



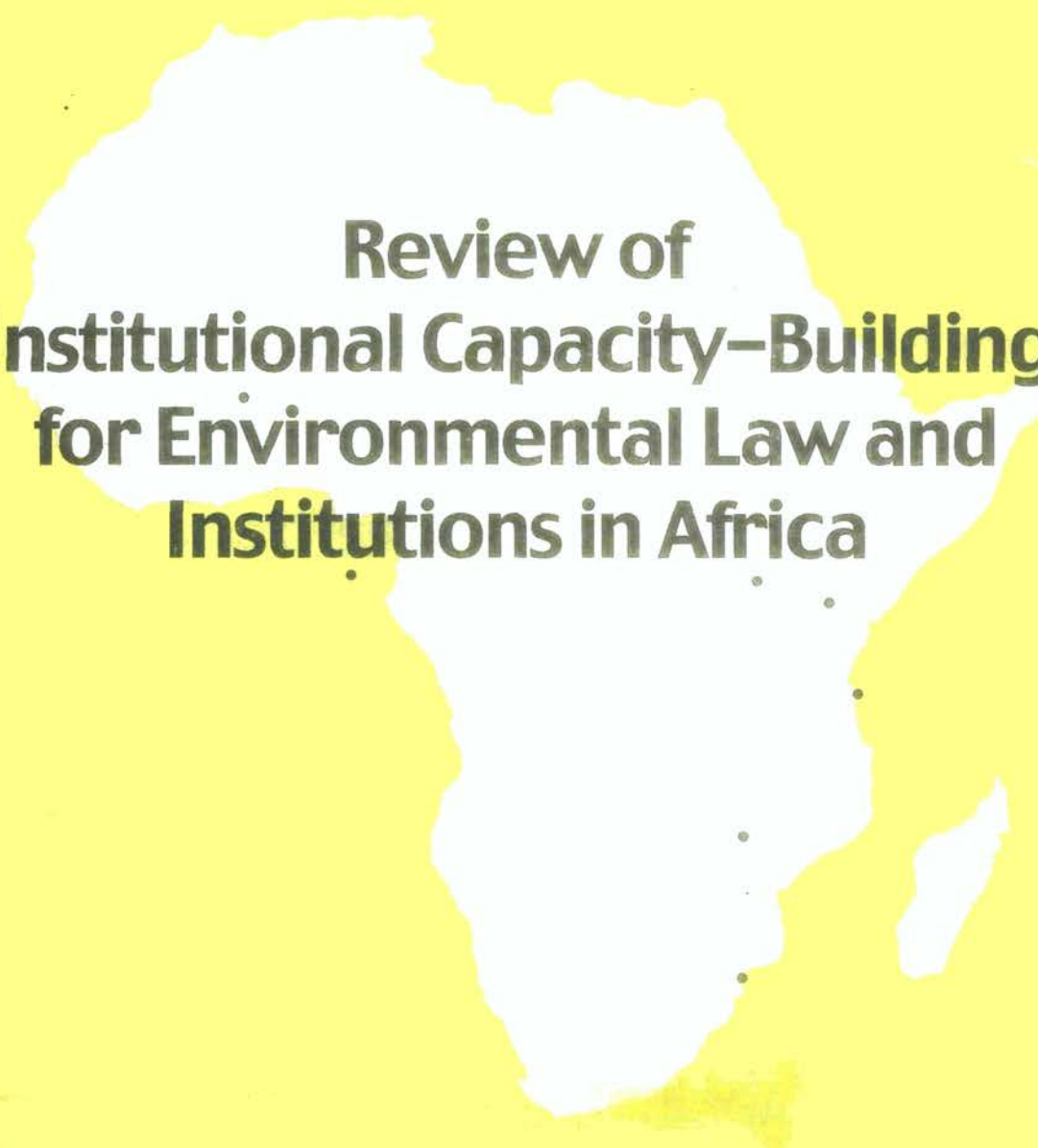
UNEP

United Nations
Environment Programme

**UNEP/UNDP/Dutch Joint Project on
Environmental Law
and Institutions in Africa**



United Nations
Development Programme

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**Review of
Institutional Capacity-Building
for Environmental Law and
Institutions in Africa**

June 2000

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**UNEP/UNDP/DUTCH JOINT PROJECT
ON ENVIRONMENTAL LAW AND
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PREFACE

The pilot project on the enhancement of capacity of selected African countries in environmental law and institutions was prompted by the Dutch Government's financial grant of US\$ 5 million as a response to the glaring need for such an initiative in Africa. It was clear that African countries needed support if they were to meet the requirements and aspirations enunciated in Agenda 21 as well as in Rio Declaration. Such support should be directed towards initiatives which develop demonstrative practices in making of environmental law with public participation, ownership of such laws by nationals and efficacious machineries for enforcement of such laws.

The funds were provided to UNEP because of its established global mandate in capacity building in environmental law. But given that UNEP does not maintain country offices which would coordinate national level work in an intensive project, the Dutch Government proposed too that UNDP should be a partner in the project to derive benefits from the agency's experience in technical assistance and capacity building. This was to be the basis of the title of the project as UNEP/UNDP/Dutch Joint Project on Environmental Law and Institutions in Africa.

The three parties resolved to invite other global agencies with established interest and competence in various aspects of environmental law. These were The World Bank and Food and Agriculture Organization of the United Nations (FAO) as well as the International Union for the Conservation of Nature and Natural Resources, (IUCN), now popularly known as The World Conservation Union. Together with the donor they form the Steering Committee of six. But the day to day management of the project is by UNEP where it is located in the Division of Environmental Policy Implementation, as a Legal Pilot Project.

The project has been implemented systematically in seven countries. Country specific activities have been done in Burkina Faso, Malawi, Mozambique and Sao Tome and Principe. On the other hand Kenya, Tanzania and Uganda were treated as a sub-regional unit, where activities are targeted at development and harmonization of laws on sectoral or functional issues of sub-regional significance.

The process of developing environmental laws has had two broad features. First, the project operationalized the concept of capacity building by deploying nationals as consultants to do background studies and then drafting the laws. In many cases, the nationals had never worked as consultants, let alone in environmental law. Such consultants received guidance from the project management and, in some cases, backstopping by international consultants in order to improve quality of the deliverables. This process ensures the development of national capacity as individuals acting as consultants remain in the country available for subsequent assignments.

Secondly, the draft reports and bills are discussed in national consensus-building workshops with the participation of stakeholder groups. Their views are incorporated in the draft reports or bills and thus ensuring broadly based national ownership of the deliverables.

Capacity building initiatives of the project are also undertaken through thematic training workshops. These have been done for different groups on environmental law generally; legal protection of biological diversity; methodology for development of environmental standards; and implementation of environmental conventions. A unique workshop was conducted for a mixed group of industrialists and public sector representatives on promotion of enforcement of and compliance with environmental law. But the training exercises done under this project from 1996 and which seem to have captured global imagination are the twin discussion on judicial intervention in environmental causes for judges, and environmental litigation for legal practitioners.

The governments and individuals who were exposed to these initiatives under the project have agreed unanimously and enthusiastically that they were highly beneficial. Two independent evaluation exercises have adjudged Phase I of the project as successful. They submitted, and the Steering Committee concurs, that the project should proceed to a new phase in an expanded form, to benefit more African countries, and that additional donors should be sought to join the Dutch in the initiative, beginning 2001.

Despite these obvious successes of the project the Steering Committee maintained that more work should be done in Phase II to sharpen the capacity of the national institutions concerned with the development and enforcement of environmental law in a sustainable way. The Committee was concerned not only with what can be done anew, with and for the countries to strengthen the institutions but also the extent to which those who have been trained under the project are deployed in the relevant fields.

These objectives prompted the engagement of two consultants to travel to four project countries to assess the institutional needs and to recommend how they can be addressed. The four, out of the seven, project countries were selected for in depth studies were Burkina Faso, Malawi, Mozambique and Uganda. The principal criteria in their selection was that all the four had developed their framework environmental laws and had experience of

at least four years with implementation. They should therefore, be in a clearer picture than the other project countries, with the relevant institutional needs.

The two consultants were selected on the basis of the needs of the exercise and their backgrounds. Mr. Kifle Lemma of Ethiopia has significant experience in environmental law and was the sole consultant in the first of the two independent evaluations of the project. In addition he participated in the expert review of the second independent evaluation of the project. On the other hand Erik Davies from Canada has experience in institutional arrangements. The two consultants are responsible for the present report. The first draft of the report was circulated to all members of the Steering Committee who generously contributed suggestions for its improvement. In addition, it was circulated to all the project countries for comments and verification of facts. The contribution of Kifle Lemma and Erik Davies to this study is gratefully acknowledged.

The report is presented as a useful guide and not necessarily a blueprint. It should be useful in the implementation of Phase II of the project. In addition, the report should provide useful guidelines for countries interested in similar initiatives. Finally, the report should be a useful point of departure for students of environmental law and institutions, particularly in developing countries.

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Executive Summary

Phase I of the *UNEP/UNDP/Dutch Joint Project On Environmental Law & Institutions in Africa* has almost been completed. The project's Steering Committee has commissioned the present study to determine options for implementation of environmental laws in phase II. This report documents the findings of the consultants who traveled on mission to Uganda, Malawi, Mozambique and Burkina Faso from January 24th to March 3rd, 2000¹. Findings presented here help to clarify the institutional capacity needs of a number of select countries that have participated in phase I and are expected to continue participating in phase II of the Joint Project. Many of the needs identified in this report are expected to exist in new phase II countries.

The first step in meeting the TOR was to *identify the types of institutions required for the development and implementation of environmental law in a sustained way*. While it was acknowledged that a range of organizations is involved at the international, national, district and local levels, the team focused their efforts nationally. The resulting list included government institutions with coordinating environmental functions (NEMAs), line ministries (transport, energy, mining, agriculture, water, etc.), legislative and judicial branches, police, environmental NGOs and CBOS, professional associations, the private sector, and academic institutions. While the range of institutions to be engaged is quite broad, phase I of the project primarily focused on environmental/natural resource ministries as well as on legislative and judicial branches. Clearly a broader range of stakeholders needs to be engaged if the Joint Project hopes to ensure the sustainable implementation of environmental laws.

The second step involved *evaluating the capacity of existing institutions to implement environmental law, in particular laws prepared under the project, and how initiatives under phase I have contributed to it and to recommend necessary improvements*. In the three to five days available to the mission team per country it was impossible to carry out an evaluation of all institutions identified. Nor did time permit an exhaustive examination of issues - particularly at the individual level. Investigations were, therefore, restricted to national government institutions engaged during phase I of project implementation. Results indicate that:

- most of the national government institutions are in a poor position to implement any of the laws prepared by the project (organizations visited were characterized by a broad range of institutional capacity issues at the systemic, organizational and individual levels).
- although country-led initiatives at developing environmental laws have been successfully carried out, they have not followed a systematic approach.

The second bullet implies that the Joint Project will need to provide more direction during phase II in the form of guidelines, strategic interventions and, where necessary, through increased use of international experts who bring lessons learned from other countries.

It is important to acknowledge that developing the capacity to implement environmental laws is a long-term goal. For instance, donors in Latin America and Southeast Asia have spent the last 15 years focused on developing environmental policy and legislation. It is only recently that efforts are being made to strengthen institutional capacities for implementation especially at the local level.

Systemic Capacity Constraints

Policies, Laws and Regulations

Implementation of NEAPs has not taken place systematically. There is little evidence of their influence in Programme development, project implementation or reporting.

- Key environmental policies and action plans require harmonization with NEAPs;
- There is a lack of strategic planning when drafting environmental laws;
- National Environmental Management Statutes (NEMS) have not established strong environmental institutions;
- Development of legislation has not always preceded policy;
- Environmental laws have not addressed the issue of harmonizing penalties;

¹ A Steering Committee meeting was held in Kenya at the beginning of the mission to facilitate the mission.

- Harmonization of regional environmental laws & standards will reduce the potential for conflicts;
- Environmental compliance frameworks do not incorporate economic & planning instruments;
- The general public have little access, if any, to information on environmental laws.

Coordination of Institutions

- Parliaments do not seem to monitor implementation of environmental laws;
- Mandates of a number of key agencies remain unclear after restructuring;
- NEMAs are unable to coordinate line ministries as a result of their current connections with the Ministry of Environment, etc.;
- Environmental liaison units in most line departments are not functional;
- Involvement of environmental NGOs needs strengthening. In many countries this was attributed to the lack of umbrella organizations at the national level to take on a coordinating role;
- Professional associations of lawyers, environmental scientists, economists, etc. need to be involved in law making;
- Private sector involvement could be improved during phase II;
- Linkages between Universities and the project could be strengthened.

Organizational Capacity Constraints

- Mandates of many government institutions require clarification so that priorities for implementation and resource allocation can be made;
- Guidelines to assist in the implementation of environmental regulations are often absent;
- Strategic implementation plans based upon existing capacities are rare;
- Management, administrative and technical skills continue to be below optimal levels in most government departments (lack of training plan and resources);
- Awareness of environmental legislation by staff is low;
- Lack of capital & financial resources as well as poor infrastructure often hinder implementation of environmental law;
- There is a clear need to improve access to information on environmental law;
- Only a few examples of information tracking systems were identified;
- Office networking capabilities were non-existent.

Individual Capacity Constraints

There is a high degree of individual mobility within government institutions. This has been attributed to restructuring and the resulting loss of job security within some agencies, as well as to higher salaries being offered by the private sector. Given this rather dynamic situation, measures like training and awareness raising do not necessarily achieve capacity building objectives for the institutions targeted. If an individual trained by the project is moved to another government institution, or to the private sector, there is an immediate loss of expertise to the department targeted. Depending on their new responsibilities they may or may not continue to be available as a resource.

Finally, the mission's TOR required the *identification of measures to enhance institutional capacity for implementation of environmental laws* as well as *benchmarks and criteria to evaluate their success*. Measures required to enhance the institutional capacity flow directly from the challenges identified at the systemic, organizational and individual levels. They are, in fact, the benchmarks required to evaluate the success in building the capacity of institutions to develop and implement law. Criteria are the measurable elements of change that can be used by the Joint Project to monitor and evaluate the success of activities during phase II. The report identifies a broad range of possible measures and criteria in Tables 5.1 and 5.2.

Clearly addressing the broad range of institutional capacity needs identified above goes beyond the capacity of the Joint Project to undertake. Providing a long list of recommendations without scoping their appropriateness for phase II implementation would clearly be unproductive. The following, therefore, constitute primary recommendations for phase II:

- *Continue drafting environmental legislation*, ensuring that provisions for institutional capacity needs for implementation are adequately reflected in law and regulations, organization, management, guidelines, etc.
- *Develop/update National Implementation Plans For Development & Implementation of Environmental Laws* for all countries involved in phase II. These will report on the state of environmental legislation at the nation level, identify gaps, prioritize areas for intervention and identify areas for joint cooperation with existing government programme and donor activities.
- *Leverage donor and political support* to assist in funding measures identified to enhance the institutional capacity to implement environmental laws. To this end national plans will become a major tool for identifying opportunities for cooperation as well as for leveraging additional funding.

Four stages of implementation are envisioned for phase II with various recommendations associated with each (full description of recommendations are found in the concluding chapter to this report).

Project Start-up

Project start-up will require the development of “Guideline For Phase II Implementation & Reporting.” The guide should deal with how countries in phase II will:

1. Prioritize environmental legislative drafting needs through the preparation of a strategic plan, harmonization of sectoral policies and action programme; revision of national environmental management statutes; followed by drafting of regulations and standards (see Text Box 6.1 for full list). A basic framework for environmental management will be provided to readers for how to:

- better integrate institutional capacity needs within legislation;
- broaden the existing compliance framework for environmental laws to include economic, planning and communication tools that go beyond strict enforcement;

2. Conduct activities such as legislative drafting, workshops, awareness-raising and training (training objectives suggested include drafting of environmental legislation, strategic planning, enforcement of environmental regulations, etc.).

3. Leverage support from government and donors for funding activities designed to assist in the implementation of environmental laws through the development of a coordination strategy at project start-up. Potential areas for cooperation are suggested in Table 5.2 of the report. They include among others:

- NEAP revision and integration with national planning systems;
- restructuring of NEMAs to facilitate their coordinative role;
- development of a broad range of compliance tools;
- preparation of guidelines;
- development of communication strategies; and
- preparation of human resource strategies.

4. Better tracking of project impacts through participatory monitoring and evaluation activities which include the use of logical framework analysis, objectively verifiable indicators and regular reporting.

5. Directions on how to format and present reports at various stages of project implementation.

Several background studies will have to be conducted in order to assemble the proposed guide. These studies will also act as important reference materials for countries during phase II. They include:

- Environmental Institutions Framework Study; and
- Compliance Framework Study.

Country Start-Up

Country start-up will require the development of strategic national plans that set out priorities, identify activities, present budgets and schedules for implementation. These plans will be based upon three studies to be prepared at the beginning of phase II by each country:

- Environmental Policy and Legislation Review;

- Institutional Study on Environmental Management & Law;
- National Compliance Study For Environmental Laws.

Implementation

Implementation of national programmes will require regular reporting by countries as well as by Nairobi. To this end it is recommended that national strategies be followed up with quarterly country activity reports and yearly overviews. Nairobi should complement this reporting quarterly programme activity reports and yearly summaries. This documentation will be the foundation of any monitoring and evaluation activities undertaken by the project. In addition to these activities Nairobi is encouraged to strengthen its communication strategy with participating countries by:

- Providing regular updates on Programme implementation;
- Establishing regional environmental law groups;
- Ensuring that an adequate translation and publication budget be available to ensure broad dissemination of project materials

Finally, regional workshops should be developed around themes identified as a result of compiling information from Country Activity Reports and Programme Activity Reports. Results should be used to address issues identified. Wherever possible use of regional workshops should be minimized in favour of country-based implementation since the latter has the potential to impact more people.

Project Completion

Project completion will require synthesizing information collected as a result of monitoring and evaluation activities. Further:

- national evaluations should be completed prior to overall Programme evaluations for the Joint Project as a whole;
- Programme evaluation should report on how well objectives have been achieved by using the objectively verifiable indicators identified and tracked in quarterly reports. It should include in it frank discussions on successes and failures as well as lessons learned. Finally it should suggest future steps for a phase III should it receive funding.

Acronyms

AVD	Association Burkinabe Pour La Sauvegarde de l'Environment
CBO	Community Based Organizations
EIA	Environmental Impact Assessment EIE – Les etudes d'impact sur l'environnement
FAO	Food and Agriculture Organisation
IaWCs	Inter-Agency Working Committees
IUCN	IUCN – International Union for the Conservation of Nature UICN – Union Mondiale Pour La Nature
LTF	Legal Task Force
NEAP	NEAP – National Environmental Action Plan Plan d'Action National Pour l' Environment
NEC	National Environment Council
NEMA	NEMS National Environment Management Authority CONAGESE – Conseil National Pour La Gestion de l'Environment
NEMS	National Environment Management Strategy
NCC	National Co-ordinating Committee
NSC	National Steering Committee
NGO	NGO - Non-Governmental Organisations ONG -Organisations Non Gouvernementale
PAN	Plan d'Action National de Lutte Contre la Desertification The National Action Plan To Combat Desertification
PSCoEs	Parliamentary Standing Committee on Environment
TAC	Technical Advisory Committee
TOR	Terms of Reference
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
UNOPS	United Nations Office for Joint Project Services

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1. INTRODUCTION

This report was commissioned by the *UNEP/UNDP/Dutch Joint Project On Environmental Law & Institutions in Africa* (herein referred to as the “Joint Project”). It documents the findings of the consultants who traveled on mission to Uganda, Malawi, Mozambique and Burkina Faso from January 24th to March 3rd, 2000². The study is expected to help clarify the institutional building and strengthening needs of a number of select countries which have participated in phase I and are expected to continue participating in phase II of the Joint Project. It is also expected to capture any lessons learned to help improve delivery as well as to enhance ownership by new countries participating in phase II.

1.1. Background To Present Study

In the course of providing phase I participating countries with environmental framework legislation and other laws and regulations, the project has ensured that institutional arrangements considered indispensable were provided for or strengthened in legislation. In fact, some of the participating countries have gone as far as establishing some of the new institutions required by the legislation. The joint project has also endeavored to build the capacity of individuals working in such institutions through various forms of training including hands-on training in drafting environmental laws and regulations, seminars and workshops. The provision of computers, printers, photocopiers and faxes has also been part of the institutional capacity building efforts of the Joint Project.

The decision of the Joint Project Steering Committee to conduct a mission was prompted, in part, by the findings of an internal review undertaken in May 1997 as well as that of an External review undertaken in October 1998. Both concluded that the Joint Project should start giving even more attention to strengthening the institutional capacity for environmental management with particular focus on measures that will help improve the implementation of the laws and regulations developed through Joint Project assistance.

1.2. Objectives of Mission

The mission's TOR outline four broad objectives:

- Identify the types of institutions required for the development and implementation of environmental law in a sustained way;
- evaluate the capacity of existing institutions to

implement environmental law, in particular laws prepared under the project, and how initiatives under Phase I have contributed to institutional capacity and recommend necessary improvements;

- identify measures required to further enhance the capacity of phase I and new phase II countries to implement environmental law; and
- Identify benchmarks and criteria that could be used in evaluating the success in the enhancement of national institutions for the development and implementation of environmental law in a sustained way.

1.3. Key Findings

Key observations stemming from the current study include the following:

Development of institutional capacity for any organization should be careful to take into account both needs dictated by mandate as well as the existence of external resources, which can be drawn upon for temporary activities. Examples of the latter include legal drafting skills, consulting expertise to develop regulations and guidelines, sectoral expertise held by other departments, technical expertise in universities, facilitation skills, communication specialists, etc.

The range of institutions to be engaged in the development and implementation of environmental law is quite broad, even at the national level. Clearly a broader range of stakeholders needs to be engaged if the Joint Project hopes to achieve its goals.

