
3. Government capacity.....	39
4. Public capacity.....	41
5. Collection of information.....	43
VI. Conclusion and recommendations	46
1. Access to government information.....	46
2. Generating and disseminating information	48
3. Government capacity.....	50
4. Public capacity.....	54
5. Collection of information.....	55
Annex 1.....	57
Annex 2.....	59

I. Summary

This study assesses the laws and practices related to public access to environmental information in Uganda. To review the quality and implementation of the legal framework it uses a set of indicators developed by The Access Initiative (TAI). These indicators are applied with a special focus on forestry and oil exploitation.

The written law in Uganda indicates efforts to open up environmental decision making processes to public influence and scrutiny. The right of access to information is recognised as a general principle of accountable governance and reflected in special legislation on environmental protection and forest management. The status of the right in the oil and petroleum sector is weaker.

The report finds that in general there is a considerable lack of awareness in Uganda of the legal rights related to accessing environmental information. Whilst the law is underutilised the main barrier in practice appears to be a 'culture of secrecy' – the general reluctance of government officials towards disclosing information.

The value of transparent and accessible information systems is generally recognised as a basis for sustainable development. But officials, non-governmental organisations (NGOs) and the media alike struggle with key barriers such as the general lack of resources and capacities as well as the politics of patronage. The relationship between civil society and certain levels of government often prevents proper collaboration and participation.

To fundamentally improve access to environmental information in Uganda it is important to not only focus on legal and institutional structures but to strengthen the demand side of accountability and build civic competencies.

The report outlines potential areas of activity and makes specific recommendations that could be implemented with limited resources within the existing framework of law, policy and institutions. These are:

- to develop subsidiary legislation that enshrines openness as a core value and strengthens the independence of civil servants;
- to improve the use of the internet by government institutions and build the required technical capacity, in terms of skills and equipment, within government institutions to operate an up to date website;

- to undertake a strategic impact assessment of the new oil and gas policy;
- to channel financial aid aimed at improving environmental governance and strengthening civil society through credible non partisan Ugandan civil society organisations; and
- to reinvigorate the Ugandan Environment Information Network.

II. Background

Poor people in developing countries often rely heavily on their immediate environment for their livelihoods. They are most likely to be exposed to environmental risks and degradation but usually the worst represented in relevant decision making processes. Good natural resources management depends on participatory, transparent, open and accountable governance. This study therefore aims to support the Government of Ireland's programme of assistance to developing countries (Irish Aid) in promoting environmentally sustainable development that is consistent with the economic, social and environmental needs and priorities of people in developing countries and contributes to poverty reduction.¹

Building on existing work and specific needs indicated by partner organisations the study assesses the national laws and practices related to public access to environmental information in the Irish Aid priority country Uganda. For this purpose it uses a set of indicators developed by The Access Initiative (TAI) to review quality and implementation of the law. These indicators are applied with a special focus on forestry as a more traditional and oil exploitation as a newly emerging natural resources management sector in Uganda. On the basis of the assessment several recommendations on how to address access barriers and enhance information systems are made in part VI of this report.

1. Principle 10 of the Rio Declaration

In June 1992 at the UN Conference on Environment and Development in Rio de Janeiro, 178 governments committed to an idea. By endorsing the Rio Declaration on Environment and Development they agreed that environmental issues are best addressed with the involvement of all concerned citizens. To ensure meaningful citizen involvement Principle 10 of the Declaration lists three fundamental access rights: access to environmental information, participation in environmental decision making and judicial and administrative proceedings. These rights are generally regarded as the main pillars of good environmental governance and the key procedural requirements to achieve better environmental justice. When they are both protected by the law and embodied in government practices, decisions are more likely to be equitable, responsive to people's needs and environmentally sustainable.

1 See www.irishaid.gov.ie on the work and priorities of Irish Aid

Principle 10 of the 1992 Rio Declaration

Environmental issues are best handled with the participation of all concerned citizens, at the relevant level. 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. 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.

Following the adoption of Principle 10 of the Rio Declaration in 1992 a number of developing countries and countries with economies in transition have strengthened the legal framework for public participation in environmental decision making. The Ethiopian Constitution of 1994, for example, provides that people have the right to full consultation and to the expression of views in the planning and implementation of environmental policies and projects that affect them directly. Under Article 50 of the 1996 Constitution of the Ukraine people are *“guaranteed the right of free access to information about the environmental situation, the quality of food and consumer goods, and also the right to disseminate such information. No one shall make such information secret.”*

Article 92 of the Ethiopian Constitution

Article 92

Environmental Objectives

Government shall endeavour to ensure that all Ethiopians live in a clean and healthy environment.

The design and implementation of programmes and projects of development shall not damage or destroy the environment.

People have the right to full consultation and to the expression of views in the planning and implementations of environmental policies and projects that affect them directly.

Government and citizens shall have the duty to protect the environment.

Internationally the 1998 UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)² is the most significant elaboration of Principle 10 of the Rio Declaration. The Convention links human well being and human rights to environmental protection and emphasises the need for stakeholder involvement to achieve sustainable development. Parties to the Convention are under the obligation to establish and enforce regulatory frameworks to secure citizens' access to information, participation and justice.

Article 1 of the Aarhus Convention

Article 1 Objective

In order to contribute to the protection of the right of every person of present and future generations to live in an environment adequate to his or her health and well-being, each Party shall guarantee the rights of access to information, public participation in decision-making, and access to justice in environmental matters in accordance with the provisions of this Convention.

There is a variety of other international law and policy documents that call for the right of citizens to participate in environmental and other decision making processes that affect their lives. Pursuant to Article 19 of the Universal Declaration on Human Rights, the right to freedom of opinion and expression includes the freedom to seek, receive and impart information through any media. The World Bank's Operational Policy on Indigenous Peoples supports the concept of free, prior, and informed consultation with affected communities about a proposed project.³

In order to translate Principle 10 of the Rio Declaration into action civil society organisations from around the globe founded The Access Initiative (TAI) in 2000.⁴ At the heart of TAI's work is an online toolkit containing a total of 148 indicators to assess governments' performance in four categories: access to information, public participation, access to justice and capacity building. Within each category the assessment further distinguishes between the quality of the existing law (law), the government's

2 For the full text of the Aarhus Convention see www.unece.org/env/pp/treatytext.htm

3 Revised Operational Policy and Bank Procedure on Indigenous Peoples (OP/BP 4.10), 2005 available at www.worldbank.org

4 For more information on TAI see www.accessinitiative.org

actual efforts in providing access (effort) and the level of access achieved (effectiveness). Using the TAI toolkit software, the indicators are applied by national coalitions of civil society groups to selected case studies.

To date TAI assessments evaluating laws on the books and government practices have been carried out in more than 30 countries. At the end of an assessment the coalition produces a report summarising findings and making policy recommendations. The results are disseminated within the TAI network and to the general public through the TAI Findings segment of the online toolkit, publications, training and advocacy work.

Applying the same comprehensive set of indicators across different jurisdictions has generated a growing knowledge base of good practice. Amongst governments the findings are generally recognised as credible. Thus the TAI methodology provides a robust basis and additional leverage for law reform, better environmental governance and collaboration between government and civil society.

2. Access to environmental information

A basic requirement for the achievement of sustainable development is that citizens have the right and ability to influence decisions about the natural resources that sustain their communities. Good environmental governance therefore ensures the effective participation of the public in the preparation and implementation of environmental policies, legal frameworks, plans and projects.

Effective access to meaningful information is the first step in empowering citizens to exercise a degree of control over resources and institutions. The right to know is the basis for stakeholder involvement in environmental decision making processes that affect their lives, their community and the development and security of their country. As Kofi Annan, the former Secretary-General of the United Nations, observed:

“The great democratising power of information has given us all the chance to effect change and alleviate poverty in ways we cannot even imagine today.”⁵

The right to information gives the public a practical tool to oversee government decision-making and conduct. By opening governments up to public scrutiny and increasing transparency the potential for corruption,

⁵ Kofi Annan, Address to the World Bank conference “Global Knowledge 1997”, Toronto, Canada, 22 June 1997

mismanagement and error is reduced. Providing people with access to quality information generates citizens' trust in government actions, promotes active participation in development and reduces the likelihood of contentious unsustainable decisions.

In a legal context access to information is mostly associated with a right to request and receive documents. Many developing countries have general and vague constitutional guarantees for the right of access to information which are increasingly complemented by specific legislation. These laws define a legal process by which government information is available to the public and may include privacy or data protection laws. They are often referred to as 'freedom of information legislation'.

The 1996 Constitution of the Republic of South Africa is often described as one of the most progressive constitutions in the world.⁶ A Bill of Rights contains provisions concerning civil, political, social and economic rights including the right of access to information. These rights may be limited by law only "*to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom...*"⁷

Access to information in the South African Constitution

Section 32 Access to information

1. Everyone has the right of access to any information held by the state; and any information that is held by another person and that is required for the exercise or protection of any rights.
2. National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

In Northern democracies the business sector has often been the most active user of freedom of information legislation requesting information on upcoming tenders, privatisation plans and other potential business opportunities. Private companies can also obtain information on the overall regulatory landscape to better understand decisions made by regulatory authorities. In the UK businesses have used freedom of information requests to find out from the National Health Service (NHS) the terms and conditions of contracts with third-party service providers. This has

then helped them to win valuable contracts.

3. Uganda

Uganda is a landlocked country situated in East Africa sharing territorial borders with Kenya, Sudan, the Democratic Republic of Congo, Rwanda and Tanzania. It is roughly the size of Great Britain and has a population of around 30 million of which half is younger than 15. It gained independence in 1962 and in 2005 a referendum led to the adoption of a multi-party system. Presidential and parliamentary elections were held in 2006 re-electing as President Yoweri Museveni, who has been in power since 1986. In another step towards a final peace settlement ending the civil war in the North of the country, the Ugandan government and the Lord's Resistance Army signed a ceasefire in February 2008.

Uganda is one of 33 countries in Africa classified by the UN as Least Developed and, according to the 2007/08 Human Development Report, as number 154 on the human development index. The 2007 Corruption Perception Index of Transparency International ranks Uganda in place 111 amongst 179 countries with a score of 2.8 out of 10 between, for example, Egypt (2.9) or Mali (2.7). There are at least 32 languages spoken in Uganda and only a fraction of the population has good command of the official language English. More than a quarter of people are illiterate.

The country's economy is to a large extent dependent on foreign aid and its national budget is approximately 40% donor funded (totalling roughly USD870 million in grants and net loans for 2006/07). In 2000, Uganda qualified for enhanced Highly Indebted Poor Countries debt relief (worth USD1.3 billion) and Paris Club debt relief (worth USD145 million). Following a G8 summit in 2005, the World Bank multilateral debt-relief initiative further reduced Uganda's external debt by almost 90 per cent.⁸

Since 1986, the government has made significant progress in rehabilitating an economy that was decimated during the regime of Idi Amin (1971-79) and years of civil war. According to the 2005/06 National Household Survey headcount poverty levels have fallen to 31.1 per cent of the total population. In 2006 nearly 80 per cent of the population relied on land, agriculture and soils for their primary livelihood. In 2005 approximately 30 per cent of Uganda's territory was under permanent traditional food (e.g. maize, beans or cassava) and export crops (e.g. coffee, cotton or tobacco)

8 See Uganda and the IMF on www.imf.org/external/country/UGA/index.htm and the CIA World Factbook on www.cia.gov/library/publications/the-world-factbook/index.html

– almost all of them grown by smallholders.⁹ Demographic projections suggest that overall Uganda may have exhausted the land available for new farmers by 2022. This is due to the rise in population, soil erosion, overgrazing and unsustainable farming practices.



