

WORKING PAPER 3



Perspectives for Legislating Against Climate Change in Uganda

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Purpose and scope of the paper

This paper summarises perspectives for climate change legislation. It is one of the products for the celebrating and marking the Environmental Management for Livelihood Improvement Bwaise Facility (EMLI) 10 years of improving livelihoods.

This paper presents perspectives from EMLI members and partners to take note of, while developing legislation on climate change.

The information is drawn from a database of EMLI publications and consultations which were carried out by EMLI, ActionAid Uganda, Environment and Natural Resources CSO Network and Climate Action Network Uganda during the development of the National Climate Change Policy and National preparatory workshops on Climate Change Conferences.

The scope of the paper includes legislation against climate change in Developed and Developing countries taking into account lessons learned from experiences with addressing and respecting the United Nations Framework Convention on Climate Change and its Kyoto Protocol and Paris Agreement. Experiences from Australia, Canada, United Kingdom, United States, Kenya, Pakistan, Rwanda and South Africa on good practices in legislating against climate change.

The purpose of the paper is to contribute to the process of developing the Climate Change Bill for Uganda by: providing general context of the global framework giving effect to domestic legal and regulatory framework for climate action; identifying gaps in policy and practice necessary for legislation; comparing experiences elsewhere on climate change legislation with a view of highlighting good practices; and suggesting recommendations of potential provisions for consideration in the Climate Change Bill.

This paper is not a proposal for the Climate Change Bill but intends to facilitate discussion on legislating against climate change in Uganda.

Key messages

- ⊕ Uganda lacks explicit law governing greenhouse gas emissions reduction
- ⊕ National climate change legislation serves as the basis for building international support and may spur resource allocation (through a carbon tax), foster public participation and raise ambition for national climate action
- ⊕ High potential for climate displaced persons due to projected increase in incidence and severity of natural disasters thus increasing magnitude of loss and damage
- ⊕ Need for insurance against loss and damage so as to protect and guarantee assistance to climate displaced persons
- ⊕ Silence of environmental impact assessment (EIA) regulations on climate change
- ⊕ There exist gaps in policy and practice of implementing climate action: gender gap, carbon trading gap and ambiguity in emissions reporting
- ⊕ The National Environment Bill (2017) and the Climate Change Bill should reinforce each other and work in tandem
- ⊕ The Climate Change Bill should take a duty-based approach.

1. Introduction

International climate response is insufficient to reduce greenhouse gas emissions by the amounts needed to avoid dangerous levels of global warming (UNEP, 2016). Problems of climate change, by virtue of their polycentric nature, present the most difficult of regulatory challenges (Stallworthy, 2009). To be more practical, there exists no institution with requisite legal jurisdiction and authority aligned with the borderless nature of climate change. Therefore domestic legislation is an enabler for catalyzing ambitious international commitments (Townshend and Matthews, 2013).

Despite slow progress at the United Nations Framework Convention on Climate Change (UNFCCC) negotiations, there is nascent legal basis on which countries are fostering climate action. The Sabin Center for Change Law and the Grantham Research Institute on Climate Change and the Environment have observed significant increase in the number of climate laws and policies of more than 1,200 climate change or climate change-relevant laws worldwide. Over the years, the number of climate change-related laws has outweighed flagship legislation on climate change. However, the number of laws relating to climate change is not a perfect indicator of the breadth and depth of a country's legislative response. This view has been largely espoused by studies such as Townshend et al. (2011), among others.

Theoretically, climate change legislation is not defined due to ambiguities in terminologies of climate change and legislation. Nachmany et al. (2015) provide a working definition with flexibility on a country-by-country basis. This definition encompasses legislation, or regulations, policies and decrees specifically to climate change or that relate to reducing energy demand, promoting low carbon energy supply, or adaptation to climate impacts, among others. Additionally, climate change legislation may be distinguished between formal laws i.e. legislative acts (passed by a parliament or equivalent legislative authority) and executive instruments (by presidential decrees, executive orders, government policies or plans), passed or decreed by the government, president or equivalent executive authority.

Nachmany et al. (2017) observe that in cases where both legislative and executive instruments exist, prominence has been given to legislative over executive instruments. This assertion is true in the case of Uganda where the Executive (Cabinet) adopted an instrument (National Climate Change Policy) in 2015. Now Parliament is yet to enact legislation to give effect to (implement) the Policy.