Most national government institutions are not well placed to implement any of the laws prepared by the project. Organizations visited were characterized by a broad range of institutional capacity issues and were far from meeting even the minimal requirements to implement environmental laws. As a result the Joint Project should continue to focus on:

- systemic issues related the development of environmental legislation as well as resolving coordination issues for the institutions involved;
- organizational issues related to the development of documentation centres for environmental law, clarification of mandates, etc.

Country-led initiatives at developing environmental laws, although successful, have not been systematic in their implementation. The Joint Project will need to provide more direction in the form of guidelines, strategic interventions and through increased use of

² A Consultative meeting was held in Kenya at the beginning of the mission to facilitate the mission.

international experts who bring lessons learned from other countries.

Addressing the broad range of institutional capacity needs identified above goes beyond the capacity of the Joint Project to undertake. It will, therefore, be important to:

- coordinate phase II activities with other donors to the extent that is possible;
- continue drafting environmental legislation in phase II;
- develop plans for implementation that identify opportunities to coordinate with other donors and leverage funding for interventions focused at developing organizational capacities for the implementation of environmental laws.

1.4. Structure of Report

Volume 1: Programme Overview, is the first in a series of five reports. It presents the overall findings and recommendations of the consulting team at the Programme level. Volumes 2 through 5 are Country Reports that contain findings and analysis in draft form at the national level for Uganda, Malawi, Mozambique and Burkina Faso respectively. They also contain lists of people met and their contact numbers as well as interview notes. These will remain in draft form since they were not a requirements under the present TOR.

The Programme Overview is organized as follows:

- Section 2 describes the methods and analytical framework used by the consulting team.

- Section 3 presents a theoretical framework for the institutions involved in the development and implementation of environmental law.
- Section 4 presents the findings of the institutional capacity evaluation undertaken. It starts by presenting the national context in which capacity building initiatives are undertaken. These help to scope expectations when undertaking any initiative during phase II. This section then goes on to identify capacity issues and needs related to the development and implementation of environmental law at the systemic, organizational and individual levels.
- Section 5 identifies measures/benchmarks and criteria for institutional capacity evaluation
- Section 6 then makes recommendations for phase II at the Programme level using a Programmatic approach.

Attachments include:

- Appendix 1: TOR For Consultancy
- Appendix 2: People Interviewed & Schedule of Consulting Team
- Appendix 3: Phase I Project Implementation Issues & Lessons Learned
- Appendix 4: Potential Areas For Joint Collaboration With Other Donors

2. Methodology

This chapter describes the methods used by the study team during their mission. Specifically it details:

- The assumptions used for scoping the range of institutions involved in the analysis;
- The approach used for in-country stakeholder consultations; and
- The impact of scheduling constraints on the mission.

The analytical framework used is presented in the final section.

2.1. Scoping the institutions involved in analysis

The consulting team understands that the implementation of environmental laws and regulations involves stakeholders at the village, district, national and international levels. Analysis of the full range of institutions at all these levels is well beyond the scope of this study given budget and time restrictions.

Analysis has, therefore, dealt primarily with national level institutional capacity issues and needs related to the development and implementation of environmental law. In the three-to-five days available per country, consultation with stakeholders has focused on:

- lead environmental management agencies (NEMA's and line agencies/departments);
- the judiciary and lawyers involved with the drafting and litigation of new laws; and
- where possible, the public prosecutors office and educational institutions.

The importance of civil society institutions at the national level has also been stressed, since environmental management can only be successfully carried out with the full participation and involvement of as many stakeholders as possible. Time limitations of the study required that these stakeholders be addressed by:

- examining the extent to which central government ministries and agencies facilitate the participation of civil society institutions through policies, laws, regulations, guidelines, etc; and
- consulting directly with industrial organizations, larger umbrella environmental NGOs and autonomous public bodies (i.e. Chambers of Commerce).

2.2. Approach used for in-country stakeholder consultations

The country coordinator carried out a selection of stakeholders to be interviewed by the mission for each of the four countries visited. Criteria used for selection include the requirements that stakeholders:

- Had participated in phase I activities;
- Represented, where possible, government agencies, the judiciary, lawyers, private sector, NGOs, professional organizations and academic institutions.

Time restrictions and availability of interviewees restricted the actual number of stakeholders interviewed. When necessary the team split up to ensure that key stakeholders were included in the review. To ensure consistency in approach both team members conducted the first week of interviews together. The actual number of interviews carried out in each country varied considerably, based primarily upon scheduling constraints of the consulting team (see section 2.2) as well as the availability of interviewees.

Information was also drawn from presentations made by participants in phase I countries during the consultative meeting in Nairobi, January 26-27, 2000. In some cases these participants were interviewed directly by the consulting team.

It is important for readers to note that findings reported by the mission team are based upon interviews and *not* on any literature review. Documents consulted include the External Evaluation Report as well as the Phase II Project Proposal. While cross referencing statements made by stakeholders with existing documentation would strengthen the rigour of analysis, the focus on stakeholder consultation is expected to capture most of the relevant issues required for phase II implementation.

2.3. Impact of Scheduling Constraints of Mission

Attachment 2 summarizes the trip's schedule. It shows that the actual time spent in each country varied considerably.

- Both Uganda and Malawi involved 5 full working days of interviews.
- Mozambique's trip was postponed due to major flooding events that paralyzed Maputo and made it difficult to schedule interviews with a broad range of stakeholders. As a result only 3 full working days of interviews were carried.

- Travel to Burkina Faso took two full days as a result of airline difficulties. Luckily the Project Steering Committee were able to arrange meetings on Saturday so that a full 4 days of interviews were possible.

2.4. Development of an Analytical Framework

The team started out with a basic framework that recognized systemic, organizational and individual

levels of evaluation (see Table 2.1). These were further refined into benchmarks and criteria as the mission proceeded. Results are presented in Chapter 5.0 .

Institutional benchmarks and indicators then developed as a result of field observations. These are to be used by the Joint Project in phase II to evaluate the success of interventions designed to improve the capacity of institutions to develop and implement environmental laws.

Table 2.1 Basic Framework For Capacity Evaluation

Systemic	Organizational	Individual
Policies Laws & Regulations	Structure and competencies Mission and strategy	Job requirements (skill levels and needs); Training (includes on-the-job-training);
Inter-relationships between institutions	Planning processes, research, etc.,	Career progression (accountability/ethics);
	Human resources	Access to information (personal and professional networking);
	Financial resources:	Performance (conduct incentives/security);
	Information resources	Values and attitudes (moral and motivation);
	Infrastructure	Teamwork;
		Work re-deployment (job sharing); Communication skills.

3. Institutions Involved In The Development & Implementation of Environmental Law

This chapter presents an institutional model for environmental management that identifies the potential range of national institutions as well as their roles and responsibilities. This framework is used in Chapter 5 to compare the actual institutions involved in each country and where gaps could be filled.

The sections that follow present:

- A rationale for the institutional framework presented; and then
- A description of the institutions involved in the development and implementation of environmental law.

3.1. Rationale For An Institutional Framework

Legal and institutional arrangements for environmental management have gradually evolved and changed as scientific understanding of the dynamics of environmental processes and the impact of anthropogenic activities on such dynamics has increased. Trends indicate a move from sectoral approaches that isolate and exploit the environment, to a holistic eco-system approach that is concerned with sustainability and promotes an integrated and coordinated approach to environment and the economy. Institutional arrangements have also been influenced by participatory approaches to development and the devolution of power to sub-national levels, including the empowerment of grass - roots communities to decide and act on the political, economic and social issues which affect them.

In the relatively short time that NCSs, NEAPs and other similar sustainable development plans have been adopted and implemented a number of lessons have been learned about the constraints that are being faced. Environmental laws and regulations are considered indispensable for the effective implementation of these plans. They establish mandates for institutions as well as define roles and responsibilities for government, civil society and individual citizens. These rights then have the backing of the law and, hence, are enforceable.

Thus, when one discusses the implementation of environmental laws and regulations one is also speaking about the implementation of the environmental management frameworks as expressed in these plans. In the past, trivializing the institutional arrangements embodied in the framework plans (as well as in the NEMS and other environmental laws) has led either to:

- The postponement of their establishment on a

permanent basis (preferring to proceed either with the old arrangements or on an ad-hoc basis); or

- the creation of weak institutions with mandates that are unclear and capacity which is far from sufficient to meet even the most basic of their functions.

Consequently, institutions have failed to respond to the challenge of environmental management and sustainable development.

Since environment is an area that transcends all sectors, it is now accepted that its management requires the coordination of a multitude of stakeholders. In other words, its management requires inclusiveness. Effective management of the environment requires diverse *institutions* and *individuals* with a wide range of skills to work in harmony.

Generic institutional arrangements for environmental management are described in the sections that follow. These are then compared to institutions that were engaged in phase I. Implications for phase II are discussed.

3.2. Description of Institutions

The stakeholders in the formulation and implementation of environmental laws, including their enforcement can be broadly categorized as:

- Government institutions (coordinating bodies, line agencies, legislative/judicial branches, and the police);
- Academic institutions;
- NGOs and CBOs
- Professional associations; and the
- Private sector.

These institutions are normally accounted for in well-drafted national environmental management strategy (NEMS) in order to clarify the basis for implementing environmental laws.

3.2.1. Government Institutions With Integrative / Coordinating Environmental Functions

National environmental management authorities (NEMAs³), are the apex institutions in matters that concern the management of the environment, as are any other institutions attached to them or created by them to enhance their capacity to carry out their integrative and coordinating functions. Where these

³. NEMA is being used in this Study as a generic term that includes all national agencies with this function.

apex agencies are placed, within the national government structure, differs from country to country. They may be directly accountable to parliament, the executive branch of the government (i.e. the cabinet/ council of ministers) or a line ministry which holds an environmental portfolio along with other portfolios such as water, forest, agriculture or natural resources.

The function of an apex agency is to see to it that a framework for environmental management (i.e.- the policies, strategies, action programmes as well as the laws and regulations backing them) are formulated, implemented, monitored, assessed and evaluated, using integrative, co-ordinative and regulative mechanisms. For NEMAs to carry out these functions they require the ability to *control* as well as *coordinate* other institutions involved. This implies legal powers as well as a position within government higher than the line agencies it manages. In other words NEMAs ideally report directly to the legislative branch or are accountable to the executive branch (the cabinet). In cases where the agency is responsible to the executive branch, having the policy council chaired by the Prime Minister / President or their deputies is expected to give the agency political clout. Box 3.1 provides an example of possible functions for a NEMA.

Box 3.1: Possible Functions of National Environmental Management Agencies

Mandate of NEMAs may consist of the following:

- coordinate the formulation of environmental management policies, strategies and action programmes;
- review priorities for implementation of programmes and aspects thereof as frequently as required.
- promote coordination of programme implementation through inter-organizational collaboration and cooperation;
- prepare guidelines and directives to ensure the compatibility of projects with policies and strategies;
- advise on the allocation of funds and other resources to the various organization involved in the implementation of programmes;
- monitor and assess the impact of policies and strategies as well as evaluate the effectiveness and timely implementation of programmes.

Normally the NEMAs consist of a NEC; various ATCs of a permanent or ad-hoc nature and an executive arm or a secretariat with the duty of providing the NECs with decision support materials as well as ensuring that decisions are implemented. Ideally, both NECs and ATCs should represent major environmental stakeholders within and outside government. Ideally the executive arm or secretariat will have sufficient human resources to enable the NEMA to carry out its

mandate effectively (policy analysis and review, strategic planning, etc.). In addition, IAWCs may be established, composed of experts from line agencies, to work on specific policies, strategies or action plans.

Civil advisory bodies, think tank institutions, etc. may be attached to the NEMAs for additional expertise. They bring to the table views that have been developed as a result of working with the grass roots. They also potentially bring innovative ideas resulting from research conducted at this level.

The importance of bestowing advisory status to civil institutions merits further discussion since it is an additional means of strengthening the partnership between government on one hand and the civil society on the other hand.

While having representatives of civil society in the NECs and TACs is necessary to ensure that they are involved in overall environmental management decision-making, establishing various civil society advisory bodies would have several benefits. The following are a few examples of such benefits:

- provide insight regarding environmental management issues as perceived by their groups and what they think the solutions are;
- point out the skills and resources that their groups have which they can use to carry out the policies and strategies for environmental management;
- indicate existing policy and legal constraints which are hampering their effective participation in environmental management and how such constraints can be ameliorated by government action;
- advise on how their group's awareness regarding the environmental policies, strategies and action programmes can be enhanced, as well as which mechanisms can be used by their groups to carry out their own sensitization and awareness enhancement efforts among grass roots communities.

The NEMAs may also liaise with PSCoEs and lobby for the establishment of one if there is none. This is required not only to ensure that PSCoEs grasp the policy background of proposed environmental legislation but also to provide them with feed-back regarding compliance with and enforcement of legislation. This creates the opportunity for the parliament to take timely and appropriate action in terms of bringing to task any organ of the executive which may not be functioning as it should and taking initiative for amendments or new legislation where the need arises.

It is also worth noting that at the sub-regional or supra-national levels there are institutions whose main function is to carry out coordination and integration among groups of countries through common planning of activities in areas of common concern, including the harmonization of environmental laws and regulations.

These can consist of inter-governmental bodies that consist of a summit of Head of States, a Ministerial Council, a technical committee and a Secretariat.

3.2.2 *Government Institutions With Line Functions*

Line agencies have specific mandates for implementing policies, programmes and projects within discrete sectors (i.e. natural resources, transportation, agriculture, energy, etc.)⁴. Each agency will be responsible for implementing a range of compliance and enforcement activities under the laws entrusted to them. In addition to sector-specific activities there are a number of others related to environmental management that require coordination with one or more other agencies. For this reason many line agencies are likely to be members of the NECs and the IAWCs.

Traditionally, the powers and responsibilities of line agencies extended down to the lowest administrative level. With decentralization and devolution of powers to local government these line agencies are increasingly involved in providing policy and strategic guidance rather than being directly involved in implementation. What is increasingly apparent is that districts require technical assistance and training where devolution includes new responsibilities. Also required is a clearer delineation of the roles and responsibilities between the national government and lower administrative levels.

3.2.2. *The Legislative and Judicial Branches*

Since government institutions in their broadest sense may normally be divided into the legislative, the executive and the judicial branches, it may not be appropriate to group the legislature and the judiciary together with line agencies. The legislative (parliaments) and the judicial branches of government play an important role in the enactment and implementation of environmental laws.

The Legislative Branch

The legislative branch plays a central role with regard to the development and enactment of environmental laws. This branch is also responsible for ensuring that the executive branch and the line agencies are meeting their mandates as required by law and votes funds for these.

It is common practice for parliaments all over the world to establish various committees to deal with the diverse issues that parliaments will have to deal with in the course of carrying out their legislative business (e.g.- economic, social or labor and industrial ...etc.) A recent addition to these types of committees is the parliamentary standing committees on environment (PSCoEs).

Sectoral Committees is that to which a parliament refers to proposed sectoral legislation pertinent to the area for which such committee has been established for review. Under normal circumstances members of such a committee would be expected to be reasonably conversant with the issues which they are expected to deal with so that they will be able to discuss the proposed legislation with the representatives of the executive and, subsequently, present their views to parliament as a whole. Since the position that the members of such a committee take regarding a given legislation presented to them has a decisive influence on how the whole parliament votes securing their full support on any legislative proposal is important.

The Judiciary

The judiciary is entrusted with the very important function of ensuring that environmental laws and regulations are interpreted and applied properly. To facilitate the role of the judiciary many countries have resorted to the creation of special chambers to deal with environmental litigation, just as they normally do for other types of litigation such as taxation, family and business litigation. In fact some countries go as far as establishing "Environmental Tribunals" or "Environmental Courts". However, the constitutional feasibility of such a move will have to be examined and ascertained before countries exercise this option. For example the constitutions of some countries define rigidly the court structures and systems. Under such circumstances establishment of such courts may not be feasible. Besides, such tribunals or courts, being separate from the other courts, may require resources for their own administrative and other support machinery.

The roles of these two branches of government apply also to the realm of environmental law.

3.2.3. *The Police Force & The Public Prosecutor's Office*

The police force in any country plays an important role in the enforcement of criminal law. To the extent that environmental sanctions are criminalized both the force as well as the Public Prosecutor's Office will play an important role. Because development and implementation of environmental laws and regulations has not yet taken root in African countries the police forces and the prosecutors' offices do not yet see environmental offences as meriting their attention. Thus, it would be essential for these two important public services to be sensitized adequately before they will begin considering investigation and prosecution of environmental offences as part of their normal activities.

⁴ The police force and the Attorney General/ Public Prosecutor Offices (where they fall under the executive branch of government such as the Ministry of Justice) may be considered as line agencies that are mandated to control criminal activities and prosecute criminal offenders, not excluding environmental crimes.

3.2.4. Civil Institutions

It is important to note that the environmental management policies and strategies such as the NEAPs have national ownership, which means they do not belong only to government. All sectors of society in a country have both the right and the duty to see to it that they are implemented. In fact, aside from the facilitation role of government, in terms of creating a favorable enabling environment (which is of course very important) implementation largely depends on the people and their institutions. It is, therefore, important to describe in some detail the roles that can be played by the various civil society institutions.

3.2.5. NGOs and CBOS

Non government organizations (NGOs) and community based organizations (CBOs) play a particularly important role in helping communities and their institutions understand their rights and duties with regard to environmental laws. The impact of both groups' activities is becoming increasingly significant in the African context.

African governments can only provide the enabling environment for better management of the larger part of the environment. Given that the majority of African peoples carry out natural resource-based activities, their actions have a direct impact upon the latter's sustainability. If environmental laws and regulations are to have any kind of impact, evidence suggests that the general population must be empowered by these same laws with regard to natural resource management. This also implies a basic understanding of what the implementation of each law entails. Hence arises the need to give space to NGOs and CBOs to play a role, as appropriate, both in the formulation and implementation of environmental management plans as well as laws and regulations. Such recognition will eventually help develop and strengthen a partnership with both communities as well as government that will result in a dynamic working relationship.

3.2.6. Professional Associations

Professional associations can be important partners in the performance of advocacy roles. They can be expected to diligently apply their skills for an enhanced management of the environment. For example:

- lawyers can test and promote the utilization of the provisions of *locus standi*⁵;
- economists and scientists can undertake research that provides new concepts and ideas for application in the better management of the environment.

Many other types of groups are possible. The importance of these groups is that they can promote

awareness of environmental issues as well as mobilize their membership to contribute to better environmental management on specific issues.

3.2.7. The Private Sector

The private sector also needs to be supportive of environmental objectives as provided in legislation. The participation of industry representatives in law making, for instance, helps to determine the level of regulation required, monitoring and reporting requirements, as well as the time required to phase in new laws to achieve compliance. A host of other sanctions and incentives can also be identified through the inclusion of industry during the development of these laws. In many instances, awareness-raising that falls out of these activities is key, since industry representatives are likely to report back to a large membership on the timing and requirements of new laws.

Increasingly industry has a wider range of incentives for complying with environmental laws:

- Corporate image has become increasingly important to many industries interested in promoting their image as environmentally responsible agencies. This is where awareness-raising activities through NGO groups provide important momentum. Another important scheme is the publicisation of "bad" and "good" industries in local newspapers. This provides further pressure on industries to improve their environmental performance.
- Market access to both international and local markets is being promoted through accredited environmental management systems like ISO 14000 and EMAS (British).
- Cleaner production concepts in countries like China, the Philippines and Indonesia have shown that pollution reduction and improved forms of management often can lead to significant cost savings for industries.

As a result industries are increasingly likely to undertake voluntary compliance activities when they are included in law making exercises that directly involve the above three factors.

3.2.8. Advisory Role of Civil Institutions

Civil institutions also can provide advice to the NEMAs through umbrella organizations.

In the case of NGOs the membership can nominate individual NGOs to form a committee (of staff working within each such NGO) which can be called upon to deliberate and advise on issues that are considered pertinent. Where there are no umbrella NGOs it would be advisable for the NEMAs to promote the establishment of one.

⁵ A principle usually found in constitutions giving individuals (or groups) the right to litigate environmental issues in court and bring a suit against offenders irrespective of the fact that the person/group has suffered or not suffered damage.

In addition, the establishment of a private sector advisory body to the NEMAs would provide added value. Private Sector advisory bodies need not be established from scratch in many cases. For example, the private sector already has bodies such as UMA in Uganda, while in Mozambique they are in the process of forming the MIA. Some of these bodies have already created committees for environmental matters.

It is important to note that NGOs should not be dependent on government for resources or funding. They are expected to have their own sources of funding. These sources are usually the membership fees, resources acquired locally or from abroad from persons or institutions who support their objectives etc. Those NGOs whose objective is the enhancement of environmental management in its diverse aspects would, therefore, be expected to use whatever resources they have towards that end.

3.2.9. Involvement of These Institutions In Phase I

Table 3.1 compares the range of potential groups involved in environmental management versus those actively engaged in phase I of the Joint Project by country. The resulting pattern likely

reflects the Joint Project's focus in phase I:

- on the stakeholders directly involved with the drafting of environmental legislation (lawyers);
- environmental issues related to natural resource management (a priority with most countries visited);

As a more fully developed compliance framework is developed, so too will the list of agencies engaged grow.

While ideally *all* of the institutions shown in Table 3.1 should be involved in phase II activities, the actual number will vary from country to country depending on the level of resources available. Chapter 6 recommends the development of country-level implementation reports that identify opportunities for coordinating and leveraging interventions with other donors. Given that various international groups have already engaged a wide range of institutions in environmental management activities it should be relatively easy for the Joint Project to take advantage of these linkages to increase the potential impact of its own activities. The quality of programming should not be compromised for comprehension in terms of the number of institutions engaged in the study.

Table 3.1 Institutions Engaged With Environmental Law Initiatives in Phase I

Institutions With Environmental Mandates	Uganda	Malawi	Mozambique	Burkina Faso
Parliamentary Standing Committees				
Courts				
Auditor General				
Ministry of Environment				
Line Agencies (Transport, Industry, Health, etc.)				
Local Government (regional, district, municipal)				
Inter Government Agencies				
Police Force				
Academic Institutions				
Environmental NGOs (umbrella groups)				
Business Organizations (umbrella groups)				
Professional Organizations (legal advocacy)				
Media (newspapers, television, etc.)				
Donors				

4. Institutional Capacity Evaluation

This chapter summarizes institutional capacity constraints and needs for the development and implementation of environmental laws in phase I countries as identified by the stakeholders interviewed. It also identifies project activities used to address these needs and the lessons learned.

