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# ARTICLE

## COUNTRY EXPERIENCES IN THE IMPLEMENTATION OF THE RIO FOREST PRINCIPLES: A CASE STUDY OF THE EAST AFRICAN COMMUNITY STATES

GODBER W. TUMUSHABE\*

### I. INTRODUCTION

Over the last two decades, there has been emerging consensus that the lack of proper policy, institutional and legal frameworks at the national level has largely contributed to unprecedented forest degradation in East Africa.<sup>1</sup> In the aftermath of the 1992 United Nations Conference on Environment and Development (UNCED)<sup>2</sup>, the Republic of Kenya (Kenya), the Republic of Uganda (Uganda) and the United Republic of Tanzania (Tanzania) started processes to reform their forest management institutions.<sup>3</sup> The three East African Community

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<sup>1</sup> This is demonstrated by the efforts at the national level to engage in detailed policy, legal and institutional reforms that have characterized the forest sector in the aftermath of the UNCED.

<sup>2</sup> The Conference was held in Rio de Janeiro, Brazil in 1992.

<sup>3</sup> The three countries constitute a regional block called the East Africa Community

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(EAC) countries instituted policy frameworks aimed at addressing the underlying causes of forest degradation as well as developing a package of legal measures largely directed at changing resource user behaviors. As the momentum for the 2002 World Summit for Sustainable Development (WSSD)<sup>4</sup> in Johannesburg builds, this paper attempts to reflect on the extent to which the reforms in the three EAC countries have responded to the commitments under the Rio Forest Principles<sup>5</sup> and Agenda 21,<sup>6</sup> two of the treaties negotiated at UNCED. The Rio Forest Principles and the broad UNCED commitments have purportedly provided the political impetus and the programmatic context within which forestry sector reforms in the EAC countries have been undertaken. However, it is argued that considerable divergences exist in both the approaches and the pace of reforms at the national level.<sup>7</sup>

This article is divided into eight sections. Section II analyzes the status and trends in forestry resources in East Africa and the relevance of the forestry sector in national economic development and regional integration. This section emphasizes the applicability of forestry goods and services in addressing rural poverty and proposes that investments targeted at in-

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governed by the East African Community Treaty, which was concluded and signed at Arusha, Tanzania on November 30, 1999, available at <http://www.eacq.org/eac-in-brief.htm>.

<sup>4</sup> The World Summit for Sustainable Development (WSSD) is intended to bring together all stakeholders including governments, private sector and civil society and work towards forging an agreement and plan of action to achieve global sustainable development as envisaged under Agenda 21.

<sup>5</sup> *Non-Legally Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests*, Report of the U.N. Conference on Environment and Development (Rio de Janeiro, Brazil), Annex III, U.N. Doc. A/CONF.151/26 (Vol. III) (1992), available at <http://www.un.org/documents/ga/conf151/aconf15126-3annex3.htm> [hereinafter *Forest Principles*]. The Rio Forest Principles as a set of voluntary guidelines, which were adopted at the United Nations Conference on Environment and Development (UNCED), that took place at Rio de Janeiro, Brazil in 1992. *Id.*

<sup>6</sup> Agenda 21 is a programmatic plan of action adopted at the United Nations Conference on Environment and Development (UNCED) held at Rio de Janeiro in 1992. Chapter 11 thereof addresses the actions required of Nation States and the international community to address the problems of deforestation. *Agenda 21*, U.N. Conference on Environment and Development (UNCED)(Rio de Janeiro, Brazil June 14, 1992), Sect. II, Ch. 11, at ¶ 11.1, U.N. Doc. A/CONF.151/26 (1992), available at <http://www.un.org/esa/sustdev/agenda21text.htm> [hereinafter *Agenda 21*].

<sup>7</sup> For example, while Tanzania adopted its National Forestry Policy in 1998, it was not until 2001 that Uganda adopted its policy and a process to develop a national forestry policy has been going on since 1999.

creasing the productivity of the sector could provide the much needed stimuli for national economic development. Section III assesses the UNCED processes that gave birth to the Rio Forest Principles and the relevant forestry provisions in Agenda 21. Section IV analyzes the contributions of the EAC Member States in the UNCED forest agenda while section V reviews the UNCED commitments<sup>8</sup> as they relate to forests. Section VI looks at the implementation of the UNCED forest related commitments at the regional level while section VII analyzes the common features of forestry reforms in the EAC Member States. Section VIII concludes with the proposition that the major problems of implementation has been the failure of the EAC countries to more systematically move towards reforming their legal and institutional framework to respond to the management challenges introduced by the UNCED process.

## II. OVERVIEW OF THE FOREST SECTOR IN EAST AFRICA

The EAC is comprised of three countries covering an area of 1.7 million square kilometers.<sup>9</sup> The Community has an estimated population of 80 million<sup>10</sup> people who share a common history, language, culture and infrastructure. The EAC countries also share common resources including bodies of water,<sup>11</sup> national parks<sup>12</sup> and forest ecosystems.<sup>13</sup> All these resources are under tremendous pressures largely arising from increasing population, growing demand for forest products, low in-

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<sup>8</sup> Chapter 11 of Agenda 21 identifies three major programmatic areas within which action by the international community is required in order to arrest forest degradation: (A) Sustaining the multiple roles and functions of all types of forests, forest lands and woodlands; (B) Enhancing the protection, sustainable management and conservation of all forests, and the greening of degraded areas, through forest rehabilitation, afforestation, reforestation and other rehabilitative means; (C) Promoting efficient utilization and assessment to recover the full valuation of the goods and services provided by forests, forest lands and woodlands. *Agenda 21, supra* note 6.