Central Kampala

As a result of increased agricultural activities, population growth, encroachment, urbanization and over harvesting Uganda's forest cover has continuously declined. Around 90 per cent of the population depends on wood or charcoal for its energy needs, while only around seven per cent have access to electricity. In January 2008 the Ministry of Water and Environment warned that *“Uganda's current standing volume of timber is estimated to last the next 5–8 years only after which the government will have to import timber to meet growing demands for the booming construction industry.”*¹⁰

This is despite government and donor efforts to control and manage the forest resources in Uganda in a more sustainable manner. Of the 4.9 million hectares of forests and woodlands, 30 per cent have been

9 National Environment Management Authority (NEMA), State of the Environment Report for Uganda 2006/2007, 2007, Kampala

10 Salome Alweny, Uganda running out of timber, Sunday Monitor, 20 January 2008

designated as protected areas (forest reserves, national parks and wildlife reserves). According to the 2006/2007 State of the Environment Report, the National Forest Authority, during the year 2005/06, held over 210 meetings attended by around 8500 people from local government authorities and communities “*to sensitise them about the need to keep forest reserves in tact*”. Nevertheless the need to attract capital has repeatedly led to the allocation of protected areas to investors such as sugar cane or palm tree growers, mining or oil companies.

Forest “give-aways”

In November 2006 various officials of the National Forest Authority (NFA) resigned over the President’s request to allocate areas in a protected tropical rainforest (Bugala) to the palm oil producer Bidco. At about the same time the Ugandan government also directed the NFA to allow a sugar company, owned by India based Mehta Group, to convert 7,100 hectares in the Mabira national forest reserve into sugar cane plantation. Newspapers and radio covered the issues extensively and NGOs calling for due process to be followed stepped up their legal advocacy and campaign work. In April 2007 street demonstration against the government plan left at least three people dead and several wounded, with many shops and properties damaged. For the time being the planned forest clearances have been suspended by the Ugandan cabinet.

To meet its domestic power needs Uganda has been heavily dependant on oil imports. When post election violence erupted in Kenya in January 2008 and fuel shipments from Mombassa ground to a halt many Ugandan businesses were badly affected. Pump prices rose to an all-time-high, many areas suffered fuel shortages and long lines formed at the stations that still sold petrol. Many Ugandans therefore hope that the discovery of oil in the Albertine Graben region (Lake Albert basin) in the West of the country will help to alleviate current energy problems. Subsequently natural gas reserves were also found in the same area.

The Ugandan government has repeatedly stated that it will take a cautious approach towards oil production to ensure that “*in Uganda oil will not be a curse but an asset*” and much of the proceeds be spent on the country’s

development.¹¹ At present foreign oil companies - mainly Tullow (Ireland/UK) and Heritage Oil (Canada) – are putting in place the infrastructure to start oil exploitation in 2009. They have also built schools and health centres and drilled boreholes for drinking water in some villages.¹²

Local communities around Lake Albert have voiced concerns about the likely impacts of oil exploration in the area. Although there may be new employment opportunities, fishermen fear that pollution, the influx of oil workers and “*rich people*” taking their land will adversely affect their livelihoods. They are also concerned about possible access restrictions to fishing grounds and, as the exploration area lies on the border with the Democratic Republic of Congo, security issues. Representatives of the Bunyoro Kingdom, whose traditional territory covers the Lake Albert region, have demanded a 50 per cent share of the oil revenues.¹³

4. Methodology

In order to determine if and to what extent people in Uganda have appropriate access to information concerning the environment that is held by public authorities, the relevant TAI indicators were applied to the existing law and its implementation. Although the TAI indicators were developed for individual case studies they also provide a comprehensive framework to examine general barriers and opportunities for better access. In essence, they correspond to the good practice principles promoted by other organizations and institutions.¹⁴ These principles recognize that law does not implement itself and that appropriate access depends on a variety of conditions such as rights awareness, capacity building, civil service structures or record management.

The questions raised as part of the TAI methodology capture the complexity of issues involved. They distinguish between the collection and dissemination of, and access to information whilst evaluating the quality

11 Uganda has high hopes in oil, *The New Vision*, 13 November 2007

12 Agness Nandutu, Petrol dollars start flowing in Hoima, *The Monitor*, 30 April 2007

13 Joshua Kato and Fred Kayizzi, Bunyoro villagers warm up to oil money with worries, *The New Vision*, 20 July 2006

14 Report of the UN Special Rapporteur on the protection and promotion of the right to freedom of opinion and expression to the United Nations Commission on Human Rights, E/CN.4/1999/64, January 1999; Article 19, *The Public's Right to Know: Principles on Freedom of Information Legislation*, June 1999; Commission on Human Rights, *The right to freedom of opinion and expression*, resolution 2000/38, April 2000; African Commission on Human & Peoples' Rights, *Declaration of Principles on Freedom of Expression in Africa*, October 2002; Recommendation Rec(2002)2 of the Committee of Ministers of the Council of Europe to Member States on Access to Official Documents, February 2002; Commonwealth Parliamentary Association (CPA) Study Group on Access to Information, *Recommendations for Transparent Governance*, London, 2004; Aarhus Clearing House at aarhusclearinghouse.unece.org; UNEP, *Draft Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters*, 2008

of the existing law, the government's actual efforts in providing access and the level of access achieved.¹⁵ The full list of indicators related to access to information is attached in Annex 1. For the purpose of this study the indicators were broadly applied in the following groupings: Access to government information¹⁶, generating and disseminating information¹⁷, capacity and resources of government¹⁸, capacity of the public including compliance monitoring¹⁹ and collection of information²⁰.

TAI methodology sample questions

7. How clear and inclusive is a framework law supporting broad access to government information?
17. To what extent does the law require the government to offer the public technical assistance, guidance or training on how to access and use the selected information type?
27. How well did the responsible agency make a planned and systematic effort to disseminate information to a minority or disadvantaged group in the selected case?
33. To what extent were guidelines or training on access to information offered regularly over the last 3 years to staff in the agency managing the selected information type?
45. To what extent did media involvement facilitate access to information in the selected case?

15 See above section 2
 16 Indicators 7 - 10, 13, 19, 23, 25, 30, 31
 17 Indicators 11, 12, 16, 19, 24 - 27, 29, 31, 35, 39 - 41
 18 Indicators 14, 15, 18, 32 - 36, 42, 44
 19 Indicators 17, 22, 37, 38, 43, 45, 46
 20 Indicators 20, 21, 28

III. The regulatory framework

The following part of the study provides an overview on the legal framework pertaining to environmental information. It summarises the main rights and obligations with a view to assessing their adequacy for effective access to information. Relevant regulations are grouped into (1) general and (2) environmental law, and law on (3) forestry and (4) oil exploitation.

1. General

The Ugandan Constitution was adopted in October 1995. It establishes a presidential system with a strong executive and in comparison a relatively weak parliament. The President is chief of state and head of government with significant powers to influence the composition and work of the judiciary. The constitution provides that as political objectives the state “shall be based on democratic principles which empower and encourage the active participation of all citizens at all levels in their own governance”²¹, and promote sustainable development and the management of natural resources in such a way “as to meet the development and environmental needs of present and future generations of Ugandans”²². It comprises a comprehensive set of guarantees on political and human rights which include the right to freedom of speech and expression²³, the right to a clean and healthy environment²⁴ and, in Article 41, the right to access information held by the state²⁵. In accordance with Article 41, in 2005 the Ugandan parliament further elaborated on the constitutional guarantee of access to information through the Access to Information Act (No 6 of 2005).

Right to access in the Ugandan Constitution

Article 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) The 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.

21 National Objectives and Directive Principles of State Policy Art.II (i) of the Constitution
 22 National Objectives and Directive Principles of State Policy Art.XXVII (i) & (ii)
 23 Art.29 (1) of the Constitution
 24 Art.39 Constitution
 25 Art.41 Constitution

The Access to Information Act of 2005 further specifies the constitutional guarantee of access to information by determining the scope of citizen rights and the obligations of information offices in all public bodies. It prescribes the procedures for obtaining access to information and making complaints against a refusal to release information. In principle the Act applies to information and records of all government bodies at the national, regional and local level. It does not apply to cabinet records and the records of court proceedings before the conclusion of the case.²⁶ The Act explicitly recognizes the link between the provision of timely, accessible and accurate information and transparent, accountable and participatory governance.²⁷

Section 5 of the Access to Information Act

Right of access.

- (1) Every citizen has a right of access to information and records in the possession of the State or any public body, 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) For the avoidance of doubt, information and records to which a person is entitled to have access under this Act shall be accurate and up to date so far as is practicable.

A request for access to a record or information shall be in writing. It needs to provide sufficient particulars to enable the public officer handling the request to identify the information requested and the identity and address of the person requesting it. A person who, because of illiteracy or disability is unable to make a written request may make that request orally.²⁸ A person's right of access shall not be affected "*by any reason the person gives for requesting access or the information officer's belief as to what the person's reasons are for requesting access*".²⁹ Within 21 days from receipt of the request, the information officer shall determine if and how to give access and "*the fee, if any, to be paid upon access*"³⁰ "*representing the actual cost of retrieval and reproduction of the information*"³¹.

A request should be refused to the extent it relates to information which is

26 Section 2 of the Access to Information Act
 27 Section 3 - Purpose of the Act
 28 Section 11 - Form of Request
 29 Section 6 Access to Information Act
 30 Section 16 Access to Information Act
 31 Section 47 Access to Information Act

private, commercially viable or confidential, or if its disclosure jeopardizes life or health of a person, property, a fair trial, the administration of justice or the state's defence, security and international relations.³² In all of these cases further qualifying conditions apply under which the official nevertheless has to disclose the relevant information because it, for example, is already in the public domain or would reveal a serious public safety, health or environmental risk. A general public interest test applies to all exemptions. It requires the disclosure of information where the information would reveal either a substantial infringement of the law or a serious threat to public health and safety and on balance the public interest in the disclosure of the record is greater than the possible harm caused by the disclosure of information.³³

Pursuant to the Act, all public bodies must compile a manual describing their structure and functioning. The manual shall contain contact details, procedures for access requests, information on records held and a description of any arrangements allowing for citizens' input in policy formulation or government performance. The manual must be updated every two years.³⁴ Every other year, the information officer shall also publish a description of the categories of records automatically available without access request.³⁵

2. Environment

The National Environment Act of 1995 sets out the general legal framework and policy objectives for the sustainable management of the environment in Uganda. It encourages the participation by the people of Uganda in the development of policies, plans and processes for the management of the environment as well as the equitable use of natural resources for the benefit of present and future generations.³⁶ To co-ordinate and supervise all activities in the field of the environment the National Environment Agency (NEMA) was established under the Act as the principal agency for the management of the environment in Uganda.³⁷

The functions of the NEMA comprise the gathering and dissemination of information on the environment and natural resources, the publication of relevant data on environmental quality and resource use as well as the organisation of public awareness and education campaigns in the field