1.1 Global context for climate change legislation

Climate change is recognized as a complex, multidimensional problem that demands comprehensive global solution. According to Boyd (2010), a growing number of scholars have approached climate change legislation in the context of traditional understanding of environmental law. Parties to the UNFCCC recognized that States should enact effective environmental legislation with environmental standards and management objectives reflecting environmental and developmental context (UNFCCC, 1992). Yet the Paris Agreement under the UNFCCC makes a big omission by not providing for legislation against climate change. However, scholars of climate change legislation have provided reasons for developing climate related laws. Burger and Gundlach (2017) and Nachmany et al. (2017) point out the growing urgency of the climate crisis, ratification and entry into

force of the Paris Agreement under the UNFCCC and the inclusion of climate action as one of the 17 Sustainable Development Goals, as some of the drivers for growing number and importance of specific legislation.

1.2 National context for climate change legislation

Uganda draws her climate obligation on various sources of legal authority, inter alia, international law and the 1995 Constitution (amended). Internationally, Uganda has communicated her Nationally Determined Contributions (NDCs) through her ratification of the Paris Agreement in accordance with Article 4.2. Furthermore, Uganda is a signatory to both the UNFCCC and the sister treaty, the Kyoto Protocol. Thence has an obligation to meet Article 4 of the UNFCCC and Article 12 of the Kyoto Protocol.

The Constitution of Uganda, the principal legislation from which all laws, regulations and institutional policies derive validity, under Article 245, which mandates Parliament to provide for measures intended to protect and preserve the environment from abuse, pollution and degradation; to manage the environment for sustainable development. It should be noted that the Constitution of Uganda has no explicit provision for climate change.

However, sector policies such as the National Climate Change Policy (2015) provides for formulation of stand-alone law in addition to, a series of sectoral legislative and regulatory reforms. Additionally, EMLI (2015) highlighted potential legal reforms in more than 11 Laws across the Energy, Water, Agriculture, Infrastructure, Forestry and Aviation sectors. Therefore, the strength of any climate change legislation will lie in the detail, of which, most is yet to unfold.

1.2.1 Impact of Climate Change in Uganda

During the development of the National Climate Change Policy (2015), the country did not have a true reflection of quantified impacts associated with changing climate. According to MWE (2015), climate change damage in the agriculture, water, infrastructure and energy sectors is estimated between USD 273 - 437 billion, over a 40 year period, if no action is done.

Table 1: An overview of climate vulnerabilities in Uganda

- | |
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| <ul style="list-style-type: none">• Increased frequency, intensity and severity of climate-induced disasters• Poorest rural communities and women, children and the elderly most at risk• Most affected food crops include; plantain/matooke, beans, rice, sorghum, sweet potatoes, and cassava, and overall losses for food crops by 2050 to approx. USD 1.5 billion• Reduction in availability of soil moisture for plant growth and crop productivity and soil carbon sequestration and water retention potential affected• Water demand will increase to 1,651MCM/y by 2050 and largest economic losses are expected to be in L. Victoria, Albert, and Kyoga watersheds• By 2050, climate change will increase the energy deficit by around 26 percent due to reduction in precipitation that will almost certainly reduce biomass availability and affect alternative sources of energy such as hydro power• Relative Malaria Incidence (RMI) is expected to gradually rise from the 2020s with western region experiencing highest RMI |
|--|

Source: *Technical Note on Advancing the National Adaptation Plan Process (2016)*

2. Scenario setting for Climate Change legislation

Applying Brewster (2009) approach for analyzing the effect of legislation in a system, a dynamic scenario analysis on direct effects of national legislation points out that greenhouse gas emission reduction might not be feasible as expected (negative static effect on greenhouse gas emissions). However, an effect on national policies, can be beneficial in form of development of policy preferences. For example, the Green growth Development Strategy 2017/18-2030/31 seeks to inter alia, ensure that social economic transition is achieved through a low carbon development pathway that safeguards the integrity of the environment and natural resources. Consequently, the strategy projects to reduce greenhouse gas emissions by 28 percent relative to the conventional growth pathway. Such a policy shift might be given effect by enacted of the climate change legislation.