<sup>9</sup> Uganda is 199,550 square kilometers. DORLING KINDERSELY WORLD REFERENCE ATLAS 556 (2nd ed. 1998). Kenya is 566,970 square kilometers. *Id.* at 316. Tanzania is 886,040 square kilometers. *Id.* at 532.

<sup>10</sup> Uganda's population is 21.3 million. *Id.* at 556. Tanzania's population is 29.7 million. *Id.* at 532. Kenya's population is 30 million. *Id.* at 316.

<sup>11</sup> Lake Victoria which is the biggest fresh water lake in the world is shared by the three countries.

<sup>12</sup> For example the Serengeti National Park is shared between Kenya and Tanzania.

<sup>13</sup> For example the Sango Bay-Minziro Forest ecosystem which crosses from Rakai District in Southern Uganda to Bukoba District in Northern Tanzania.

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vestments in natural resources management, poorly defined property rights, and macro-economic policies that provide incentives for over-exploitation.

In all three EAC countries, the forestry sector is the major source of energy. For example, at the time of the UNCED in 1992, it was estimated that fuel-wood, charcoal and agricultural residues accounted for 92% of Tanzania's total energy consumption.<sup>14</sup> Table 1 shows the total forested area of Tanzania mainland by type as shown in the report prepared for UNCED.<sup>15</sup>

**Table 1:** The total forested area in Tanzania mainland by distribution and type<sup>16</sup>

Type of forest	(ha. million)	Proportion to total forest estate
Forests (Excluding mangrove)	1.4	3.2%
Mangrove forests	0.1	0.3%
Woodlands	42.9	96.5%
Total	44.4	100%

In 1989, it was estimated that the forestry sector provided 2-3% of the Gross Domestic Product (GDP) and 10% of Tanzania's registered exports while the sector is estimated to provide 730,000 person-years of employment.<sup>17</sup>

Uganda's forest estate is estimated to have declined from 45% of the total land area at the turn on the century to about 7.7% by the end of the last decade.<sup>18</sup> Existing literature shows

<sup>14</sup> UNITED REPUBLIC OF TANZANIA NATIONAL ENVIRONMENT MANAGEMENT COUNCIL, NATIONAL CONSERVATION STRATEGY FOR SUSTAINABLE DEVELOPMENT 7 (1994) [hereinafter TANZANIA NCSSD]. It was also estimated that commercial fuels, in particular electricity and petroleum accounted for only 0.88% and 7.2% respectively of total energy consumption. *Id.*

<sup>15</sup> UNITED REPUBLIC OF TANZANIA, NATIONAL REPORT FOR THE 1992 UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT (UNCED) 5 (1991) [hereinafter TANZANIA NATIONAL REPORT 1991]. According to the report, forest resources are considered to comprise of forests, woodlands, grasslands or savanna accounting for 50% of Tanzania's total land area. *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> UNITED REPUBLIC OF TANZANIA MINISTRY OF NATURAL RESOURCES AND TOURISM, NATIONAL FORESTRY POLICY 11 (1998) [hereinafter TANZANIA NATIONAL FORESTRY POLICY].

<sup>18</sup> REPUBLIC OF UGANDA MINISTRY OF WATER, LANDS AND ENVIRONMENT, THE

that this decline was caused by many factors ranging from increasing population, inadequate legal and policy framework, lack of accurate data on forest resources, and encroachment.<sup>19</sup> At the moment, Uganda's forest estate (forests and woodlands) is estimated at 4.9 million hectares (ha.) covering approximately 24% of Uganda's total land area<sup>20</sup> and contributing approximately 90% of the national energy needs. By 1986, Uganda's production of wood-fuel was estimated at 15.6 million cubic meters per annum while consumption was estimated at about 18.3 million cubic meters representing a deficit of 3.3 million cubic meters per annum.<sup>21</sup> Table 2 below shows the distribution of Uganda's forests by type.

**Table 2:** Approximate areas (in hectares) of forest and woodland under different categories of ownership and management<sup>22</sup>

	Government land		Private Land	Total
	Central and Local Forest Reserves	National Parks and Wildlife Reserves	Private and Customary Land	
Tropical High Forest	306,000	267,000	351,000	924,000
Woodlands	411,000	462,000	3,102,000	3,974,000
Plantations	20,000	2,000	11,000	34,000
Total Forest	737,000	731,000	3,464,000	4,932,000
Other Cover Types	414,000	1,167,000	13,901,000	15,482,000

NATIONAL FOREST PLAN (Draft for Consultation) 4 (2001) [hereinafter UGANDA NATIONAL FOREST PLAN].

<sup>19</sup> NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY, STATE OF THE ENVIRONMENT REPORT FOR UGANDA 1998 71-83 (1999); see REPUBLIC OF UGANDA MINISTRY OF WATER, LANDS AND ENVIRONMENT, THE UGANDA FORESTRY POLICY 3 (2001) [hereinafter THE UGANDA FORESTRY POLICY].

<sup>20</sup> UGANDA NATIONAL FOREST PLAN, *supra* note 18, at 3.

<sup>21</sup> World Bank, 1986.

<sup>22</sup> THE UGANDA FORESTRY POLICY, *supra* note 19.