The sections that follow:

- describe the context in which environmental laws and regulations are developed and implemented in the countries visited; and then
- identify systemic, organizational and individual capacity constraints and needs related to the development and implementation of environmental law.

4.1. Project Implementation Context

The project has been in operation in each of the countries for only a limited period - three/four years. The development and implementation of environmental law faces a number of challenges in the countries visited:

- (i) *Ongoing Institutional Restructuring*: Most countries visited have just officially completed a significant restructuring of government agencies. As a result, mandates require clarification, and both staff and organizational structures remain in a state of flux, creating uncertainty over resource access and job security.
- (ii) *High Degree of Individual Mobility*: As a result of restructuring, as well as competitive salaries in the private sector, most agencies are characterized by a high degree of individual mobility. This problem is further compounded by the private sector, which offers more competitive salaries, leading to a drain of senior expertise in departments. As a result of both factors training programme may not always result in building the capacity of the institutions originally intended. For instance the mission team noted that a number of lawyers trained as government employees had moved on to the private sector, or had moved to departments which could afford to pay higher salaries for their skills. Nevertheless the capacity remains in the country.
- (iii) *Ongoing Policy and Legal Reform*: Key environmental policies still require harmonization in the countries visited. Also, despite the progress made to date there remain a number of significant pieces of environmental legislation, which have yet to be developed and adopted. This means any Joint Project interventions in phase II continue to take place

in the context of a dynamic policy and legal environment.

- (iv) *Decentralization of Central Government Functions*: Most countries are beginning to decentralize a wide range of government functions. National governments in Francophone and Allophone countries have traditionally played more central roles than in former British colonies. As a result challenges to decentralization will be quite different in Mozambique and Burkina Faso compared to countries like Uganda, Malawi and Kenya.
- (v) *Lack of resources & donor dependence*: Often ministries lack both the staff as well as the basic resources required for Programme implementation. This may account in part, for the lack of strategic planning done by some of the agencies visited.
- (vi) *Lack of Donor Coordination*: This continues to be a problem since bilateral agencies can be influenced by political agendas at home rather than necessarily being guided by strategic plans of the recipient countries. As a result programming can be inconsistent from year to year and lack the long-term continuity required for capacity development.

These factors constitute the risks and assumptions that need to be made when considering options for implementation during phase II of the Joint Project.

4.2. Systemic Environmental Capacity Needs

The system, or enabling environment, is the highest level within which capacity initiatives may take place (UNDP, 1998). Dimensions of capacity building examined at the systemic level include:

- *Environmental management policies, strategies and action plans* that define broad environmental goals as well as roles and responsibilities.
- *Laws and regulations* that have been developed to govern the system and set the framework in which capacity initiatives function.
- *Inter relationships* among institutions and their ability to coordinate the implementation of environmental laws, regulations and standards;

These three areas are examined in the sections that follow.

4.2.1. Environmental Management Policies, Strategies and Action Plans

As far as environmental management policies,

strategies and action plans are concerned all the countries visited had developed a National Environmental Action Programme (NEAP). These Programmes present a framework of policies, as well as strategies and actions for implementation. Where necessary sectoral policies and strategies are to be revised in more specific fashion for harmonization with the NEAPs.

The study findings indicate the following issues as constraining the implementation of the NEAPs:

- Implementation of NEAPs has not been systematic;
- Key environmental policies and action plans need to be harmonized with NEAPs to improve their implementation.

Each of these issues is discussed further in the subsections that follow:

Implementation of NEAPs Have not been Systematic

Interviews in all countries visited reveal that actions required by NEAPs are not always the basis for project formulation and implementation. While some had addressed various aspects of their NEAP by proxy none were reporting progress against this plan. Even in Uganda, NEMA's efforts to coordinate planning and implementation activities of line agencies with regard to NEAP have largely been unsuccessful. Reasons provided during interviews suggest that other ministries considered NEMA to be intervening in what they considered to be internal affairs. Similarly in Malawi, the NEC and the Department of Environment were considered weak by many interviewees and incapable of coordinating or directing the activities of other line agencies.

Other reasons identified by stakeholders for inconsistent implementation of NEAPs include:

- While participatory processes were used for the development of NEAPs, similar mechanisms were not employed to develop strategic plans, identifying roles and responsibilities, for their implementation.
- Several of the NEMAs are not properly institutionally set up to enable them to promote effective implementation of the NEAPs through coordination;
- The NEAPs have not been internalized through integration in the national development planning systems of the countries concerned;
- Some line agencies interviewed gave the impression that they did not consider the NEAP to be their mandate to implement. According to

them, environmental action plans were the NEMAs responsibility. In other words line agencies were still thinking of environment as a sector rather than as a cross-cutting theme requiring coordination among a range of departments.

- Reporting mechanisms were not established to document progress against the NEAPs. Therefore, collection and analysis of results of implementation of activities was difficult for the NEMAs, which are responsible for managing this information.

Key Environmental Policies and Action Plans Require Harmonization With NEAPs

In almost all countries visited a broad range of stakeholders pointed to the continued need for harmonization of environmental policies, action plans and NEAPs. In theory, NEAPs provide the framework around which countries develop their environmental policies. In practice:

- (i) In some instances NEAP finalisation has not been immediately followed by sectoral policy revisions.⁶ For example, in countries such as Mozambique sectoral policy development is at its lowest. In fact interviewees in Mozambique have indicated that there is now a feeling among the line agencies that their NEAP has not identified the environmental issues in that country correctly and that, as a result, it requires revision.
- (ii) In other instances, environmental policies and action plans have been developed without adequate consultation with the NEAPs subsequent to their development. For example:

In Burkina Faso interviewees pointed out the need to harmonise their "National Action Plan To Combat Desertification" (PAN⁷) with their NEAP. They also identified the need to create stronger linkages among their National Environmental Action Plan (PANE⁸), the LPDHD⁹, and the Agricultural Sector Adjustment Plan¹⁰ to ensure coordinated implementation;

Another example is that of Malawi where a Presidential Commission had just completed a review of the National Land Policy. Revisions to such an important document will have repercussions for many of the recently enacted pieces of environmental legislation as well as for other environmental policies.

Lack of policy information in other country NEAPs

⁶ Many countries had sectoral policies in place prior to the development of their NEAPs. Depending on how outdated these policies are, it is likely that a number will have to be revised to ensure harmonization with NEAPs.

⁷ Plan d'Action National de Lutte Contre la Desertification.

⁸ Plan d'Action National Pour l'Environnement.

⁹ La lettre d'Intention de Politique de Developpement Humain Durable.

¹⁰ Le Plan d'Ajustement Du Secteur Agricole.

suggested that a similar review might be appropriate in Uganda and Malawi.

4.2.2. Laws & Regulations

In most cases the Joint Project has played an

important role with regard to the drafting of key environmental laws and regulations over the past 5 years. Table 4.1 presents a list of legislation developed with project assistance. The following interesting patterns emerge:

Table 4.1 Legislation Drafted With Joint Project Assistance in Phase I¹¹

Laws Prepared With Project Assistance	Uganda	Malawi	Mozambique	Burkina
National Environmental Management Statutes				
Forestry Act				
Fisheries Conservation & Management Act				
National Parks & Wildlife Amendment Act				
Land Use Management Act				
Law on Environmental Crimes				
Harmonization of Environmental Penalties				
Law on Toxic & Hazardous Waste				
Law on Municipal Waste & Hospital Waste				
Regulations/Decrees Prepared With Project Assistance	Uganda	Malawi	Mozambique	Burkina
EIA				
Land use and management regulations (wetlands, mountains, lakes & rivers)				
Management of Protected Areas				
Management of Fauna & Activities of Hunting Guides				
Community Level Wildlife Management				
Forestry Exploitation				
Prevention of Marine & Coastal Pollution				
Aquaculture				
Draft Fish Subsidiary Regulations and Rules				
Trade in Fish Products				
Creation of Water Parimeters of Economic Interest				
Use of Fires in Rural Areas				
Inspection, Monitoring & Auditing				
National Air Quality System				
CFC Emissions				
Vehicle Pollution				
Hazardous Installations				
Classification of Dangerous Establishments				
Toxic substances and chemicals				
National Council For Sustainable Develoment & National Environmental Fund				
Decree on the organisation, mandate and the functioning of the National Council for Environment Management (CONAGESE)				
Environmental Fund				

Key To Table

Adopted

Draft (submitted or not)



¹¹ Note that country project officers were asked by the consultants to confirm the information presented in Table 4.1. Since this was not done readers are cautioned that findings may have some errors.

- The Joint Project has played a key role in drafting environmental laws and regulations with the exception of the NEMs (the only country receiving project assistance for the latter was Uganda). With the exception of Burkina Faso, the Joint Project played a key role in drafting environmental framework laws in Uganda, Malawi and Mozambique;
- This is also true for EIA regulations, though donors such as the World Bank have done extensive background work leading up to this drafting;
- While Malawi has drafted fewer environmental laws under the Joint Project than any other country visited, it has a much better record of adopting these pieces of legislation. Number of laws drafted versus adopted in Malawi are 7/9, versus Uganda's 1/1, Mozambique's 17/2 and Burkina's 14/9;
- Burkina Faso has adopted more regulations than any other country;
- Mozambique has drafted more pieces of legislation (17 to be exact) than any other under the Joint Project, and have adopted the fewest;

In the course of visiting the countries studied the following issues were identified regarding the development and implementation of environmental laws and regulations:

- Lack of strategic planning when carrying out drafting of environmental laws;
- National environmental management statutes have not established strong environmental management institutions;
- Development of legislation has not always preceded policy
- Economic/financial and planning laws, regulations and tools have been ignored to-date;
- Environmental laws have not addressed the issue of harmonizing penalties;
- Harmonization of regional environmental laws and standards will reduce the potential for conflicts;
- Slow adoption and no monitoring of implementation of laws and regulations by parliaments;
- Implementation problems;
- There are still environmental laws and regulations that require revision;
- Harmonization of regional environmental laws and standards will reduce the potential for conflicts;
- Environmental compliance frameworks do not incorporate economic and planning instruments.

Lack of Strategic Planning When Drafting Environmental Laws

During phase I the development of laws and regulations with the assistance of the joint Project was preceded by review of the state of the environmental legislation in the participating countries to identify shortcomings and gaps. However, once this was done the countries fixed the priorities themselves. In fixing such priorities many of the countries have not used a systematic approach which has in mind equipping the countries with basic laws and regulations which are ready for implementation. In addition the Joint Project currently faces a context in which policies, laws and regulations continue to require re-drafting to ensure harmonization. What is required for all countries in phase II is a plan for prioritized legislative drafting based upon the hierarchy of policies, laws and regulations which need to be addressed. This plan should allow countries to develop at least the minimum legal framework required for environmental management at the national level.

Strategic planning in new phase II countries will help avoid the following issues identified by the team in the countries visited:

- Absence of major sectoral acts or statutes, leaving gaps in the existing environmental management framework;
- drafting of regulations based on acts and statutes that have not been reviewed for harmonization with the NEMS;
- Lack of implementation regulations for major sectoral acts and statutes (e.g. Uganda wild life);
- Need for technical guidelines for administrators and proponents related to newly developed EIA regulations (see text box 4.1);
- Lack of environmental quality standards.

As a result of the above many administrators and regulatees have no basis for implementing and adhering to newly drafted environmental laws.

Phase II of the project should update existing reports on the state of environmental legislation and then set out to identify priorities as well as a schedule for implementation. It identifies short and medium term implementation plans based upon existing capacity with the Ministry of Environment and Water. This latter step should involve all stakeholders to ensure their buy-in and should receive approval at the highest levels to ensure adherence to the plan by all parties. It will be important to ensure wide distribution of this information to all parties.

National Environmental Management Statutes Have Not Established Strong Environmental Institutions

All the countries visited have NEMS. With the exception of Uganda, all other NEMS have been drafted prior to the commencement of Joint Project activities.

It is now obvious that these statutes have a number of shortcomings with regard to the institutional mechanisms established for environmental management activities. The following are the major problems observed:

- The NEC in Malawi is restricted by law to providing only advice and recommendations to the Ministry of Natural Resources and Environmental Affairs (see Section 12 of Malawi's NEMS). As a result the Ministry has no obligation to accept any form of guidance from the NEC (Section 8 of the Malawi NEMS). In addition, with an NEC that has purely advisory function the multi-stakeholder coordination and integration principle loses its meaning. It should be noted that the chairman of the Malawi NEC is a person outside government with, apparently, no political status within the government. It is, therefore, important that the functions of the Malawi's NEMA, including the NEC, be reviewed and appropriately redrafted. During such redrafting due regard should be given to the chairmanship of the NEC.
- The situation in Burkina Faso is even worse. There the NEMS does not provide for any coordination body. Instead it entrusts to the Minister of Environment very unspecific powers to carry out institutional coordination of environmental quality in Burkina Faso (Title I, Chapter III, Article 6) and provides for the institution of a coordinating mechanism (Title I, Chapter I, Article 7). The creation, organization as well as the attributes and functions is to be provided for by a council of ministers' decree upon presentation by the minister in charged of the environment (Title I, Chapter I, Article 8). Thus, the CONAGESE within the Ministry of Environment in Burkina has no obvious legislative mandate to undertake coordination and integration of environmental concerns.
- In Mozambique the NEMS creates a National Council for Sustainable Development (a consultative body of the Council of Ministers) as the NEC. It also provides this body with a number of powers (Articles 5 and 6 of an unofficial translation of the Mozambique NEMS). Unfortunately, Mozambique's NEC is not operational since the NEMS also provides that the NEC will be activated by another law which has yet to be enacted by the Council of Ministers (Article 6(2)). It should also be added that the NEMS in Mozambique does not call for the creation of an executive arm through which the NEC can execute its decisions, resolutions and directives.

Development of Legislation Has Not Always Preceded Policy

The team found a number of instances where the drafting of legislation was followed by the development

of policy. As a result there is some uncertainty as to whether or not policy is in harmony with legislation. For instance:

- In Malawi the *Fisheries Conservation and Management (FCM) Act* came into force as of October 1st, 1998 with the development of the National Fisheries & Aquaculture Policy in 1999. Also the *National Parks and Wildlife Act* was passed in 1992, but is currently undergoing technical reviews and consultations based upon a draft Wildlife Policy.
- In Uganda a new Forestry policy is being drafted, while a draft Forestry Act has been in existence for some time.

The above, in many stakeholders' opinions, necessitates another series of reviews potentially resulting in further legislative revisions where the need is identified.

Environmental laws have not addressed the issue of harmonizing penalties

An issue was identified with regard to how strict sanctions should be in environmental law. Conflicts between the Forestry and the Penal Codes were identified in Burkina Faso. In some cases sanctions called for under the new environmental regulations were higher than those traditionally levied. Stakeholders interviewed felt that magistrates, when faced with this situation, would not apply the environmental law because of their familiarity with the Penal Code.

In Mozambique, for example, a draft Law on the Harmonization of Environmental Penalties has been developed with project assistance. It may be useful to have similar exercises to come up with harmonized penalties in the other countries. It is likely that, even when such a law is adopted, further awareness-raising activities will be required for magistrates, lawyers, enforcement officers and a range of potentially affected parties. These activities would be used to ensure each group's familiarity with the new law as well as the range of other related pieces of legislation.

Harmonization of regional environmental laws & standards will reduce the potential for conflicts

Another coordination issue expressed by stakeholders is the harmonization of environmental laws with neighboring countries.

Uganda has already signed an MOU with Kenya and Tanzania regarding cooperation on environmental matters, including harmonization of environmental laws and regulations. In fact Uganda wants this MOU raised to the status of a protocol within the context of the East African Cooperation Treaty. Specific objectives identified in this MOU are to:

- (a) establish interim arrangements for continued consultations, capacity building and networking

on environmental policies, laws and strategies;

- (b) undertake joint programmes and activities including information-sharing and harmonization of relevant environmental laws under the Project;
- (c) provide a basis for the Partner States to cooperate with competent specialised international organisations and other governments in the field of environment management, pending the adoption of a protocol under the Treaty;
- (d) promote the development and implementation of environmentally sound principles, international agreements, instruments and strategies for environment and natural resources management among the Partner States.

While details were not available to the consulting team, stakeholders interviewed mentioned that further regional environmental law efforts are being undertaken by:

- Malawi, who is a member of SADC;
- Burkina Faso, which is a member of the West African Economic Monitoring Union (UEMOA) through the Commission for Environment & Rural Development.

Environmental compliance frameworks do not incorporate economic & planning instruments

Most countries visited have yet to develop a comprehensive compliance framework for the implementation of environmental law. Specific shortcomings include:

- *Focus on enforcement:* interviews and documentation available to the consulting team suggest that, with the exception of Burkina Faso, most countries have focused on litigation and enforcement issues as the sole means of achieving compliance with newly enacted environmental laws. In this respect, Burkina Faso appears to fall short in dealing with enforcement issues altogether. "Le Cadre Institutionnel De La Gestion De L'Environnement" does not identify the courts, the police or private litigators with regard to their role in enforcement.
- *No consideration of economic & planning instruments:* There also appears to be little thought put into how economic and planning tools could be used to achieve greater compliance with newly developed environmental regulations. Sometimes these types of interventions are perceived as being too advanced for the countries in question.

Perhaps as result of the above, the key government agencies involved in the Joint Project tend to be the Ministry of Environment and line agencies responsible for natural resource management. While other ministries and departments may or may not have been

consulted, there is actually a much broader scope to actively involving them. The lack of a more broadly based compliance framework suggests that a rather restrictive view may have been taken of environmental law and its implementation. There is a real need to develop a better understanding of how economic and non-economic incentives and disincentives can be used to form a comprehensive framework for compliance in the countries of project implementation.

Environmental laws have to be made more accessible to the general public

The Mission Team noted a real absence of information on environmental laws that was accessible to the public in the countries visited. Challenges included:

- Numerous local languages;
- Low literacy rates;
- Scattered populations in remote locations; and
- Legislation available only in legal text formats (no "simple language guide").

Accessing information on environmental laws internationally is also made difficult for countries like Burkina Faso and Mozambique where English is not widely spoken. Uganda has published a simplified version of their National Environmental Statute and is currently translating this into four local languages. Efforts like this need to be made in other countries of project implementation. In Mozambique for example very few people in the legal profession, particularly the older generation, speak English.

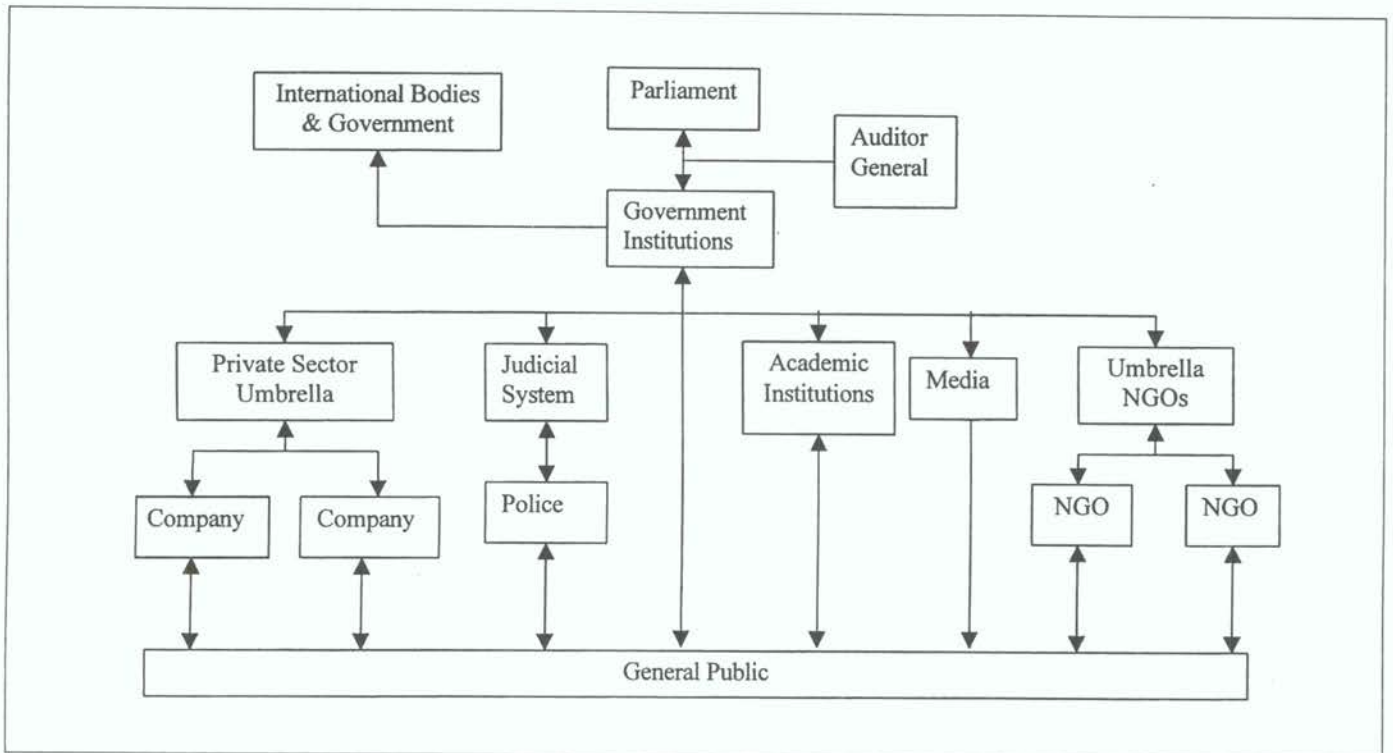
4. 2. 3. Coordination of Environmental Institutions

Figure 4.1 illustrates some of the major institutions potentially involved in environmental management at the national level. Key to the present inquiry is exploring the *relationships* among and within these groups. Relationships can be defined formally through mandates or less formally through information exchanges (sharing data, sending newsletters, etc.)