Noting that national policy measures serve as a ceiling for what Governments accept in international bargaining, national legislation serves as the basis for building international support. Consequently, national legislation is an indicator of domestic preferences and a reflection of how far a country is willing to compromise at any one point in time. A case in point is the affirmation that Uganda's priority is to reduce the vulnerability of its population, environment and economy by implementing adaptation actions. Further analysis should be done for longer-term to ascertain direct effects of the legislation, including how the climate policy alters incentives for private sector at national level.

It is documented that national climate change legislation may; spur resource allocation (through a carbon tax), foster public participation and raise ambition for climate action.

3. Gaps in Climate Change Policy and Practice

A number of gaps covering a wide spectrum of issues do exist across institutions and actors at various levels of governance. From a variety of knowledge platforms on climate change working in silos, wide gap between science and policy interface on climate change, lapses in policies and laws fostering adaptation and mitigation and so on.

3.1. Gaps at International level

3.1.2 Climate Displaced Persons

There is growing concern and discussion to extend refugee definitions to cover environmentally displaced persons. Citizens all over the world are displaced as a result of climate change. Uganda is not exceptional because is mostly impacted on by hydrological and meteorological disasters. Natural hazards and disasters continue to displace thousands of residents, claim lives, devastate homesteads and destroy livelihoods. Kitutu (2013) estimates a total of 1102 people to have died and 3,365,380 affected by natural disasters in Uganda since the 1920's. The author acknowledges droughts affecting more people followed by floods among the natural disasters. It is documented that parts of Bududa, Sironko and Bulambuli Districts in the Mount Elgon area, Karamoja region and Teso are most vulnerable to disasters (GOU, 2010; Kitutu, 2013 and MWE, 2015) thus candidates for significant number of 'climate displaced persons'. Acknowledging that climate change has implications for the full enjoyment of human rights (Human Rights Council, 2008), no international law recognizes its violent impact of displacement of people.

At national level, communities that are affected by extreme climate events remain without any government support while the local government support often remains symbolic (Friis-Hansen, Bashaasha and Aben, 2013). Therefore, the Bill should oblige Government to protect and guarantee assistance for climate displaced persons.

3.1.3 Loss and Damage

Article 8.1 of the Paris Agreement under the UNFCCC recognize the importance of averting, minimizing and addressing loss and damage associated with the adverse effects of climate change, including extreme weather events and slow onset events (UNFCCC, 2015). However, the Paris Agreement does not involve or provide a basis for any liability or compensation. Yet addressing loss and damage suffered by poor people should be priority (ActionAid, 2010). It is very difficult to ascertain the actual social, environmental and economic cost after an adverse climate event. Currently, Uganda has only estimated costs of adaptation in her economic assessment of impacts yet there is high certainty of substantial loss and damage. Although there exists the Contingencies Fund (GOU, 2015b), annually replenished with an amount equivalent to 3.5 percent of the appropriated annual budget of Government of the previous financial year used to respond to natural disasters, the 15 percent allocation for financing responses to disasters makes it less relevant for the magnitude of loss and damage witnessed once disasters strike.

Two approaches; insurance and compensation funds are known for dealing with victims of catastrophes. Noting that compensation clearly identifies the cause of harm with limited liability, it is not sufficient to cover a large number of victims. Perhaps a mix of government compensation with private insurance serves a good model for a country with insufficient data like Uganda. A case in point is the US National Food Insurance Program where insurance is conditional on the participation of communities in floodplain management measures to reduce future flood damage. Insurance is sold through private insurance companies and agents, and is backed by federal government. The National Climate Change Policy (2015) provides for development of innovative insurance schemes (low-premium micro-insurance policies) and low interest credit facilities as one of the agriculture sector priority actions.

Therefore, the Bill should oblige Government to provide for insurance against loss and damage with a back-up of an allocation from the contingencies fund.

3.2 Gaps at national level

3.2. Legal gaps

3.2.1 Absence of domestic legislation on emissions reduction

It should be noted that Uganda lacks explicit law governing greenhouse gas emissions reduction. Absence of such domestic legislation limits the effectiveness of international treaties and agreements such as the Kyoto Protocol and the Paris Agreement under the UNFCCC. Where existing legislation prevails such as National Environment Bill (2017), only provides a framework approach. For example, the National Environment (Management of ozone Depleting Substances and Products) Regulations 2001, limits itself to regulating production, trade and utilization without specific measures for compliance and enforcement, though it provides for a pollution tax on importers of controlled substances. Noting that climate change response is a complex, multi-level challenge for

regulation and governance, a mix of diverse regulatory and non-regulatory measures should be developed through nested multilevel structures.