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Like Uganda and Tanzania, the forestry sector in Kenya faces a number of daunting problems and challenges linked to rapid population growth and poor governance.<sup>23</sup> The gazette forestland, estimated at 2.8% of the total land area (582,646 sq. km), is decreasing rapidly due to pressure from agriculture and expansion of human settlements. The remaining area of closed canopy forests (approximately 1.2 million ha.) is expected to lose about 240,000 ha. in the next twenty-five years.<sup>24</sup> While the forestry estate is continuing to shrink, the disparity between demand and supply for wood products (timber, pulpwood, poles and fuelwood) is growing. According to the Kenya Forest Master Plan, it is estimated that increases in total wood demand will outstrip wood supply before the end of this decade.<sup>25</sup> Further, it is estimated that by the year 2020, wood demand will stand at 45 million cubic meters while supply will stand at 38 million cubic meters representing a deficit of 7.0 million cubic meters.<sup>26</sup>

Generally, a few striking similarities can be identified as generic to the forestry sector in the EAC countries. First, the major driving factors of forest loss appear to be agriculture and population growth.<sup>27</sup> In fact, with Uganda developing a new strategic framework for poverty eradication premised on agriculture modernization,<sup>28</sup> there are apparent growing indications that forestry lands will be a focus of agriculture invest-

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<sup>23</sup> Over the years, there has been a growing intricate relationship between forestry policy and politics in Kenya. On many occasions, the Government has given away or attempted to degazette several forest reserves to distribute to local people or ruling party sympathizers to buy political support. See WORLD RESOURCES INSTITUTE, AFRICA'S VALUABLE ASSETS: A READER IN NATURAL RESOURCES MANAGEMENT 301-19 (1998).

<sup>24</sup> THE REPUBLIC OF KENYA, 1999. KENYA FORESTRY RESEARCH INSTITUTE (KEFRI)-STRATEGIC PLAN 1999-2003: DEVELOPMENT AND CHALLENGES OF FORESTRY RESEARCH IN KENYA (1999) (on file with the author).

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> THE UGANDA FORESTRY POLICY, *supra* note 19, at 3; TANZANIA NATIONAL FORESTRY POLICY, *supra* note 17, at 8; REPUBLIC OF KENYA MINISTRY OF ENVIRONMENT AND NATURAL RESOURCES, KENYA FOREST POLICY 3-5 (1999) [hereinafter KENYA FOREST POLICY].

<sup>28</sup> See generally REPUBLIC OF UGANDA MINISTRY OF AGRICULTURE, ANIMAL INDUSTRY AND FISHERIES/MINISTRY OF FINANCE, PLANNING AND ECONOMIC DEVELOPMENT, PLAN FOR MODERNIZATION OF AGRICULTURE: ERADICATING POVERTY IN UGANDA (Government Strategy and Operational Framework) (2000).

ments.<sup>29</sup> Second, the EAC countries are pursuing almost identical macro-economic policies that provide the context for forest sector development (see Table 3).

The major macro-economic objectives include poverty eradication, ensuring macro-economic stability, creating an enabling environment for a strong private sector, and scaling down government involvement in the economy. Third, the forestry sector will for sometime remain the main source of energy for both rural and urban populations. Finally, since large tracts of forests are found on private land,<sup>30</sup> the comprehensive approach adopted under the Rio Forest Principles provides a useful legal context in which policy and legislative interventions can be undertaken to ensure sustainable management of the entire forest estate.

**Table 3:** Highlights of the national policy framework for forest sector development in East Africa

	Macro-Economic Policy Framework	Environmental Policy Framework	Forestry Policy Objectives
Tanzania	<ul style="list-style-type: none"> <li>▪ Combating poverty and deprivation in order to improve peoples welfare;</li> <li>▪ Ensuring macro-economic stability;</li> </ul>	<ul style="list-style-type: none"> <li>▪ To ensure sustainable and equitable use of resources for meeting the basic needs of the present and future generations;</li> </ul>	<ul style="list-style-type: none"> <li>▪ Ensured sustainable supply of forest products and services by maintaining sufficient forest area under effective management;</li> </ul>

<sup>29</sup> For example, between 1999-2000, the Government of Uganda proposed to degazette 3,500 ha of forest reserves on Bugala Island for a palm oil development project. This project was abandoned following the interventions by environmental civil society organizations and donors. At the moment, there are attempts by Government to degazette or change the land use of Butamira Forest Reserve for sugar cane growing. See Godber Tumushabe et al., *Sustainably Utilizing Our Natural Heritage: Legal Implications of the Proposed Degazettement of Butamira Forest Reserve*, ACODE POL'Y RES. SERIES, No. 4, 2001.

<sup>30</sup> For example, in Uganda, 70% of the entire national forest estate is considered to be located on private land with only less than 30% located in protected areas spread across the country. UGANDA NATIONAL FOREST PLAN, *supra* note 18, at 3.