32 Sections 26-33 Access to Information Act

33 Section 34 Access to Information Act

34 Section 7 Access to Information Act

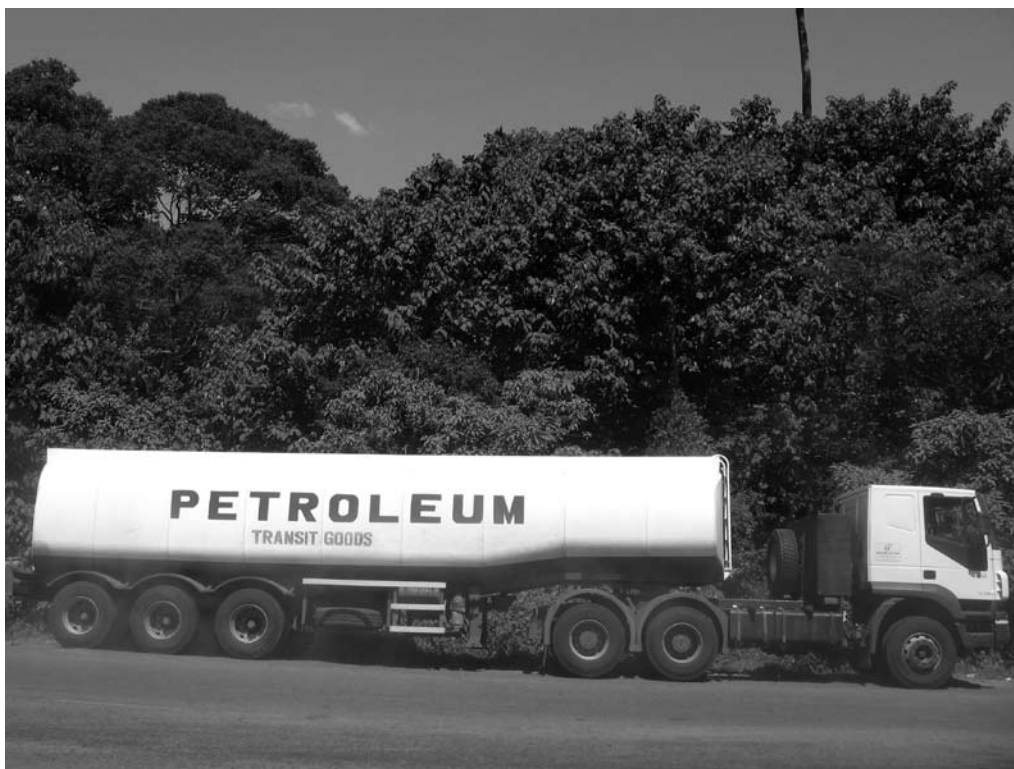
35 Section 8 Access to Information Act

36 Section 3(2) of the National Environment Act

37 Sections 5 & 6 National Environment Act

of environment.³⁸ The NEMA is tasked to exchange information with other Ugandan, foreign, international and non-governmental agencies, co-ordinate the management of environment information with other government agencies and local authorities and advise Government on existing information gaps and needs.³⁹

In collaboration with education and regional authorities NEMA is also responsible for educational campaigns on the environment aimed at schools and the general public.⁴⁰ The NEMA shall publish a State of the Environment Report every two years.⁴¹ Any person who carries out any activity which has or is likely to have a significant impact on the environment shall keep records relating to resulting waste and by-products, their effects on the environment and financial implications.⁴² These records shall be transmitted to the NEMA annually and be used as a basis for the preparation of the state of the environment report.⁴³



38 Sections 3 & 87 National Environment Act
39 Section 87 National Environment Act
40 Sections 7(1), 88 National Environment Act
41 Sections 7(1) & 87(2) National Environment Act
42 Section 78 National Environment Act
43 Section 79 National Environment Act

According to section 86 of the Environment Act people have “*freedom of access to any information*” relating to the implementation of the Act submitted to NEMA or any other government institution or official with legal management or control functions related to the environment. Access shall be granted “*on the payment of a prescribed fee*” but “*does not extend to proprietary information which shall be treated as confidential*”. The Act further outlines the basic steps and requirements of the Ugandan Environmental Impact Assessment (EIA) process.

The Environmental Impact Assessment Regulations of 1998 further specify the rules and procedures for carrying out an environmental impact study. The Regulations provide that “[*t*]he developer shall take all measures necessary to seek the views of the people in the communities, which may be affected by the project”. For this purpose the Regulations prescribe a minimum standard of activities to proactively facilitate access to information about the proposed development.⁴⁴

Facilitating access under the EIA Regulations

Regulation 12 paragraph 2 EIA Regulations:

In seeking the views of the people ... the developer shall -

- (a) publicise the intended project, its anticipated effects and benefits through the mass media in a language understood by the affected communities for a period of not less than fourteen days;
- (b) after the expiration of the period of fourteen days, hold meetings with the affected communities to explain the project and its effects; and
- (c) ensure that the venues and times of the meetings shall be convenient to the affected persons and shall be agreed with the leaders of local councils.

Based on the project brief submitted by the developer, NEMA in consultation with other government agencies determines whether the project has a significant impact on the environment and the level of EIA required. If the project brief adequately addresses environmental concerns, approval can be issued without the need for further assessment. Otherwise a full environmental impact study has to be carried out in accordance with terms and conditions and by EIA experts approved by the NEMA.⁴⁵

44 Regulation 12 of the Environmental I
45 Section 20 National Environment Act

Following completion of the study the developer shall submit an environmental impact statement (EIS) including a description of the project, potential impacts and mitigation measures, possible alternative, gaps in knowledge and an economic analysis. The EIS “*shall be a public document and may be inspected at any reasonable hour by any person*”.⁴⁶ NEMA will invite written comments by persons who are most likely to be affected by the proposed project and the general public.⁴⁷ An invitation to submit comments should be publicized through national or local newspapers, other mass media and lower governments. It needs to contain specified information (e.g. location, proposed mitigation measure, benefits to community) and “*be in languages understood by the majority of the affected persons*”.

Taking into account the comments received, the NEMA may issue a certificate of approval, reject or modify the proposal. If the project is particularly controversial or has transboundary impacts a public hearing has to be held.⁴⁸ The set-up of the public hearing shall broadly correspond to the nature and size of the project. Date and venue shall be advertised through the mass media and any person attending the meeting can make presentations. The developer shall be given an opportunity to answer to any presentation and to provide further information.⁴⁹

The Environmental Impact Assessment Public Hearings Guidelines issued by the NEMA in 1999 provide further guidance on how to conduct the public hearing. They allow for the arrangement of “*pre-public hearing meetings*” between public officials, the developer and other interested parties to identify issues, participants, possible witnesses or experts and to finalize the meeting schedule.⁵⁰ At the conclusion of the public hearing the presiding officer shall summarise the proceedings and discussions without making conclusions.⁵¹ S/he then draws up a report including recommendations on which basis a final decision is taken. Following the final decision by NEMA the report shall be made public.⁵² According to the Guidelines anyone can request copies of reports, submissions and other materials in the files. In return the authorities can require the payment of reasonable costs incurred in connection with photocopying or duplicating.⁵³

46 Section 21 National Environment Act
 47 Regulations 19&20 of the Environmental Impact Assessment Regulations
 48 Regulation 21 EIA Regulations
 49 Regulation 22&23 EIA Regulations
 50 Section 8 of the Environmental Impact Assessment Public Hearings Guidelines
 51 Section 20 EIA Public Hearings Guidelines
 52 Section 26 EIA Public Hearings Guidelines
 53 Sections 5(10), 10(4), 22(2) and 26(7) EIA Public Hearings Guidelines

As a matter of principle any project brief, environmental impact statement, public comments, report of the presiding officer or any other information related to the EIA shall be public documents. Subject to Section 86 of the Statute and Article 41 of the Constitution (see above) any person who desires to consult these documents shall have access on such terms and conditions, as the NEMA considers necessary.⁵⁴

3. Forests

The National Forest and Tree Planting Act of 2003 consolidated the law relating to the forest sector and trade in forest produce. The Act aims to contribute to the conservation, sustainable management and development of forests for the benefit of the people of Uganda. Its objectives include increasing public participation in forest management, creating greater awareness for the benefits of forest cover and *“to guide and cause the people of Uganda to plant trees”*.⁵⁵

The law provides for the establishment of different categories of forest reserves with the involvement of local communities. In order to designate a central or local forest reserve a notice must be published in the government gazette, print media and *“any other media that is likely to draw the matter to the attention of all interested persons”*. Local communities shall be consulted through public meetings and other means and an environmental impact assessment must be carried out. The notice must identify the location of the reserve, summarise the proposed management plan and *“invite written comments and representations”*.⁵⁶ The same procedure applies if the government intends to amend or revoke the declaration of a forest reserve.⁵⁷

The formal requirements for declaring an area as a community forest (or amending such declaration) are less stringent. Following approval by the District Council and consultations with the local District Land Board and the local community a community forest may be established. The order made to this effect *“shall be published by posting outside the office or other meeting place of the local government”*.⁵⁸

Management plans for forest reserves and community forests shall be drawn up and revised every five years in consultation with the local

54 Regulation 29 EIA Regulations
 55 Section 2 of the National Forest and Tree Planting Act
 56 Sections 7 & 10 National Forest and Tree Planting Act
 57 Sections 8 & 11 National Forest and Tree Planting Act
 58 Section 17 National Forest and Tree Planting Act

community. They contain a description of “*all matters relating to the forest*” including the measures for sustainable development and “*the involvement of local communities in the management of the resources*”. “*A management plan shall be disseminated to the local community.*”⁵⁹

A National Forest Plan shall set the framework for activities destined to develop the forestry sector in Uganda. In preparing the National Forest Plan the views of persons and organisations involved in forestry have to be taken into account, “*in particular the views of persons whose livelihoods are dependent on the forest sector*”.⁶⁰ Its implementation is measured on the basis of its contribution to economic growth and transformation, improvements in income and quality of life of the poor and good governance and security. Its key strategies include community-based participatory planning, institutional reforms, collaborative management, increasing access to information and developing a civil society advocacy forum.⁶¹

The law prescribes a number of other information obligations. A person intending to undertake an activity that may have a significant impact on a forest shall undertake an environmental impact assessment.⁶² Through the media the Minister shall notify the public of the existence of plant and livestock pests or diseases.⁶³ In respect of private land trees may be declared protected. But before making such an order the authorities need to “*take into account the views of the affected communities*”.⁶⁴ The government is further required to put together an inventory of all forests in Uganda.⁶⁵

The Act established the National Forest Authority (NFA) as the principal organ responsible for its implementation. It explicitly tasks the Authority to promote innovative approaches for local community participation in the management of central forest reserves.⁶⁶ In consultation with the local authorities it may establish Forestry Committees to advise on the “*ideas, desires and opinions of the people in the respective areas on all matters relating to the conservation and use of*” and “*assist local communities to benefit from the central forest reserves*”.⁶⁷ Section 91 addresses the right to access information.

59 Section 28 National Forest and Tree Planting Act
 60 Section 49 National Forest and Tree Planting Act
 61 The National Forest Plan, Ministry of Water, Lands and Environment, October 2002
 62 Section 38 National Forest and Tree Planting Act
 63 Section 36 National Forest and Tree Planting Act
 64 Section 31 National Forest and Tree Planting Act
 65 Section 37 National Forest and Tree Planting Act
 66 Sections 52 & 54 National Forest and Tree Planting Act
 67 Sections 62 & 63 National Forest and Tree Planting Act

Section 91 National Forestry and Tree Planting Act

- (1) Every citizen has a right of access to any information relating to the implementation of this Act, submitted to or in the possession of the State, a local council, the Authority or a responsible body.
- (2) A person desiring information under subsection (1) shall apply to the relevant body under subsection (1), and shall be granted access to the information on the payment of the prescribed fee, if any in a prescribed manner.
- (3) Freedom of access to information under this section does not extend to proprietary information which is treated as confidential.
- (4) For purposes of this section, “proprietary information” shall mean information on research or practices initiated or paid for by an individual or private company or financial standing of an individual or private company which is not for public consumption.

4. Oil and petroleum

The Petroleum (Exploration and Production) Act of 1985 is the main law governing the exploitation of oil in Uganda.⁶⁸ The Petroleum Act focuses on so called “*upstream*” elements of petroleum production – i.e. the exploration and extraction of oil. The holder of a petroleum exploration licence is required to inform the authorities about the discovery of oil and has to furnish further information as requested.⁶⁹ A subsequent application for the production of oil must be accompanied by specified geological, chemical and other data.⁷⁰ Any licence holder has to maintain records and report in regular intervals on, amongst others, drilling activities, the quantities of oil won or gas flared.⁷¹

Although the Act recognises the potential for conflicts between oil exploration and other rights to the land (related to grazing and farming) the communication of environmental information is mainly addressed as a one way flow in the direction of the government.⁷² The authorities have to keep records⁷³ but as a matter of principle any information provided by a petroleum exploration or production license holder shall not “*be disclosed to*

68 The Mining Act of 2003 does not apply to petroleum (as defined in the Petroleum Exploration and Production Act of 1985 (Act 7 of 1985). The Petroleum Supply Act of 2003 addresses issues around the transportation, storage, distribution and marketing of petroleum products.