Coordination issues identified for institutions visited include the following:

- Parliaments do not seem to monitor implementation of environmental laws;
- Mandates of many agencies remain unclear after restructuring;
- NEMAs are unable to coordinate other line agencies as a result of their present positions within the Ministry of Environment;
- Environmental liaison units are non-existent or not functioning in many of the departments visited;
- A number of departments involved with environmental management issues have yet to be engaged;

Figure 4.1 The National System¹²



- Roles and responsibilities of a number of line departments require clarification with regard to the implementation of environmental laws;
- Involvement of environmental NGOs needs strengthening;
- Professional associations need to be involved;
- The private sector needs to be better engaged;
- Linkage with and among universities remains weak;
- Institutions for resolution of transboundary conflicts remain under-developed.

Each of the above points is dealt with more extensively in the subsections that follow.

Parliaments do not seem to monitor implementation of environmental laws

The role of parliament is to facilitate the enactment of environmental laws and regulations as well as to monitor, from time to time, whether or not these laws are being implemented. No evidence of the latter activity was presented to the mission team in any of the countries visited. Reasons for this are likely to include the fact that in some countries:

- parliamentary standing committees on environment do not exist yet;
- where they do exist members have a low awareness of environmental laws and issues; and

- the lobbying strength of the private sector interests is too closely tied to pro-private sector parliamentarians.

To enable the parliaments to realize environmental mandates described in sections 3.2.1 and 3.2.2:

- PSCoEs should be established where they do not exist;
- they should be sensitized to policy and legal issues regarding environmental management, as should other members of parliament;
- roles and responsibilities should be clarified and included in the standing orders of parliament as well as the TORs of the PSCoEs

Mandates of a Number of Key Agencies Remain Unclear After Restructuring

Restructuring programmes with ministries involve organizational shifts at the highest level. They can include creating new ministries, shifting departments between ministries and reorganizing departments within ministries. As a result mandates and relations between all stakeholders can change.

Roles & Responsibilities With Regard To Implementation of Environmental Regulations Need Clarification

Many environmental laws and regulations have implications for a number of government agencies, yet

¹² Note that Figure 4.1 does not depict local government agencies since the present study did not have the time to evaluate their role.

roles and responsibilities have yet to be determined. For example, despite the consultative process used in Burkina Faso, a number of stakeholders felt that the potential for overlapping roles and responsibilities was high. There the Ministries of Animal Resources, Agriculture as well as Tourism & Transportation are all potentially implicated by the “Decree Providing for the Regulation of Concessions for the Management of Fauna and the Activities of Hunting Guides”. Given the scarce resources reported by most agencies, a strategic allocation of responsibilities with regard to their implementation will help ensure their success.

NEMAs are unable to coordinate line ministries

NEMAs’ ability in the coordination of environmental management activities in the countries visited is primarily affected by:

- *Lack of strong and clear legislative mandate* (see 4.2.2 above). For instance, in Mozambique, there is no legal instrument that provides MICOA with the mandate to coordinate the environmental management activities based on the Mozambican NEAP.
- *Inappropriate location within government hierarchy*. Specifically with regard to the second point, with the exception of Uganda, NEMAs in all the other countries visited are located within the Ministries of Environment. This undermines their ability to coordinate environmental initiatives with other ministries, regardless of legislative mandates that recognize this function. Further, most NEMAs exist as departments at the same level as other natural resource departments (e.g.- water, land, forest, wildlife) within their own ministry thereby restricting even their internal ability to coordinate. In Malawi the ability of the Department Environmental Affairs to coordinate is further complicated by the fact that the director is actually at a lower staffing level than his counterparts within the Ministry.

Practically all NEMA staff interviewed felt strongly that both problems needed to be addressed.

In some cases NEMA staff seem to have become so frustrated with the situation that they have almost given up. For example members of CONAGESE in Burkina have proposed abandoning any coordinating function within government. Instead they want to focus their efforts on developing institutional capabilities to develop and implement law in civil society.

Institutional mechanisms for coordination are most advanced in Uganda. Not only are they provided for in the NEMs, but also a number of significant efforts have been made to realize their implementation. Uganda is the only country where a NEMA exists as a semi-autonomous body although still under the general supervision of the Ministry of Lands, Water and

Environment. Its current success, however, may be due more to the level of funding and support being provided by the World Bank. Most other ministries in Uganda tend to view NEMA as an extension of the Ministry of Lands, Water and Environment. The Ugandan NEMA may also soon be challenged by a proposed department of environment to be established under the same ministry where it is located. This might result in a similar situation to the one that reportedly, exists in Tanzania. There both the NEMA and the Department of the Environment are located in the vice-president’s office. As a result of ambiguities in the legislative mandate of both, the Department has dominated NEMA and numerous conflicts have been reported.

Malawi also has on the ground the institutional mechanisms for coordination although their appropriateness is doubtful (see 4.2.2). On the other hand both Mozambique and Burkina Faso have no established coordination mechanisms on the ground and the mechanisms proposed in the NEMs of both countries are not appropriate (see 4.2.2). Therefore, in these two countries there is hardly any systematic coordination going on as envisaged in the NEAPs and the NEMs. They operate without the higher authority envisioned as necessary to exert control over line agencies.

If Uganda’s experience is anything to go by, even where a NEMA has a reasonably thought-out legislative mandate, there still may be other important problems of coordination like:

- weak linkages between the NEMAs and the line agencies;
- lack of technical interagency committees to discuss issues of implementation of the NEAP actions (lack of regular joint planning, implementation strategies and actions);
- poor communication between the NEMAs and the line agencies as well as between the line agencies;
- perception by line agencies that implementation /enforcement of NEAPs and environmental laws is the business of the NEMAs;
- as a result NEMAs in countries like Uganda felt that they had to take on monitoring and enforcement roles;
- unwillingness of the NEMAs to assert their legal power to require coordination as well as to play a more proactive role to ensure coordination;
- lack of specifically tailored training on how to coordinate and cooperate;
- inadequate awareness-raising efforts as to the modes of coordination;

As a result the NEMA in Uganda will have to take measures for strengthening coordination. Other countries will have to take similar initiatives if NEMAs are to achieve any kind of coordinative role.

NEMA's need to play a more pro-active role with regard to raising awareness of environmental laws

Uganda is far ahead of the other countries when it comes to awareness-raising activities. A number of innovative efforts and initiatives have been undertaken by Uganda's NEMA to increase general awareness of new environmental laws which has mainly benefited the systemic level:

- Conducting a series of environmental law and consensus-building workshops which have focused on increasing the understanding that major stakeholder groups (including lawyers working in environmental litigation and magistrates responsible for environmental law enforcement) have of the new laws.
- Publishing the National Environmental Statute in a simplified easy-to-understand version, and undertaking translation of the same into four local languages;
- Preparation of simplified publications stating the rights and obligations of individuals;
- Preparation and broadcasting nine episodes for a Court Room Drama television series dealing with various aspects of environmental law through a contract that NEMA has arranged with a consultant;
- Provision of a sensitization / training workshop to the private sector regarding the handling of environmental requirements.

Within NEMA-Uganda there is a feeling that these awareness-raising efforts have paid off, when one takes into account the fact that 50% of the complaints that it investigates come from public reporting.

In Malawi, translation of their NEMS into four local languages has been successfully accomplished. There is also a radio programme designed to create awareness about environmental issues that is being carried out with assistance from UNDP. Mozambique has plans to start a similar programme, again with the assistance of UNDP.

Despite the above, however, the following awareness-related issues were identified:

- There is still lack of awareness at all levels of government. Government officials and staff at the technical level may be conversant with environmental issues in their countries. They may well know about the need for policies and laws. They are not, however, in many instances, aware of such issues as the need for coordination and integration, and how to go about achieving it as well as what kind of institutional mechanisms should be used to ensure implementation of the laws that are enacted;
- Awareness of stakeholders outside government, particularly in the rural areas is practically non-

existent. Awareness of NGOs, CBOs, professional associations, and the private sector about environmental laws and regulations is very limited if any. The public at large, particularly the rural populace, in fact have no or very little awareness regarding the causes of environmental degradation and its consequences for development, let alone about the laws and regulations enacted to bring about a more sustainable management of the environment.

Identification of targets for awareness-raising must be carefully carried out. Outside the workshops there is no broad Programme for raising the awareness of the general public, government staff, law enforcement bodies, the private sector and the NGOs. For example, that awareness efforts are not very much tailored to the needs of specific groups is demonstrated by the fact that the so-called simplified translations attempted in some countries for dissemination among the wider public are still too technical to be understood by ordinary people, particularly in the rural areas. A number of stakeholders requested support for the development and dissemination of awareness raising materials — these could include simplified versions of the laws and regulations in laymen's terms (translated in local languages), etc.

- In many of the countries the full range of approaches for enhancing awareness have not been explored. Except for Uganda, the other countries have not gone further than having or planning to have radio environmental programmes into which they intend to include awareness regarding the environmental laws and regulations. For example, in Burkina Faso, there was no documentation or apparent media-based strategies for raising awareness with regard to new environmental laws. The use of drama, aside from the TV series in Uganda, has not expanded particularly at grassroots community level using the radio (which is relatively accessible as compared to TV) and amateur drama groups. The use of various religious and other indigenous institutions at all levels has also not been explored.

While the initiative of translating laws and regulations into vernaculars has been commendable the fact that in countries such as Mozambique items of the laws and regulations translated into vernaculars have not been disseminated is definitely something that should be questioned by the Joint Project. To be effective the simplified versions of the laws and regulations should also include guides on how the targets can get what they want out of them. Suggested plans for translating environmental laws and regulations into local languages need to be complemented with a wider range of approaches for different target groups.

Environmental Liaison Units In Most Line Departments Are Not Functional

Environmental liaison units (ELUs) are an important institutional mechanism that assists in the coordination and integration of environmental activities among line departments at the national level. They are the link between their respective line agencies and the NEMAs, helping to ensure activities planned and executed within their own department have due regard to requirements of the NEAPs and the NEMSSs.

Uganda is the only country where ELUs expected to function in this manner have been established. While both Malawi and Mozambique have established what they call environmental focal points in many of the line agencies as well as in NGOs and district bodies, these entities seem to have been established:

- to serve only as focal points for various environmental conventions; and
- in some cases as ad hoc and or temporary focal points for specific actions.

Neither the ELUs nor environmental focal points have been very effective. Reasons include:

- (with the exception of Uganda) these organizations have not been established with the specific object of working with NEMAs to ensure integration of environmental concerns within their own line agencies;
- they have not been formalized within the structures of their agencies. In Uganda they are committee-like bodies, while in Malawi and Mozambique they are just individuals;
- they lack strict accountability within their line agencies for their functions;
- turn-over of staff has hindered the ability of these units to function. For example, in Uganda after the NEMA trained members of focal points on how to play their roles the individuals trained were fired or removed to other positions as a result of retrenchment in pursuit of restructuring policies;
- in some cases (as in Malawi) the NEMA designated Coordinators for the Environmental Focal Points are not very senior and, therefore, exert little influence over others.

The above raises an important issue for ELU and that is the extent to which they facilitate coordination of activities, versus acting as a means of control for NEMAs. Ministries are far more likely to establish and maintain these groups if they feel that ELUs provide them with opportunities to share information and resources. This particular issue has to be dealt with directly if ELUs are to be ever established and functional.

Involvement of Environmental NGOs Needs Strengthening

Environmental NGOs potentially play a very important role in both the development and implementation of environmental laws (see section 3.0). While both Uganda's and Malawi's NEMS provide for the participation of NGOs in the NECs or related bodies, actual involvement of these groups is inadequate. In Mozambique and Burkina Faso NEMSSs do not specifically require the involvement of NGOs. In fact they do not specify membership type at all. Challenges facing the more active engagement of NGOs include:

- The NEMAs have not taken the required initiative to call upon the environmental NGOs to discuss their respective roles;
- The capacity to effectively coordinate environmental NGO participation at the national level varies considerably from country to country;
- With the exception of CURE in Malawi and SPONG in Burkina Faso, countries like Uganda and Mozambique lack umbrella NGOs¹³ to facilitate the partnership between the wider NGO community and government (specifically NEMAs). While the Joint Project has actively engaged CURE, further efforts have to be made to involve SPONG in Burkina Faso as well as to encourage the development of similar organizations in Uganda and Mozambique.
- In Mozambique the NGO movement only really got started in the late 1980's. As a result NGOs there tend to be weak and lack the resources as well as the expertise to actively engage government over environmental management issues.

Despite these challenges the Mission Team has observed encouraging trends in both Uganda and Malawi:

- Greenwatch, Uganda has helped to promote the publication of an environmental page every Thursday in an English language newspaper, New Vision. This NGO group will also begin publishing a monthly newsletter on environmental law issues in the near future. Other activities include (i) litigation raising general awareness of the ramifications of new environmental laws, and (ii) lobbying parliament on specific environmental issues.
- Greenwigs in Malawi are finalizing their plans to undertake similar activities.

It is important to note that participants attending environmental litigation workshops run by the Joint Project established these two NGOs. Similar groups and activities should be encouraged in Mozambique and Burkina Faso.

¹³ Umbrella NGO's refer to larger environmental groups that often help smaller NGOs by disseminating information to them, coordinating awareness-raising activities and even providing training.

Finally, the team noted that Uganda had a well developed web site listing all NGO's by district, including key resource people and their contact numbers. This type of site will greatly enhance the ability of these groups to coordinate their activities with a wide range of organizations as access to the net is improved.

Professional Associations Need to be Involved In Law-Making

Efforts to involve professional associations in the development and implementation of environmental laws and regulations should be increased. For example none of the NEMAs of the countries studied had established active links with the bar associations¹⁴. Bar associations have large memberships of lawyers who should be sensitized and kept informed about the issues that arise through the development and implementation of environment laws and regulations.

NEMAs have an opportunity to engage a wide range of professionals to assist in environmental law initiatives including environmental scientists, economists, engineers, health officials, planners, lawyers, etc.

Private Sector Involvement Could Be Improved

The engagement of the private sector has been variable from little, as is the case with Mozambique, to quite high as was demonstrated in Uganda. In the latter case, business groups interviewed recognized that they had a clear stake in the development of environmental legislation. In fact stakeholders expressed a desire to become more organised to ensure that their views be heard during the development of laws and regulations affecting them.

Again, the NEMAs in Uganda and Malawi specifically provide for the representation of the private sector in the NECs and related bodies. Provisions have been taken quite seriously in Uganda where the Ugandan Manufacturers Association (UMA) expressed with great enthusiasm the important role they are playing as members of both the policy council and the board of directors of NEMA-Uganda. UMA itself has taken a pro-active approach and appears to have regular communication not only with NEMA-Uganda but also with parliament where it intends to lobby regarding environmental laws and regulations of interest to the private sector.

In Malawi, the private sector is supposed to be represented by the Malawi Chamber of Commerce and Industry (MCCI). However, this group does not appear to be as active as its Ugandan counterpart.

It was noted that, the degree of awareness of the environmental management options available to industry in response to newly developed regulation was

not yet satisfactory. There is a whole host of environmental management systems (EMS), like ISO 14000 and EMAS, which assist industry in monitoring and achieving compliance. Alternative strategies for waste reduction include cleaner production which donors are currently promoting in a number of countries worldwide. These ideas could be further strengthened/introduced by the Joint Project through coordinated efforts with other donors during phase II.

Finally, and perhaps most interestingly, nine episodes have been completed for "Court Room Drama" - a television series in Uganda. Each episode deals with a specific aspect of environmental law. This initiative was undertaken by a private entrepreneur on his own initiative who obtained funding from NEMA for the development of this series. As has been demonstrated in North America and Europe, the environment is also a market to be tapped in Africa. Similar initiatives to Uganda's could be encouraged in other countries, as a means of raising public awareness.

Linkages Between Universities Remains Weak

The development and implementation of environmental laws clearly requires the cultivation of a wide range of skill-sets within any country.

- With regard to legal/drafting skills a number of law faculties were visited during the mission. While Makerere University has had an operational environmental law Programme for some time, many others visited were considering developing environmental law curriculums. Some had even started identifying course needs.
- A complementary skill-set is required in a wide range of other disciplines including engineering, economics, biology, geology, etc. Clearly it is important for universities to introduce a wide range of environmental management topics in their curricula.

It would be in the interests of all universities to coordinate their efforts. This would ensure that resulting diplomas would be recognized more easily between countries. It would also mean that, potentially, some of the effort that went into developing course materials could be shared. Much of the information developed by the Joint Project during both phase I and the proposed phase II could be shared with universities and colleges to help them while developing their programmes.

Institutions for resolution of transboundary conflicts require strengthening

The need to establish institutions to deal with transboundary environmental management issues was recognized by many of the countries visited. Two examples of regional groups dealing with these types

¹⁴ It may be noted that individual members of these associations have been used as consultants by the Joint Project in the development of laws. They have also, on their own initiative, formed environmental law advocacy NGOs in Uganda and Malawi

of issues are SADC (both Malawi and Mozambique are members of this organization) and African Economic Monitoring Union (UEMOA) of which Burkina Faso is a member. Both have committees or commissions that the Joint Project could work with, to:

- help establish protocols to resolve transboundary disputes; and
- disseminate information about the development of environmental legislation being developed in member countries (members could help to scope out areas for potential conflict and propose resolutions).

Donor Coordination Could Be Improved

The need to improve donor coordination was noted in a number of countries visited by all parties. A number of examples were revealed, where international groups were working in mutually complementary areas. For instance, in Burkina Faso:

- The Royal Dutch Commission On The Environment has submitted a proposal to the Director General of EIA in the Ministry of Environment and Water. This proposal identifies short and medium term implementation plans based upon existing capacity. To-date no action has been taken by the Ministry on this matter.
- IUCN, Burkina Faso has a project funded by World Bank that trains people in EIA. They have also established the “Burkinabe Society of Environmental Impact Assessment”.
- World Bank is working on developing the Mining Code, Regulations and by-laws as well as EIA sectoral guidelines.

The above examples also illustrate the potential for overlap and potentially conflicting signals to the Ministry of Environment and Water with regard to priorities and implementation. Clearly this could be avoided if donors identified areas of potential overlap at regular meetings.

4.3. Organizational Capacity Constraints

Organizations are traditionally the focus of institutional capacity-building initiatives. They can include government agencies, private sector organizations and NGO groups. Capacity-building initiatives at this level can focus on:

- Mandates and organizational structures;
- Planning processes & tools used to implement mandate (guidelines, strategic plans, management and administrative systems, etc.);
- Human resources (number of workers, training Programmes, etc.);
- Capital and financial resources required to run the organization;

- Management information systems used to support operations (includes all media – electronic and paper).

A key objective of the consultancy was to evaluate the capacity of existing institutions to implement environmental law. Specifically the consultants were required to address how initiatives under Phase 1 contributed to institutional capacity and to recommend necessary improvements.

Joint Project activities during phase I were aimed primarily at the systemic and individual levels. Examples of the latter level of intervention include:

- Hands on training in drafting environmental laws and regulations;
- Training by attachment;
- Workshops to enhance awareness; and
- Consultative workshops.

As the Joint Project moves from the development of environmental legislation to its implementation, a consideration of *organizational* capacity initiatives becomes increasingly relevant. This will help to ensure the sustainability of interventions, given that individuals are mobile, but organizational structures have the potential to endure much longer. Given the limited resources available to the Joint Project it will be important to work with other donors and ongoing Programmes such as UNDPs Capacity 21, to identify strategic opportunities for input.

The consulting team focused their efforts during the mission on an informal examination of government agencies and their structures. Time available did not permit for a similar investigation for other organizations visited (NGOs, business groups, etc.).

4.3.1. Organizational Structures & Mandates

Mandates of many government institutions require clarification.

This reflects a number of factors including the recent restructuring of many ministries and departments; additional responsibilities imposed by recently drafted laws; and the lack of harmonization with other government agencies with similar responsibilities. For example:

- Uganda’s NEMA which was formerly under the Ministry of Natural Resources is now under the Ministry of Water, Lands, Forest and Environment. At the same time a new Department of Environment has been proposed within the same ministry, creating a great potential for conflict and confusion, and the mandates of both groups remain unclear.
- Malawi’s Department of Mining has been shifted from ministry to ministry. Most recently it was part of the former Ministry of Energy and Mines.

This ministry was abolished in March 1998 and the department was in limbo until July 1999. At that point it became part of Ministry of Natural Resources and Environmental Affairs where it remains for the present time.

- Mozambique, however, has a particularly challenging problem with regard to the clarification of mandates. There, each department's mandate must receive parliamentary approval. Every time an election occurs, this procedure is repeated. Further slowing down the resolution of this matter is the fact that parliamentary approval procedures have not been clearly established. As a result, the mandates of many ministries, prior to the current election, never received approval over the previous five-year term.

4.3.2. Planning Processes & Tools

Guidelines to assist in the implementation of environmental regulations are often absent

These guidelines can be broadly grouped into two categories. The first type of guideline assists stakeholders in carrying out compliance activities. The second assists bureaucrats in administering the regulation. Both are necessary tools for implementation. All countries visited placed EIA as one of their top priorities with regard to the development of environmental regulations. Relevant guidelines were investigated by the consulting team as an indicator for the state of implementation support given to other environmental regulations.

- Uganda has both general guidelines as well as sectoral ones (roads and wildlife) and is, perhaps, the farthest-ahead, of the four countries visited. The World Bank has been the primary supporter for the development of these guidelines. To this end a consultant was hired in 1996 to chart out an institutional framework for EIA. General guidelines were then prepared for use by developers, lead institutions and districts. These guidelines identify different levels of assessment as well as roles and responsibilities. For instance, the role of NEMA is to scrutinize TOR and scope of EIA. The lead agency focuses on issues relevant to its jurisdiction over the project.
- Malawi currently has also developed general EIA guidelines with assistance from the World Bank. Sectoral guidelines are planned to assist proponents in implementing key studies.
- At the moment Mozambique has developed and passed general EIA guidelines. There are currently plans for developing thirteen sectoral guidelines.
- Burkina Faso is perhaps the farthest-behind given that even its draft EIA regulations have, as yet, to be adopted.