3.2.2 Poor enforcement and low compliance levels

Building from the analysis of implementation of environmental laws, (Mwinzi, 2017) attributes to lack of political will, as one of the problems challenging the implementation of laws. GreenWatch (2006) points out poor enforcement and low levels of compliance as some of the impediments for environmental law implementation in Uganda. There is no specialized juridical system for handling climate change related issues. This limits opportunities for public interest litigation against the government, in case government faults on some of its obligations related to climate change response. Efforts to establish an environment tribunal/court under the National Environment Bill (2017) may create a window of hope.

3.2.3 Silence of environmental impact assessment (EIA) regulations on climate change

Schedules 5-7 of the National Environment Bill (2017) do not provide for control of emissions from the land-use sectors. Consequently, the National Environment Bill (2017) does not include a trigger for environmental assessment specifically tied to greenhouse gas emissions or climate change. Yet environmental impact assessment (EIA) conducted for projects that significantly impact the environment, should involve a consideration of climate change issues.

In South Africa, the High Court rejected the approval for development of a coal-fired power plant on the grounds that climate change and its impacts are relevant considerations for the EIA of such a project (Burger and Gundlach, 2017). This provides an example of a country where EIAs must consider climate change.

3.3 Policy Gaps

3.3.1 Failure to recognize Climate Change as a sector policy issue

Recognizing climate change as a policy issue could be a potential trigger for required climate action at sectoral level. Apart from the National Environment Management Policy identifying climate change as a policy issue/objective, key sector policies; the Energy policy for Uganda (2002) and the National Forestry policy (2001) do not identify climate change as a policy issue (Bomuhangi et al, 2016). Failure of key sectors of the economy identifying climate change as a policy issue limits sector response to project short term response as opposed to integrated long-term sectoral approach to climate change. In addition, sectors that endeavor to implement climate actions have been challenged by limited funds and low levels of capacity. Other sectors perceive climate change response as an issue for ministry of water and environment.

3.3.2 Limited policy awareness

Ampaire et al. (2017) analyzed constraints to policy implementation using Rakai district as the study area and observed inter alia, very limited awareness of existence of the National Climate Change Policy among sub-County leaders (Bomuhangi et al, 2016), non-functional environmental committees and production committees and unstructured and weak linkages between Ministries, Departments and Agencies (MDAs) and other actors. Furthermore, the authors highlighted the failure of the National Climate Change Policy to explicitly describe institutional cooperation, integrated planning and delivery of their assigned mandates.

3.4 Gaps in the Practice of implementing climate action

3.4.1 Gender gap

According to Bomuhangi et al. (2016) gender is seldom mainstreamed in most of the natural resources policies and action plans in Uganda yet it is considered an issue relevant to climate change adaptation. Ignoring the impacts of gender inequalities and women's recurrent socio-economic disadvantages continue to be a critical challenge to adaptation efforts. It is documented that the most vulnerable population to climate extremes in Uganda are particularly the poorest rural communities more so the women and children, and other disadvantaged groups such as elderly, due to their low adaptive capacities and lack of resources to ably cope with various climatic events (EMLI, 2016a). It is therefore crucial that the Bill makes provisions for mandatory integrated gender analysis and gender-sensitive tools such as assessment, design, monitoring and evaluation in all climate actions at all levels.

3.4.2 Ambiguity in emissions reporting

The Kyoto Protocol to the UNFCCC commits its Parties to binding targets based on six (6) greenhouse gases; carbon-dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs), and sulfur hexafluoride (SF₆). Of the 6 greenhouse gases, Uganda reports only three (3) gases i.e. carbon-dioxide, methane and nitrous oxide (MWE, 2014). There is need to address the ambiguity in reporting on greenhouse gases. The Nationally Determined Contribution (NDC) for Uganda provides a target reduction of approximately 22 percent of national greenhouse gas emissions in 2030 compared to business-as-usual. Apparently, Uganda has established a Digital National Greenhouse Gas Inventory System (UNDP, 2016). However, there are still challenges in monitoring and reporting greenhouse gases at sector level due to limited tools equipment and skills. Therefore, the Bill should explicitly spell out within its schedules whether all, some or additional, apart from the 6 Kyoto protocol gases will be controlled and reported. Additionally, a robust, transparent and accurate monitoring, reporting and verification system is a must.