69 Section 18 of the Petroleum Act

70 Section 21 Petroleum Act

71 Section 37 and 2nd schedule

72 Sections 38 to 41 Petroleum Act

73 Section 42 Petroleum Act

any person who is not a Government Minister or an officer in the public service except with the consent of the licensee". Exceptions apply in connection with legal proceedings, studies, requests of financial institutions, liability claims and contractual agreements. Violation of the non-disclosure obligation is a criminal offence.⁷⁴ The Act does not address *"downstream"* oil production activities such as the refining of oil and utilisation of gas, the use and distribution of oil revenues or local benefits and participation in the industry.

This lacuna in the legal framework has been addressed by the new National Oil and Gas Policy. The policy officially launched in February 2008 aims to achieve exploitation and utilization of oil and gas in a manner that contributes to poverty eradication and *"creates durable and sustainable social and economic capacity for the country"*. Objectives also include national participation in the petroleum and gas industry, nature conservation and the use of revenues *"to create lasting value for the entire nation"*.



Queuing for petrol

Transparency and accountability are named as guiding policy principles. Openness and access to information are described as fundamental rights, and the importance of disclosing information “*that will enable stakeholders to assess how their interests are being affected*” is stressed. “*The policy shall therefore promote a high standard of transparency and accountability in licensing, procurement, exploration, development and production operations as well as management of revenues from oil and gas.*”⁷⁵ To implement policy objectives it is envisaged to set up a new regulatory authority and a national oil company to handle the state’s commercial interests.

The Petroleum (Exploration and Production) (Conduct of Exploration Operations) Regulations of 1993 provide further instructions on how to carry out (upstream) oil exploration activities. The regulations prescribe safety at work and pollution prevention measures as well as the documentation an operator has to submit and maintain. The few provisions on access to information solely focus on the right of public authorities to access information. Thus an inspector shall, for example, have access to technical records of a license holder or operator at any reasonable time and treat such notes as confidential.⁷⁶ The revision of the regulations, anticipated under the new policy, will focus on integrating technical advances.

The Environmental Impact Assessment Guidelines for the Energy Sector of 2004 also apply to oil exploration projects.⁷⁷ The guidelines were drawn up by the NEMA to provide ministry officials, developers and practitioners with a simple overview of their tasks during the EIA process. The report describes impacts commonly associated with different energy projects, possible mitigation measures and guidelines for resettlement and compensation. The importance of public participation and involvement during the EIA process for energy projects is highlighted in a separate chapter. A listing of the possible methods for systematic involvement of the public comprise: meetings, interviews, surveys, field offices (to serve as a liaison with the developer and the public), “*Open Houses*” (accessible locations where the information on the proposed project and the EIA can be found) or advising panels consisting of representatives of the different stakeholder groups.

75 Part 5 of the National Gas and Oil Policy - The Policy Framework

76 Regulation 8 of the Petroleum Regulations

77 Section 4.9 of the Environmental Impact Assessment Guidelines for the Energy Sector

IV. Focus group discussions

The written law indicates efforts to open up environmental decision making processes to public influence and scrutiny. The right of access to information is recognised as a general principle of accountable governance and, while its status in the oil exploitation sector is still slightly weaker, it is reflected in special legislation on environmental protection and forest management. However, from a ‘consumer’ perspective a legal framework is only as good as its implementation.

In order to identify the main barriers for meaningful access to environmental information focus group discussions were held with Ugandan NGOs that command particular expertise and experience in the field. They work on environmental governance and natural resource management issues, and often operate as gatekeepers for local communities. Focus group discussions are widely recognised as a method of fact finding in social research. They promote self-disclosure among participants and avoid preconceived ideas of the interviewer taking the lead. Each focus group discussion lasted for around an hour and was recorded (with the permission of all the participants) for later transcription.

1. Pro-biodiversity Conservationists in Uganda

“If they don’t have answers they should have said so.”

Pro-biodiversity Conservationists in Uganda (PROBICOU) was established in 1999 to *“conserve biodiversity by promoting sustainable development through shared responsibilities and networks”*. The group consists of professional conservationists and other members who primarily work on biodiversity conservation, chemical and waste management. Their main focus at the time of the interview was the reintroduction of DDT for malaria control in Uganda.

DDT in Uganda

The Ugandan government has repeatedly announced that it will use DDT for indoor residue spraying to control malaria in all endemic districts. Uganda is a party to the Stockholm Convention on Persistent Organic Pollutants which restricts the production and use of DDT. The only recognized acceptable purpose of DDT use is for disease vector control in accordance with World Health Organisation (WHO) recommendations and guidelines, provided that no locally safe, effective and affordable alternatives are available.

An environmental impact assessment was carried out in June–July 2005.⁷⁸ The three Ugandan NGOs consulted were Ecotrust, Nature Uganda and IUCN. The study acknowledges that *“more than 200 environmental groups condemn DDT for being a current source of significant injury to humans. But five decades of experience with DDT shows that it is highly effective and safe when deployed in house spraying.”* It finds that *“[t]he clear benefits of DDT use seem to outweigh its perceived dangers”*. In July 2007 Uganda, in accordance with its obligations under the Stockholm Convention, notified the Convention Secretariat of the intention to start spraying in January 2008.⁷⁹

PROBICOU was concerned that *“relevant organisations were not involved in the environmental impact study”* on the use of DDT. When they sent their input by letter *“it was rejected”*. Subsequent attempts to find out more about the circumstances of spraying from the National Environment Management Authority (NEMA) *“did not yield any success”*. Other instances when they were not given the information requested included a road construction project and several clean development projects around waste management (capturing and converting methane, generating energy and manure) funded by the World Bank.

The group felt that people in general had no access to meaningful environmental information. In their view there were large gaps in the collection of data (for example on water quality), a general reluctance of the government to provide adequate information (e.g. on the hazards of DDT) and a complete lack of awareness amongst citizens and officials

78 The Environmental Impact Study Re-Introduction and Use of DDT for Malaria Vector Control in Uganda is available at www.nemaug.org/UPLOADS/EIADDT.pdf

79 The official register is available at www.chem.unep.ch/ddt/DDTRestrictions.html

about the right to access information. At the same time the members of PROBICOU themselves did not have sufficient knowledge of the 2005 Access to Information Act and had not yet utilised it in connection with an information request.

The group also noted that *“civil society in Uganda was weak”* and *“people did not know about their rights”*. In PROBICOU’s experience, it was often easier for an individual to obtain information on an informal basis than as an NGO - NGOs being generally perceived as *“anti-government”*. The group argued that environmental information was often only disseminated *“pro forma”* (e.g. as part of an environmental impact assessment) while the actual decisions had already been taken. The focus group participants therefore strongly held that *“the government should come out and sensitise the people”* as well as *“the public officials in government”*. In order to fill existing knowledge gaps it was further recommended to fund research projects specifically focusing *“on local issues”*.

2. Ugandan Wildlife Society and Uganda Nile Discourse Forum

“You can’t expect a government agency to give you detailed information.”

The Uganda Nile Discourse Forum (UNDF) was established in 2003 to support civil society participation in the developments on the Nile basin. It shares offices with the Uganda Wildlife Society (UWS), founded in 1998 – an advocacy and independent environmental public policy research organisation whose mission is to promote the conservation of wildlife and environment in Uganda. The UWS operates as a Depositor Centre for environmental impact assessments which are made available to the public on behalf of the NEMA. To date, however, they have only received a few while *“there should be so many more”*.

The participants felt that some environmental impact assessments, e.g. for the Bujagali hydropower dam on Uganda’s White Nile, had resulted in the dissemination of good and balanced information by project proponents and critics. Thus *“where the consultation was done a lot came to light”*. But in many cases the communities consulted subsequently also stated: *“but we didn’t hear about that”*. In their view some EIAs are only approved *“because of someone’s specific interest”*.

Bujagali dam

In 1999 the Ugandan Parliament approved the construction of a low-pressure river power plant to be situated at the Bujagali Falls about 8km north of Lake Victoria. The main element of the project is a rock fill dam of 850m and a volume of 750,000m³. World Bank financing for the dam was approved in 2001 and construction work was due to begin in 2002. But following protests by environmentalists and residents, a corruption scandal and the withdrawal of the private sector sponsor its construction was suspended in 2003. Subsequently the Ugandan government announced its determination to go ahead with the project and in 2007 the World Bank approved a revised USD 360 million financing package for the dam.

The group stated that in regards to the release of information and public participation the Ugandan government *“still has very strong governance issues”*. Certain information, specifically related to large scale investments, is often withheld from the public and *“the person who gives it to you has to be very careful”*. In this connection *“technical officers”* may quietly admit *“it’s wrong”* but can’t voice their concerns openly. Through existing working relationships with civil servants (e.g. of NEMA) members of the group were in the past able to obtain the required information. But in their experience *“writing a letter”*, may rather complicate things. Although one participant was familiar with the 2005 Access to Information Act, it was noted that the group *“hadn’t used it yet”*.

In order to improve information governance *“strong partnerships”* between civil society and government were seen as important. All focus group participants felt that NGOs should provide expert knowledge to support development processes and reach the communities which are not *“innovative enough to peek the likely impacts”*. *“If a community doesn’t like the project it is most likely to be frustrated.”* Hence it was crucial to empower communities and allow them to stand up *“for their environmental rights”*. To build this capacity and effectively disseminate information *“all channels of communication such as churches, mosques, weddings or ... local radio stations”* should be explored.

3. Advocates Coalition for Development and Environment and the African Institute for Energy Governance

“How many Ugandans know about the existence of the law?”

The Advocates Coalition for Development and Environment (ACODE) is a public policy research and advocacy think tank that started work in 2000. The African Institute for Energy Governance (AFIEGO) was founded in 2004 and, in its work, focuses on energy security and sustainable use. ACODE is a lead organisation of the global TAI initiative and, as part of the Anti-Corruption Coalition Uganda, campaigned for the introduction of an access to information law.

The participants expressed the view that for a *“young democracy like Uganda”* it was an achievement to have a freedom of information act but that the act eventually passed by Parliament in 2005 was *“of poor quality”* because of the wide exemptions to access stipulated. They also criticised the provisions on costs, the lack of further implementing regulations and the ‘pro forma’ appointment of information officers. Some participants felt that the procedures established by the Act to request information were also *“too bureaucratic”* and others stated that *“we get our information because we work with the ministries not because of the Act”*.

The unison view was that the 2005 Act *“has not been utilised”* and that in general *“Ugandans do not know about the existence of the law”*. One of the main barriers to its application in favour of better access was described as *“a culture of confidentiality amongst civil servants”* who either *“feel they have to protect the government”* or *“fear that they will lose their jobs”*. When ACODE carried out research in Northern Uganda they required information on existing titles to land. In the land registry they found out that the registrar was under instructions *“not to keep the documents in the usual filing place”*. Information is often *“kept under key and lock”* or can allegedly *“not be found”*. In another instance AFIEGO visited the relevant ministry to examine a mining lease and were told *“such information is kept in state house”* (the President’s office). Both organisations were particularly concerned that the content of the oil production sharing agreements between the Ugandan government and investors was not disclosed to the public.

Non-disclosure of oil Production Sharing Agreements

Production Sharing Agreements (PSA) are contracts between an oil company and a host government, in which the corporation provides capital investment, in exchange for control over an oilfield, and access to a large share of the revenues from it. Since there are few statutory rules and regulations governing “*downstream activities*”, such as benefits to local communities or the reinvestment of royalties, in Uganda their content to a large extent depends on negotiations between state and companies. To date the PSAs are kept confidential. With regard to the need to do so, the views of company representatives (Tullow and Heritage Oil) interviewed for the purpose of this study differed significantly. The Ugandan government’s position is that the non-disclosure was necessary to protect the commercial interest of investors and to negotiate increasingly beneficial terms and conditions (with competing companies).

The focus group also held that within public institutions there were no adequate information management and sharing systems in place. Due to a lack of alternatives government officials sometimes used the ACODE library to find documents. There was therefore a need to establish “*a central depository*” for government information on the environment.

The participants felt that donor efforts should focus on building a competent civil society in Uganda largely through local NGOs. Only citizens with civic competences “*appreciate information*” and were capable of “*demanding their rights*”. “*But what government basically does is further education*” – not civic education. Since the government was neither “*open*” nor “*accountable*” and critical civil society organisations were still “*intimidated*” and “*bullied*” direct budgetary support was effectively promoting bad practice.

