

CAN WETLAND USER PERMITS CO-EXIST WITH TRADITIONAL WETLAND USE?

IMPLICATIONS FOR COMMUNITIES

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Written by Hilda Makmot, Judy Adoko, and Jeremy Akin

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INTRODUCTION

Both the State and local communities have important roles to play in the realistic and effective management of Uganda's wetlands. Neither can manage without the other.

The 2000 *National Environment (wetlands, River banks and lakeshore management) Regulations*¹ defines “**wetlands**” as areas permanently or seasonally flooded by water where plants and animals have become adapted; and includes swamps, areas of marsh, peat land, mountain bogs, banks of rivers, vegetation, areas of impeded drainage, or brackish salt.

Wetlands are a vital part of Uganda's geography and constitute a key resource for development. Their ecological functions include maintaining purifying the water table (to supply safe drinking water), preventing of erosion (to avoid mudslides and soil infertility), flood control, micro-climate regulation, toxin retention, and sediment traps. Wetlands provide habitats for wildlife, notably waterfowl. Wetlands also provide socio-economic benefits to the community, including fishing, water for domestic use (cooking, washing, and watering cattle), clay for pottery, and papyrus for handcrafts and roof thatching.²

Article 237(b) of the 1995 Constitution of the Republic of Uganda states that; *“the Government... shall hold in trust for the people and protect natural lakes, rivers, wetlands, forest reserves, game reserves, national parks and any land to be reserved for ecological and touristic purposes for the common good of all citizens”*.

The 2013 National Land Policy, however, recognizes that **“The 1995 Constitution and Land Act (Cap 227) do not take into account the role of local communities in the preservation and management of common property resources.”**³ It also

¹ Regulations 2(II)

² *“Implementing Uganda's wetlands policy-A case study of Kabale District.”* Sophie Glass: school for international training

³ 2013 Uganda National Land Policy, S.53. It also goes on to say that “Common Property Resources, especially communal grazing land have in the past been grabbed, sold illegally, or individualized by some members of the local communities.

admits that,

*“In the absence of regulations or guidelines to govern the management and use of such resources (natural lakes, rivers, wetlands, forest reserves...) by the State as a trustee, including accountability and transparency principles, the “trustee” has carried on as if it is the “owner”, thus breaching the public trust doctrine. Safeguards in legislation have not deterred extensive degeneration, occasioned by administrative abuse.”*⁴

To stem this abuse in management and use of natural resources held under the public trust doctrine, and to ensure environmental sustainability, the Policy states that government will put in place measures to:

- (i) *Institutionalize mechanisms for the **joint and participatory management of the natural resources with communities owning land adjacent to, in or over which the resources are situated;***⁵ and
- (ii) *Ensure that common property resources exclusively used by or available to particular communities are **directly held and managed by them.***⁶

The purpose of this brief is to compare the legal process of acquiring wetland user permits and the reality on ground—as well as the implication of this on communities who rely on these wetlands as traditional users. It is also to draw attention to the competition between traditional land users of wetlands and wetland user permit holders and the likely negative impact on the livelihoods of the traditional wetland users. This brief is to bring better understanding to communities, Environment Officers, NEMA and other policy makers of this impact in Lango sub region so that appropriate changes to the environment policies, laws and practices can be made to improve the situation of the rural community wetland users.

⁴Ibid, S.19

⁵ Ibid, S.22(ii)

⁶ S.55(iv)

WETLAND RESOURCE USE PERMITS

A **Wetland Resource Use Permit**, according to the Regulations mentioned above, refers to a permit granted to a person, community or organization to make extractive use of wetlands and/or other non extractive uses (such as tourism and cultural activities) in accordance with the law.⁷ The *Regulations state that "...a person shall not carry out any (non-traditional) activity in a wetland without a permit issued by the executive director of NEMA."*⁸ According to the law, traditional users (i.e., the communities that are located nearby the wetland) do not need to obtain a permit for their daily use.

These Permits serve several important functions:

- Regulating the extraction of wetland-based resources for economic purposes, in order not to degrade or damage them so they become unproductive;
- Regulating non-traditional activities so as to conserve the environmental functions of the wetland and all species whose sustainability is reliant on protecting the wetlands; and
- Protection of community livelihoods, which depend on what is termed "traditional uses"; thus, protecting the rights of communities to use and manage these resources effectively.