3.4.3 Carbon trading gap

Article 6(4) of the Paris Agreement establishes a mechanism to contribute to the mitigation of greenhouse gas emissions and support sustainable development. The Mechanism will, inter alia, incentivize and facilitate participation in the mitigation of greenhouse gas emissions by public and private entities. Section 3.4 of Uganda Nationally Determined Contribution (NDC) highlights the use of international market mechanisms where appropriate but building upon the experience of the Clean Development Mechanism (CDM) and other existing market mechanisms to meet and/or increase the level of the country's commitments. However, carbon markets have been challenged by, inter alia, inadequate domestic demand, limited financial involvement and incomplete regulatory infrastructure (Lo, 2016). Namanya (2008) observed the ambiguity of CDM in delivering sustainable development benefits in Uganda. Empirical research of a CDM bagasse cogeneration project at Kakira Sugar Works (KSW) in Uganda revealed that only one-third of carbon credits claimed under the CDM were found genuine (Purdon, 2014). Currently, a number of institutions: Electricity Regulatory Authority (ERA), Uganda Investment Authority (UIA), National Environment Management Authority (NEMA), National Forestry Authority (NFA) and Uganda Energy Credit

Capitalisation Company (UECCC) are engaged in carbon trading but with limited private sector involvement. This may breed potential overlaps as a result of incoordination exacerbated by duplication and fragmentation of initiatives (Clark et al, 2010).

4. Recommendations to the National Climate Change Bill

Based on the gaps in climate change policy and practice above while building on the 11 elements suggested for climate change legislation in Uganda (EMLI, 2016b), the following recommendations should be explored while crafting the climate change Bill:

1. Strengthen the role of Climate Change Department in addressing climate change

Noting that there has been no explicit study on prospective Climate Change Commission as recommended by the National Climate Change Policy (2015) and no independent review on functionality and relevancy of similar institutions, the Bill should provide for the strengthening of the Climate Change Department, while making provision for an elevated institution in the near future. The strengthened role of the Department may include inter alia;

- a. Coordination, regulation and supervision of national climate actions
- b. Provision of secretarial services to the Policy Committee on Environment during matters of climate change
- c. Advise on mainstreaming, alignment and coherence of sector policies, programmes and laws responsiveness to climate change
- d. Provision of national climate change risk and vulnerability assessments, low emission development strategies, and adaptation measures
- e. Provision of multi-stakeholder platform for gender responsive climate change education, training, public awareness, public participation and capacity building
- f. Setting and regulation of national emissions reference levels
- g. Management of the country's obligations to international conventions, treaties, agreements on climate change and related reporting requirements
- h. Advise on fiscal instruments for implementing national climate actions

2. Continue the functionality of the National Advisory Committee on Climate Change and provide for appointment of technical committees

Defining an effective governance framework to address complex and adverse impacts associated with extreme weather events is not such an easy task. Polycentric governance systems have been cited as one approach for solving collective problems (Ostrom, 2008). Noting that the Policy Committee on Environment, established under the National Environment Act (1995), may continue to play a key role (vested with executive powers) as stipulated in the National Climate Change Policy (2015). The Policy puts in place the National Climate Change Advisory Committee will be put in aimed to ensure working level coordination and provision of climate change technical input to the Policy Committee on Environment. The committee is envisaged to be chaired by the Minister for Water and Environment, however, the past number of times it has met, has been chaired by the Permanent Secretary with notable absence of representatives of district authorities and private sector. Therefore the Bill should provide for the continuation of the National Advisory Committee on Climate Change (NACCC) but with clear functions.

The functions of the NACCC may include;

- a. Duty to advise and assist the Climate Change Department on all national climate actions
- b. Monitor performance of climate actions in conformity with international obligations
- c. Appoint technical committees to assist in executing other roles, for example, committee on climate finance, committee on greenhouse gas inventory and emissions reduction, and committee on adaptation and resilience
- d. Guide the functionality of lower governance structures: climate change desk officers (sector and local government level)
- e. Report to the Minister responsible for Water and Environment. Among the reports may include; report on progress on implementation of the National Climate Change Policy, report on status of emissions level, report on climate risk, vulnerabilities and impacts.