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	Macro-Economic Policy Framework	Environmental Policy Framework	Forestry Policy Objectives
Tanzania Con't.	<ul style="list-style-type: none"> <li>▪ Maintaining an environmentally sustainable development path;</li> <li>▪ Creating an enabling environment for a strong private sector;</li> <li>▪ To reduce government involvement in directly productive activities;</li> </ul>	<ul style="list-style-type: none"> <li>▪ To prevent and control degradation of land, water, vegetation and air</li> <li>▪ To improve the condition and productivity of degraded areas;</li> <li>▪ To promote international co-operation on the environment agenda.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Increased employment and foreign exchange earnings through sustainable forest-based industrial development and trade;</li> <li>▪ Ensured ecosystem stability through conservation of forest biodiversity, water catchments and soil fertility;</li> </ul>
Uganda	<ul style="list-style-type: none"> <li>▪ Creating a framework for rapid economic growth;</li> <li>▪ Maintaining macro-economic stability;</li> <li>▪ De-centralization;</li> <li>▪ Directly increasing the ability of the poor to raise incomes;</li> </ul>	<ul style="list-style-type: none"> <li>▪ Enhance the health and quality of life of the Ugandan people and promote long-term sustainable socio-economic development through sound environmental &amp; natural resource management and use;</li> <li>▪ Integrate environmental activities in development with full participation of the people;</li> </ul>	<ul style="list-style-type: none"> <li>▪ An integrated forest sector that achieves sustainable increase in the economic, social and environmental benefits from forests and trees by all the people of Uganda, especially the poor and vulnerable.</li> </ul>

	Macro-Economic Policy Framework	Environmental Policy Framework	Forestry Policy Objectives
Uganda Con't.	<ul style="list-style-type: none"> <li>▪ Directly increasing the quality of life of the poor.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Conserve, preserve and restore ecosystems and maintain ecological processes and life systems.</li> </ul>	<ul style="list-style-type: none"> <li>▪ An integrated forest sector that achieves sustainable increase in the economic, social and environmental benefits from forests and trees by all the people of Uganda, especially the poor and vulnerable.</li> </ul>
Kenya	<ul style="list-style-type: none"> <li>▪ Improving governance to create an enabling environment for private sector and public resources, allocated towards infrastructure improvement and security while decisively addressing health and education priorities;</li> <li>▪ Consolidate stabilization gains and reduce the domestic debt burden;</li> </ul>	<ul style="list-style-type: none"> <li>▪ Facilitating the optimal use of the national land base and water resources in improving the quality of the human environment;</li> <li>▪ Promoting sustainable use of natural resources to meet the needs of present generations while preserving the ability to meet the needs of future generations;</li> </ul>	<ul style="list-style-type: none"> <li>▪ Increase the forest and tree cover of the country to increase the supply of forest products and services on a sustainable basis;</li> <li>▪ To conserve and rehabilitate remaining natural habitats and conserve their biodiversity;</li> </ul>

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	Macro-Economic Policy Framework	Environmental Policy Framework	Forestry Policy Objectives
Kenya Con't.	<ul style="list-style-type: none"> <li>▪ Improving allocation of resources through acceleration &amp; broadening of the structural reform scope, including improving the regulatory environment affecting agriculture priority areas that have direct implications for poverty eradication;</li> <li>▪ Enhancing Government's proactive role in facilitating expansion of the private sector.<sup>31</sup></li> </ul>	<ul style="list-style-type: none"> <li>▪ Treating environmental conservation &amp; economic development as integral aspects of the same process of sustainable development;</li> <li>▪ Generating income &amp; meeting national goals &amp; international obligations by conserving biodiversity, reversing desertification, mitigating effects of disasters, &amp; maintaining the Earth's ecological balance.<sup>32</sup></li> </ul>	<ul style="list-style-type: none"> <li>▪ Support the Government policy of poverty alleviation and rural development through income generation, employment and participation by local communities;</li> <li>▪ Promote international obligations.</li> </ul>

## III. COMING TO A CONSENSUS: FORESTS AT RIO

At its 38<sup>th</sup> Session in 1983, the United Nations General Assembly (UNGA) passed a resolution<sup>33</sup> establishing a World Commission on Environment and Development (WCED) to

<sup>31</sup> See Letter of Intent by the Government of Kenya to the International Monetary Fund and the attached Memorandum of Economic and Financial Policies of the Government of Kenya, 2000-03, available at <http://www.imf.org/external/NP/LOI/2000/ken/01/INDEX.HTM>.

<sup>32</sup> REPUBLIC OF KENYA SECRETARIAT/MINISTRY OF ENVIRONMENT AND NATURAL RESOURCES, THE KENYA NATIONAL ENVIRONMENT ACTION PLAN (NEAP) REPORT 1 (1994) [hereinafter KENYA NEAP].

<sup>33</sup> The Commission was among other things requested to propose long-term environmental strategies for achieving sustainable development by the year 2000 and beyond and to help define shared perceptions of long-term environmental issues and the appropriate efforts needed to deal successfully with the problems of protecting and enhancing the environment. Available at [http://geneva-international.org/GVA/WelcomeKit/Environnement/chap\\_5.E.html](http://geneva-international.org/GVA/WelcomeKit/Environnement/chap_5.E.html).

formulate an “agenda for change.” The WCED,<sup>34</sup> chaired by the former Norwegian Prime Minister Gro Harlem Brundtland, published its report in 1987.<sup>35</sup> In its report, the Commission acknowledged the importance of forests in maintaining and improving the productivity of agricultural lands, yet it observed that “agricultural expansion, a growing world timber trade, woodfuel demand,” and growing poverty were leading to severe forest degradation in many countries.<sup>36</sup> Consequently, by the time of the UNCED in 1992, there was already emerging consensus about the need to take actions to halt the degradation of forest resources.