4. Greenwatch

“Natural resources management can be enhanced if the communities are given certain information.”

Greenwatch Uganda is an environmental rights advocacy organisation established in 1995. Its mission is to enhance public participation in the management and protection of the environment and in enforcement of the right to a clean and healthy environment. The organisation has been

involved in training judges and other officials on environmental law and contentious environmental litigation.

The focus group participants described their good working relationship with government officials as instrumental in obtaining information. But they also felt that *“higher authorities”* often made access difficult. On some occasions documents were secretly given to them but usually *“they tell you how difficult it is ... and that they have to stay in their job”*. The group had just received the copy of an environmental impact study related to limestone mining in the Queen Elizabeth National Park with a deadline for returning it. Although their view was that a formal request for information can make the situation *“more complicated and takes more time because they become defensive”* they had written a letter to find out whether the relevant permits were issued by the Ugandan Wildlife Authority.

The participants found that the statutory regulations relating to, for example, EIAs, policymaking or collaborative forest management, provided a sufficient basis to raise and communicate relevant environmental information. The main problem was their implementation in practice. Public gatherings were often more *“about free food for the communities”* and only served to rubberstamp a project. However *“if communities were equipped with meaningful information it would be much easier to monitor and govern natural resources”*.

Greenwatch therefore works with *“local councillors and officials, chiefs, parish chiefs and others who represent the community”* in different districts of Uganda on the development of local bylaws (ordinances). These bylaws are designed to implement the objectives of the National Environment Act at the local level taking into account regional differences and specific environmental challenges. They address, for example, agricultural practices to ensure food security, animal pests, conservation activities or waste management and can regulate local conduct in some detail.

Excerpt from the 2006 Luweero District Production and Environment Management Bill

Sustainable Agriculture and Food Security

12 (t) Every head of a household situated in an area where banana growing is feasible and appropriate, shall plant at least 0.2 hectares of banana either as a sole crop or inter cropped with other crops.

Conservation of Trees and Forests

39 (d) All residents of the district and sub-counties shall devote at least 2 full days per year for tree planting during the first and second rains.

39 (i) Any person who contravenes this section commits an offence under this ordinance and is liable to a fine of not more than twenty thousand shillings or imprisonment not exceeding six months or both.

As part of the drafting process local issues are raised and with the help of experts and consultants incorporated in the law. *“People know the issues themselves ... and we ask what do you think the solution should be?”* At the time of the interview Greenwatch was in the process of translating some of the bylaws into local languages. To inform people about the content of the law, their rights and obligations, they were planning to use local radio stations, posters, drama groups. *“Some actors will play loggers ... and we’ll show people how to report an offence.”*

5. Budongo Forests Community Development Organisation (BUCODO)

“When people know their rights they become a bit difficult to manage.”

Budongo Forests Community Development Organisation (BUCODO) is an indigenous voluntary NGO initiated by the local community living around Budongo Forest Reserve in the Albertine Rift of Western Uganda in 1998. It was registered as a national NGO in 2000 and aims to improve the livelihoods and welfare of the local communities by conserving the environment through development. BUCODO is one of the organisations implementing the EU sponsored EMPAFORM programme designed to strengthen civil society participation in forest management in Kenya, Tanzania and Uganda.

One of the EMPAFORM components is to facilitate access to information for communities. At the beginning of the programme when BUCODO wanted to find out what people knew *“they would just pick one thing everybody knew: you are not supposed to cut a tree”*. Their work mainly focused on producing and disseminating simple guides which summarise people’s rights and obligations under the existing legal framework in local languages. In addition consultants provided technical information as required – e.g. on the establishment and management of forest enterprises.

Although they felt that as a result of their work people were better informed, in their view, it was only *“a drop in the ocean”* because there was *“no structure or system to ensure continuity of access to information within the government”*. Relevant documents had to be purchased at prohibitively high costs or were often out of print. In addition the *“poor reading culture”* and high percentage of illiteracy made reaching the communities very difficult. Materials should therefore *“come out in formats that are easier to consume”*. *“It’s mostly radio that works for the ...communities we deal with.”* While people tend to *“put posters up inside their house”*, other techniques such as drama or public debates were described as useful but often too expensive to organise.

The group’s experience was that the communities no longer trusted the government. Their *“ignorance had often been exploited”* – for example: by officials levying unjustified fees. *“Corruption thrives where there is an information gap.”* In disseminating information the government also tended *“to promote its own interest”*. NGOs in comparison were perceived as a neutral broker able to work on the *“demand side”*. In order to effectively provide information to the public there should be *“places where people can go when and as they feel like”*. In this connection public libraries could be better used.

Summary

The focus group discussions indicated that there is a considerable lack of awareness in Uganda for the legal rights related to information access. This applies not only to the public at large but also to civil servants and NGOs. In particular knowledge of the 2005 Act on Access to Information was fairly limited. At the same time the principle value and need for accessing, collecting and disseminating useful environmental information in accessible formats was underlined by all participants.

The main barrier raised by all groups was the general reluctance of

government officials to disclose information – described as a “*culture of secrecy*”. In this regard explanations ranged from the legacy left by the British Empire’s colonial civil service to the pressure on individuals exercised by a “*big man*”. Although the vast majority of focus group participants felt that the government perceived NGOs primarily as trouble makers, all of them underlined the need for partnership and cooperation. In their view there were many areas where NGOs were better qualified to inform people and build the capacities required to request and handle information.

Barriers to accessing environmental information do not exist in isolation and questions of equity and accountability often dominated the discussions. While it was recognised that the resources and capacities available to government were very limited, the participants found that priorities should be set differently. As a result of the politics of patronage coupled with weak civil society and institutional structures, the appropriation and extraction of natural resources has not led to poverty alleviation to the extent possible. The general consensus was that transparency and adequate information systems will empower people, lead to better natural resources governance and increase opportunities for the poor.

The groups had an array of responses to existing barriers and challenges. A recurrent suggestion was the establishment of ‘one stop’ shops for environmental advice and information. All of them saw the need to continuously build civic competences and communicate information in new ways. In their view, donor funding should primarily help to develop the civil society structures required to hold government accountable, promote good practices and utilise rights.

V. Assessment

The main legal provisions related to access to environmental information have been summarised in part III of this report. In the following sections the TAI indicators are applied to assess the adequacy of the existing legal framework and its implementation in practice. This is done on the basis of the focus group interviews (part IV above), further desk top research and additional interviews carried out with representatives of, amongst others, government, donors, investors, NGOs, the media and academia. The full listing of stakeholders consulted is contained in annex 2.

1. Access to government information

The first Ugandan TAI assessment highlighted the need to complement the existing legal framework by distinct freedom of information legislation and procedural rules to access information.⁸⁰ Following the introduction of the Access to Information Act in 2005 the resulting legal framework may be described as “*one of the most liberal regimes of access to information within the Eastern Africa sub-region*”.⁸¹ However its significance is diminished by a lack of clarity in drafting, the envisaged scope of application, limitations and exceptions, insufficient procedural guarantees and, to date, a lack of utilisation.

Exceptions to the right of access are rather wide and open to interpretation. With regard to confidential information, the law, for example, states that a request may be refused if “*the information was supplied in confidence by a third party*” and “*the disclosure could be expected to prejudice the future supply of similar information*” and “*if it is in the public interest*” to obtain “*similar information or information from the same source*” in the future. Since the supply of information “*in confidence*” is not linked to any legal, professional or ethical commitment to secrecy, the norm potentially provides a wide-ranging and convenient excuse for the refusal of access.⁸²

The information officer has 21 days to decide whether to grant access and notify the requestor accordingly.⁸³ Failure to respond within that time period is deemed a refusal of the request.⁸⁴ But the Act does not apply to private bodies which carry out public functions and, although any fee may effectively prohibit most Ugandans from seeking access, it does not make

80 Godber Tumushabe, Arthur Bainomugisha, et. al., Consolidating Environmental Democracy in Uganda through Access to Justice, Information and Participation, ACODE Policy Research Series No 5, Kampala, 2002

81 From the draft second TAI assessment

82 Section 28 of the Access to Information Act

83 Section 16 Access to Information Act

84 Section 18 Access to Information Act

special provision for the waiving of fees if requestors are unable to pay.⁸⁵ Other shortcomings of the Act have been outlined by the Commonwealth Human Rights Initiative and Article 19.⁸⁶

The Act only states that a person's right to access shall not be affected by "*any reason the person gives*" but does not explicitly require that a reason for the request is given.⁸⁷ Although other legal instruments (i.e. section 86 of the National Environment Act, section 91 of the Forestry and Tree Planting Act and section 59 the Petroleum Act) also contain provisions on access to information the new law does not clarify its relationship with other (existing and future) rules and regulations.

The general perception of legal practitioners and government officials in this regard was that where subject specific rights existed, they would take priority but be supplemented through the provisions of the new Act. One may even argue that the new law has effectively reduced existing access rights by introducing new exemptions beyond those prescribed under the constitution (security and sovereignty of the state, privacy) and the environment and forestry laws (proprietary information). In practice these may prove to be rather academic problems.

More importantly language and content of the Act suggest a limited understanding of the measures necessary to facilitate and promote access to information. Although the structure and wording of the Act is not fundamentally different from corresponding pieces of legislation in industrialised countries it merely focuses on "*allowing access to official records*" rather than delivering a service to citizens. The United Kingdom Freedom of Information Act 2000 in comparison requires authorities to "*communicate*" information to requestors and provide a "*digest or summary of the information*".⁸⁸

85 Section 5 Access to Information Act

86 Commonwealth Human Rights Initiative, An analysis of the Uganda draft Access to Information Bill (Bill No 7 of 2004), May 2004; Article 19 Global Campaign for Free Expression, Memorandum on the Ugandan Access to Information Bill 2004 (Bill No. 7), London, May 2004

87 Section 6 Access to Information Act

88 UK Freedom of Information Act 2000 section 1 paragraph 1 (b) and section 11 paragraph 1 (c)

UK Freedom of Information Act

The UK Freedom of Information Act came into full force in 2005. In 2006, 43 central government bodies including all departments of state received a total of 33,688 information requests under the Act and the Environmental Information Regulations. This represents a 12% reduction on the 38,108 requests received in the previous year.⁸⁹

In comparison to the actual use of access to information legislation in the UK there is no relevant experience with information requests in Uganda. Ugandan academics, government officials and even journalists and proponents of the Act in NGOs alike therefore described it as “*a non starter*”, “*outside demand*” or “*a law for the sake of having it*”. For the large scale investors interviewed for the purpose of this study it had no relevance.

It seems to be fairly safe to say that people in general are not aware of their statutory right of access to information. Most of the members of NGOs and journalists interviewed as part of this study knew, in general terms, about the existence of such a right but many had not yet heard about the 2005 Act itself. Nearly all of them felt that access to useful information depended on personal relationship and “*trust*”. Otherwise they had all encountered a significant lack of responsiveness and their few formal requests for information had been subjected to bureaucratic hurdles, delays and excuses.

This experience was – at least partially – confirmed by different government officials. Questions raised by local communities related to the extension of farm land or the free issuing of seeds (forestry sector), compensation payments or environmental hazards (petroleum) would be answered informally to the extent the information was available. “*Only in case of a hot issue people write letters.*” In those cases they had to be careful not to infringe obligations under the Official Secrets Act and take into account “*higher authorities*”. In recognition of the frustrations citizens may experience in obtaining meaningful information, one official felt that “*people mostly think it is a waste of time to ask for information*”.

The most problematic feature of the Act in practice may be that all

⁸⁹ Ministry of Justice, Freedom of Information Act 2000, Second Annual Report on the operation of the FOI Act in Central Government 2006

information requests have to be channelled through the “*information officer*” who is defined as “*the Chief of Executive of the public body*”. While an earlier draft version of the Act envisaged that every public body would appoint an information officer and sufficient deputy information officers to secure the capacity of handling all access requests, the law now bundles all powers in the hands of the head of the institution. In practice, the Ministry of Public Service has issued a circular directing that principal information scientists in government ministries and departments be constituted as information officers. Their deputies (senior information scientists) have automatically emerged as deputy information officers.

