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A Review of Ugandan National Laws and Policies that Relate to Plant Genetic Resources for Food And Agriculture (PGRFA)

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A REVIEW OF THE NATIONAL LAWS AND POLICIES THAT RELATE TO PLANT GENETIC RESOURCES FOR FOOD AND AGRICULTURE (PGRFA)

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ABSTRACT

After the Uganda cabinet approved the ratification of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), efforts to domesticate the treaty were embarked on. The initial process has necessitated the review of existing policies, laws and strategies so as to identify synergies and strengths, but most importantly to identify gaps in the laws, policies and strategies. The hypothesis was that there are such big gaps in the present legal and institutional framework of the country that there is need for a law on PGRFA. With regard to policy the following were reviewed; the Agricultural Research Policy, the Forestry Policy, the Plan for Modernization of Agriculture, the Poverty Eradication Action Plan, and the draft National Biodiversity Strategy and Action Plan. In addition the following laws were reviewed, namely; the 1995 Constitution, the National Environment Statute, the Water Statute, the Plant Protection Act, the Wildlife Statute, the Local Governments Act, the Land Act, the Forest Act, the Prohibition of Burning of Grass Decree, and the Cattle Grazing Act. This paper is part of the above process. It discusses the identified synergies, gaps and overlaps in the existing laws and policies in relation to conservation of PGRFA by local communities.

INTRODUCTION:

Uganda is located in East Africa astride the equator. It covers a land area of 241,038 square kilometers lying between the latitudes 4o12' N and 1o 29S and longitude 29o 34E and 35o 0E. It's a land locked country sharing borders with Sudan in the north, Kenya in the East, Tanzania and Rwanda in the south and Democratic Republic of Congo in the west. The provisional census results of 2003 indicate the population to be 24 million people.

Agriculture is the main source of livelihood for the people of Uganda. Over 80% of the population most of who are smallholder peasants directly earn their living through agriculture. Agriculture contributes 45-49% of GDP. Plant genetic resources therefore as the basis for agriculture are a very important resource for the people and the country at large. Despite their importance, however, plant genetic resources issues are rarely on the top political agenda. More so the communities that have nurtured these resources since humanity have had little recognition and support. In many instances contradicting policies across sectors normally end up relegating plant genetic resources and marginalising the very people and communities that ensure the availability of the resources. The result is limited utilisation of the resources and therefore

limited advancement in agricultural productivity, nutrition and health. In a country like Uganda limited agricultural productivity is perpetuation of poverty among the people.

As international agendas on trade, health, hunger and environment continue to unfold, Uganda took the initiative to review its existing laws and policies that relate to plant genetic resources for food and agriculture. This paper focuses on the gaps and synergies in the different instruments in relation to the natural role of communities in conserving, developing and making available plant genetic resources for food and agriculture. In the absence of specific legislation on PGRFA, the review focuses on biodiversity related legislation, which in turn has a bearing on PGRFA.

Traditionally, Uganda's biodiversity was protected by customary norms that attributed human existence to deities that were closely associated with both animal and plant species¹. In Uganda, most tribes have totems, which are directly linked with wildlife, including some edible plants e.g. the *Vigna unguiculata* (mpindi). The Nakayima Tree in Mubende District is famous for its association with traditional rituals.

This to a great extent ensured that wildlife species, including plants coexisted with human kind without much threat from the other thus maintaining an ecological balance.

Towards the end of the 19th Century, foreign religions were introduced in Uganda. These religions condemned customary practices and many were consequently eroded. Coupled with the introduction of laws to regulate human activities in relation to the environment this had the effect of relegating customary norms to the periphery and therefore affecting to some degree norms that could have been used to protect PGRFA.

Objective:

One of the objectives of the study was to review the National Laws, policies and strategies in order to assess how PGRFA and the role of local communities in conservation of PGRFA is provided for.

¹ See Report on Laws relating to Wildlife Management in Uganda in The UNEP/UNDP/ DUTCH Project on Environmental Law and Institutions in Africa Report on the Development and Harmonisation of laws relating to Wildlife Management, December 1999

THE LAWS

1. THE 1995 CONSTITUTION OF THE REPUBLIC OF UGANDA

The 1995 Constitution opens with National objectives and directive principles of state policy. There are expressions of the aspirations of the people and direction for government to follow in executing its duties on behalf of the people.