Following on the work of the WCED, the UNCED became, perhaps, the first major international initiative that produced what appeared to be a consensus framework for the management of the world’s forests. This consensus was expressed in a number of instruments concluded at the Conference. Chapter 11 of Agenda 21 contained a series of commitments and actions that States would undertake to promote the management of forests globally. Chapter 11 was complemented by a consensus political statement entitled Non-Legally-Binding Authoritative Statement of Principles for a Global Consensus on the Management, Conservation and Sustainable Development of All Types of Forests (often referred to as the “Rio Forest Principles”).<sup>37</sup> In particular, the title of the Rio Forest Principles largely reflects the lack of consensus on a more acceptable agreement on forestry issues at the Conference.

A series of agreements embodying legally binding commitments to address a broad range of environmental and development issues were concluded at Rio.<sup>38</sup> From a strictly legal per-

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<sup>34</sup> Also commonly referred to as the “Brundtland Commission” after the Chairman of the Commission Gro Harlem Brundtland. *Id.*

<sup>35</sup> See OUR COMMON FUTURE: WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT (1987).

<sup>36</sup> *Id.* at 126.

<sup>37</sup> Some analysts have correctly argued that the debate on forestry issues at UNCED proved too controversial, and as a result the delegates could not reach an agreement to include the Rio Forest Principles in Agenda 21 proper. See for example Karl Hansen, *Socio-economic Issues in the International Forestry Policy Dialogue*, Nov. 1995, available at <http://iisd1.iisd.ca/forests/equityf3.htm>.

<sup>38</sup> Most prominent of these agreements include: The Convention on Biological Diversity, 1992 (The Final Act of the Convention was adopted at Nairobi in 1992); The United Nations Framework Convention on Climate Change, Rio de Janeiro, 1992. In addition to these two Conventions, UNCED called on the United Nations General Assembly (UNGA) to establish an Inter-Governmental Negotiating Committee to prepare

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spective, it is important to draw a distinction between those commitments expressed in legally binding instruments such as the three “sister conventions”<sup>39</sup> and the associated protocols<sup>40</sup> on the one hand, and commitments expressed in the Conference Declarations including Agenda 21 on the other.

Generally, Agenda 21, the Rio Forest Principles and the Rio Declaration<sup>41</sup> itself are a package of soft law instruments not legally binding upon nation states. In particular, the Rio Forest Principles are generally considered a set of aspirational guidelines to direct the conduct of states towards a more sustainable forest management regime. However, the political significance of UNCED itself and the process of continuous review of the implementation process of these instruments appear to have elevated the character of these instruments to give them an increasingly binding quality. The periodic reporting requirement,<sup>42</sup> especially at the post-Rio Summits, tends to exert significant political pressure on Nation-States to implement the commitments under these instruments as if they were binding *ipso facto*. Therefore, it is tenable to argue that these soft law instruments have assumed “special character” within the hierarchy of international legal norms and their influence on national laws and practice is quite instructive.

Indeed, commentators on the global forestry dialogue have often disagreed on the legal quality of the Principles. Some

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a convention on desertification. In December 1992, the UNGA agreed to the UNCED proposal (See Resolution 47/188) and the Convention was adopted in Paris on June 17, 1994 and opened for signature in October 1994.

<sup>39</sup> United Nations Convention on Biological Diversity, (June 5, 1992), available at [http://www.biodiv.org/chm/conv/cbd\\_text\\_e.htm](http://www.biodiv.org/chm/conv/cbd_text_e.htm).

<sup>40</sup> Since 1992, two major protocols have been negotiated. The Cartagena Protocol on Biosafety, to the Convention on Biological Diversity, Montreal, 2000 (also referred to as the Cartagena Protocol) was negotiated and adopted in 2000. *Cartagena Protocol on Biodiversity to the Convention on Biological Diversity* (Feb. 23, 2000), available at <http://www.biodiv.org/biosafe/Protocol/html/Biosafe-Prot.html>. The Kyoto Protocol was negotiated and adopted in 1997 pursuant to article 17 of the United Nations Framework Convention on Climate Change, 1992. Kyoto Protocol to the United Nations Framework Convention on Climate Change, 3d Sess., [1997] U.N. Doc FCCC/CP/1997/L.7/Add.1/1997 reprinted in 37 I.L.M. 32 (1998).

<sup>41</sup> The Rio Declaration on Environment and Development, containing 27 principles, represents the main political statement of the UNCED, available at <http://www.unep.org/unep/rio.htm>.

<sup>42</sup> Since 1992, States have been submitting reports on the progress made in implementing their obligations under the various conventions while reports on the implementation of Agenda 21 are prepared for Rio + Conferences such as the upcoming Rio + 10 (WSSD) due in Johannesburg later this year.

have argued that the Principles contain few calls for direct action that would halt deforestation, ensure that trade in forest products be based on environmentally sustainable practices, or commit to the adoption of a comprehensive world forest strategy. However, other observers have hailed the Principles as an important statement of consensus, and a starting point for possible future engagement in forestry negotiations.<sup>43</sup> As demonstrated in the later sections of this article, it is clear that within the three East African countries, the Rio Forest Principles are being implemented as if they were legally binding commitments.

#### IV. EAC COUNTRIES' PARTICIPATION IN AND CONTRIBUTION TO UNCED

The EAC countries participated fully in the UNCED proceedings. However, with the exception of Tanzania, no record of the positions submitted in preparation for the Conference has been found in the process of preparing this paper. Since the EAC countries have historically made efforts to present common positions at international fora, it may be tenable to argue that the Tanzania position reflects the key environmental and developmental concerns of all the three countries.