3. Provide for mainstreaming of climate change in sector plans, programmes and budgets

It is imperative to operationalize efforts aimed at integrating climate change issues in national policy, planning and budgeting frameworks. The Climate Change Department, National Planning Authority (NPA) and some sectors such as Agriculture have developed climate change mainstream guidelines. In addition, the Climate Change Department has developed climate change indicators. However the effectiveness and applicability of these guidelines and indicators is at the discretion of respective climate change actors. For example, the final Budget Call Circular issued in March 2017 simply encouraged sector institutions to promote climate smart activities without detailed budget estimates. Without mandatory requirements to sector institutions, mainstreaming climate change may remain a myth. Therefore, the Bill should provide for mainstreaming of climate change in all sectors with a mandate to ensure compliance assigned to the Climate Change Department.

4. Provide for national adaptation goal

It is well documented that climate change affects all sectors of Uganda's economy making the need for preparedness inevitable in all sectors to ensure that the country is resilient to the adverse impact of climate change (GOU, 2015a). It has been nationally acknowledged that Uganda's approach to climate change adaptation is to strengthen the country's resilience (GOU, 2015c). Additionally, this is envisaged to involve: increasing food security; reducing poverty; increasing levels of education; promoting skills development and enhancing the integrity of ecosystems. This overarching approach is in conformity with Article 7(1) of the Paris Agreement which establishes the global goal on adaptation of enhancing adaptive capacity, strengthening resilience and reducing vulnerability to climate change, with a view to contributing to sustainable development.

It is fundamentally important that Climate Change Bill gives effect to the national approach to climate change adaptation through establishment of national adaptation goal. The national goal may include, inter alia, Ecosystem-based approaches to adaptation, Community-based approaches to adaptation, Gender-responsive adaptation approaches and National Adaptation planning processes, among others guided by the available science and, as appropriate, traditional knowledge, knowledge of indigenous peoples and local knowledge systems.

5. Provide for mandatory sector, local governments & Urban authorities, Non-state actors reporting on GHG emissions and climate action

Recent observations highlight that various actors are at own discretion to inform Climate Change Department of their climate smart plans/climate actions. This inturn has made the Climate Change Department coordination role dysfunctional since the Department is ill-informed of multilevel climate actions thence challenging inclusive reporting. However, some sectors such as the forestry sector have championed the reporting roles, for example by communicating Uganda's Forest Emissions Reference levels of 8.05 million tCO₂/year and informing the Department retrospectively. For the country to have unquestionable baseline of emission levels, it is desirable to make it mandatory for sectors, agencies, private sector and civil society to monitor and report on levels of emissions. Additionally, making reporting on climate actions by respective stakeholders' duty based and enshrined in the Bill will trigger compliance through civil, administrative or criminal action.

6. Provide for establishment of a national platform for the exchange of experiences and sharing of best practices on climate action

Currently, number of parallel and uncoordinated platforms with different stakeholders and objectives exist. For example, local governments, such as Rakai, Luweero have established platforms organized in ad hoc way to foster learning and understanding climate change. Private sector is also convening different companies and finance institutions to tap into opportunities offered by climate change. Academia continues to work in a closed loop of research focused on publishing while civil society continues to convene platforms with central government agencies aimed at raising awareness and catalyzing implementation of climate actions. However, few opportunities exist for reflecting and sharing on climate change with a multitude of stakeholders.

The necessity to replicate Non-State Actor Zone for Climate Action platform established by the Paris Agreement to scale up efforts and support actions to reduce emissions and build resilience while decreasing vulnerability to the adverse effects of climate change is clear. Therefore, the Bill should provide for establishing a national platform whilst complementing existing non-state actor platforms and enhancing cooperation and effectiveness with government, academia, civil society and private sector. Such a platform should be multi-sectoral in nature, able to convene regularly and may be decentralized to lower levels of governance.

7. Establish a national mechanism for carbon trading

Uganda exhibits high mitigation potential in the land use, land-use change and forestry sectors thence justifying carbon trading potential. Building on existing institutions such as the CDM-Designated National Authority (NDA) in the Ministry of Water and Environment, there is need to tap into the emerging mechanism established under Article 6(4) of the Paris Agreement. However the country must enhance capacity of the NDA, equip private sector and ensure coherence among institutions engaged in carbon trading so as to enhance competitiveness and engagement in existing and emerging carbon markets.