Objective XXVII provides for the sustainable utilization of Uganda's natural resources i.e. "..... to meet the development and environment needs of present and future generation of Uganda".

Clause IV of objective XXVII empowers the state, including Local Government to "..... ensure the conservation of natural resources and protect the biodiversity of Uganda.....".

Flowing from this objective are the substantive provisions in the Constitution.

Article 245 embodies objective XXVII by empowering Parliament to make laws for inter alia, the sustainable management of the environment.

Article 237 (2) (b) enjoins Parliament to make laws empowering Government or Local Governments to protect and hold in trust for the people; National parks, Game reserves, Forest reserves and any area/land to be reserved for ecological and touristic purposes for the common good of all the citizens.

Thus, the 1995 Constitution lacks specific provisions on PGRFA. Nevertheless, it contains some provisions on the environment which have a direct impact on biodiversity and in turn, PGRFA. Thus the Constitution lays a firm background for the conservation and protection of biodiversity generally at a National and International level.

2. THE NATIONAL ENVIRONMENT STATUTE, 1995

The National Environment Statute provides among other things, for the sustainable management of the environment. The statute is not specific on PGRFA. Nevertheless, it has provisions that are related to the protection and sustainable use of biological factors of plants and the environment.

The statute provides for the preservation of biological diversity in principle 3(1)(e), which can be read as covering PGRFA since it forms part of biological diversity.

One of the guiding principles of the statute is to encourage maximum participation by the people of Uganda in issues related to the management of the environment. In our context, we contend that protecting PGRFA can be construed to be a means of managing the environment. In Section 40, the statute makes very deliberate provisions for community participation in reforestation and afforestation. It charges the local communities with the duty of ensuring public participation by encouraging voluntary self-help in the community to plant trees and vegetation. Local communities are made responsible for taking measures to plant trees and other vegetation on land no matter the nature of tenure². The local environment committee³ is empowered to mobilize the community to ensure compliance of this provision where a holder of an interest in land fails to comply⁴. The National Environment (Hilly and Mountainous Areas Management) Regulations, 2000 provide for further participation by the local communities in the management of the environment and by extension, PGRFA. The regulations provide guidelines and measures relating among other things, to appropriate farming methods in hilly and mountainous areas. The regulations apply

In part to facilitate the sustainable utilization and conservation of resources in mountainous and hilly areas by and for the benefit of the people and communities living in the area.⁵The Local environment committees are responsible for ensuring that these guidelines are complied with. The statute protects the traditional uses of forests, which are indispensable to the local communities and are compatible with the principle of sustainable development⁶.

² S.40(3)

³ S.2 National Environment Statute provides that “...means a committee in the environment appointed ...at the Municipal, Town Division, County and subcounty ...or such other lower level ...council as the Local Government System may determine.”

⁴ Section 40(4)

⁵ Regulation 3(a)

⁶ S.46(5)

The statute provides for the conservation of biological resources in situ⁷ and ex-situ⁸ and for the regulation of access to genetic resources. Also relevant are the provisions on management of forests⁹ and the protection of elements (objects and sites) in the natural environment, which are of cultural importance to the various people of Uganda¹⁰.

The statute creates the National Environment Management Authority, which among other things is empowered to issue guidelines for the conservation of biological diversity.

In furtherance of this objective, the statute provides for environmental regulation¹¹ through *inter alia* environmental impact assessments, environmental audits and environmental monitoring with respect to PGRFA.

The National Environment (Wetlands, Riverbanks and Lakeshores Management Regulations) 2000 are created under section 108 of the Statute. The principles of the Regulations are that Wetland resources and resources on riverbanks and lakeshores are utilized in a sustainable manner. Thus, the regulations aim at regulating the traditional use of wetlands by allowing¹² the cultivation of not more than 25% of a wetland area.