To get a wetland user permit, individuals and groups must follow the steps below:

Process to Acquire a Wetland Resource Use Permit

1. Applicant picks "**Form A**" at a fee of UG Shs 50,000/= from the National Environment Management Authority (NEMA) offices in Kampala, through the District Environment Office (DEO). This simply means that the forms can be picked from the District instead of going to NEMA offices in Kampala.
2. Applicant fills the form (in Triplicate).
3. District Environment Committee consults the affected community and either approves or disapproves the application. (*This is because a community neighboring a wetland must legally be consulted before an application is even considered.*)
4. The Committee sends the application back to NEMA for verification and if satisfied, the Executive Director (ED) of NEMA then grants the permit (Form B) and the applicant then pays an additional UG Shs 100,000/= per year.
5. However, if not convinced or satisfied, NEMA refers the application back to the DEO for further assessment and a statement (Environmental Impact Assessment) or report is sent back to NEMA for final approval or dismissal of the application.

⁷ 2000 *Regulations* (kk)

⁸ *Ibid.* S.12(1)

FIGURE 1: What a wetland user permit should look like as per the law ⁹

REPUBLIC OF UGANDA
Form B

<p>Permit to Carry Out a Regulated Activity in a Wetland, Riverbank and Lakeshore. <i>The National Environment Act.</i> <i>The National Environment (Wetlands, Riverbanks and Lakeshores Management) Regulations.</i></p>
(To be completed in triplicate.)
Permit No. _____ Fee paid: shs. 50,000
Name _____ Address _____ _____
You are granted/denied a permit to carry out the activity(s) in a wetland/riverbank/lakeshore of _____ _____
Location of the wetland/riverbank/lakeshore _____ _____ (district, county, sub county, village; where necessary mention more than one)
This permit is valid from _____, 20 ____, to _____, 20 ____.
The permit is subject to the following conditions _____ _____ _____ (Please attach on separate sheet where necessary.)
Date _____
Seal and signature _____
Executive Director, National Environment Management Authority

On the ground, however, LEMU has found that in Lango Sub-region, there have been some 16 ‘Permits’ issued in a period of six years (2007-2012)—all of which are questionable since the Executive Director of NEMA is the only one mandated to issue wetland user permits. ¹⁰ In these particular cases, they have instead been issued by the District Environment Offices. LEMU also documented cases where individuals in communities have claimed to have a Permit

to use wetlands for their personal income generating projects and almost always, the permits are fake. Since communities do not know either what an authentic permit looks like, or the fact that the process of acquiring wetland licenses requires their consent, communities therefore accept without question these illegitimate documents shown to them as “permits” by wetlands encroachers.

⁹ The National Environment (wetlands, river banks and lakeshore management) Regulations, 2000

¹⁰ Supra 5

FIGURE 2: Example of a “Permit” that LEMU has found on the ground

....District Local Government
Natural Resources Department
Wetland Section

REPUBLIC OF UGANDA

THE NATIONAL ENVIRONMENT MANAGEMENT STATUTE, NO.4 OF 1995
&
NATIONAL ENVIRONMENT (Wetlands, River Banks and Lake shores Management)
Regulations, 2000.

This is to certify that an application for the wetland use permit has been received from;

.....
In accordance with the provisions of the National Environment Act, CAP 153 and THE
NATIONAL ENVIRONMENT (wetlands, River Banks and Lake shores Management)
Regulations, 2000 regarding

.....
Has been reviewed and in line with the waiver of user permit fee issued by NEMA on 2nd
November 2006 found to have no significant impacts on the Environment but the following
appropriate mitigation measures were identified and made a condition for issuing of the
permit to (ensure monitoring & compliance) which will remain valid for.....years from the
date of issue.

(PLEASE TURN OVER)

Dated at District Wetlands Office

Signed.....on day.....month.....year

District wetlands Officer/ Environment Inspector-.....

CONDITION FOR ISSUING OF WETLAND USE PERMIT FOR IN.....WETLAND,....
SUB COUNTY....DISTRICT

**TAKE NOTE THAT THIS OFFICE RESERVES THE RIGHT TO WITHDRAW THE PERMIT
IF IT IS DISCOVERED THAT THE CONDITIONS IN THE PERMIT IS NOT BEING
OBSERVED.**

LEMU's ANALYSIS

This is an issue for two main reasons. First, it suggests that the role of communities in the issuing of wetland permits may not be effectively understood or implemented currently. Since communities are generally unaware that the District Environment Committee is legally required to consult the community before granting a wetland user permit, this practice may go unnoticed.

Secondly, the wetland laws clearly define what roles the different, mandated agencies should play when it comes to the protection of wetlands. Environment Inspectors are to issue improvement notices, which are issued to individuals misusing wetlands as a warning to stop such activities (of which, all DEOs are licensed inspectors¹¹), and the Executive Director of NEMA to issue restoration orders and wetland user permits.