Therefore, the Bill should establish a national mechanism for carbon trading to, inter alia, regulate, design fiscal instruments and improve coordination. Additionally, the mechanism should leverage private sector engagement. Furthermore, a proposal of a carbon levy of 1 currency point per ton of CO₂ (equivalent to USD 5) has been proposed by EMLI. Perhaps, it is worthy to expound this

proposal in accordance with Article 8 of the Public Finance Management Act (2015) in such a way to deter inefficient production whilst catalyzing realization of green growth.

8. Provide for establishment of an independent National Climate Change Fund

Elsewhere, countries are moving away from managing climate finance through individual stand-alone projects. Knowing the complexity surrounding the climate finance landscape in Uganda characterized by lack of robust structures to code, track, climate change fund offers a window of hope to solving financing climate actions in Uganda. Such a fund should be in conformity with Article 10, 11 and 46 of the Public Finance Management Act (2015). It should be noted that Article 11 (f) provides for Secretary to the Treasury to manage the Consolidated Fund and *any other fund* as may be assigned by the Minister. Therefore, the Minister responsible for Finance may by statutory instrument establish the independent National Climate Change Fund in accordance with Article 81(1) of the Public Finance Management Act (2015). Lessons may be drawn from the Energy Fund that was formed by Statutory Instrument No.16 of 2008 on the 24th of September, 2008 and initially operated under the Ministry of Finance, Planning and Economic Development and later transferred to the Ministry of Energy and Mineral Development during the financial year 2008/2009.

The National Climate Change Fund may give effect to Article 11 (h) of the Act which provides for mobilization of resources including assistance from development partners and integration of the funds into the planning, budgeting, reporting and accountability processes prescribed by the Act. The independent National Climate Change Fund should meet international best practices for fund management with limited government control. In this case, it should have an independent efficient Board of at most 5 members fully consisted by the Minister responsible for Finance, a Secretariat (Climate Change Department or a fund management firm) and a Trustee (Bank of Uganda or a viable commercial bank). The goal of the independent climate change fund may be to serve as a financing mechanism for low greenhouse gas emissions and climate-resilient development in Uganda.

The objectives of the independent National Climate Change Fund may include, inter alia,

- a. Mobilization of new and additional financial support from a wide variety of sources, instruments and channels, for climate actions with respect to both mitigation and adaptation
- b. Administration of carbon trading transactions
- c. Provision of financial and technical support to public, private, civil society and other stakeholders, in form of grants, loans and other financial instruments to implement climate actions with respect to both mitigation and adaptation and other cross-cutting issues such as capacity building
- d. Provision of systematic mechanism to mark and count activities which address adaptation and mitigation as their significant or principal objective
- e. Provision of modalities for the accounting of financial resources provided, mobilized and deployed

According to UNDP (2012), climate change fund mechanism supports countries to direct finance towards climate change projects and programs. It should be noted that Kenya Climate Change Act (2016) has provided for establishment of National Climate Change Fund vested under the National Treasury. Elsewhere, lessons should be learned from the Rwanda Environment and Climate Change

Fund (FONERWA) also known as Rwanda Green Fund, which has invested in public and private projects. The Fund has received seed capitalization amounting to USD 50 million from UNDP, KFW and DFID. In addition, the Fund has leveraged USD 18 million from external finance and Government of Rwanda has committed USD 4 million. So far, the fund has disbursed approx. USD 17 million.

9. Provide for hybrid approach to litigation

Increasingly, sources of legal rights and obligations are incorporating constitutional, common law and statutory elements (Burger and Gundlach, 2017) taking form of a hybrid approach that imposes a ‘duty of care’ on the State, in addition to the usual ‘public trust’. Kakuru and Ssekyana (2009) argue that enforcement of environment law in Uganda is weak due to most judgments being ‘merely declaratory’ in nature. This is partly true because environment cases are public interest litigation matter, thus no costs associated with them. This highlights that most public good (environment) related cases have no punitive actions. Extending such status quo to the current situation, characterized by adverse impacts of climate change might make matters even worse due to huge losses and damages associated with climate change.

Part XIV of the National Environment Bill (2017) provides for establishment of Environmental Tribunal with powers of the High Court. The climate change bill should provide for a hybrid approach compelling government duty of care and public trust, by identifying matters responsible for causing climate change and making it an offence.

Or simply extend the jurisdiction of the Environmental Tribunal to cover matters responsible for climate harms and resultant human rights violations such as the Right to life and Right to a standard of living adequate for the health and well-being, including food, clothing, housing and medical care and necessary social services. In addition to the offence related to pollution, i.e. causing emissions to escape into the air in any other way contrary to National Environment Bill.