Similarly, the National Environment (Mountainous and Hilly Areas Management) Regulations¹³ aim at facilitating the sustainable use and conservation of resources in mountainous areas.

The Environmental Impact Assessment (EIA) Regulations, 1998 impose a strict duty on all developers who are required to carry out EIA for their projects under the statute. The Regulations allow for public participation in the EIA process. An enlightened public will automatically reject to consent to a project, which is likely to have adverse effects on PGRFA and therefore the regulations are key to the management of the Country's PGRFA.

At the time of writing this report, local environment committees have been established in 54 districts out of a total of 56. They are functional to the extent that they meet and discuss issues that arise. However, the drawback is that problems inherent to the local council system still

⁷ S. 43

⁸ S. 45

⁹ S. 46

¹⁰ S. 50

¹¹ Part IV of the National Environment Statute

¹² Regulation 11

¹³ S. 1 – 2/2000 made under S. 108

hamper enforcement.

3. THE PLANT PROTECTION ACT

This is a 1964 Act whose purpose is to make provision for the prevention of introduction and spread of disease destructive to all plants, not necessarily plants for food and agriculture. However, Section 8 of the Act makes it an offence for someone to knowingly introduce any pest or disease into any cultivated land and provides a penalty of a fine of a paltry figure of 2000 shillings (almost one US dollar) or six months imprisonment. The Act charges the relevant Commissioner and plant inspectors with the duties of prevention of the introduction and spread of disease to plants and makes no provision for participation by the local communities.

4. THE AGRICULTURAL SEEDS AND PLANT STATUTE, 1994

Among other things, the statute aims to provide for the promotion, regulation and control of plant breeding and variety release. The main focus of this law is a breeder's seed and plant varieties. This in effect excludes on farm PGRFA and hence the participation of the local communities in this effort.

5. THE WILDLIFE STATUTE, 1996

The statute repeals the National Parks Act, Cap 227 and the Game (Preservation and Control) Act, Cap 226. The statute gives a wider definition of wildlife than the old legislation by the inclusion of wild plants¹⁴. It provides for the protection of an area of Local or National importance because of its biological diversity, landscape or Natural heritage¹⁵. On the payment of the prescribed fee, a person can acquire wildlife use rights, which would entitle him/her to among other things, farm, trade or use wildlife (plants) for educational or scientific purposes or for general extraction. General extraction can be read to mean for use as food.

This is a good idea that will guarantee that wildlife resources are utilized sustainably in protected areas. It opens the arena of conservation to the private sector by allowing the Executive Director

¹⁴ S. 2

¹⁵ S. 18 & 19

of the Uganda Wildlife Authority to enter into any suitable commercial or collaborative arrangement with any person for the management of protected areas to provide services therein and manage species or a class of species of animals or plants¹⁶.

Section 70 (A) introduces the concept of benefit sharing with the local communities surrounding wildlife areas. It allows for communities to own and have an interest in protecting wildlife. This is an avenue for the local communities to utilize and protect PGRFA that may be in the wildlife areas.

The main stay of management of wildlife inside and outside the protected areas is however, the responsibility of the Uganda Wildlife Authority.

The Statute imposes a duty on the Board to pay 20% of the park entry fees collected from wild life protected areas to the local government of the area surrounding the wildlife protected area from which the fees were collected¹⁷. Under section 26, the historic rights of individuals in conservation areas are preserved. These include persons who were actually residing in Game Reserves, National Parks or Forests that have since been declared National Parks. Guidelines may be established to allow access of communities neighbouring conservation areas to resources, which are crucial to the survival of those communities.

Participation of local communities in the conservation of wildlife is guaranteed by the requirement that one third of the Uganda Wildlife Authority Board Members should be representatives of local communities¹⁸. Local government may appoint local government wildlife committees to advise the Authority on the management and use of wildlife within the local jurisdiction.

Where the Minister needs to declare some areas as wildlife conservation areas, he is required to consult with the local communities in the affected areas. The Minister may by statutory instrument declare any species and restrictions to its use will apply.

¹⁶ S. 15

¹⁷ S. 70

¹⁸ Schedule I of the Statute

Thus the Statute introduces novel concepts of popular participation of local communities. This promotes the conservation of ethical and poses wildlife as a sustainable resource.