In its submission in preparation for UNCED,<sup>44</sup> Tanzania emphasized the need for the Conference to address the issues of underdevelopment and poverty as the underlying causes of environmental problems. It urged the international community to try to strengthen the existing multilateral environmental and development organizations so that they meet the increasing challenges facing developing countries.

Perhaps the most far reaching recommendation by Tanzania, which has often been shared by Uganda and Kenya as well as many other developing countries, was the call on the UNCED to put in place a framework for reforming the international financial, monetary, and trading system.<sup>45</sup> It argued for

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<sup>43</sup> See The National Council for Science and the Environment, *International Forest Agreements*, available at <http://www.cnie.org>.

<sup>44</sup> TANZANIA NATIONAL REPORT 1991, *supra* note 15.

<sup>45</sup> Tanzania argued for a reformed international trading system oriented towards creating a global rule-based system based on the principles of multilateralism and non-discrimination.

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a reformed international financial system that can set up durable arrangements for the transfer of adequate resources from developed to developing countries so as to accelerate development in the South.

Of particular relevance to the management of forests were Tanzania's recommendations on funding, biodiversity, technology transfer and climate change. The Tanzanian government emphasized that "any targets for the stabilization or reduction of the greenhouse gas emissions should not prejudice the growing energy requirements of the developing countries compatible with their national economic development." These concerns continue to be re-echoed in the ongoing dialogue on forestry. For example, in his address to the opening of the 4<sup>th</sup> Session of the Ad hoc Inter-Governmental Panel on Forests in 1997, Ambassador Daudi N. Mwakawago of Tanzania, representing the Group of 77 and China, re-emphasized the relevance of poverty eradication and technology transfer to the implementation of the Forest Principles.<sup>46</sup>

As already noted, no record was found of the submissions of Kenya and Uganda for the UNCED. On the other hand, the Tanzanian recommendations did not make any specific mention of the issues of forestry other than the various generalizations about biodiversity, technology transfer, and climate change. It is therefore difficult to ascertain with precision the actual contributions of these countries in the overall formulation of what came to be known as the Forest Principles. In fact, even the country reports that have been submitted after UNCED have neither made reference to the controversies that characterized the forestry discussions nor an assessment of what the specific agenda of these countries was as far as forestry issues were concerned.

Despite what contributions the East African countries may have made to the final outcomes of the UNCED, Chapter 11 of Agenda 21 and the Rio Forest Principles contain a package of obligations that the countries needed to fulfill in order to move

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<sup>46</sup> Statement by Ambassador Daudi N. Mwakawago, Permanent Representative of the Republic of Tanzania, Chairman of the Group of 77 and China, at the Opening of the Ad hoc Inter-Governmental Panel on Forests-Fourth Session, New York, (Feb. 11, 1997), available at <http://www.g77.org/Speeches/021197b.htm>.

towards sustainable management of forests.<sup>47</sup> In particular, the Rio Forest Principles contain declaratory statements that could be seen to guide the implementation of the more precise actions agreed under Chapter 11 of Agenda 21. An understanding of the key actions adopted in Chapter 11 therefore is a pre-requisite to the more general statements of the Rio Forest Principles.

#### V. STATES' OBLIGATIONS UNDER AGENDA 21'S CHAPTER 11 AND THE RIO FOREST PRINCIPLES

Generally, Chapter 11 contains four major programme areas: Programme Area 1 deals with sustaining the multiple roles and functions of all types of forests. Programme Area 2 focuses on enhancing the protection, sustainable management and conservation of all forests and the greening of degraded areas. It is envisaged that this programme area would be promoted "through forest rehabilitation, afforestation, reforestation and other rehabilitative means." Under Programme Area 3, states undertook to promote efficient utilization and assessment to recover the full value of the goods and services provided by forests, forestlands and woodlands. Finally, Programme Area 4 addresses the issue of capacity building. States undertook to establish and/or strengthen capacities for planning, assessment and systematic observations of forests and related programmes, projects and activities, including commercial trade and processes.

In broad terms, under Chapter 11 of Agenda 21 and the Rio Forest Principles, countries are obligated to undertake a number of actions in order to move towards a more sustainable forestry management regime. Governments undertook to rationalize and strengthen the relevant forestry administrative structures and ensure inter-sectoral coordination.<sup>48</sup> The States committed themselves to prepare and implement national forestry action programmes and/or plans for the management,

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<sup>47</sup> The commitments under these instruments have been enriched by IPF Proposals for Action and subsequent decisions within the framework of the global forestry dialogue under the auspices of the World Commission on Sustainable Development (WCSD). *Programme of Work of the Intergovernmental Panel on Forests*, U.N. ESCOR Doc. E/CN.17/IPF/1995/2, available at <http://www.un.org/esa/sustdev/aboutiff.htm>.

<sup>48</sup> *Agenda 21*, *supra* note 6, at 11.3; *Forest Principles*, *supra* note 5, at 3.



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conservation, and sustainable development of forests<sup>49</sup> and recognized the various processes under the Tropical Forestry Action Programme.<sup>50</sup> In the post-UNCED international forestry dialogue, the concept of National Forest Programmes has gained increasing dominance and acceptability as constituting the essential organizational framework for the implementation of the international commitments relating to sustainable forestry management.