This is one such example were the National Environment Bill (2017) and the Climate Change Bill could complement and reinforce each other to serve a common goal to compel the State its duty of care for citizens. Therefore, climate suits could be filed in case of failure to mitigate climate change, since this will be breach of government’s duty under the public trust doctrine.

10. Provide for establishment of robust and transparent Monitoring Reporting and Verification (MRV) system

Parties to the UNFCCC are obliged to communicate to the Conference of the Parties (COP), through the secretariat information on the actions taken or envisage will take to implement the Convention in the context of enhancing action at the international and national level to mitigate climate change (UNFCCC, 2014). Developing country Parties like Uganda are required to submit the following;

- i. Quadrennial national communications (NATCOMs), every four years
- ii. Biennial update reports (BURs), every two years
- iii. Setting up domestic MRV of domestically supported nationally appropriate mitigation actions (NAMAs)
- iv. Undertaking MRV of REDD-plus activities for the purpose of obtaining and receiving results-based incentives.

Additionally, the Article 3 of the Paris Agreement requires all Parties to undertake and communicate the following ambitious efforts;

- i. Communicate and maintain successive Nationally Determined Contributions (NDCs) to be achieved
- ii. Submit and update periodically an adaptation communication, which may include its priorities, implementation and support needs, plans and actions
- iii. Communicate financial needs and priorities
- iv. Communicate technology transfer support needed and received
- v. Communicate on actions or measures for capacity-building
- vi. A national inventory report of anthropogenic emissions by sources and removals by sinks of greenhouse gases
- vii. Information necessary to track progress made in implementing and achieving NDCs

It should be noted that information submitted shall undergo a technical expert review under transparency framework for action and support, established under Article 13(1) of the Paris Agreement.

Therefore with such enormous reporting requirements to be subjected to international consultation and analysis, the Bill should provide for establishment of a robust, transparent, consistent and accurate MRV system.

11. Alignment to the principles set out in the Constitution, International Law and the UNFCCC especially the principle of good faith

Ultimately, the effectiveness of the Paris Agreement and global cooperative efforts to avoid dangerous climate change impacts will depend on national governments in conjunction with sub-national governments, businesses and civil society (APEEL, 2017) taking strong domestic emissions reduction efforts. The following principles should be observed in the Climate Change Bill;

- i. Special needs and circumstances, especially the vulnerable (women, children, disabled, elderly, among others) and the poor
- ii. Precautionary
- iii. Common but differentiated responsibilities and respective capabilities
- iv. Inter-generational and intra-generational equity
- v. Polluter Pays
- vi. Good faith
- vii. Public participation, public access to information and access to remedial procedures

5. Discussion

Contrasts should be drawn basing on two perspectives; a more traditional statutory approach and/or a further duty-based approach. Practically, a tradition statutory approach is the usual legislation giving effect to Policies and legalizing institutions and so on whereas the duty-based approach is a form of legislation providing specific forms and functions, for example, a provision justifying duties of local governments, and imposing a form of accountability with sanctions to face legal instruments, in case of non-compliance.

Perhaps, the climate change Bill should take a duty-based approach. This could be seen as departure from the usual regulatory based form of legislation. This may lay impetus for strengthening existing institutions, for example fronting Local governments, Municipalities, Urban authorities and lower levels of governance into action as opposed to manifesting duties at the center, more analogous with usual regulatory based approach known to assign only a few decentralized reporting functions to local governments.

The Bill may promote innovation by catalyzing the operationalization of the Public Private Sector Act (2015) in addition to providing for transfer of duties from the selected central Ministries, Departments and Agencies to the Local Governments for impact climate action.

6. Conclusion

Legislators should prepare to address climate change against a broader picture of regulatory reforms. A number of features characterized by ex-ante agenda setting built on the foundation of inclusiveness and transparency need to be designed so as to respond to the inefficiencies of the traditional legal and regulatory framework in Uganda.

In line with the observation by Stallworthy (2009) that the judiciary is generally resistant to adopting intensive approaches to review new policy areas such as climate change. The Bill should create an enabling environment so as to propel subsequent litigation in light of inadequate government performance while addressing climate change. Therefore both the National Environment Bill (2017) and the Climate Change Bill should reinforce each other while working in tandem.

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