Sections 44 and 45 of the Access to Information Act 2005 affords some protection to any official who releases information in good faith believing “*that the information was substantially true and disclosed evidence of wrongdoing or a serious threat to health, safety or the environment*”. But overall the existing legislation is badly equipped to break up the culture of secrecy described by almost all interviewees as one of the main barriers for access to information and better responsiveness. Rather than a general call on civil servants to be more transparent, the Act essentially represents a handling procedure for formal requests.

2. Generating and disseminating information

The law requires the government to generate and disseminate environmental information in connection with individual projects, broader natural resources management, its own functions and as part of general education. Nevertheless people are frequently unaware of basic environmental information and in the Teso region, for example, build in wetlands where floods are likely to cause major destructions. In general there is little knowledge about government services, opportunities to access information and too often “*people do not know what they do not know.*”

The most comprehensive compilation of environmental data is contained in the State of the Environment Report which, according to the law, has to be published on a biannual basis. The most recent report for 2006/2007, funded by the World Bank and compiled by a group of consultants, was released during the Commonwealth Heads of Government Meeting (CHOGM) in Kampala in November 2007.

In the foreword to the report the Minister of Water and Environment expresses his hope that the report will “*inform the people of Uganda about the state of our natural resources but also that the information contained in*

this report will be put to good use by every citizen". Realistically the main audience of the fairly technical document (356 pages) probably does not go far beyond academics, journalists, government officials and the donor community. It provides a wide range of environmental information, e.g. on flooding, deforestation or wildlife protection, crucial to decision making processes on sustainable development. However, at the time of writing (May 2008) the report had not been uploaded to the website of NEMA.

This observation underlines the general lack of resources, infrastructure and institutional capacity as one of the main barriers for disseminating information to a wide range of stakeholders. Public bodies often do not have the basic technical equipment and communication systems such as internet connections or websites. Government websites are not updated for months and only few public libraries (with even fewer up to date materials) exist. Some laws and regulations are available through the websites of different ministries. But apart from a commercial website, there is no source of comprehensive legal information such as the Kenya Law Reports Online which provides access to legislation and jurisprudence in Kenya free of charge.⁹⁰

Impact assessments are the main tool for communicating environmental information related to a particular project between stakeholders. The law provides for the dissemination of information during the scoping phase and as part of the consultations on the environmental impact statement. It also requires the main documents to be publicly available and determines timelines for input and decision making. However, it is generally recognised as good practice that when a decision has been taken the competent authorities should again inform the public concerned of its content. This includes in particular mitigation measures, their reasons and consideration.⁹¹ Such a requirement appears to be partially missing in the Ugandan legislation.

While, according to NEMA officials, *"developments are still going ahead"* without required EIAs insufficient consultations with communities have also led to the rejection of projects. The debates associated with, for example, the Bujagali dam, the introduction of DDT or palm oil plantations indicate that local communities and the general public are getting increasingly involved in matters that were previously perceived as the preserve of the authorities and developers. Environmental concerns of communities have led to planning authorities taking action against quarries, new landfills for

90 www.ugandaonlinelawlibrary.com subscription fees starting at USD 300 per year and prepaid access cards at USD 25; www.kenyalaw.org set up and maintained through donor funding (e.g. DFID, GTZ)

91 For example EU Directive 85/337 on Assessment of the effect of certain public and private projects on the environment

waste disposal, churches or disco halls.⁹² But at the same time government officials interviewed for this study also conceded that investors and other authorities were still capable of exercising substantial pressures to have their proposals approved and to expedite the process.

Consultations with communities are organised through the local leadership and in general people input if and to the extent that they feel concerned. Representatives of the two oil companies interviewed for this study described their intention of going beyond the EIA requirements by “*strategically engaging with communities*”. They employ professionals who, sometimes introduced by officials from the ministry, interact “*on the ground*” with local institutions, organisations and communities - for example: explaining compensation arrangements to farmers whose land is affected by oil exploration activities.

In general the law recognises that written information in the English language only reaches a small audience. Television, newspapers and the internet are limited to urban areas while radios, mostly owned by men, are the main channel of communication in rural areas. There are around two million cell phones subscribers and the number of internet connections increases steadily. However, considering that only five per cent of the population has access to grid electricity internet use must still be very limited.⁹³

All interviewees therefore agreed that in order to disseminate information more widely the use of different languages and a variety of techniques was necessary. There are good practices, particularly in the forestry sector, of providing complex information in accessible formats. NEMA and the National Forestry Authority have used posters, radio shows and public gatherings to inform people about environmental rights, hazards and management issues. In general these efforts have been rather ad hoc, subject to major financial constraints and often donor driven.

3. Government capacity

The law essentially assumes sufficient capacities and resources within public authorities to provide access, disseminate and collect information. It requires public authorities to maintain a basic infrastructure but does not provide for internal training. Following the adoption of the 2005 Access to Information Act, the Ministry tasked with its implementation complained

92 Justin Ecaat, A Review of the Application of EIA in Uganda, Report prepared for the UN Economic Commission for Africa, NEMA, October 2004

93 State of the Environment Report for Uganda 2006/2007

about a lack of resources. Although not explicitly envisaged under the provisions of the Act, it appears that most ministries have appointed officials below the Chief Executive level to deal with information and public relations issues. But there has not yet been a concerted effort across government authorities at the national, regional or local level to build the capacity of staff on access to information or publicise and promote citizens' access rights under existing legislation.

One information officer felt that civil servants should be consulted in connection with the development of new laws but once they had been adopted they should "*simply follow the law*". In his view there was a limited need for additional training. All other interviewees felt that further substantive capacity building efforts were required. The environment and natural resources investment plan drawn up by the Ministry for Environment and Water (launched in December 2007) underlines the need to build the "*human and institutional capacity*" at all levels to improve the management of environmental information.

There are individual capacity building initiatives. For example, the NEMA and others create awareness for environmental laws, including access rights, through workshops for government officials, policymakers and members of the judiciary. With funding from the Commonwealth Secretariat a small public information resource centre is hosted by the Ministry for Land, Housing and Urban Development. But dispersed efforts are insufficient to address what has been described by one of the academics interviewed as the general "*inability to process data*". In his view even where there was sufficient data, people would at best organise it but not engage with it in a meaningful way.

The environmental impact assessment process depends heavily on the expertise of private consultants. Following the discovery of oil in Uganda, the oil companies observed a substantive lack of expertise amongst local practitioners which is gradually being filled with the help of international experts. Gaps in institutional and administrative arrangements are increasingly addressed mainly with the support of the Norwegian Agency for Development Cooperation (Oil for Development initiative). This has, however, not led to Uganda's joining the Extractive Industries Transparency Initiative (EITI) which supports improved governance through the verification and full publication of company payments and government revenues from oil, gas and mining.⁹⁴

94 For further information on EITI see citransparency.org The National Oil and Gas Policy for Uganda under objective 6 (*To ensure collection of the right revenues and use them to create lasting value for the entire nation*) lists as action point (iii) *Participate in the processes of the Extractive Industries and Transparency Initiative (EITI)*

The Oil and Gas Policy released in February 2008 recognises the insufficiency of the legal and institutional framework as well as the existing capacities and infrastructure to exploit and utilise Uganda's oil and gas reserves. The lack of funds also constitutes a major barrier to all compliance monitoring and enforcement. Even where information has been communicated effectively and resulted in tangible outputs such as mitigation measures, NEMA and other government agencies do not often have the resources and capacity for the required follow-up work.

Oil company representatives consulted as part of this study also criticised that local politicians often had created unreasonable expectations with regard to the possible benefits of oil exploitation in the Albertine Graben. This was mirrored by the concerns of government officials who felt that they did not have the status and resources to compete with political statements and that as a result, for the general public, it was very difficult *“to distinguish between information and propaganda”*. Equally when someone with power exercises undue influence (*“when a big man calls”*) officials could only *“work around it”*.

4. Public capacity

The general perception amongst NGOs, journalists, government officials, academics and donor representatives was that people lacked the basic competencies and knowledge to get meaningfully involved in decision making processes that affect their lives. It was observed that during EIA hearings people could often not follow the proceedings and did not have the knowledge to challenge the developer's assumptions. In particular the long term implications of a project were rarely understood.

Various interviewees stated that there was *“no demand side for environmental information”*. In their view this applied equally to a technical, scientific or legal context and was usually described as resulting from a *“lack of development”* and the civic competencies required for questioning the status quo and voicing an opinion. On the other hand, there was a realisation that *“communities can be innovative”*. But at the same time the experience of officials, for example in the forestry sector, was that community participation was inconsistent and rather ad hoc depending on immediate local needs. Since other issues are often more important, environmental information was *“low on people's radar”*. Allegedly this could only be changed by pursuing a *“top down approach”*.

This lack of skills is partially recognised by the law. Citizens need to be

assisted in gaining access to information and in the field of environment public information and education campaigns should be carried out. For this purpose NEMA, for example, has produced a summary of environmental laws in plain English and translated it into five local languages.⁹⁵ The guide contains an overview of the existing legislation and environmental offences. It does not provide further advice on rights and avenues to obtain environmental information.

It appears that in empowering communities NGOs have played a particularly important and innovative role. By all accounts, they often possess a unique set of skills and enjoy a higher degree of trust than government officials. They therefore regularly work in collaboration with government but at the same time feel perceived as “*troublemakers*”. While interactions, as part of a working relationship, were usually described as good and mutually beneficial the principle institutional relationship between civil society organisations and the state is certainly more complicated. Thus the official NGO registration process has been repeatedly used to discipline Ugandan NGOs.

Forest Governance Learning Group

The Forest Governance Learning Group (FGLG), founded in 2003, is an informal alliance of civil society organisations that aim to improve the governance of forest resources in several African and Asian countries. IIED steers the initiative and the European Commission is the main funder. Through studies, events, the exchange of experiences and the development of tactics and tools, it empowers people traditionally marginalised from forest governance. The Uganda FGLG which is led by ACODE was also one of the drivers behind the campaign against planned forest clearances. Its carefully targeted strategies included policy work and advocacy in a number of areas: gauging awareness and opinion in local communities, preparing policy briefs, catalyzing discussion by the inter-departmental Environment and Natural Resources Sector Working Group, pursuing court cases and petitioning the Ugandan parliament.⁹⁶

It is also difficult to underestimate the role of the media in facilitating

access to information in Uganda. Journalists whose reporting becomes “*too critical*” still experience intimidation and threats. But their reporting on issues like Mabira forest or the sale of wetlands has been instrumental in influencing public opinion and changing government practice - at least to some extent.

5. Collection of information

The assessment of the systems for data collection and management of environmental information by interviewees differed depending on the area concerned, needs and expectations. As a result of the current funding priorities, a relatively comprehensive body of data has been collected on, for example, health and HIV/Aids. Other basic sets of data such as population statistics are also available. But the collection of environmental data concerning *inter alia* land degradation, pollution or water is limited.

An oil company representative felt that there were “*massive information gaps and the quality of research very poor*”. There was no sufficient data on, for example, the sensitivity and biodiversity of Lake Albert around which most of the oil exploration activities take place. As a result the company undertook a one year programme to gather additional information. This assessment is partially confirmed by lack of contemporary research publications. The glossy brochure “*Opportunities for mining investment*” published in 2006 by the Ministry for Energy and Mineral Development merely contains references to reports and papers that are several decades old.⁹⁷



One of 2 rooms in the University of Kampala's law library

National Forest Plan 2002

Situation analysis

5.10.5 Situation analysis

Information needs

...There is a lack of information to serve different stakeholders' needs. Some users, including local and central governments, require information for planning, managing resources, monitoring and developing policy. Others, including farmers, small businesses and service providers who are implementing forestry activities in the field, require information on tenure, markets, technologies, funds, policies and regulation amongst others. In many cases rural people are disempowered by lack of information on government policies and programmes.