Missing from all countries visited is a management/administrative structure that provides direction on how the EIA directorate should function. Experience in other countries like Canada, USA and Australia shows that:

- Training for EA managers can usefully reduce the amount of time taken for review;
- Administrative guidelines help to ensure consistency in departmental approaches to managing documentation that evolves from the EA process;
- Separate processes for small, versus medium versus large projects helps to scope the level of effort, both for government departments as well as proponents;
- Contact protocols for coordinating departments and governments reduce time delays for the private sector and streamline the overall process.

A review of international approaches to EIA management and their potential application to the countries of Joint Project implementation would likely reveal a range of options and improvements to existing systems. Given the interest of bilateral agencies and the World Bank in establishing EIA systems, this is an area that the Joint Project should consider coordinating with other donors.

Strategic Implementation Plans Based Upon Existing Capacities Are Rare

Most Ministries, when asked, had either no strategic plans or where they had some they were not developed based upon existing capacities. Reasons for this are unclear, but are probably linked to lack of appropriate management skills, the frequency of restructuring and the resulting lack of information gained through implementation (i.e. from monitoring and evaluation). As a result programme implementation appeared to take place largely in response to proposed donor interventions. Examples of strategic plans identified during the consultancy include:

- Malawi: "Time Phased Action Plan For The Fisheries Conservation and Management Act, 1997" and the "Ministry of Agriculture & Irrigation Unit Strategic Plan Review". Implementation Report and Action Plan, 1998.
- Burkina Faso: The Royal Dutch Commission On The Environment has conducted a couple of missions to-date on the development and implementation of an EIA Strategic Plan for Burkina Faso. Resulting studies have inventorised existing human resource capabilities in the state and private sectors as well as in universities. They have proposed a network of EIA expertise that could be mobilized around specific subjects and studies required. Since most of the investment done in Burkina

Faso is through donor money, these funds could provide the basis for study implementation. The Commission has submitted a proposal to the Director General of EIA in the Ministry of Environment and Water. This proposal identifies short and medium term implementation plans based on existing capacity. To-date no action has been taken by the Ministry on this matter.

While the consulting team did not have an opportunity to examine any of these documents it was encouraging that a few departments were taking steps in the right direction. Well thought-out strategic implementation plans could be used by departments to coordinate donor efforts and help them better take control of their own mandate. These plans should be based around a set of core activities that would take place using the Ministries' own resources. A second tier of activities could be identified, sponsored by foreign assistance. There is a real need to develop the necessary internal skills to undertake these types of planning exercises within various Ministries.

4.3.3. Human Resources

Staffing is often inadequate to carry out departmental roles and responsibilities

This problem was particularly acute at the level of implementation (i.e. field officers), in a number of ministries and departments. A number of reasons were identified for this:

- In countries like Mozambique and Burkina Faso, hiring practices were often not connected to a department's capacity to implement roles and responsibilities. This stems from a bureaucratic culture where bigger is considered better. In fact, in Mozambique, the original proposed structure for the Ministry of Environment was of a smaller organization with higher salaries and more resources available for implementation. This proposal was rejected by the Ministry of Finance, which stated that it could not authorize higher salaries for one ministry without doing the same for all others. As a result one could not equate productivity to the number of workers on salary.
- Further exacerbating this problem is the fact that low salaries require staff to hold more than one job to supplement their income.
- Low government salaries also contribute to diminishing government access to expertise. For instance, salaries were so low in both Malawi and Uganda, that departments had difficulties hiring lawyers with sufficient environmental expertise, even though this capacity exists at some levels nationally. Thirty per cent of the staff of a new aluminum plant in Mozambique consists of former government staff.

- Some countries acknowledge a lack of expertise for required disciplines. Mozambique, for instance, noted the complete absence of environmental law and practitioners prior to the implementation of the Joint Project.
- Finally, in at least one country, visiting consultants were told of a number of incidents where government officials placed relatives that were not actually on staff on the payroll. This practice places a further burden on a department's ability to attract staff with adequate salaries dedicated to their jobs.

As a result of the above problems many "organograms" presented to the consulting team did not reflect actual capacity. For instance in Malawi, while the Department of Environmental Affairs has a legal division, there are no lawyers currently staffing the proposed legal positions, and the lawyer previously on board had been posted to the Ministry of Foreign Affairs.

Management, administrative and technical skills continue to be below optimal levels in most government departments

A comprehensive human resource capacity programme for any department should combine the development of management, administrative and technical skills. Few government departments visited had well established training programmes for their staff. Instead, training seemed to be carried out largely in response to donor-driven initiatives. This training often focuses on technical rather than administrative skills. For instance, the skills required to review and evaluate EIAs in most countries visited is quite thin. There were no programmes in place that would help staff strengthen these skills. A notable exception to this was Malawi's Forestry Department, which had just completed the development of a training programme for its social forestry activities.

Training and awareness-raising are a necessary part of any human resource capacity building strategy. For this reason whenever a ministry or department is mandated with a new law it is their responsibility to ensure that staff receive adequate training to interpret and implement new laws. At the most basic level this entails awareness-raising workshops. Where new guidelines and skills are required, a more structured training programme may have to be designed.

Further complicating matters is the complete absence of academic programmes in some professional fields. For instance Mining Engineering and Environmental Engineering are not taught in Malawi. In contrast, Bunda College has just introduced a new Master's Programme in Social Forestry. The Joint Project had underlined training courses, workshops and attachment.

4.3.4. Capital & Financial Resources and Donor Dependence

Lack of capital & financial resources as well as poor infrastructure often hinder implementation of environmental law

Most government departments noted a severe lack of capital and financial resources required to carry out the most basic of activities. Challenges included outdated computer equipment, inadequate telephone lines and lack of transportation. It is clear that ministries must make trade-offs between staffing and resource allocation. Unfortunately planning exercises are often not based on existing resources, and many departments work on little or no operating budget.

- Malawi's Fisheries Department has no boats or vehicles currently operating to carry out monitoring and enforcement activities.
- Many of Uganda's ministries lacked a sufficient number of inspectors. As a result NEMA began carrying out some of these duties, to ensure enforcement of the law would take place.

Donor Dependence

The Mission Team has noted that the countries involved in phase I are heavily dependent on donors to finance their development programmes, including environmental management activities. The fact that these countries' economies are under-developed means that their dependence on donor assistance will likely continue for some time.

Admittedly, nowadays it has become common practice to create funds for the environment using various mechanisms, including trust funds, endowments etc. as a means of easing lack of own financial resources, and hence the donor-dependence that such shortage creates. Government can decide to put in such a fund fees and charges paid in relation to permits and licenses, as well as meeting any taxes as may be levied in connection with environmental resources. It may also be in the interest of the private sector to contribute to such fund as a way of showing concern for the environment, or create a special fund of its own to serve as a fund for environmental restoration which can be used to pay for any damages that may be accidentally caused by its members.

Such funds will definitely be useful to finance some environmental management activities on the ground. For example, community projects designed to combat desertification, to conserve and sustainably use biodiversity resources, to undertake some practical research at grassroots level etc. However, besides the fact that the magnitude of these types of funds is indeed very small compared to the overall financial needs in the countries, funds to which donors contribute are not normally used to ameliorate problems related to lack of capacity (i.e.- shortage of skilled manpower,

equipment and other materials) in, for example, line agencies. Thus, although establishment of such funds may help, it may be unrealistic to conclude that such funds will ease donor dependence in the countries of concern in any significant way.

4.3.5. Management Information Systems

Management information systems include all media, from books to digital information. They are used to facilitate both access to information as well as decision making. Most government departments visited had computers. A few of these computers had access to e-mail and internet services. Despite the availability of technology there was little evidence of information tracking systems, office networking capabilities, web sites and decision support systems.

There is a clear need to improve access to information on environmental law

In virtually every country visited, government agencies, academic institutions and some NGOs expressed a desire for improved access to information on environmental law. In addition to resource centres the idea of establishing a web site that could be accessed by a broader range of people also held some appeal.

Where documentation centres already exist, efforts should be made to improve them rather than establishing new ones. In Mozambique the Centre For Judicial Training has plans to establish a resource centre and expressed interest in any project support that would be of assistance. In situations where there is more than one potential documentation centre, measures could be established for sharing/exchanging information with one centre of excellence being the focal point for project assistance. One potential location for these centres is the NEMAs. Provisions would have to be made for ensuring that a librarian (or someone with equivalent skills) was available to manage the resource centre. In establishing documentation centers the Joint Project may also consider the feasibility of providing resource materials on environmental policy and other related subjects.

Only a few examples of information tracking systems were identified

Information tracking systems can be used to evaluate the level of compliance. In their simplest forms these are filing systems which use a standardised approach to record keeping of information generated by departmental staff (i.e. files issued by date and type). In their most complex form they can involve satellite tracking systems that record information remotely, and transmit it to a centralised database where the information is not only stored, but undergoes analysis for further evaluation. The mission team found instances of both types of systems:

- Uganda's NEMA keeps a database of all EIAs submitted including those approved and those rejected. They have now identified a need to track follow-up activities. None of the other countries visited had similar EIA tracking systems in place.
- In Burkina Faso, Finland funds a bush fire monitoring system that uses satellite-tracking technologies.

Obviously both the levels of expertise and the capital infrastructure required for both examples vary considerably. The capacity already exists for the development and maintenance of EIA filing systems in all countries visited. What is required is direction on how to manage the information generated from an EIA study and which key indicators are required to track over the long term by administrators (i.e. type of project, location, proponent, value of project, cost of EIA report, etc.).

Establishment of such tracking systems could be a key indicator associated with the sustainable implementation of environmental legislation. Not only do they help administrators track the level of compliance being achieved over time, but also if ongoing monitoring systems are being used they help to identify potential violators (i.e. violation of standards, etc.).

Office networking capabilities were non-existent

Office networking capabilities link computers within departments and ministries so that staff can more readily access each other's files and share information. For instance any digital report on environmental law that was filed on one person's hard drive could be accessed departmentally. Staff can work on various components of a document at the same time.

This capability is achieved relatively simply with today's technology. Depending on the needs of the organisation and the computers already available to the department, installing a networking system may only require updating the software and installing a few cables. One of the benefits of networks is that the number of computers connected can be progressively increased over time.

None of the government departments visited appeared to have these capabilities. There may be a number of reasons for this:

- The first is likely ignorance of the existence of this capability. Computers are still relatively new technologies in Africa and staff in offices visited by the mission had not, in many cases, received proper training with the software/hardware currently in use.
- Secondly, while many offices had computers, filing systems tended to be paper-based. Network systems support digital information. As use of

computer increases and the amount of digital reporting evolves, the need for networks will become more obvious.

- Finally, sharing information is still not common practice in many African countries. As this "culture" changes, so too will the use of networks.

A range of networking options exists that could be explored by government departments. Further work by experienced professionals in this field would help to identify the most appropriate options.

Web sites are currently underutilised as tools for disseminating information

Web sites are important outreach tools which organizations can use to disseminate information and raise awareness – both important aspects of fulfilling any organization's mandate. Establishment of a website for the Joint Project could complement other forms of information dissemination.

Without exception, all implementing agencies for the Joint Project had access to e-mail and internet, though the quality of access varied considerably from country to country¹⁵. It is likely that use of computers and the internet will increase rather than decrease over the next five years. Donors often provide the necessary hardware and even internet access as part of their activities to NGO's, private sector organizations, etc. Websites also potentially reach audiences from all Africa, as well as the rest of the world.

Establishment of a website for the Joint Project could complement other forms of information dissemination. Information generated by the project can be posted on the website making it immediately available to internet users throughout Africa. They, in turn, can be encouraged to download information for their own use and distribution. Other donor agencies can track the Joint Project's activities using this site, thereby increasing identification of opportunities for potential collaboration.

4.4 Individual Capacity Constraints

Individuals are, of course, one of the most important elements of any organization. Elements of capacity development at this level commonly include:

- job requirements (skill levels and needs);
- training (includes on the job training);
- career progression (accountability/ethics);
- access to information (personal and professional networking);
- performance (conduct incentives/security);
- values and attitudes (moral and motivation);

¹⁵ Uganda appeared to have the poorest access to the internet, while Burkina Faso appeared to have the best. Information available on the net also appeared to vary from country to country. For instance Uganda had a well developed web site listing all NGOs in the country by district with telephone numbers and e-mail addresses where available.

- teamwork;
- work re-deployment (job sharing);
- communication skills.

The Joint Project ensured that capacity building took place at the level of the individual by:

- organising workshops and seminars to build and/or enhance the capacity of judges, magistrates, legal practitioners, lawyers, government officials and other technicians in the areas of environmental law and management;
- providing “training-by-attachment” to government officials and national consultants at UNEP, at environmental conventions secretariats and other institutions such as the WHO or the ILO.

The subsections that follow document challenges to individual capacity building.

There is a high degree of individual mobility within government institutions

As a result of government restructuring many government departments have lost up to 60 % of their key personnel (personal communication with Professor Okeddi, Executive Director, NEMA Uganda, February 2000). In addition to this privatization, a range of services has also contributed to the loss of government staff drawn to higher salaries being offered by the private sector.

The private sector offers more competitive salaries contributing to a net outflow of expertise from government

Competitive salaries in the private sector provide a powerful incentive for young bureaucrats to move from government once they have enough experience and training. For instance, most legal draftsmen recruited by the Joint Project came from the private sector. This perpetuates a situation where most legal positions within government will likely end up being filled by junior lawyers without the necessary skills required to carry out their work. Very few of the individuals interviewed had held their present posts for any significant length of time.

Awareness-Raising Activities Primarily Targeted Legal Professionals

While a number of media were used by the Joint Project to raise general awareness, the target audience in phase I was primarily composed of magistrates, lawyers and, to a lesser extent, technical specialists. A notable exception to this trend was Burkina Faso, which chose to focus on individuals from government agencies.

Awareness and training activities may not have developed the institutions intended

The obvious implication of the above points is that awareness and training programmes may not have developed the specific institutional capacities targeted, though they may contribute in other important ways¹⁶. For instance, after receiving training from the Joint Project, the Department of Environmental Affairs legal officer in Malawi was moved to the Ministry of Foreign Affairs. This has left the department with no internal legal capacity. This is likely to adversely effect its ability to promote implementation of environmental legislation nationally. Salaries being offered by the Department of Environmental Affairs are likely to dictate that a recent law graduate will be hired who will require further training. Since it is not clear what the new responsibilities of the lawyer will be who has been transferred to the Ministry of Foreign Affairs it is unclear whether or not training received from the project will have any further use. The lawyers will certainly have knowledge of conventions, processes and involvement in negotiations. What the above implies is that training needs to be:

- provided conditionally, based on commitment to continued service at a particular posting for an agreed period of time (this is standard practice in the private sector);
- undertaken at the institutional level, working with human resource departments to identify strategic training programmes based on skill requirements identified at the organisational level;
- complemented by other activities at the organizational level.

¹⁶ For instance an environmental lawyer trained through NEMA could play an important role as a litigator in this field if she/he were to join a law firm interested in pursuing this line of work.

5. Measures/Benchmarks & Criteria For Institutional Capacity Evaluation

Based on the institutional evaluation carried out in the previous chapter the team was then mandated to:

- identify measures required to further enhance the capacity of phase I and new phase II countries to implement environmental law; and
- propose benchmarks and criteria for evaluating the success of these measures¹⁷.

In fact both steps are so closely related that they are dealt with together in this chapter. Measures required to enhance institutional capacity flow directly from the challenges identified in Chapter 4.0. So, for instance, an issue previously identified was the lack of coordination between policy and laws. The proposed measure to address this issue is to ensure that development of legislation precedes that of policy. In fact if this occurs it is a benchmark for having achieved a goal of institutional capacity development. Criteria¹⁸ that might be used to measure whether or not this benchmark has been achieved include establishing whether or not the:

- Relevant policy exists prior to establishment of regulation (*existence of policy*);
- Relevant policy has been updated prior to drafting of environmental legislation (*date of policy*);
- Law references policy.

Both benchmarks and indicators are required to evaluate the degree of success of the project in enhancing the capacity of institutions to develop and implement law.

Capacity enhancement measures constitute the benchmarks for evaluating the success of initiatives in phase II

Two levels of capacity development, systemic and organisational, are dealt with in the subsections that follow. A third level, the individual, was considered; however, time constraints did not allow for direct consultation on these issues. It is referred to here so that the reader appreciates the distinction between the three possible levels of institutional analysis.

5.1.1. Systemic Level Capacity Benchmarks and Criteria

Dimensions of capacity building examined by the mission team at the systemic level include:

- *Policies* defining broad national environmental goals;
- *Laws and regulations* that have been developed to govern the system and set the framework in which capacity initiatives function.
- *Inter-relationships* among institutions involved with the implementation of the above laws, regulations and standards. This requires an identification of stakeholders, their mandates and mechanisms available for coordinating their activities.

Benchmarks and criteria have been summarized and prioritized for the development and implementation of policies, laws and regulations and institutional inter-relationships in Table 5.1.

5.1.2. Organizational Level Capacity Benchmarks & Criteria

Organizations (or entities) are traditionally the focus of institutional capacity building initiatives. They can include government agencies, private sector organizations, academic institutions and NGO groups. Aspects of organizational capacity investigated during interviews included (where possible):

- *structure and competencies*: used to describe organization, management style and standards;
- *mission and strategy*: this includes the mandate, role, services and intended clients;
- *processes* include planning, research and development, monitoring and evaluation, financial management, etc. (internal and external to the entity);
- *human resources* at this level deals with number of workers, and allocation of responsibilities;
- *financial resources*: operating and capital required to run the organization;
- *information resources*: includes all media – electronic and paper, used to support operations;
- *infrastructure* are the physical assets including buildings, computers, etc. (UNDP, 1998).

As the Joint Project moves from the development of environmental legislation to its implementation, a consideration of organizational capacity needs becomes increasingly relevant. Time available to the consultant team did not allow for a structured evaluation of the wide range of organizations visited. As a result, the primary focus was on government organizations engaged in environmental management activities.

¹⁷ Note wording change from original TOR

¹⁸ Criteria are the measurable elements of change that can be used by the Joint Project to monitor and evaluate the success of activities during phase II.

Table 5.1 Systemic Benchmarks & Criteria

Environmental Policy Benchmarks	Evaluation Criteria
1.1. Environmental Policies, Strategies and Action Plans Developed	<ul style="list-style-type: none"> • NEAP established; • NEAP harmonized with key sectoral policies and action Programmemes; • NEAP implementation strategy in place; • Guidelines for line agencies in formulating NEAP projects as part of regular annual planning cycle; • Budgeting allocation for NEAP projects; • Reporting formats established for Line Agencies
1.2 Sectoral policies and action programmes harmonized with the NEAPs	<ul style="list-style-type: none"> • Reference to NEAP in sectoral policies and action • Clear links between policy/action programmes and the NEAP with regard to priorities and institutions.
Environmental Legislation Benchmarks	Evaluation Criteria
1.3 Strategic plan for developing environmental legislation prepared	<ul style="list-style-type: none"> • Review of environmental laws carried out; • Gaps and needs identified; • Hierarchy of laws recognized in plans for implementation where Environmental framework Law is established first as primary guiding legislation.
1.4 Development of legislation precedes policy	<ul style="list-style-type: none"> • Relevant policy exists prior to establishment of regulation (<i>existence of policy</i>); • Relevant policy has been updated prior to drafting of environmental legislation (<i>date of policy</i>) • Law references policy.
1.5 Development of environmental law accounts for the following variables (a) Provides the basis for the development of strong environmental institutions;	<ul style="list-style-type: none"> • Institutions are appropriately positioned within government hierarchy to carry out mandated responsibilities. In particular, NEMAs should have (i) a multi-stakeholder NEC; (ii) a technical level committees like IaWGs (iii) civil society advisory bodies; • Ministers are afforded appropriate powers to carry out these responsibilities.
(b) penalties are harmonized;	<ul style="list-style-type: none"> • Harmonization acts are formulated and adopted.
(c) provides basis for broad compliance framework;	<ul style="list-style-type: none"> • Law uses broad range of economic, planning and awareness-raising tools to achieve compliance; • Linkages are made with other relevant laws that work in parallel with existing instruments.
(d) Efforts are made to harmonize law with similar laws and standards in existence regionally;	<ul style="list-style-type: none"> • Regional environmental management institutions are established; • Protocols for dispute resolution are set in place; • Lists of laws and common standards are established; • MOU's are ratified.

Table 5.1 Systemic Benchmarks & Criteria

Environmental Legislation Benchmarks	Evaluation Criteria
(e) consultation requirements for broad range of stakeholders;	<ul style="list-style-type: none"> • Requirements for public participation and consultation that officially recognize NGOs, professional organizations, private sector umbrella groups, etc.; • Regulations and guidelines developed; • Public registries established to facilitate access to information where required.
(f) development of supportive regulations and standards for implementation.	<ul style="list-style-type: none"> • Regulations in place; • Standards in place.
Inter-Relationship	Benchmarks Evaluation Criteria
1.6 Parliaments promote the enactment of environmental laws and monitor their implementation.	<ul style="list-style-type: none"> • PSCoEs are created; • Environmental TORs are clearly defined in internal bye-laws; • PSCoEs request regular reports from NEMAs and line agencies regarding development and implementation of NEAPs, environmental laws and regulations.
1.7 Environmental liaison units established in line departments.	<ul style="list-style-type: none"> • ELUs recognized within organizational structure; • TORs are developed; • Permanent staff positions, budgeting and reporting procedures in place.
1.8 Integration of NEAPs with national planning systems.	<ul style="list-style-type: none"> • NEAP projects developed and budgeted for in the annual planning exercise;
	<ul style="list-style-type: none"> • External performance-based reviews • Annual departmental planning and reporting on NEAP initiatives with specific budget allocations
1.9 Clarification of mandates at inter-institutional level.	<ul style="list-style-type: none"> • Clear distinction of roles between institutions; • Identification of potential synergies; • Established protocols, mechanisms and budgets for communication of information.
1.10 Dissemination of awareness materials to the general public.	<ul style="list-style-type: none"> • Simplified versions of laws and regulations prepared in English, Portuguese or French, as appropriate for various target groups and disseminated; • Simplified versions in English prepared for grass-roots translated into major vernaculars and disseminated; • TV and Radio Programmes and dramas prepared and broadcast.