Yet despite the laws, encroachers with fake permits continue to block communities from accessing wetland traditionally used resources. **With the legal provisions very clear, the point of weakness can only be laid at the foot of implementation.** LEMU's experience is that the decentralized institutions expect NEMA to take actions while NEMA expects the decentralized institutions to do the same. LEMU has been caught in between the two district and national institutions, and the communities continue to suffer as a result of inaction.

A key question is, can a wetland user permit co-exist beside traditional wetland use?

Uganda's current wetland laws do not expect traditional users of wetlands to apply and acquire permits, but communities where permits are applied are expected to be "consulted". One therefore asks what the intention of this consultation is: **will communities' rejection of the application for permits act as a veto and be final, or it is only a "consultation" in form only, with no legal weight and meaning?**

The second question to ask is, **how can the new use of the wetland of the permit holder co-exist besides the traditional land use?** In other words, if the permit is for growing rice, will it not therefore mean the communities cannot access grass, water, clay, fish, etc. LEMU sees the two cannot co-exist; either the use rights belong to an individual with a permit or the community who does not have a permit. **By the law not requiring traditional land users to have a type of permit, LEMU reasons that the livelihoods of traditional wetland users are at the mercy of wetland permit holders – unless of course communities have the right to say NO and this is respected.**

Besides endangering livelihoods, the impact of the above issues of fake licenses of encroachers and communities being at the mercy of the fake permit holders is leading to ongoing wetland degradation because communities cannot put in place management structures to safeguard the wetlands and have "given up" the management of the wetland to the State and fake permit holders who are also degrading the land with activities that the law does not approve.

ALTERNATIVE POLICY POSITIONS:

1. **Permits granted should co-exist with traditional uses.** Where the traditional land users and genuine permit holders can coexist, all wetland user permits granted should be subject to traditional uses so that the natural users cannot be pushed out of the equation completely. The rationale behind this would be to prevent individuals claiming to have permits or those with legal permits from thinking that this gives them the sole right to use a particular wetland, especially for nontraditional purposes. Where they cannot, the traditional users should be allowed to say NO and the District Environment Committee should respect the community's decision to be final.

¹¹ See *The Daily Monitor*, 14th August 2014

2. Create special “traditional use and management” permits for communities. The new National Land Policy states that communities have rights and responsibilities to manage wetlands that they use. To implement this policy, the environment law should be amended to allow special permit to traditional users – The law should consider a special permit to the traditional users so that they are not at the mercy of permit applicants. The environment institutions should give the permits in exchange for communities managing the wetlands so that it is not degraded by anyone.

3. CAO and Environment Police actively support wetland law enforcement. The Chief Administrative Officers (CAO) in the districts of Lango who manage District Environment Officers and NEMA need to take special interest in the work of the DEO in order to support them to enforce the environment laws which involve the issue of improvement notices or restoration orders. Once this institutional support is given, hard core wetland encroachers would be easily removed with DEO getting full support and backing from CAO, the Environment Police and NEMA.

Conclusion

In light of the above issues, LEMU finds that community traditional use rights are at stake as it appears that an individual or group of people with a permit could overrule the rights of the community leaving them vulnerable and at the mercy of such individuals. The communities should be given special licenses to give them prior rights over the wetlands. This will also allow them to manage the wetlands and avoid degradation.

Despite very protective laws of our environment and indirectly community access to wetland resources, encroachments of wetlands is leading to degradation of wetlands and denial of access to wetland resources for rural communities in Lango Sub Region. This is also endangering livelihoods. The law for eviction after the issue of improvement notices should be prioritized in its implementation.

For more information on land OR on LEMU's work, please contact: LEMU
Plot 6A Sunderland Avenue, Mbuya. P.O. Box 23722, Kampala - Uganda.
Tel. : +256 - 414 - 576 818; Mob : 0772 856 212
Email : info@land-in-uganda.org; Website : www.land-in-uganda.org

LEMU - Lira

Plot 50 - Ogwal Ajungu Road.
Adyel Division, Lira Municipality.
P.O. Box 1066, Lira (Uganda)
Tel : +256 (0) 372 280 597
Email: Lira@land-in-uganda.org

LEMU - Apac

Plot 9, Odora Lane
P.O. Box 12, Apac (Uganda)
Tel : +256 (0) 392 756 212
Email: Apac@land-in-uganda.org

LEMU - Soroti

Plot 1, Etyeku Road - Soroti Municipality
Off Mbale Road Pamba,
P.O. Box 23722, Kampala (Uganda)
Tel : +256 (0) 352 280 028
Email: Soroti@land-in-uganda.org



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