The concept of “National Forest Programmes” is not actually mentioned in the Rio Forest Principles and is probably derived from Chapter 11 of Agenda 21.<sup>51</sup> Although neither Agenda 21 nor the Rio Forest Principles contain an elaboration of what constitutes such programmes, the content and elements of National Forest Programmes are based on the Tropical Forests Action Programme guidelines of the FAO and have further been shaped by the discussions under the Intergovernmental Panel on Forests (IFP)/ Intergovernmental Forum on Forests (IFF) processes. The discussions have largely reflected the consensus among the international community that frameworks such as National Forestry Action Programmes (NFAP), Forestry Master Plans, and Forest Sector Reviews provide the basis for achieving sustainable forestry development as envisaged both under the Rio Forest Principles and Agenda 21.

Although no common legal definition has been ascribed to the concept of National Forest Programmes, it is generally agreed that the expression “designates the wide range of approaches to the process of planning, programming and implementation of forest activities in a country to be applied at national and sub-national levels, based on a common set of guid-

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<sup>49</sup> Principle 6(b) of the Forest Principles declared that “National policies and programmes should take into account the relationship, where it exists, between the conservation, management and sustainable develop of forests and all aspects related to the production, consumption, recycling and/or final disposal of forest products.” *Id.*

<sup>50</sup> *Agenda 21*, *supra* note 6, at 11.12.

<sup>51</sup> Paragraph 11:12 provides that one of the objectives of Programme Area B of this Chapter is “to prepare and implement, as appropriate, national forestry action programmes [NFAP] and/or plans for the management, conservation and sustainable development of forests. These programmes and/or plans should be integrated with other land uses. In this context, country-driven national forestry action programmes and/or plans under the Tropical Forestry Action Programme are currently being implemented in more than 80 countries, with the support of the international community”. *Id.*

ing principles.”<sup>52</sup> Therefore, the implementation of the UNCED forest commitments at the national level ought to be analyzed within this conceptual framework.

## VI. REGIONAL EFFORTS TO ADDRESS FORESTRY MANAGEMENT ISSUES

Despite the non-legally binding nature of the Rio Forest Principles and Agenda 21, the three EAC countries have engaged in various processes to implement these principles as if they were binding *ipso facto*. Since 1992, all three countries have been engaged in a continuous process of instituting legal, policy and institutional reforms that reflect the UNCED commitments in general and the Rio Forest Principles in particular. While many of the reform processes do not make reference to Agenda 21 or the Rio Forest Principles,<sup>53</sup> they generally tend to comply with the UNCED commitments in general and the Forest Principles in particular.<sup>54</sup>

At the regional level,<sup>55</sup> efforts are being made to ensure commonality in policy responses and institutional coordination at the ecosystem level.<sup>56</sup> In 1993, the three EAC countries identified key areas in which they would cooperate to further their regional integration processes. Conservation and re-forestation as well as research and training in forestry were considered to be key areas of the co-operation.<sup>57</sup> These initia-

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<sup>52</sup> National Forest Programmes, available at <http://www.fao.org/forestry/foda/nfp/nfp-e.stm>.

<sup>53</sup> REPUBLIC OF UGANDA MINISTRY OF WATER, LANDS AND ENVIRONMENT, THE FOREST SECTOR UMBRELLA PROGRAMME (FSUP) (1999). The Forest Sector Umbrella Programme makes explicit references to Uganda's active participation in the United Nations Commission on Sustainable Development (CSD), the Inter-Governmental Panel on Forests (IFP) and the underlying principles of developing a FSUP based on the elements and principles developed by the IFP.

<sup>54</sup> It should be noted though that the Tropical Forest Action Plan in Tanzania dates back to the mid-1980s and the UNCED can only be seen to have provided momentum to this planning process.

<sup>55</sup> See The East Africa Co-operation Development Strategy (1997-2000), available at <http://www.eastafricaweb.com/EAC/strategy.php>.

<sup>56</sup> The East Africa Cross-Borders Biodiversity Project, available at <http://www.acts.or.ke/innovation6%20-%20Reducing%20biodiversity.htm>. (being jointly implemented by Kenya, Uganda and Tanzania with funding from the Global Environment Facility (GEF) is one such regional forestry initiative).

<sup>57</sup> Common Text on Identified Areas of Co-operation Between the United Republic of Tanzania, the Republic of Uganda and the Republic of Kenya (Nov. 1993) (on file

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tives were consolidated into a Memorandum of Understanding (MoU) on environmental issues among the EAC countries covering a broad range of principles, including forestry resources management,<sup>58</sup> and were further incorporated in the Treaty for the Establishment of the East African Community.<sup>59</sup> Article 114 relating to the management of natural resources, contains elaborate provisions regarding measures to be taken by the EAC to ensure sustainable management of forestry resources within the community.

Although no specific reference has been made to the UNCED process in most of the documents regarding environmental management in the EAC, it is tenable to argue that these provisions reflect the global forestry agenda as accepted by the EAC States. Generally, little has been done to realize the aspirations of the EAC States under the Treaty as well as the MoU. However, these regional instruments provide a policy and legal framework for the enhanced operationalization of the UNCED forest commitments at the national level. The following section of the paper considers the efforts made by the EAC States in implementing the Rio Forest Principles at the national level.