Resulting benchmarks and criteria used are summarized in Table 5.2.

5.1.3. A Note on Individual Level Capacity Building Benchmarks and Criteria

Individuals are, of course, one of the most important elements of any organization. Elements of capacity development at this level commonly include:

- job requirements (skill levels and needs);
- training (includes on the job training);
- career progression (accountability/ethics);
- access to information (personal and professional networking);
- performance (conduct incentives/security);
- values and attitudes (moral and motivation);

- teamwork;
- work re-deployment (job sharing); and
- communication skills.

Benchmarks and criteria were not developed at this level since the emphasis of phase II activities is anticipated to be focused systemic and organizational issues.

Table 5.2 Organizational Benchmarks & Criteria

Benchmarks	Evaluation Criteria
2.1 Mandates established at organizational level. law and by policy;	<ul style="list-style-type: none"> • Mandate is clear based upon principles established in • No overlap exists with other institutions with regard to responsibilities; • Synergies are recognized and built upon; • Services reflect mandate; • Target groups and stakeholders are clearly identified (their needs are understood).
2.2 Organizational structure in place.	<ul style="list-style-type: none"> • Structure approved; • Structure is a realistic reflection of existing human and capital resources available; • Structure reflects mandate; • Environmental focal points exist.
2.3 Planning Process are established that clearly integrate environmental laws.	<ul style="list-style-type: none"> • Yearly planning exercises are used to establish environmental goals and priorities against existing laws and the NEAP; • Appropriate budget allocations are made to facilitate implementation of related activities; • Reporting mechanisms employ objectively verifiable indicators of success to measure progress; • Monitoring and evaluation mechanisms are established; • Reports are developed based on the above and submitted to the minister and/or appropriate bodies for review; • Lessons learned are internalized.
2.4 Information and communication resources available to staff	
(a) Library established	<ul style="list-style-type: none"> • Room or area dedicated for this function; • Budget allocated for acquisition of new material; • Librarian (or someone with equivalent skills) available; • Access ensured for all staff who require use of materials.
(b) Telephone access	<ul style="list-style-type: none"> • Telephones; • Staff have access to telephone services that support them carrying out their daily tasks.
(c) computers and software	<ul style="list-style-type: none"> • Staff have access to computers and necessary software; • Virus scanning software; • Training programmes for computer use and software; • Network services available to facilitate exchange of files and information.

Table 5.2 Organizational Benchmarks & Criteria

Benchmarks	Evaluation Criteria
(d) internet and e-mail	<ul style="list-style-type: none"> • Modems for computers; • Internet and e-mail software installed; • Accounts are available to staff.
(e) newsletters & bulletins	<ul style="list-style-type: none"> • Are there newsletters or bulletins available from the agency to update the general public on services and events.
<p>2.4 Human resource strategies are in place</p>	<ul style="list-style-type: none"> • Appropriate management hierarchies are in place with clearly established criteria and opportunities for promotion; • Training and awareness strategies are in place that target and prioritize key institutional needs based on departmental mandates and environmental priorities. <p><u>Training Indicators:</u></p> <ul style="list-style-type: none"> • Short term Training materials (modules) ; • Curriculum for long term academic training in environmental law and policy ; • Trained trainers.
2.5 Infrastructure	<ul style="list-style-type: none"> • A building or set of offices are designated for the organizations' use; • Space available is adequate to house staff, and wiring, etc. is sufficient to support use of telephones and computers; • Basic office furniture and equipment is in place.
2.6 Transportation	<ul style="list-style-type: none"> • Vehicles are available (cars, trucks, boats, etc.) to carry out mandated functions; • Sufficient budget is allocated for maintenance; • Licensed drivers are available for their operation.

6. Recommendations For Phase II Implementation

Clearly addressing the broad range of institutional capacity needs identified in Chapters 4 and 5 goes beyond the capacity of the Joint Project to undertake. Providing a long list of recommendations without scoping their appropriateness for phase II implementation would clearly be unproductive.

Addressing the broad range of institutional capacity needs identified in Chapters 4 and 5 goes beyond the capacity of the Joint Project to undertake

A Programmatic response is therefore warranted where measures identified are appropriate to the scale of funding and expertise available. Four stages of implementation are envisioned for phase II with various recommendations associated with each (full description of recommendations are found in the concluding chapter to this report).

- *Project start-up* will require the development of guidelines and general background materials to facilitate the country's involvement during implementation;
- *Country start-up* will require the development of strategic national plans that set out priorities, identify activities, present budgets and schedules for implementation;
- *Implementation* of national programmes will require regular reporting by countries on the progress of their activities, as well as support from Nairobi;
- *Project completion* is characterized by synthesizing, monitoring and evaluation information at both the country and programme level so that the success of the programme can be evaluated.

Key recommendations for phase II are presented in section 6.1, followed by a series of proposed programmatic interventions organized around the four stages of project implementation noted above. Appendix 3 contains specific recommendations for improving the management of the Joint Project during phase II.

6.1 Key Recommendations For Phase II Implementation

Three key recommendations provide the theme for proposed areas of intervention in phase II.

6.1.1. Continue Drafting Environmental Legislation

Continue drafting environmental legislation

ensuring that provisions for institutional capacity needs for implementation (guidelines, training, etc.) are adequately reflected in the development of laws and regulations.

Recommendation 1.0: Continue Drafting Environmental Legislation

6.1.2. Develop Guidelines and Country-Based Plans For Phase II Activities

The Joint Project should develop *Guidelines For Implementing & Reporting Phase II Activities*. These will be used by each country to develop nationally-based *Phase II Activities Plans* that identify priorities for the development and implementation of environmental laws during phase II. Both documents will help ensure that a more systematic approach is taken than was used during phase I.

Recommendation 2.0: Develop guidelines and country-based plans for phase II activities.

6.1.3. Leverage Donor and Political Support To Assist In Implementation

The project has made a significant contribution to the promotion of environmental laws on a rather modest budget. While efforts are being made to increase phase II funding, significant increases in the magnitude of the Joint Project's budget will likely not take place. As a result, the recommendations that follow are based on modest anticipated budgetary requirements. National plans will become a major tool for identifying opportunities for cooperation where institutional capacity measures identified for implementing environmental laws go beyond Joint Project capabilities.

Recommendation 3.0: Leverage donor and political support to assist in phase II implementation.

6.2 Recommendations For Project Start-up

Results of the mission indicate that there is a need for the Joint Project to provide stronger direction on the development of environmental policies and legislation. To this end a number of measures should be taken prior to the engagement of countries during phase II.

6.2.1. Prepare Guidelines For Implementing and Reporting On Phase II Activities

The Joint Project needs to develop a "*Guideline For Implementing and Reporting On Phase II Activities*." The guide should present priority areas for Joint Project intervention in phase II. Priorities can be further refined by each country to meet their own needs and

circumstances. Specifically the guide should deal with how countries will:

- evaluate the state of environmental policies and legislation and prioritize their needs;
- better integrate institutional capacity needs within legislation;
- develop a broad-based compliance framework that goes beyond strict enforcement measures to include economic, planning and communication tools;
- implement certain activities such as drafting, workshops, awareness-raising and training;
- design, implement and report upon measures taken to address matters previously raised.

The guide could be developed using consultants as well as a number of key stakeholders from the project. Its use by participating countries will help to ensure consistency in both the approach taken as well as how reporting takes place. This requirement should in no way be perceived as restrictive with regard to addressing country-specific needs.

Recommendation 4.0 – Prepare Guidelines For Implementing and Reporting On Phase II Activities.

Additional information is required to assemble the guide. These needs are addressed more specifically in recommendations 1.1 and 1.5 that follow. Once a draft of the guide has been developed it is recommended that it be tested on one or two countries (see Recommendation 2.0), for the purpose of identifying areas of ambiguity. It could also be circulated to environmental law groups for comment.

Establish Criteria For Prioritizing Drafting Needs

To assist countries prioritize areas for Joint Project intervention the guide will have to provide information on:

- the hierarchy and sequence required for the development of environmental policy and legislation (laws, regulations and standards);
- the basic set of environmental policies and laws required by each country to establish a system of environmental management at the national level;
- additional legislation (i.e. based upon ecosystems and natural resource utilization patterns) that countries should consider.

Criteria will have to be developed which assist countries in establishing priority areas for intervention. Information can be drawn from the present report, the World Bank environmental legislation reports as well as the draft country reports prepared under this contract. Text Box 6.1 presents a potential set of priorities that each country could use to check off when establishing priorities. Each country in phase II would be required to evaluate and present results on each of

the following stages of legislative development in their national strategy. The Joint Project would then be able to strategically provide funding, based on the priorities presented in the report.

Recommendation 4.1 – Establish Criteria For Prioritizing Drafting Needs.

Text Box 6.1: Proposed Priorities For Joint Project Intervention

- Develop strategic action plan for the development and implementation of environmental legislation;
- Harmonize sectoral policies and action programmes with each other as well as with government planning mechanisms;
- Revise National Environmental Management Statutes (NEMS) which lack either clarity or provisions with regard to powers, functions and accountability of the NEMA (including both the NECs and their executing arms);
- Give priority to ensuring that existing acts, statutes and regulations are harmonized with the NEMSS before venturing into the development of new laws and regulations;
- Draft implementation regulations and standards where they are found lacking in NEMSS and existing acts prior to developing new laws;
- Ensure that drafting exercises are directed towards the most essential of acts and regulations to make a whole sectoral law become operational / functional, as well as towards sectoral areas which have well developed policies which are in harmony with the NEAPs;
- Undertake development of new environmental laws where gaps are identified to achieve a minimum comprehensive framework. Criteria for what constitutes a minimum framework need to be established for this evaluation to be carried out.

Countries that meet all the above criteria should focus on measures required for implementation and should not be considered eligible for further project funding.

Provide Framework For Integrating Institution Needs With Legislation

Legislation can be used to embody social ideals in law, develop processes (like EIA) as well as establish institutions. With regard to institutions, legislation can be used to:

- establish an organization;
- determine its hierarchy within government;

- provide the basis for its organization and management;
- establish the basis for administration and operational guidelines (including monitoring and evaluation);
- ensure public consultation/communication takes place with specific groups.

The guide should provide readers with further information on how legislation can be used for this purpose. It should also establish a set of criteria for evaluating the extent to which existing legislation meets these needs. Benchmarks and criteria presented in this report provide a starting point for this. The guide should also show how relevant information can be collected and presented for the purpose of evaluation.

Recommendation 4.2 – Provide framework for integrating institution needs with legislation.

Develop Environmental Institutions Framework Background Study

Critical to any review of institutions will be a framework that helps project participants to understand the implications of the existing distribution of environmental management responsibilities between the NEMAs and the line agencies, as dictated by legislation. While the present report discusses general roles and responsibilities, development of such an evaluative framework was not undertaken. It is, therefore, recommended that a separate consultancy be undertaken to:

- discuss the political theory behind the hierarchy that exist in Anglophone, Francophone and Lusophone countries in Africa;
- discuss how provisions for coordination between institutions should be provided for in law;
- present a list of key institutions involved with environmental management at the national level (drawing heavily upon the present study);
- provide a framework and criteria to assist countries in evaluating the state of existing hierarchies at the national level (specific reference would be made to the role of NEMAs in relation to Ministries of Environment and line agencies);
- present options for addressing existing inadequacies.

The resulting *Environmental Institutions Framework Study* would feed into the proposed guidelines and be available as a resource document from Nairobi (possibly by being made available on the net).

Recommendation 4.3: Develop Environmental Institutions Framework Background Study.

Develop Compliance Framework Background Study

It is clear that the Joint Project as well as participating countries have focused on enforcement as the sole means of achieving compliance. In fact a wide range of other approaches are now being promoted that incorporate economic instruments (tax and non-tax based), planning methods as well as communication programmes, all of which have the potential to be embedded in legislation.

Given that this is a relatively new area for African countries, it is recommended that a separate consultancy be carried out to:

- implement a literature review on the extensive topic of compliance both internationally and in Africa;
- review challenges to traditional forms of enforcement and discuss issues like the need to harmonize environmental penalties with those existing in penal and other relevant laws;
- relate enforcement to other compliance measures available in the African context;
- suggest ways of developing a broader compliance framework with a few key environmental laws developed under the project;
- identify institutional barriers to achieving a broader compliance framework;
- (if possible) present case studies to complement the text.

The resulting *Compliance Framework Study* would feed into the proposed guidelines and be available as a resource document from Nairobi (possibly by being made available on the net). Based on the study an evaluation framework could be developed for reviewing/developing environmental legislation.

Recommendation 4.4: Develop compliance framework background study.

Provide Direction For Project Activities In Phase II

Based on the gaps identified through evaluation, a range of interventions/activities are possible for phase II. These include:

- drafting and/or revision of environmental legislation;
- awareness-raising activities;
- training;
- the development of an implementation strategy for coordinating/leveraging other donor activities;
- monitoring and evaluation of Joint Project interventions.

The guide could identify a range of possible responses by key issues or just provide guidelines on key elements for specific types of activities.

Recommendation 4.5 Provide direction for project implementation activities:

Drafters Need Training/Awareness-Raising Prior To Working On Environmental Laws

Drafting and/or revision of environmental legislation should be carried out according to the:

- priorities for drafting identified in recommendation 1.1;
- institutional needs identified in recommendations 1.2;
- broad range of tools and synergies potentially available to achieve compliance (recommendation 1.3).

Efforts should be made to ensure that drafters as well as other stakeholders have a sufficient understanding of the above issues prior to embarking on any drafting/consultation exercise. For this reason awareness-raising and training activities should take place prior to the drafting or revision of new laws. It is recommended that a clear distinction be made between awareness-raising and training, to better track intended results and impacts of project activities.

- Awareness-raising activities provide information on a particular set of issues and even suggest ways of applying this information to the group being targeted.
- Training activities not only provide information on a particular topic; they also focus on the development of skills with an associated evaluative component.

Awareness-Raising Needs Better Targeting and Tracking of Groups

Awareness-Raising activities can be used to target

various groups **to increase their understanding of how newly developed environmental laws affect their lives and daily activities.** Given that these laws potentially affect every citizen, the guide should give direction as how best to scope what groups can be targeted by the project; which specific awareness-raising objectives are most appropriate for the group being considered; and what awareness-raising tools/measures are the most appropriate.

The guide will identify a wide range of groups to be included in awareness-raising activities including magistrates, public prosecutors, police, environmental NGOs, business groups, professional organisations, etc.). There also should be better tracking of groups and individuals to ensure a better representation of various groups. This type of monitoring will assist in identifying gaps and needs at both the country and programme level. Specifically NGOs, business groups, and professional organisations should have more exposure to environmental laws.

Clearer Awareness Objectives Need To Be Established For Each Group

The guide should propose awareness-raising objectives for each target group. For instance, a workshop targeting environmental NGOs could be used to key-in on particular advocacy issues related to environmental law (Table 6.1).

Broader Use of Media (Workshops, Newspapers, Television, etc.)

Awareness-raising activities in phase I primarily focused around workshops. A broader range of tools should be used to better target a range of groups to meet specific objectives. These include:

Table 6.2: Potential Awareness-Raising Objectives For Sample Target Groups

Awareness Raising Objectives	Lawyers & Magistrates	Bureaucrats & Magistrates	Private Sector	NGOs
Hierarchy of environmental policy and legislation				
Basic framework required for environmental management				
Role of legislation in the development of institutional capacity for environmental management				
Compliance frameworks for environmental management				
Options for implementing environmental laws				
Advocacy and environmental law				

- **Workshops:** A greater emphasis should be placed on local workshops than on regional ones in phase II. Regional workshops are costly and usually only involve one or two people from a participating country. A wider range of groups could be targeted using local workshops to reach a larger number of people. To this end the Joint Project might consider developing standard awareness-raising materials. Assessment forms at the end of workshops could be used to evaluate the extent to which objectives had been achieved. Follow-up activities could be used to identify how information gained through the workshop had been applied in the field.
- **Media:** newspaper articles, television and radio shows, and theatre are all being used by various groups to raise awareness on environmental issues in the countries visited. Press releases could be prepared by the Joint Project; interviews could be arranged with local television and radio stations; etc.
- **Project Newsletters:** the Joint Project publishes the Bulletin of Environmental Law. However, the frequency as well as the range of issues dealt with could be increased. In addition, individual countries could be encouraged to produce newsletters targeted at national groups. Posting of both newsletters on a Joint Project website would increase access to this information to a much wider group of readers.
- **Web sites:** establishment of a project web site should be considered as a possible means of facilitating information on the project and about environmental law in general. Although access to the web is restricted in some countries and organizations, the potential to reach a wide audience is still great.

Training has been an important form of capacity building measure taken by the Joint Project in the participating countries. In countries where practically no knowledge or skills regarding the development of environmental laws and legislation exists, there are now core groups that can be called upon for such a task. Training can be more costly than awareness-raising activities like workshops, since they usually require more time, and depend on the existence of standardized materials, as well as evaluation.

Develop an Environmental Law Training Programme

To ensure that a consistent approach is taken for training it is recommended that the Joint Project commission the development of an **Environmental Policy and Law Training Programme**. This programme would:

- Identify a few *key groups* for training (i.e. lawyers, magistrates and bureaucrats);
- Relate *training objectives* for each group that

meet specific institutional capacity development needs (Text Box 6.2);

- Present an *evaluation framework* to evaluate the extent to which training objectives have been realized;
- Identify a range of training *activities* (on-the-job training, attachments, course work and diploma/degree programmes) appropriate for meeting each objective;
- Have training *materials* and *documentation* developed to support activities;
- Provide for *monitoring* and *evaluation* of project training activities to help target further training objectives.

Development of such a programme will not only help to reduce country-level costs for training, but will also facilitate reporting at the country and programme level since all activities are based around a similar framework. Translation of the programme into French and Portuguese would further assist implementation of training activities. The programme should also provide for training of trainers so that course materials can be re-used.

Text Box 6.2: Sample Training Objectives For Phase II

The Joint Project should develop a number of training modules in key areas of interest, including:

- Drafting of environmental legislation;
- Developing strategic plans for implementation of environmental regulations;
- Enforcement of environmental regulations by national and district officers;
- Familiarization with the contents and application of the laws as well as the preparation of bye-laws to DEOs, where they exist.

The guide would provide direction for how to modify and adapt the Programme and its materials so as to more closely meet national needs.

Develop Coordination Strategy To Leverage Donor and Government Support

Key to the success of the Joint Project will be the ability of countries to *leverage* opportunities from government and donors to assist in the implementation of environmental laws. Given the limited funds available for project implementation the development of a *Coordination Strategy* will facilitate accessing additional funding. Such a strategy would identify a number of opportunities for collaboration with other

donors that specifically build the institutional capacity for implementing environmental laws. The proposed guide would identify steps required to develop this strategy and identify a range of options potentially available to this end. These opportunities would be focused primarily on systemic and organizational capacity measures/benchmarks identified in this report.

Development of such a strategy also addresses the issue of donor coordination brought up by a wide range of stakeholders in the countries visited. If developed properly, such a strategy could play an important facilitative role for a range of activities.

Appendix 4 summarizes the following potential opportunities for capacity building that go beyond the anticipated Joint Project Budget. These are briefly summarized below.

Potential Systemic Measures For Capacity Building

Revise NEAPs where necessary

Criteria would have to be established to determine where this is necessary since the development of NEAPs is a costly endeavour. In many cases it may be more appropriate to focus on better implementation of laws through planning.

Integrate NEAPs With National Planning Systems

Integrate NEAPs with national planning systems by establishing performance-based reviews to be carried out by the Auditor-General's Office. Regular reporting would be required by each department on initiatives undertaken in relation to NEAPs (establishing a consistent format for this would be useful).

Restructure NEMAs To Better Facilitate Their Coordinative Role

Restructuring NEMAs to facilitate their coordinative role could involve relocating offices outside of ministries, constituting an independent body with closer ties to the Prime Minister's office

Help To Establish ELUs

Establish ELUs as an organizational unit within all government departments, ensuring clear mandate and adequate access to resources required to function.

Potential Organizational Measures For Capacity Building

Clarify Departmental Mandates

Clarify departmental mandates for key government agencies associated with newly developed environmental laws.

Ensure Organizational Structure Reflects Mandate and Actual Capacity

Ensure that the organizational structure facilitates realization of the institutional mandate, while at the same time reflecting the actual capacity of staff available.

Develop Tax and Non-Tax-Based Economic Compliance Tools

Develop tax-based and non-tax-based economic instruments based on outcomes of compliance study.

Develop Communication/Awareness Strategy

Develop communication/awareness strategy based on compliance study. Gaps where Joint Project activities do not take place could be filled by other donors.

Strengthen Planning System

Strengthen planning system to improve implementation of environmental laws. Areas for intervention will be based on compliance study. Planning processes should be established that clearly integrate environmental laws and reflect the NEAP.

Develop Human Resource Strategies

Develop human resource strategies that identify training appropriate for each position within the organization.

Establish Information/Communication Resources

Develop information and communication resources available to staff, including libraries, public registries, telephones, computers, software, internet and e-mail.

Provide For Basic Infrastructural Needs

Provide support for infrastructure by ensuring the organization has a building or set of offices designated for its use; wiring sufficient to support use of telephones and computers; basic office furniture and equipment.

Provide Transportation Support

Provide support for transportation to ensure that vehicles are available (cars, trucks, boats, etc.) to carry out mandated functions; that a sufficient budget is allocated for maintenance; that licenced drivers are available for their operation.

Establish Participatory Monitoring and Evaluation As Key Project Reporting Mechanism

Participatory monitoring and evaluation is fundamental to the success of this project. To this end each country needs to develop its plan with clearly defined objectives, activities and objectively verifiable

indicators. These indicators are monitored on an ongoing basis to evaluate the project's success. To this end the guide will provide guidance as to how to carry out a **logical framework analysis (LFA)** and present the results in a matrix (see Text Box 6.3). Project participants will also be asked to participate in the evaluation. For instance the Joint Project has asked workshop participants to fill out forms to evaluate the success of the event. This practice should be continued. Training programmes can evaluate the performance of students, etc. The project's budget also needs to formally acknowledge this activity since it requires additional effort and expertise (see recommendation 1.5). It is recommended that between 5% -10% of each country's budget needs to be allocated specifically for these activities.