However, seven years after the statute was passed, no regulations have been put in place for the management of wildlife save for those that were saved by the enactment of the statute. In addition, the Statute does not specifically provide for PGRFA. The Statute is more ecosystem oriented than specific to plants and does not therefore, adequately address the protection of PGRFA. Even provisions that may be interpreted to include PGRFA such as ‘farming’ or ‘utilisation of wildlife’ are not interpreted.

6. THE WATER STATUTE, 1995

The Water Statute’s objectives include, the regulation of the use, protection and management of Water resources and supply. The Statute is relevant because some PGRFA may be found in or near water resources. Section 102 allows for trees and shrubs to be removed for the purpose of accessing water works. This does present a possibility of harm to PGRFA that may fall victim to this provision.

7. THE LOCAL GOVERNMENT ACT, NO. 1997

The Act introduces a decentralized system of governance in Uganda. The local government structure is based on councils from the District Council as the highest administrative unit to the lower local council of LC III as the lowest. Below the LC III are LC II and LC I. These councils have been given the authority to deal with functions that are ordinarily the preserve of Government¹⁹. These include Lands, minerals, the Environment, Water, National Parks etc.

The local government structure is an ideal tool for the participation of the populace in governance and decision-making. They have been utilised by the regulatory bodies to help conserve the biodiversity. This is because local governments are close to the people usually concerned or affected by a particular effort of conservation or otherwise. A case in point is Section 14 (4) of the Wildlife Statute which requires the Executive Director of the Uganda

¹⁹ Article 189 (2) of the 1995 Constitution

Wildlife Authority (UWA) to seek the advice of the District council of an area bound to be affected by a UWA decision.

Another example of the vital role that local councils play in the management and conservation of natural resources is in the National Environment Statute. The Statute establishes the post of a District Environment Officer (DEO) to work, inter-alia, with the local environment committees in the performance of their functions. The DEO liases with the National Environment Management Authority on all matters related to the environment.

The Act therefore provides a mechanism for the popular participation in conservation of natural resources. Therefore, it would provide a framework for the promotion and conservation of PGRFA by local communities if specific legislation on the matter was enacted. As it stands now, the Local Governments Act talks generally about the environment or specifics like Wildlife but not PGRFA.

8. THE FOREST ACT, CAP 246

The Act provides among other things, for the protection of forests through the creation of forest reserves in which human activity is strictly controlled. The Forest Act has been criticized as not being in tandem with modern environmental law in that it is narrow in its scope. Under the Act, emphasis is placed on the commercial aspects of forests as opposed to the conservation of wildlife species. Therefore, the Act does not provide for any local community participation and for our purposes, it falls short of addressing conservation and utilization of PGRFA in forest areas. A bill to replace the current Act with a more up to date law is in the offing and will address the gaps in the current one.

9. THE CATTLE GRAZING ACT, CAP 222

The Act provides the control and regulation of grazing of cattle to prevent overstocking and overgrazing. The Minister may declare an area, a non-grazing area. This would directly protect any PGRFA that may be in the area. However, nothing specific to PGRFA is provided for.

10. THE LAND ACT, 1998

The Act provides for the different forms of land tenure i.e. Freehold, Mailoland, Leasehold and Customary tenure.

In relation to the environment, the Act obliges the occupier of land to utilize it in all environmentally sound way and in accordance with the relevant laws e.g. The National Environment Statute and the Wildlife Statute. The Act therefore, reinforces these laws that protect our natural resources. However, it does not provide for community participation in use and conservation of these resources, least of all PGRFA.

11. THE PROHIBITION OF BURNING OF GRASS DECREE, 1974

The Decree prohibits the burning of grass, a common practice in rural areas for the clearance of grasses for cultivation. Controlled burning of grass is provided for by the decree. Effective enforcement of this decree would protect PGRFA that are found in these grasses.