Information management - reliability and accessibility

There is generally poor management of information across the forest sector. There is very limited information available, it is often unreliable, inaccessible to some users like the poor and often not relevant to their needs. Compared to agriculture and tourism, for example, the forest sector has weak mechanisms for disseminating information to enhance awareness and provide effective information services to those who need them. There are particular problems relating to access to information by women, the youth and school dropouts, who may be over-burdened, and by many poor people who are illiterate.

Other interviewees stated that a lot of useful information was available but *"flying around in different places"*. In general their emphasis was on the need to consolidate existing sets of data, identify *"who has it"* and standardise methodologies. In order to address some of these shortcomings and to manage Uganda's natural resources and environment more effectively, the Environment Information Network (EIN) was established in 2000.

Funded by the World Bank the EIN's main objective was to exchange information in compatible formats between different government institutions which collect agricultural, meteorological, topographical and other data related to forests, soil and biodiversity.⁹⁸ Its activities are

98 See <http://www.nemaug.org/ein.php> or Note by the Executive Director of UNEP, Overview of regional and national environmental information networks, 24th session of the UNEP Governing Council February 2007, UNEP/GC/24/INF/12

coordinated by NEMA. The initial idea to develop a meta-database was soon abandoned and the network merely focused on information exchange, training and updating maps. Its activities have been reduced significantly since its funding expired. The few requests for information it receives are usually referred to the relevant specialist department.

VI. Conclusion and recommendations

In practice the provision and management of environmental data held by the state is subject to financial, technical and political constraints. The legal framework on access to environmental information in Uganda is still under construction and existing governance structures do not sufficiently promote accountability and transparency. The culture of secrecy within government bodies, the remaining distrust of civil society organisations and media as well as the politics of patronage remain substantial challenges for a fair and equitable management of natural resources.

On this backdrop the list of possible recommendations to address shortcomings could be overwhelming. Information technologies can greatly facilitate record management, open governance and data availability at all levels while training programmes raising the awareness for existing rights and obligations would build civil competencies and capacity across society and government institutions. But in view of the array of needs and the general lack of resources prioritisation is difficult.

In the following sections the report therefore outlines potential areas of activities before making a small number of specific, simple and what should be realistic recommendations. Recognising the limitations of this report in terms of potential impact, the recommendations focus on a few measures which could be implemented with limited resources within the existing framework of law, policy and institutions.

1. Access to government information

The legal regime on access to information could be improved through a revision of the 2005 Access to Information Act clarifying provision, extending its scope of application and regularly publicising information that has been disclosed pursuant to a request.⁹⁹ Alternatively or in addition the right to access information under the National Environment Act or the Forest and Tree Planting Act might be further strengthened and elaborated through subsidiary legislation that goes beyond the general law. In the United Kingdom, for example, there is a distinct set of rules to access environmental information – the Environmental Information Regulations (which do not differ substantially from the general freedom of information law).

Equally the existing legal gaps in the oil and petroleum legislation should

⁹⁹ See above FN 87 with reference to the various recommendations contained in the analysis of the Uganda draft bill(s) by the Commonwealth Human Rights Initiative and Article 19

be closed. New provisions will provide an opportunity to not only put in place equitable arrangements for the sharing of benefits but also to involve stakeholders meaningfully. In this respect the new oil and gas policy may not go far enough. It remains particularly vague on the anticipated involvement of local communities and civil society as to future benefit sharing structures and related decision making processes. In large parts the criticism and proposals formulated by ACODE in relations to the draft of the policy remain valid.¹⁰⁰

In absence of a stronger general law, new legal provisions should require civil servants in general to act openly and be responsive. Exceptions to disclosure of information should be narrow and carefully drafted. In addition, the increased utilisation of the existing law and subsequent applications for judicial review could help to clarify provisions and gradually strengthen their value.

However, a focus on law reform may neglect the fundamental challenges encountered by the Ugandan society at large. If there is a lack of knowledge, capacity and structures to demand and enforce rights, any freedom of information legislation is in danger of being perceived as just another alien Western concept promoted by donors and inadequate for developing countries.¹⁰¹ No matter how good the legal framework eventually may be, it is only one step in promoting open governance. The experience in Uganda and elsewhere indicates that passing a law without addressing larger questions of secrecy achieves very little.¹⁰²

In practice openness depends on daily decisions by civil servants and their commitment to apply the law in the manner intended. A wide range of measures can be suggested to address the culture of secrecy: this includes training that addresses not only formal questions of implementation, but also the rationale behind the legislation as well as the benefits it will bring to society and civil servants themselves (who in the future may be able to rely on two way communication). On the other hand public education campaigns should be undertaken to ensure that the public are aware of their right to access information. Schools and universities also provide good fora to promote civic understanding about the right to access information.

100 Arthur Bainomugisha, Hope Kivengere and Benson Tusasirwe, *Escaping the oil curse and making poverty history*, ACODE Policy Research Series, No 20, 2006 available at www.acode-u.org/pubs.htm

101 George W Kanyeihamba, *Commentaries on Law, Politics and Governance, Oh Uganda! Series Book 1*, Kampala, 2006

102 Toby Mendel, *Parliament and Access to Information: Working for Transparent Governance, Conclusions of a Commonwealth Parliamentary Association – World Bank Institute Study Group on Access to Information*, held in partnership with the Parliament of Ghana, 5-9 July 2004, World Bank Institute, Washington, 2005 with examples from Commonwealth Countries

In order to strengthen the existing legal framework on access to environmental information and make it more relevant in practise, it appears necessary to extend the reach of the existing provisions. The current situation could be characterised by uncertainty and a degree of confusion about their implementation. But this also provides an opportunity for government as a whole (possibly through a Presidential decree) or individual ministries to initiate subsidiary legislation under, for example, the National Environment Act¹⁰³, the National Forestry and Tree Planting Act¹⁰⁴ or the Access to Information Act¹⁰⁵.

Such regulations could help to challenge the culture of secrecy by encouraging a narrow interpretation of the exceptions to information disclosure, clarifying provisions and emphasising the obligations of civil servants vis-à-vis citizens. They should stress the protection of civil servants that disclose information and the requirement to take decisions in the public interest. In this connection Ugandan NGOs have called for the promulgation of “*whistle blower*” legislation. However, building on the willingness of many “*technical officers*” to collaborate, strongly worded internal rules which can be invoked as a “*protective shield*” against undue influences may already make a significant impact. It is therefore recommended **to focus on the development of subsidiary legislation that enshrines openness as a core value and strengthens the independence of civil servants.**

2. Generating and disseminating information

Addressing the culture of secrecy successfully will also build trust amongst better informed citizens to participate in decision-making processes. Thus the public will better understand their role, which in turn could reduce friction, misunderstandings and unwarranted criticism. As a result, officials will have better and more comprehensive information upon which to base their work. Increasing the information subject to routine disclosure does further undermine a culture of secrecy.

Public bodies should therefore publish information beyond current legal requirements on the internet. This includes information related to their functions, the type and form of records held, relevant laws and policy documents, audited accounts, services to the public, achievements and so on. In a country like Uganda where even senior civil servants often find it difficult to obtain official documents and hold on to their hard copies with

103 Section 108 National Environment Act

104 Section 92 National Forestry and Tree Planting Act

105 Section 47 Access to Information Act

a vengeance, it would be unrealistic to expect the general availability of reports, studies, EIAs, gazettes or laws in print. But as a result of advances in information technology it should be possible to maintain basic websites for all public institutions, which provide meaningful information in electronic format and are regularly updated.

Although NGOs, local officials, lawyers and others working with communities increasingly rely on the internet to fulfil important gatekeeper functions, at present the internet only reaches a very limited audience. Hence, the dissemination of information by other means such as radio broadcasting or theatre performances, at local gatherings and in different languages seems even more important. There is still a need to write popular versions of national forestry plans and translate them into local languages. But there are examples of good practice, particularly in the forestry sector, that should be replicated in other areas. One example of a technique not mentioned by those consulted for this study that could also enhance information penetration is the use of (solar) mobile cinema units.

In particular, NGOs expressed the view that because information could only be found in different outlets and locations there was a need for one stop environmental information centres. A similar need analysis has led Tullow Oil to contemplate whether they should set up information centres in their operation areas.

Enhancement of the communication and processing of environmental information could be achieved through the gradual development of the environmental impact assessments procedures. This should include the introduction of further sector specific EIA guidelines and uniform assessment methodologies. Such methodologies clearly indicate high and low impacts of a project and prioritise the significance of environmental aspects. This makes it easier for project participants to measure the overall environmental performance of a proposal. The EIA regulations should be supplemented by the requirement to inform the public adequately about the approval of a project and how its impacts will be addressed. New legislation should contain corresponding provisions, and be supported by additional guidelines and tool kits for the dissemination of information to civil society and specific communities.

However, since most of the oil exploration sites are located in protected areas with limited access for local communities, the use of EIAs as a consultation tool might be of limited use. At least for the foreseeable future associated activities will mainly take place in a geographically defined area

(Albertine Graben) although with potential impact on the whole country and its economy. There is therefore a need for a wider ranging assessment that allows for strategic decisions on the vulnerability of social and environmental systems, the required infrastructure and the related trade-offs. Some of the issues have been addressed as part of the consultations on the new oil and gas policy. A strategic environmental assessment would however focus in more detail on the practical challenges and provide a basis to set aside certain areas for nature protection and prepare for the influx of work force, the pressure on local resources and transportation. Ugandan NGOs and other civil society organisations would be allowed to play a larger role in representing the interests of citizens.

Strategic Environmental Assessment

Strategic Environmental Assessment (SEA) describes a range of analytical and participatory approaches applied to integrate environmental considerations alongside social and economic aspects at the early stages of decision making. It helps to develop and assess policies, plans and programmes. Unlike the EIA, the SEA is not related to a particular project but the information it generates can be used as part of an EIA at a later stage. In Uganda SEA-type approaches such as participatory tools have been used to inform the development of poverty eradication action plans.¹⁰⁶

The main recommendations therefore coming out of this section are, first, **to improve the use of the internet by government institutions** and, second, **to undertake a strategic impact assessment of the new oil and gas policy to help shape subsequent legislation and policy.**

3. Government capacity

In general, Ugandan government institutions dealing with the environment and natural resources are understaffed and under-funded. Although relatively well equipped in comparison to other departments, NEMA nevertheless lacks the manpower to effectively monitor and enforce compliance. The Directorate of Environment Affairs established in 2007 (within the Ministry of Water and Environment) does not yet have the necessary technical staff and equipment to operate properly. Building the capacity to communicate environmental information may therefore not

106 Barry Dalal-Clayton and Barry Sadler, *Strategic environmental assessment: A sourcebook and reference guide to international experience*, 2005

immediately seem to be a compelling need.

In order to improve the ability of public authorities to provide access to information, training provision could focus on additional technical and scientific skills, the promotion of the Access to Information Act, a culture of openness and service delivery, as well as the ability to engage successfully with a variety of stakeholders. In this connection workshops and visiting external experts will have a role to play. But in order to achieve long term sustainable change it would also be necessary to further develop academic education and general training programmes, and facilitate knowledge exchange and learning between government institutions and from foreign jurisdictions through mentoring or work placement schemes.

There are also areas where reorganisation, institutional reform and performance incentives could help to optimise the use of resources, free up capacity and potentially improve access to information. The mandate of the recently created Directorate of Environment overlaps to some extent with responsibilities assigned to NEMA (e.g. to develop policies and monitor resources for environmental management) under the National Environment Act. A clear allocation of the different roles required for effective and sustainable natural resource management (e.g. provision of authoritative environmental information, policy development or enforcement) may ease existing strains on NEMA and contribute to the better utilisation of limited resources.