Recommendation 4.6 Establish participatory monitoring and evaluation as a key project reporting mechanism.

Text Box 6.3: Basic Elements Of A Logical Framework Analysis Matrix

Objectives of legislative reform need to be clearly identified. For each objective the following information needs to be presented:

- *activities* and *inputs* will be identified for each objective ;
- *expected outcomes*;
- *objectively verifiable indicators* for project monitoring are measurable (number of people trained, etc.);
- *assumptions* need to be clearly defined for each objective (i.e. that the government backs current initiatives).

These are presented in a matrix format and used as a basis for reporting on a quarterly basis by project managers

Identify Types of Reports Required and Format To Be Used

Poor project reporting during phase I made it difficult to evaluate the project's impacts. Phase II should systematize reporting procedures.

Recommendation 4.7: Identify types of reports required and format to be used.

Strategic Plans For Phase II Need To Be Prepared By Each Country

Information resulting from implementing recommendations 1.1 to 1.4 will need to be presented in the first of a series of country reports entitled, **Strategic Plan For Phase II**. To this end the guide will indicate how countries should:

- present LFA's;
- document external donor support;

- present budgeting formats that help managers track activities and the inputs. Project funding should be distinguished from in-kind funding provided by governments as well as other donor funds successfully leveraged to assist with project implementation.
- schedule activities for implementation that identify key activities, deliverables and completion dates.

Other project reports should be employed for monitoring and evaluation purposes.

Country Activity Reports Should Be Submitted On A Quarterly Basis

Activity Reports should employ a similar format to that of the strategic report being submitted on a quarterly basis. They should provide the Task Manager with a sense of how well objectives are being met, activities implemented, budgets spent and how well schedules are being maintained. The guide should make it clear how each report builds upon others. Unplanned applications for funding of activities should be appended to these reports and be based on objectives identified in the Strategic Plan. In instances where country reports are not being completed on a timely basis discussions should be held with the implementing agency to immediately identify difficulties. This should be done as soon as the problem is identified so that reporting is sustained and evaluation of activities can be carried out.

Yearly Summary Reports Should Be Used To Identify Significant Changes In Programming

Yearly Reports should be used by both countries and the Joint Project to document lessons learned and identify any significant alterations in Programming. Where problems have been identified immediate action should be taken, with due documentation.

6.3. Recommendations For Country Start-up

6.3.1. Assembling Required Background Information At Country Level

All participating countries should formulate their own *Phase II Activities Plans* based on the guidelines above. These plans will help to ensure the development of a basic framework of environmental policy, and that legislation takes place during the implementation of the second phase. Depending on the country in question a number of activities may have to take place prior to the formulation of a national strategic plan. These will require their own budget. For this reason countries may wish to develop their plans in two stages.

The first stage will entail collecting and synthesising the background information necessary to develop strategic plans. The level of effort required to do this

will likely vary from country to country. Steps envisioned include the following:

Prepare Environmental Policy and Legislation Review Background Study

Priorities for developing environmental policies and legislation can only be established once an overview of existing laws has been prepared. Some new phase II countries may have no previous studies or information to draw upon. In this case they may wish to consider *hiring a local / international consultant* to carry out this exercise. Phase I countries may wish to update existing reports. The resulting ***Environmental Policy and Legislation Review*** will not only identify gaps in legislation, but will also prioritise which policies and laws are reformed first. To this end initiating a *multi-stakeholder consultation* process, followed by a *workshop* to develop consensus is strongly recommended.

Prepare Institutional Study On Environmental Management and Law Background

Identifying key environmental institutions nationally and identifying how they relate to one another based on laws and mandates will also require a significant level of effort if this information has not been compiled. A local consultant may have to be used to develop a report on this type of information. The resulting ***Institutional Study on Environmental Management and Law*** could be widely distributed to local groups to facilitate dialogue on potential areas for further co-operation.

Identify Key Stakeholders

Identifying key stakeholders should be engaged in phase II. Phase I countries might wish to evaluate institutions based on their previous performance.

Prepare National Compliance Study For Environmental Laws

Many countries have the basis for a broadly established compliance framework that simply needs to be pulled together by compiling existing information from a range of agencies previously not included in the study. It is strongly recommended that a review be undertaken of existing compliance tools for environmental laws, gaps and opportunities for improvement. Given that this is a relatively new concept it is likely that an international consultant would be required to work with local experts to put together this information. The resulting ***National Compliance Study For Environmental Laws*** could be widely distributed to local groups to facilitate dialogue on potential areas for further co-operation.

Recommendation 5.0: Assembling required background information at country level

6.3.2. Synthesize Information Into A Strategic Plan Based On Guideline

The second stage involves formulating the strategic plan. With the above information in hand, each country will set priorities, develop a budget for implementation, etc. The Task Manager should review and approve each plan as it is developed, ensuring that adequate time and effort is allocated to monitoring and evaluation activities for each proposed activity.

Recommendation 6.0: Synthesize information into a strategic plan based on guidelines.

6.4. Recommendations For Implementation

6.4.1. Strengthen Nairobi's Regional Communication Strategy

The Joint Project should improve the flow of information with countries involved in phase II activities.

Recommendation 7.0 – Strengthen Nairobi's regional communication strategy.

There are a number of ways in which this could be done:

Provide Updates on Programme Implementation

Based on quarterly reports provided by each country office, Nairobi should identify benchmarks reached, success accounts, lessons learned, etc. in the newsletter published during phase I. Rather than focusing exclusively on success accounts the newsletter could also be used as a vehicle for identifying challenges to the development and implementation of environmental law in Africa. Further the newsletter could ensure a potentially wider distribution to interested parties internationally.

Recommendation 7.1: Provide updates on Programme implementation.

Establish Regional Environmental Law Groups

Regional Groups will have common interests such as the resolution of transboundary disputes, information sharing, etc. which should provide strong incentives for the establishment of these groups. In many cases such organizations already exist, but could use additional assistance from the project to guide their activities. The notion of a region could also be more broadly interpreted to include countries that share similar languages, or political histories (and therefore traditions of law). For instance a Francophone Environmental Law Group could be established to facilitate the exchange of information and ideas between French-speaking countries involved in phase II implementation.

Recommendation 7.2: Establish regional environmental law groups.

Increase Budget For Translation & Publication of Project Materials

The number of documents translated into languages of participating countries needs to be increased. Translation needs to happen in two ways (i.e. into English, as well as into French, Portuguese, etc.). Once translated all documentation needs to be distributed to participating countries. To this end a significant increase in the projects budget for both translation and publishing is recommended.

Recommendation 7.3: Increase budget for translation and publication of project materials

6.4.2. Target Regional Workshops To Deal With Transboundary/ International Issues

Regional workshops should be developed around transboundary issues common to countries trying to develop environmental legislation regulating a common issue. Use of regional workshops, however, should be minimized in favour of country-based implementation, since the latter has the potential to affect more people.

Recommendation 8.0: Target regional workshops to deal with transboundary/ international issues

6.5 Recommendations For Project Completion

6.5.1. National Evaluation Should Be Completed Prior To Programme Evaluations

Many countries had not completed their phase I report by the time the consulting team carried out the current mission. It is strongly advised that Yearly Reports be completed prior to the development of any ***End of Phase II Report***.

Recommendation 9.0: National evaluation should be completed prior to programme evaluations.

6.5.2. End Of Phase II Report Should Clearly Document Success Through Objectively Verifiable Indicators

The final report concluding up phase II should report on how well objectives have been achieved, by using the objectively verifiable indicators identified and tracked in quarterly reports. It should contain frank discussions on successes and failures, as well as lessons learned. Finally, it should suggest future steps for a phase III should it receive funding.

Recommendation 10.0: End of Phase II report should clearly document success through objectively verifiable indicators.

Appendix 1: Phase I Project Implementation Issues & Lessons Learned

This chapter focuses on management and implementation issues identified by Joint Project participants during phase I. Recommendations are made here on how to improve implementation during phase II.

Approaches Used During Phase I

During Phase I, the Joint Project has attempted to use mechanisms that build capacity within the participating countries at both the national and sub-regional levels through the use of nationals, as well as create the necessary ownership of the outputs resulting from the Joint Project activities.

Ownership of the outputs was promoted by:

- using national experts as consultants to review the state of environmental law and undertake the actual drafting of legal texts required to update existing legislation or fill a gap in original drafts, as the case may be;
- making nationals drawn from Government, private sector, and NGOs primarily responsible for directing the development of environmental law, including coordinating similar initiatives by other donors. This was generally carried out using two levels of grouping, i.e., within a national legal task force responsible for overseeing the reviewing of the state of environmental law and the subsequent drafting of the laws and regulations, and within the National Steering Committees to coordinate similar on-going initiatives (e.g. Malawi); and
- subjecting the review reports and draft laws and regulations prepared by the national consultants and vetted by the LTFs, to participatory national consensus-building workshops involving all relevant stakeholders.

The PTMO, located at the headquarters of UNEP, Nairobi together with the National LTFs prepared work plans for each country. Back-stopping and advice was rendered as necessary, by the same office, by staff of UNEP as well as the staff of the members of the PSC, or by international consultants recruited by the PTMO. Analogous instruments from other countries were also provided to ensure that the substantive contents and institutional machinery are comparable and adequate as regards issues being addressed.

Joint Project activities have provided useful information to UNEP's environmental law programme as well as its technical assistance programme.

The Joint Project also carried out training and awareness-building activities in development and enforcement of environmental law in which various

target group representatives of specific groups participated. Training by attachment has been provided with selected legal officers at UNEP, the Geneva-based Environmental Convention Secretariats, and other Geneva-based agencies such as WHO, WTO and ILO.

The PTMO has been guided by the PSC which provided policy guidance in running the programme as well as in ensuring coordination between international, intergovernmental and non-government agencies.

Implementation Issues and Lessons Learned

The consulting team used interviews as an opportunity to identify issues associated with project implementation during phase I. Lessons learned should be applied to phase II activities and countries where appropriate. Both are summarized below:

Steering Committees and LTFs not functional:

Initially, Steering Committees (SCs), Legal Task Forces (LTFs) and consultative workshops worked reasonably well for participating countries. Regular meetings were held to discuss issues. Gradually, however, LTFs failed to participate in meetings. Reasons provided by stakeholders include:

- non-payment of sitting allowances,
- time constraints imposed by regular jobs on their members, or
- departure of key persons from government service.

In some countries such as Mozambique, the LTF has ceased operation altogether. Project activities now proceed without this body. In Uganda and Malawi the LTFs remain operational, albeit with many members often absent. .

National Project Coordinators Could Not Be Retained

Retaining national project coordinators (NPCs) was also reported as being problematic for Malawi and Mozambique. Mozambique has, apparently, the worst experience in this regard since it is now on its fourth NPC. Most of the time NPCs leave their positions in the civil service for better-paying jobs in the private sector

Important Stakeholders (NGOs, Police, etc) Were Not Always Included In Joint Project Implementation

Even where the national level Joint Project mechanisms were used there has been lack of or inadequate inclusiveness of important stakeholder groups such as NGOs, professional associations, the police and the private sector. This was noted as a

particular problem by the consulting team in Mozambique. Again this limits:

- awareness of Joint Project activities , as well as
- ownership of the outputs.

With the exception of CURE in Malawi, umbrella NGOs do not appear to have been involved in Joint Project activities during phase I. Reasons for this are varied:

- In Uganda and Mozambique there appears to be no such umbrella organization for environmental NGOs.
- In Burkina Faso the umbrella organization referred to as SPONG has not been engaged. Instead a smaller non-umbrella environmental NGO has been appointed that lacks the appropriate capacity and resources.

As a result many environmental NGOs have not been provided with regular feedback on the Joint Project goals, progress, etc. during phase I.

Recommendation: A greater effort needs to be made to involve umbrella NGOs like CURE and SPONG that can feed information to their members about Joint Project activities. Selection of these groups should be based on their ability to link up with other NGOs, provide project-related information to its membership, etc.

Coordination with other Donor Programmes Could Be Improved

While the challenge of attaining some degree of coordination with other donors is difficult, it should continue to be a priority. In Uganda, the World Bank finances NEMA's daily operations by providing rent, salaries and operating costs. Without this support it is unlikely that Joint Activities could be implemented. Current financing arrangements require that the World Bank approve the types of activities NEMA staff carry out, as well as the priority placed on each. If Joint Project priorities are to become NEMA's they will also have to be approved and promoted by the World Bank. This requires coordination with the Bank as a donor. Similar challenges exist in many of the countries visited, though for different reasons.

Donor coordination offers potential benefits as well. For instance, phase I of the Joint Project funding through Malawi's Capacity 21 Programme allowed Joint Project consultants to travel and carry out consultations with a range of stakeholders while drafting laws. The Dutch bilateral agency has also developed strategic guidelines for the implementation of EIA in Burkina Faso, which complement legislative efforts carried out by the project.

Recommendation: Given the Joint Project's limited budget relative to other initiatives, coordination of activities also presents an important leveraging opportunity. Where programmes share overlapping

objectives, cost sharing arrangements can be made. If for instance a donor proposes a workshop on environmental management, the project may be able to make a presentation on environmental laws. Coordination mechanisms, which should be further explored, include:

- Malawi's National Steering Committee is a potentially useful forum for donors trying to coordinate activities. Members are USAID, the World Bank, UNDP, JICA, GTZ and CIDA. Where similar committees exist in other countries, they should be identified during the start-up of phase II.
- UNDP's Capacity 21 objectives may complement activities slated for implementation in phase II. These need to be explored.

Regional Environmental Law Groups Would Facilitate Exchanges of Lessons Learned During Phase II Implementation

Regional environmental groups exist in all countries visited. A number of stakeholders interviewed felt that environmental law groups should be established at the regional level to facilitate the exchange of information and deal with transboundary issues.

In particular it was noted that the basis for English and French law are quite different. Impacts of phase II Joint Project implementation would, therefore, be greatly enhanced if Francophone countries were encouraged to share their experience. This would achieve several objectives:

- (i) Firstly it would increase the amount of French language information generated by the Joint Project and, therefore, its potential impacts to other Francophone countries.
- (ii) Secondly, the lessons learned by Burkina Faso during phase I would enable it to act as a facilitator of new French-speaking countries joining the Joint Project.

Recommendation: That Regional Environmental Law Groups be established by the Joint Project to facilitate exchange of information and ideas between countries involved in phase II implementation. There is currently an African network of environmental lawyers. Two tiers could be established below this, with project assistance. The first would be at a national level, the second at a regional level.

Project Reporting and Record Keeping Could Be Improved

Project reports have not always been submitted on time by National Project Co-ordinators. The few shown to the mission team in Malawi lacked rigour with regard to monitoring, evaluation and reporting on project activities. As a result, in institutions where staff turnover was high, institutional memory on Joint Project activities was poor or non-existent. The consulting team also found it difficult to clearly identify project-specific interventions as against those of other donors, on the basis of the documentation and reporting

formats currently being employed by the project. For example:

- members of the NSC in Burkina felt that prior to the commencement of the actual legal drafting, line agencies had received extensive technical input, often funded or supported by other donors. The project had not acknowledged these efforts or their role in the overall development of the law.
- In Malawi the FAO provided initial support for the drafting of the Water Law, which was later completed by the project. No record or acknowledgement of these earlier efforts was evident from the information presented to the study team.

Recommendation: The above point to a need to improve both the frequency and quality of project reporting. This includes:

- *Clearly distinguishing between project inputs and non-project inputs required to prepare and/or implement environmental laws;*
- *Using objectively verifiable indicators for reporting against implementation of activities.* None of the countries used benchmarks and indicators to track activities and inputs in phase I. Doing so would help track successes and identify challenges to implementation;
- *Reporting should be done regularly using a consistent format to facilitate comparison of results from country to country.* Ideally, logical framework analysis matrices would be developed at both the country and programme level.

Low Project Awareness and The Need For Improved Communication

There is very low awareness about the worth of the Joint Project and, sometimes, even about the existence of the Project itself. Even those individuals and institutions which at one time had an involvement in project activities, have become alienated in terms of the progress of project activities. As a result it is possible that the initial momentum developed during phase I is at risk.

Most stakeholders interviewed in the countries visited complained about the lack of information available with regard to the Joint Project's implementation. No one was sure if phase I had ended, what had been accomplished over the last year, etc. Clearly, dissemination of Joint project implementation information needs to be strengthened, possibly through newsletters, establishing a web site, etc.

Determining the most appropriate form of information dissemination will be an important step. In Burkina Faso, for instance, all parties interviewed felt that the project could only benefit from an increased information flow from Nairobi with regard to implementation, success reports, etc. They felt that using a participatory method for Joint Project

implementation would ensure that all stakeholders remain apprised of the Joint Project activities. Briefing meetings held at regular intervals would greatly facilitate the exchange of information required.

Recommendation: Phase II of the Joint Project needs to address at least two communication objectives. Information from Nairobi should be made available at the programme level identifying key milestones in implementation, success accounts, etc. This could be done using a newsletter as well as a website. In-country communication should focus on improving awareness of the Joint Project and its various initiatives. This could be done by publishing a one-page bulletin that updated project participants and stakeholder groups on relevant environmental law activities taking place at the country level. Both will require specific budgets and allocation of work responsibilities.

Improved Translation of Project Information Required

Translation of information was identified as an issue in Burkina Faso and Mozambique. For instance:

- Joint Project documentation from Nairobi was not translated into French; and as a result, almost no one in Burkina Faso has read this information;
- In Mozambique the head of the Bar Association was not able to speak or read in English. The consulting team was told that this was true of many senior bureaucrats and that much of the project's information would not be read by them unless translated into Portuguese;
- It is not clear whether or not relevant Joint Project documents sent to Nairobi from Burkina Faso have been translated into English. For instance neither the draft proposal for phase II of the Joint Project (November 1999) or the institutional study on environmental protection (January 2000), prepared by UICN and SP/CONAGESE, had been translated into English by Nairobi at the time of this consultancy, February 25, 2000.

As a result important insights into the development of law cannot be fully shared among the countries participating in the Joint Project.

Recommendation: That the Joint Project set aside a sufficient budget to ensure that translation of documentation does not continue to be a barrier.

International Experts Have A Legitimate Role In Capacity Development

Country-led initiatives have made significant progress in the development of local capacity through active engagement of local stakeholders. There still remains, however, a legitimate role for outside experts to play in many phase II activities. Burkina Faso formally acknowledges this role in its proposed budget for phase II. The draft proposal, however, falls short of identifying the most strategic areas for this type of assistance. Ideally proposals for international expertise in phase II activities would identify:

- *Existing donor activities that already provide international support:* For instance the Royal Dutch Commission on the Environment has carried out an extensive review of existing capacities for the implementation of EIA's. The World Bank has focused its efforts on developing sectoral guidelines in the mining sector. Forms of international assistance in Phase II would have to be carefully identified to avoid duplication of efforts.
- *Areas of expertise / experience that Burkina Faso currently lacks:* For instance, strategic planning (particularly with regard to the development of departmental human resource capacities, communication strategies, and the development of management information systems) remains weak.

Recommendation: Phase II should consider the active engagement of individuals to assist countries in initiating the above processes and others.

Development of Laws and Regulations Have Preceded Policy

A problem that has occurred in a number of countries is that sufficient attention has not been given to whether or not a sectoral policy has been developed prior to the drafting of related laws and regulations. As a result, a number of stakeholders reported the need

for further reviews of policies and laws to ensure their harmonization.

Recommendation: In new phase II countries the Joint Project should avoid redrafting laws where policies have not been developed or require revisions.

Selection of Phase II Countries Should Take Into Account Ongoing Restructuring

Interviews in Uganda, Malawi and Mozambique have identified government restructuring as an issue for project implementation in phase II. As a result of retrenchment and downsizing, people who were familiar with the Joint Project have left their former positions. In addition the frequent turnover of staff, and changes in the internal structure of line agencies (e.g. Mozambique) have resulted in a slowing down of the implementation of Phase I activities, besides severely limiting the capacity of the institutions to mature and evolve into effective organizations in the carrying out of their mandates.

Recommendation: Restructuring is taken into account by the Joint Project when selecting new phase II countries. Where restructuring is ongoing, the project will be able to influence factors such as the location and reporting responsibilities of NEMAs. Where restructuring is complete interventions can begin to focus more on the drafting of laws and regulations.

Appendix 2: Potential Areas For Joint Collaboration With Other Donors

Systemic	Organizational	Organizational (cont)
Revise NEAPs where necessary	Clarify mandates for key government departments associated with newly developed environmental laws.	Develop human resource strategies that identify training appropriate for each position within the organization.
Integrate NEAPs with national planning systems by establishing performance-based reviews, to be carried out by the Auditor-General's Office. Regular reporting would be required by each department on initiatives undertaken in relation to NEAPs (establishing a consistent format for this would be useful).	Ensure that organizational structure facilitates realization of mandate.	Develop information and communication resources available to staff; Library established; Public registry (where relevant); Telephone access assured for staff; Computers and software; Internet and e-mail;
	Develop tax-based and non-tax-based economic instruments based on outcome of compliance study.	
Restructure NEMAs to better facilitate their coordinative role. This could involve relocating offices outside of place. ministries to constitute an independent body with closer ties to the Prime Minister's office.	Develop communication/awareness strategy based on compliance study. Other donors could fill gaps where Joint Project activities do not take	Provide support for infrastructure by ensuring the organization has: a building or set of offices designated for its use; wiring sufficient to support use of telephones and computers; basic office furniture and equipment.
Establish ELUs as an organizational unit within all government departments, ensuring clear mandate and adequate out mandated access to resources required to function.	Strengthen planning system to improve implementation of environmental laws. Areas for intervention will be based upon compliance study planning processes, and will so selected as to clearly integrate environmental laws and reflect the NEAP.	Provide support for transportation to ensure that: vehicles are available (cars, trucks, boats, etc.) to carry functions; sufficient budget is allocated for maintenance; licenced drivers are available for their operation.