POLICIES AND STRATEGIC FRAMEWORKS

1. THE POVERTY ERADICATION ACTION PLAN (PEAP)

The Poverty Eradication Plan is Uganda's comprehensive development framework, which adopts a multi-sectoral approach in recognition of the multi-dimensional nature of poverty. The priority action areas under PEAP include primary health care, roads, primary education, rural water, and transformation of agriculture (Cap. 1.3). The action area on transformation of agriculture has been translated into the Plan for Modernisation of Agriculture (PMA).

2. THE PLAN FOR MODERNISATION OF AGRICULTURE, 2000

The plan is a multisectoral framework geared towards moving Uganda's agriculture from a subsistence level to a modern market oriented one. The vision mentions effective utilization of resources such as land, water and forests in a sustainable manner. It does not mention PGRFA.

Objective 4 of the PMA is to 'Promote sustainable use and management of natural resources by developing a land use management policy and promotion of environmentally friendly techniques'. Among the constraints and opportunities that appear in the PMA as having been identified by the subsistence farmers as the ones that affect their livelihoods and productivity there is no mention of PGRFA (Cap 1.5). Therefore engaging the communities in agricultural transformation as far as PGRFA is concerned may not have been addressed adequately. The impact of modern agriculture on PGRFA and to communities else where in the world must serve as a caution as to how the PMA is implemented.

3. THE UGANDA NATIONAL AGRICULTURAL RESEARCH POLICY, 2003

The mission for agricultural research is "to generate and disseminate appropriate safe and cost-effective techniques, while enhancing the natural resource base.

The policy states that Agricultural research programmes shall be formulated and prioritized with stakeholders' participation so as to ensure that the country's strategic, basic, applied and adaptive research interests are addressed (Section.3.3). Priority No.5 of the policy puts special focus on recent developments related to the agricultural sector including genetic resources conservation and biotechnology, globalization of world markets and Trade Related Intellectual Property Rights and their implications for the Plan for Modernisation of Agriculture. One would like to assume that 'stakeholders includes local communities but it is not explicitly stated. Are they therefore key players?

4. THE UGANDA FORESTRY POLICY, 2001

The fifth policy statement in the policy lays emphasis on collaborative partnership with rural communities for sustainable forest management. It seeks to promote innovative approaches to community participation forest management on both government and private forest land. Among the guiding principles for the forest sector as outlined in the policy are; integration of gender and equity into forest development, taking into consideration cultural and traditional attributes and institutions, and encouraging the roles of NGOs and CBOs. Though this policy is specific on forestry, there are a number of policy interventions that could be extended into a PGRFA policy. This would particularly be important in harmonizing community roles in the two sectors.

5. THE DRAFT NATIONAL BIODIVERSITY STRATEGY AND ACTION PLAN (NBSAP)

The draft NBSAP is at the moment the most elaborate document on issues of genetic resources as a whole. The goal of the NBSAP is to enhance biodiversity conservation, management and sustainable Utilization at all levels (Section 2.1). In the sectoral strategies the NBSAP identifies the lack of policy and legislation specific to PGR as a major constraint and highlights the specific gap on PGR outside protected areas where communities have full control (Section 2.4.2). The proposed strategies include , among others, strengthening institutional and infrastructural capacity for PGR management and putting in place legislation on plant genetic resources. The NBSAP therefore if approved will provide a good framework for developing the necessary instruments for management of PGRFA and incorporating the role of communities.

CONCLUSION

In conclusion, one sees that the laws reviewed do not specifically refer to plant genetic resources for Food and Agriculture. The special nature of PGRFA therefore and the unique and important role of communities in management of the resources is not well recognized and provided for in the laws. Most of the laws passed prior to the 1995 Constitution are outmoded as they fall short of addressing environmental issues, which are necessary for the protection of PGRFA. The post 1995 legislation has modern environmental trends including community participation in some. However, they do not address PGRFA specifically. Several policies that have been developed in

the recent past have also taken into account the importance of local communities to varying degrees of emphasis. The relationship however between peoples' livelihoods and PGRFA doesn't come out clearly and therefore the role of communities in managing the resources is not given the necessary weight. This implies that realization of the full benefits of PGRFA by the people and the country at large is never attained. A separate law therefore as proposed in the draft NBSAP is likely to be the solution.