Additional drivers will be required to gradually build the capacity within government to transform from a relatively secretive top-down institution to a more open service orientated one. This may entail the inclusion of additional indicators (on, for example, access to and dissemination of information) in reports measuring government performance and the endorsement of aspirational international standards – such as those embodied in the Aarhus Convention which is now open to global participation.¹⁰⁷

107 On the Aarhus Convention see above section II.1; other relevant standards have *inter alia* been drawn up by the Extractive Industry Transparency Initiative, the World Bank (Forests Policy), the African Development Bank (Policy on the Environment), the South African Development Community (Protocol on Forestry) or the United Nations Forum on Forests

Annual Assessment of Minimum Conditions and Performance Measurements for Local Government

With the overall goal to achieve poverty reduction, local governments in Uganda are assessed on an annual basis to verify that they deliver services in accordance with the law, in a timely manner and with value for money. Depending on their performance they can be given a 20% bonus or reduction in their local development grant. The publication of findings in the local media allows people to monitor whether payments to, for example, local schools and their staff were made in accordance with the official allocations.

One of the mechanisms donor countries currently support to encourage institutional changes is the introduction of Client Service Charters which indicate available services, delivery standards and mechanisms for channelling complaints. The charters form part of the Ugandan Public Service Reform Programme (PSRP) that aims to create a more efficient, transparent and accountable public service to facilitate economic growth and poverty eradication.

Client Service Charters

The Ministry of Public Service (MoPS) developed and launched a charter in July 2007. It also supported the development of a client charter in the Ministries of Tourism, Trade and Industry and Health, the local governments of Luwero and Iganga districts and Entebbe Municipality. The Uganda Revenue Authority and Uganda Investment Authority have launched their charters without direct support from the MoPS.

From the MoPS Client Charter 2007/08 – 2009/2010:

4.0 General Standards of Service of the Ministry of Public Service

We shall at all times adhere to and continuously improve the standards of services indicated below:

Answer all telephone calls by the third ring.

Be courteous to all our clients.

Attend to all our clients within 30 minutes from the time of arrival at our respective service points.

Respond to all written correspondences within five working days of receipt.

Provide information on new policies, reports, publications and circulars through the Ministry website.

...

From the Ugandan Revenue Authority Client Service Standards:

1.0 General standards

...

1.10 Moment of Truth¹⁰⁸: We shall attend to the stakeholder with a smile while sitting in a posture that shows our readiness to serve.

1.11 Listening: We shall very attentively listen to stakeholders. In particular, we shall not attend to personal mobile phones or engage in non-official communication with fellow staff while the stakeholder watches/listens.

1.12 Thanking: After every exchange with stakeholder, we shall express gratitude, bid the stakeholder farewell and wish them a nice day. ...

A recent assessment of the Ugandan PSRP found that the notion of client focus is still hampered by challenges from the demand (clients) and supply (public officers) sides. In essence, clients could not hold the responsible public officers accountable and demand the due services because “*they had not been informed of the commitments in the charters as well as their rights and responsibilities during the implementation of the client charters*”.¹⁰⁹ To empower the supply and demand sides, the assessment report recommends that government bodies should disseminate relevant information through a mix of methods.

This again underlines the substantial contribution to open governance that modern information technologies, in particular the internet, can make at low costs. For the reasons outlined above (section VI.2) the capacity to operate and maintain a website with up to date information seems to be an indispensable and affordable starting point. **Building the relevant technical capacity, in terms of skills and equipment, within government institutions to operate and make best use of a website should therefore be promoted as a priority.**

¹⁰⁸ Moment of Truth refers to that time when we are attending to the stakeholder, and the stakeholder is receiving the service he/she requires or deserves.

¹⁰⁹ Per Tidemand, Emmanuel Ssewankambo, Ministry of Public Service Uganda, Advisory services for independent review of the Ugandan PSRP, Final Report, February 2008

4. Public capacity

The need to strengthen the demand side of accountability and build civic competencies was a key theme echoed by almost all interviewees. There is a variety of responses by government, civil society organisations and donors to this need. While previous work of, for example, Oxfam in Uganda focused on supporting institutions in implementing poverty alleviation action plans, it now focuses on empowering people to “*be heard*”.¹¹⁰ Workshops, collaborative forest management, translating and disseminating legal information in different formats represent recommendable efforts to gradually improve the ability of people to claim rights and demand information.

Already the provision of very basic information, e.g. on the possibility of accessing forest reserves or purchasing private land, has in the past stimulated people’s engagement. As a general rule, people will want to get involved if they see economic opportunities or other personal interests concerned. This can be a step to empowerment and the long term impacts of initiatives delivering (wind up or solar powered) radios to remote regions in Africa for free may be significant.

In this connection it is also important that the government does not perceive the media as a partner of convenience only, expected to report success and praise achievements. It should rather encourage independent and balanced journalism to lay the foundation for informed social, economic and environmental choices. There is also a need to allow journalists and scientists to learn from each other in order to present often complex information in accessible formats. In addition NGOs, churches, unions and other civil society stakeholders play a role in disseminating information widely. Collectively they often reach the poorest and most alienated citizens and, as a result, can serve as a (two-way) communicator on their behalf.

There is evidence that financial support directly given to developing country governments (direct budget support) not funding a particular project has been instrumental in improving services in health, education and other priority areas. But it also carries the risk that the funds may be misapplied or used inefficiently. Domestic accountability which depends on functioning democratic structures in government, media and civil society is therefore particularly important.¹¹¹

110 Oxfam, “Right to be heard programme”, www.oxfam.org.uk

111 Tim Burr, Comptroller and Auditor General National Audit Office, Providing budget support to developing countries, Department for International Development, February 2008

Open letter to the donor community¹¹²

Extract from “*Tyranny*” by Beti Kamyá, special envoy in the office of the President of the Forum for Democratic Change:

You might wish to appreciate that Uganda has not degenerated to the Kenyan situation yet because the opposition leadership have exercised and called for maximum restraint, most of them having been in the bush before and hate to see Uganda take that route again, but I assure you that it is a time bomb we are sitting on in Uganda.... We used to run to you every time there was a governance and human rights problem (remember?) because we trusted you and believed you could help us find a solution. Do you see us anymore? We decided that you are part of the problem rather than the solution. We now consider you collaborators of the oppressors rather than partners in promotion of good governance....

Direct budget support primarily creates rights and liabilities between states. A recipient government may therefore be inclined to focus on its responsibility vis-à-vis donors and not the local population. In the case of governance support, this may effectively undermine emerging civil society structures. As a matter of principle civil society’s ability to act as an independent counterweight to the state could also be hampered if it is financed through government institutions.¹¹³ Hence, **financial aid aimed at improving environmental governance and strengthening civil society should only be channelled through credible non partisan Ugandan NGOs and other civil society organisations.**

5. Collection of information

Effective systems of data collection and record management are key to the effective functioning of an access to information regime and good governance in general. The introduction of such systems, where they do not already exist, should be promoted at all levels through training, increase of staff, new technologies and regulatory frameworks. Equally, additional local and regional research and data collation should be encouraged. The same general suggestions outlined with regard to the capacity building of government institutions to disseminate and provide access to information apply. But in view of the limited resources, the barriers identified by interviewees and efforts already made in using existing environmental information a crucial recommendable measure appears to be the **reinvigoration of the Environment Information Network (EIN).**

112 Beti Kamyá, “*Tyranny*”, Open letter to the donor community, Daily Monitor, 7 January 2008 the author is special envoy in the office of the Forum for Democratic Change president

113 Jane-Lise Schneeberger, Die Budgethilfe: Nicht perfekt, aber zumindest existent, Eine Welt, Nr.4, December 2007

Annex 1

The Access Initiative (TAI) Assessment Methodology Toolkit Indicators on Access to Information

7. How clear and inclusive is a framework law supporting broad access to government information?
8. To what extent does the law protect government employees who release information to the public in an effort to expose corruption in government conduct or to protect the public interest?
9. How limited and clearly defined is the scope of confidential information?
10. To what extent does the law support public access to comprehensive information about the environmental area (water, air, forest, etc) concerned in the selected case?
11. To what extent does the law require a government agency to generate or report regular and diverse information of the selected type?
12. To what extent does the law require a government agency to publicly disseminate all generated or reported information of the selected information type?
13. How clear and narrow are the limits on claims of confidentiality of the selected information type?
14. To what extent does the law require the agency responsible for the selected information type to build the capacity of its staff on access to information?
15. To what extent does the law require the agency responsible for the selected information type to build the capacity of its staff with regard to the environment?
16. To what extent does the law require the agency responsible for the selected information type to maintain the infrastructure needed to provide the public access to the information?
17. To what extent does the law require the government to offer the public technical assistance, guidance or training on how to access and use the selected information type?
18. To what extent does the law require the government to build the capacity of sub-national governments to provide access to the selected information type?
19. Does the law establish a reasonable timeframe within which the responsible agency must make information of the selected type available to the public?
20. How good is the system for data collection and integrated management of the selected information type?
21. To what extent does an agency or system generate and/or collect information about the environmental area (water, air, forest, etc.) concerned in the selected case?
22. To what extent is there a monitoring system and/or penalties for non-compliance to ensure the agency meets its obligations to disclose information?
23. How complete, relevant, and accurate were responses to requests for information in the selected case?
24. How complete, relevant, and accurate was the information disseminated to the public in the selected case?
25. To what extent did the public have access to information in the selected case at little or no cost?

26. How comprehensive and planned were efforts to reach a wide range of stakeholders with information in the selected case?
 27. How well did the responsible agency make a planned and systematic effort to disseminate information to a minority or disadvantaged group in the selected case?
 28. To what extent does the government generate/collect the selected information type at regular time intervals and in a timely fashion?
 29. With what level of timeliness does the government disseminate the selected information type?
 30. How prompt was the response to a request for information in the selected case?
- Channels of Access
31. To what extent was all relevant information in the selected case found in many different outlets in different locations?
 32. To what extent does the agency that manages the selected information type have staff explicitly responsible for disseminating information and responding to requests?
 33. To what extent were guidelines or training on access to information offered regularly over the last 3 years to staff in the agency managing the selected information type?
 34. To what extent were guidelines or training on the environment offered regularly over the last 3 years to staff in the agency managing the selected information type?
 35. How adequate is the government budget allocation for facilitating the collection and dissemination of the selected information type?
 36. How regularly did relevant sub-national government officials receive guidelines or training on access to the selected information type over the last 3 years?
 37. How clear and easily accessible are the public guidelines on how to obtain the selected information type?
 38. How regularly have activities to build the capacity of the public in the selected information type been conducted over the last three years?
 39. To what extent did the relevant information in the selected case reach the relevant public in time?
 40. To what extent did individual choices and behaviour change because of information?
 41. To what extent did information lead to deliberate actions to prevent or reduce negative impacts on the environment or human health?
 42. How well did staff/officials execute their information provision and management responsibilities in the selected case?
 43. In the selected case, to what extent did stakeholders have the skills and knowledge to obtain the information they needed?
 44. How well did sub-national government agencies facilitate access to information in the selected case?
 45. To what extent did media involvement facilitate access to information in the selected case?
 46. To what extent did civil society organization involvement facilitate access to information in the selected case?

Annex 2

I am grateful to members of the following organisations and institutions for their input:

Advocates Coalition for Development and Environment (ACODE)
African Institute for Energy Governance
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Greenwatch
Heritage Oil and Gas
Irish Aid
Ministry of Energy and Mineral Development
Petroleum exploration and production department
Ministry of Land and Urban Planning?
Ministry of Water and Environment
National Environment Management Authority (NEMA)
National Forest Authority
Oxfam
Pro-biodiversity Conservationists in Uganda (PROBICOU)
Sustainable Development Centre Makerere University
The Monitor
Tullow Oil
Ugandan Nile Discourse Forum
Ugandan Wildlife Society (UWS)
Voice of Teso

The Foundation for International Environmental Law and Development (FIELD) is a UK based charity committed to the promotion of environmental protection and sustainable development through the rules and institutions of international law. FIELD recognises that the people most susceptible to the impacts of environmental degradation are often the least equipped to shape the necessary solutions. It therefore aims to broaden access to environmental justice through research, capacity building and advocacy at the international, national and local level. FIELD was founded in 1989 and in April 2005 formed an institutional alliance with the International Institute for Environment and Development (IIED).

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