Appendix 3: TOR For Consultancy

UNEP/UNDP/DUTCH JOINT PROJECT ON

ENVIRONMENTAL LAW AND INSTITUTIONS IN AFRICA

STUDY ON INSTITUTIONAL ARRANGEMENTS FOR SUSTAINABLE

DEVELOPMENT AND ENFORCEMENT OF ENVIRONMENTAL LAW IN AFRICA

Below are the terms of reference for a consultancy mission to study and make recommendations on institutional arrangements for sustainable development and the enforcement of environmental law in Africa. The concept of institutions may be defined as the formal and informal organizational structures which may be involved in the development and enforcement of environmental law. Most of the institutional arrangements will be public in the sense of being created and operated by the government. But there is a necessity to identify, encourage and strengthen private institutions interested in the field as a way of broadening public participation in these processes, now considered a prerequisite to an effective legal regime of the environment. In other words, the institutional study should cover private professional organizations as well as other non-governmental and civil society organizations with competence and interest in the environmental field.

The range of institutions must be examined at all levels of the society. Just as it is essential that a broad range of institutional arrangements be examined, so is it essential that different levels of the society be involved in the development and enforcement of environmental law. Both perspectives promote the broad ownership of the law as well as the efficacy and mechanism for its enforcement.

It is hardly likely that all the institutions interested in the field will be doing it on a full-time basis. The study must endeavour to review the category of institutions which are involved on part-time basis too.

The activities performed during Phase I sought to enhance the institutional capacity of the project countries through specific mechanisms. First, they operationalized the concept of capacity building by engaging nationals as consultants and putting them through the process of developing laws. Secondly, the activities involved a broad range of national stakeholders in consensus building workshops to

evaluate the reports and draft laws. Thirdly, nationals underwent thematic training workshops and other symposia to build up awareness. Fourthly, some national lawyers underwent training by attachment involving exposure to the operation and structure of UNEP and other environmental agencies. Finally, the project provided basic equipment such as computers, faxes and photocopiers.

It is important to assess how the people who have been so involved in Phase I have been utilized to strengthen the national organizational structure. Have the people and equipment enhanced the national infrastructure? What other means are required?

PREPARATION FOR THE STUDY

In preparation for this study, institutional reviews had been requested from Burkina Faso, Malawi and Mozambique. The three countries will therefore form the focus of the study. All the three countries have enacted framework environmental laws: Burkina Faso in 1994, Malawi in 1996 and Mozambique in 1997. Therefore, the three countries will have had substantial experience with implementation of the framework laws alongside the traditional sectoral laws.

It has been observed during the five years of Phase I that Uganda, which enacted a framework law in 1995, has taken some serious steps towards implementation and enforcement of environmental law. Therefore, the consultancy mission will include Uganda too, to ensure that her experience can benefit this exercise.

As part of the preparation for the mission, these guidelines, and the specific terms of reference which follow, will be forwarded to the four countries to be covered on the mission. It will be requested that a specific officer should assist at the national level in assembling the necessary information in order to facilitate in-depth work by the consultant. The agency which has been the focal point during Phase II will be requested to give the necessary support to the consultant.

Important primary documents to be studied in preparation for the mission include: The Briefing Note; the Internal Evaluation Report (May 1997); the External Evaluation Report (October 1998); and the Draft Project Document for Phase II.

TERMS OF REFERENCE

Taking into account the foregoing guidelines and the documents available through the project, the consultants shall conduct a mission covering the four project countries, namely: Burkina Faso, Malawi, Mozambique and Uganda, for the following purposes:

- (a) To provide a critical analysis of the kinds of institutions required for the development and implementation of environmental law and institutions in Africa, in a sustained way.
- (b) To evaluate the existing capacity of existing institutions to implement environmental law, in particular the laws prepared under the Project, and how initiatives under Phase I have contributed to it; and to recommend necessary improvements.
- (c) To identify the measures required to enhance institutional capacity both generally and to the minimum level required for implementation of environmental laws in Phase I countries and in the Phase II countries.
- (d) To provide a succinct outline of the benchmarks or criteria which could be used in evaluating success in the enhancement of national institutions for the development and implementation of environmental law in a sustained way.

The mission will be conducted by two (2) consultants, one of whom will have established competence and experience in environmental policy and law in Africa. The other one must have competence in public sector management, particularly with regard to institutional arrangements. The assignment will commence on 10th January, 2000 and will last for a total of 40 working days spread over two months.

The consultants will plan their mission in such a way that they present their preliminary observations to a consultative meeting on institutional arrangements to be held at UNEP HQ, Nairobi on 26th and 27th January, 2000.

At the end of the first 30 days the consultants will submit their draft report to the Task Manager of the Joint Project. From an agreed stage the consultants will finalize the report, taking into account any observations presented by the Task Manager. This process will be completed within ten (10) days.

Appendix 4: Contacts & Schedule For Environmental Law Mission in Africa

Tables A1 through A4 list contacts by country visited. Table A5 provides the mission's schedule

Table A1 Ugandan Interview List

Name & Position	Contact Numbers	Department or Organization
Robert Wabunoha (Chief Legal Officer) Ms Cornelia Kakooza (Environmental Legal Officer)	Wabs@aol.com	National Environmental Management Authority Communications House, 6 th Floor, Plot 1 Colville Street, P.O Box 22255 Kampala, Uganda
Dr. David A. Ogram, Commissioner for Labour	345002 tel 433090 mobile dogaram@infocom.co.ug	Ministry of Gender and Labor, PO Box 7009, Kampala, Uganda
Mr. John Ntambirweki	None	Faculty of Law, Makerere University
Mr. Justice Trindigarukayo, Assistant Commissioner of Wildlife Policy Development and Chairman of National Technical Commission on Biodiversity Conservation.	41251294 tel 408732 fax	Ministry of Tourism, Trade and Industry P. O. Box 4241 Kampala
Mr. Oluka Akileng, Acting Deputy Commissioner Mr. Hudson J. Andrua , Project Manager, Strengthening of Forest Department Project Mr. Kenneth Lakuma Opiro, Assistant Project Manager, Strengthening of Forest Department Project	347085 tel 347086 fax sfd@imul.com	Forestry Department P. O Box 7124, Kampala Uganda
Mr. Charles Sebukeera Director of Information and Monitoring	Nema@imul.co or neic@starcom.co.ug	National Environmental Management Authority Communications House, 6 th Floor, Plot 1 Colville Street, P. O Box 22255 Kampala, Uganda
Mr. Enoch Dribidu (Assistant Commissioner)	321316 tel 720914 mobile 321368 fax wrap@imul.com	Water Resource Management Department PO Box 19 Entebbe, Uganda
Mr Ladislaus Kiiza Rwakafuuzi (Editor and Advocate)	258136 tel 259976 fax kalr@swiftuganda.com	Kampala Law Reports Plot 8/2 Luwum Street, Universal House, PO Box 1773, Kampala
Hillary Obonyo (Executive Director)	None	Uganda Manufacturers Association

Table A1 Ugandan Interview List

Name & Position	Contact Numbers	Department or Organization
Mary Kusmbiza (Legal Officer)		
K.S. Mubbala, (Director, Lands and Environment)	341875 tel 341875 fax	Ministry of Water, Lands & Environment, 1 st Floor Century House, Parliamentary Avenue, P. O. Box 7096, Kampala
Kenneth Kakuru (Director)	231127/342356 Kadvoc@starcom.com.ug	Greenwatch, Kakuru & Co, Advocates Solicitors & Legal Consultants
Phillip Karugaba, Advocate	Tel: 343859/259920/ 255431 Fax: 259992 Mugmat@starcom.co.ug	Mugerwa & Matovu, 3 rd Floor Diamond Trust Bld., P.O. Box 7166, Kampala, Uganda
Dr. Okeddi (Director) Dr. Henry Aryamanya-Mugisha (Deputy Director)	251064 tel 257521 fax ma@imul.com nema@imul.com	National Environmental Management Authority (NEMA), Uganda
Ambassador Justin G Lokwiya (Head of Secretariat) Bill Farmer (Technical Adviser)		Forestry Sector Coordinator Secretariat, Baumann House, Parliament Avenue, PO Box 27314, Kampala Uganda
Ms. Harriet Lwabi, Commissioner, First Parliamentary Council		Ministry of Justice, Uganda
Joseph Opio-Odongo (Sustainable Development Adviser) Joseph.opio-odongo@undp.org	233-440 tel 344-801 fax	UNDP PO Box 7184, Kampala, Uganda

Table A2 Malawi Interview List

Name & Position	Contact Numbers	Department or Organization
Etta M'mangisa,	783-500 Etta.mmangisa@undp.org	United Nations Development Programme Officer Programme, P.O Box 30135, Lilongwe, 3 Malawi
Shaibu A Mapila, Director of Fisheries Brian Rashidi, Assistant Director of Fisheries	826-918 cell 743-060 tel/fax Smapila@malawi.net Brianrash@malawi.net	Fisheries Department, Ministry of Natural Resources & Environmental Affairs, P.O. Box 593, Lilongwe Malawi
Pickford K. Sibale, Agriculture Research Specialist Dr. Tony Seymour, Freelance Consultant	(265) 780611(0) tel (265) 781 158 Psibale@worldbank.org (44 1248) 712-540 mourevans@hotmail.com Seymourevans@hotmail.com	World Bank Mission in Malawi, P.O. Box 30557, Capital City Lilongwe 3, Malawi DANIDA – Danish International Development Agency
Mr. Nkhata, Regional Commissioner for Lands		Ministry of Lands, Physical Planning and Surveys
Mr. Kaseko, Mining Engineer	722-194 722-933, 720-843 tel 722-772 fax	Department of Mines, Ministry of Natural Resources & Environmental Affairs. P.O Box 251, Lilongwe, Malawi
Wellings W.M. Simwela, Assistant Division Head, Forestry Extension Services Malawi	782721 tel/fax 829-877	Department of Forestry Box 30048, Capital City Lilongwe 3, Malawi
Mr. O N Shella, Deputy Controller Water Resources	783-762, 823-340 cell, 783-737 fax Wrd@eomw.net	Ministry of Water Development, Private Bag 390, Lilongwe 4
Stephen Nanthambwe (Deputy Director)	740-780 tel 741-986 fax landcons@malawi.net	Ministry of Agriculture and Irrigation, PO Box 30291, Lilongwe 3, Malawi
Mr. Nzima, Deputy Director Parks and Wildlife Department	782-702 tel; 823-027 Gdz-dnpw@malawi.net	Ministry of Tourism, Parks and Wildlife, Lilongwe, Malawi
Mwambene Environmental Officer	741-914 fax 741-965 tel scdp@malawi.net	Local Government Department, Ministry of State Po. Box 30312, Lilongwe 3 Malawi (Shire Building)
Mr. S.A Nyirenda, Under- Secretary Mrs. Alice Chapuma,		

Table A2 Malawi Interview List

Name & Position	Contact Numbers	Department or Organization
Senior Economist (former desk officer for Forestry Issues)		Ministry of Natural Resources & Environmental Affairs, Lilongwe, Malawi
Ernest Makawa	781111 tel, 783379 fax	Environmental Affairs Department
Mr. Kubwaza Mr. Misford W. Mikuwa, Head, Environment Impact Assessment and Inspection Section		PO Box 394, Lilongwe 3 Malawi
Wayne McDonald, Natural Resource Officer	782455 tel 783181 fax fmcdonald@usaid.gov	U.S. Agency For International Development PO Box 30455, Lilongwe 3, Malawi
Mr. G.M Mkandawire, Director of Commerce & Industry	780-244 switch 784-679 tel, 824-576 cell 780-680 fax Minci@malawi.net	Ministry of Commerce and Industry, P.O Box 30366 Lilongwe 3, Malawi
Isaac M.C. Chimutu (Operations Director)	671-988 tel 671-147 fax mcci@eo.wn.apc.org	Malawi Chamber of Commerce and Industry, PO Box 258, Blantyre, Malawi
Aloyslus Kamperewera (Environment and Natural Resource Sciences)	781-111 tel 783-379 fax eadfinance@malawi.net	Environmental Affairs Department, Private Bag 394, Lilongwe 3, Malawi
Roger Morton (Group Chief Executive)	671-933 tel 671-026 fax rmorton@portland.malawi.net	Pan African Cement Group PO Box 523, Blantyre Malawi.

Table A3 Mozambique Interview List

Name & Position	Contact Numbers	Department or Organization
Dr. Andre da Silva, Jurista	465848 tel 465849 fax dngnrn@zebra.uem.mz	Ministerio Para a Coordenacao da Accao Ambiental, Gabinete Juridico, Av Acordos de Lusaka, 2115, Caixa Postal, 2020
Francisco Mabjaia, Secretary General	Phone 465843/48/51 Fax 465849 Micoa@ambinet.uem.mz Fmabjaia@virconn.com	Ministerio Para A Coordenacao da Accao Ambiental (Ministry For The Coordination of Environmental Affairs), Office of the Secretary General, Av. Acordos de Lusaka, 2115 – CP 2020, Maputo
Celia Meneses, Investment Lawyer	420955 tel 429163 fax c.meneses@teledata.mz	Deloitte & Touche Ave Zedequias Manganhela 95, 4 Andar, Maputo
Antonio Paulo Namburete, Attorney-General		Attorney-General's Office Avenida Julius Nyerere, 15 Maputo Mozambique Tel 492800 Fax
Antonio JLM Reina, Director of the <i>Forum Natureza em Perigo Mocambique</i> Mauricio Sulila, Secretary General of Livaningo	(258.1) 308 924 tel (258.1) 308 925 fax	<i>Forum Natureza em Perigo Mocambique and Livaningo (Candlelight)</i> Praceta Cruz do Oriente, No. 15-1 Andar, Maputo, Mozambique
Ebenizario Chonguica, Representante para Mocambique	Tel: 01-492815 Fax: 01-490812 Eben@sortmoz.com	UICN (Union Mundial para la Naturaleza) Av Armando Tivane, 971, Maputo, Mozambique
Luis-Luis, Technician, EIA Department	Phone 465843/48/51 Fax 465849	Ministerio Para A Coordenacao da Accao Ambiental (Ministry For The Coordination of Environmental Affairs), Office of the Secretary General, Av. Acordos de Lusaka, 2115 – CP 2020, Maputo
Sergio Carlos Macamo, Mechanical Engineer Head of Technical Department		National Directorate of Industry, Ministry of Industry, Trade and Tourism
Henny Matos Development Fabiana Issler, Programme Officer Else Leona McClimans UNV Gender Adviser	(258 1) 490337 henny.matos@undp.org fabiana.issler@undp.org	United Nations Programme Ave Kenneth Kaunda, 931, PO Box 4595, Maputo, Mozambique
Carlos Alberto Cauio, President	431634 tel 431635 fax	Mozambique Bar Association, AV Vladimir Lenine, 691, 1, PO Box 1796, Maputo, Mozambique

Table A3 Mozambique Interview List

Name & Position	Contact Numbers	Department or Organization
Joao Carlos Trindade, Justice	423306 tel 421614 fax trindade@teledata.mz	Tribunal Supremo, Ave Vladimir Lenine, 691, 1, PO Box 1796, Maputo, Mozambique
Mauricio Sulila, Secretario Geral	308 924 tel 308 925 fax bazaruto@mail.tropical.co.mz	Praceta Cruz do Oriente, no 15-1 Andar, PO 4303, Maputo, Mozambique
Afonso Armindo Henriques Fortes (Juiz Conselheiro do Tribunal Supremo)	431-001 tel 420-699 fax	Tribunal Supremo, Caixa Postal 278, Maputo Mozambique
Espirto Santo Mongane (Advocate and Consultant)	(082) 321-809 tel 303-056 fax Monjane&assoc@emilmoz.com	186 Bagamoyo Rd, 2 nd Floor, Office No. 22, Maputo, Mozambique
Delfim de Deus Junior Consultant	329-404 tel 322-520 fax	Caixa Postal 1036, Beira Mozambique
Jose Maria de Sousa (Secretario Geral)	420699 tel	Tribunal Supremo, Maputo, Mozambique
Ma. De Conceicao HAC P Faria, Directora Adjunta	490-422 tel 494-631 fax	Universidade Eduardo Mondlane, Ave Kenneth Kaunda, 960, Maputo, Mozambique

Burkina Faso Interviews

Name & Position	Contact Numbers	Department or Organization
Kourita Sandwidi, Dean of the Faculty of Law	Tel: 315302 Fax: 332386 No email	University of Ouagadougou 0.3. B.P 7021 Ouagadougou 03, Burkina Faso
Son Excellence Mèlegue Traore, Président de l'Assemblée Nationale		(National Assembly Secretary General)
OUOBA Salifou, (Director General of Environment) OUEDRAOGO A Karim, (Director Fisheries) OUEDRAOGO Rasmane SALO R. Bruno (Jurist Wildlife and Forestry)	363028 tel 357036 tel 300022 tel 311669 tel	Ministry of Environment
Ousmane Tiemtore, Secrétaire Général Exécutif	Tel: 307433 Fax: 301159	Groupement Professionnel des Industriels (GPI) 01 BP 5381 Ouagadougou 01, Burkina Faso
OUEDRAOGO Antoine	Tel: 362200/360678	Groupe Alize Cuisse et Peunse BP 7033 Ouagadougou
TAPSOBA Roger-Marie, Directeur Général	No telephone number provided	Entreprise de Collecte de Recyclage d'Ordures et de Nettoyage du Faso (E.C.O.N.FA) Waste Disposal & Recycling, Cleaning Company 01 BP 149 Ouagadougou 01, Burkina Faso
BANON Siaka, DMP	Tel: 314266	Ministry of Health, Ministère Sante
MASSIMBO Francis	Tel: 324098/363999	Ministry of Environment
HIEN Sounda B. Gilbert, Burkino, Marcel Magalo (Permanent Secretary)	Tel 315570/3371	Ligue des Consommateurs du (LCB), Consumers League Burkina Faso Ministry of Animal Resources
COULIBALY Sambou, (Permanent Secretary) DJINI Dakar SEMDE Idrisa BANCE Soumoyilo HONADIA Mamadou,	312464 tel 307343 tel 312464 tel 316491 fax honadia@fasonet.bf	CONAGESE
Sanfo Alidou, Administrateur Civil	Commission National Decentralization CND	
Keijzers, Henriette, Representative Resident Adjunct	Henriette.keijzers@undp.com	UNDP

Burkina Faso Interviews

Name & Position	Contact Numbers	Department or Organization
Kabore Martin, Permanent Secretary		Ministry of Environment and Water
Bikienga Martin, Minister of Agriculture		Ministry of Agriculture
National Task Force OUATTARA kelemory, Ministry de l'environnement et LEU HARO Nacou, Ing des Mines, BUMIGEB – Minstere de l'Energie et des Mines IUCN Members AVD representative; UNDP		
		Dutch Embassy
DAKOURE Haridiata, (Director General) DABIRE Jean Emmanuel (DES/ENAM) KI Zachail (DFC/ENAM) CHAMMAS Samir Section Magistrature) ABUDA Y A (Director of Studies, lecturer)		Ecôle National d'Administration et Magistrature (ENAM)
NGO Meeting OUEDRAOGO Ousaman (SOS Sahel International) GARANE Amidou (Societe Bukinabe gave le droit de l'environnement) SANPARE Nouna (Green Cross Burkina Faso)	306470 tel 362746 tel 344077 tel	Location: IUCN headquarters

Table A5 Mission Schedule

Date	Activity
Saturday January 22, 2000	Erik Davies departs for Nairobi & reviews project documentation
Sunday ,January 22, 2000	Erik Davies arrives in Nairobi. Kifle Lemma departs from Addis and arrives in Nairobi
Monday to Friday January 24-28 th , 2000	Mr. Davies and Mr. Lemma review documentation and meet with the steering committee. Also prepare interview format and schedule for countries to be visited
Saturday, January 29 th , 2000	Mr. Lemma departs for Kampala, Uganda while Erik continues to work in Nairobi
Sunday January 30 th , 2000	Erik departs for Kampala and meets with Kifle. Set up Uganda country report framework
Monday to Thursday, January 31 st to February 3 rd	Mr. Davies and Mr. Lemma meet with project stakeholders in Uganda
Friday February 4 th , 2000	Travel to Malawi via Kenya
Saturday to Sunday February 5 th – 6 th , 2000	Prepare draft Uganda Country Report
Monday to Friday February 7 th –11 th , 2000	Carry out extensive meetings with project stakeholders in Malawi
Saturday February 12 th , 2000	Prepare draft Malawi Country Report
Sunday February 13 th , 2000	Travel to Maputo, Mozambique via Johannesburg
Monday to Wednesday, February 14 th – 16 th , 2000	Carry out extensive meetings with project stakeholders in Mozambique
Thursday to Friday, February 17 th to 18 th , 2000	Travel to Burkina Faso via Johannesburg. Note connecting flight missed in Abidjan – had to spend night in Côte d'Ivoire and travel following day.
Saturday to Tuesday, February 22 nd , 2000	Carry out extensive meetings with project stakeholders in Burkina Faso. Note that Kifle departs for Nairobi in the afternoon
Wednesday February 23 rd , 2000	Erik completes meetings in Burkina Faso and departs for Nairobi via Lagos. Mr. Lemma arrives in Nairobi
Thursday February 24 th , 2000	Mr. Lemma meets Okidi in Nairobi Mr. Davies arrives in Nairobi
Friday – Saturday February 25 th – 26 th , 2000	Prepare draft country reports for Mozambique and Burkina Faso
Sunday to Wednesday February 27 th to March 1 st	Prepare Draft Final Report. <i>Note this only provides us with four days for this activity which probably underestimates the actual effort required for this step.</i>
Thursday, March 2 nd , 2000	Wrap up report preparation and submit draft for review. Prepare presentation to committee
Friday to Saturday,	Presentation to Charles Okidi and colleagues of findings
March 3 rd , 2000 Saturday March 4 th , 2000	Erik travels to Canada Kifle returns to Ethiopia