## VII. NATIONAL RESPONSES TO THE UNCED FOREST COMMITMENTS

Although the EAC countries are moving towards regional integration in many areas including environmental management,<sup>60</sup> their responses towards implementing global environmental commitments still have to be analyzed within a national context for a number of reasons. First, these countries have distinct policy making structures and the processes of policy and legal reforms take place at different paces. Second, forestry policy reforms have been undertaken as part of donor conditionalities imposed by the World Bank, International Monetary Fund and other multinational lending entities.

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with the author) [hereinafter Common Text].

<sup>58</sup> Memorandum of Understanding Between the United Republic of Tanzania, the Republic of Kenya and the Republic of Uganda on Environmental Management (Oct. 1998) (unpublished).

<sup>59</sup> The Treaty came into force on July 7, 2000, available at <http://www.eachq.org/eac-TheTreaty.htm>.

<sup>60</sup> Common Text, *supra* note 57.

These conditionalities required a reduction in public sector funding, including funding spent on public agencies responsible for forest management.<sup>61</sup> Third, funding for forestry sector reforms has largely been provided through external support<sup>62</sup> and, consequently, donors tend to dictate the pace and context of the reform processes.<sup>63</sup>

The approaches to implementing the Rio commitments, as far as sustainable forestry management are concerned, have been similar among the EAC countries although they have proceeded at different paces. The overall approaches entail: integrating forestry activities into the overall environment and development activities at the policy, legal and management levels; developing an effective legal and regulatory framework; and re-organizing forestry and other related institutions to ensure institutional coordination and policy coherency.

In the post-Rio era, the EAC countries have focused on four major types of reforms that have implications for forest sector development. These four types of reforms are discussed below.

#### A. NATIONAL ENVIRONMENTAL ACTION PLANS (NEAPS)

First, these countries engaged in a process to formulate National Environment Action Plans (NEAPs). By 1994, Kenya<sup>64</sup>, Tanzania<sup>65</sup> and Uganda<sup>66</sup> had adopted their National Environment Action Plans. The NEAPs contained analysis of the underlying causes of forest degradation and the remedial actions needed to arrest this degradation. Among the key recommendations of the NEAPs prepared by the EAC countries

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<sup>61</sup> Over the last 10 years, multilateral and bilateral donors have required the scaling down of government in key areas including public administration. Consequently, many countries have been encouraged to restructure their public environmental agencies to give them greater autonomy in their operations.

<sup>62</sup> For example, the National Environment Action Plan (NEAP) Processes were largely driven by the World Bank which provided funding for these processes although this does not explain why it took long to complete the process in Kenya compared to Uganda where the process was completed as early as 1994.

<sup>63</sup> In all the three countries, the Department for International Development of the United Kingdom (DFID-UK), Germany Technical Assistance (GTZ), the Government of Finland and the European Union have been dominant players in the forestry sector.

<sup>64</sup> KENYA NEAP, *supra* note 32.

<sup>65</sup> TANZANIA NCSSD, *supra* note 14.

<sup>66</sup> REPUBLIC OF UGANDA SECRETARIAT/MINISTRY OF ENVIRONMENT AND NATURAL RESOURCES, THE NATIONAL ENVIRONMENT ACTION PLAN FOR UGANDA (NEAP) (1994) [hereinafter UGANDA NEAP].

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was the need to develop new policy and legal frameworks for forest sector development at the national level.

The three countries share two key striking similarities with respect to the NEAP processes. First, the World Bank's support to the NEAPs was delivered as part of the conditionalities for development assistance. Second, the NEAPs have largely taken place outside the framework of the national development planning process. A critical analysis of the NEAPs shows that the environment was looked at entirely outside the national macro-economic framework, a factor that may well account for their limited impact on addressing environmental degradation. Nevertheless, the NEAP processes have generally provided the basic framework for policy and legal reforms in the environment sectors of the EAC States.

### B. REFORM OF NATIONAL ENVIRONMENTAL POLICIES

The second type of reforms focused on the reformulation of national environmental policies. After 1992, the three EAC countries engaged in a process to put in place environmental policy frameworks as a follow-up to the NEAP/NBSAP processes. In 1994, Uganda adopted its framework environment policy<sup>67</sup> followed by Tanzania<sup>68</sup> and Kenya. Uganda and Kenya have since succeeded these policy frameworks with framework laws.<sup>69</sup>

The overall objective of these reforms has been to create coordination and coherence in the various institutions that deal with environmental management. While these efforts have in some measure achieved that objective, problems of institutional conflicts exist in many areas including overlaps in institutional mandates. However, the most important problem that has not been resolved by these framework reforms is the failure to put

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<sup>67</sup> REPUBLIC OF UGANDA MINISTRY OF NATURAL RESOURCES, THE NATIONAL ENVIRONMENT MANAGEMENT POLICY (1994).

<sup>68</sup> UNITED REPUBLIC OF TANZANIA VICE PRESIDENT'S OFFICE, NATIONAL ENVIRONMENTAL POLICY (1997).

<sup>69</sup> Uganda enacted a National Environment Statute in 1995 (Statute No. 4 of 1995) while Kenya enacted its Environmental Management and Coordination Act, 1999 (No. 8 of 1999). At the second meeting of the Committee on the Environment of the East Africa Community, it was reported that Tanzania would have its framework legislation ready by December 1999 (Ref. No. EAC/SR/11/99). No record has so far been found to suggest that either the law or the bill is in place.

in place effective mechanisms<sup>70</sup> for integrating environmental concerns in the overall macro-economic and national development framework.

At another level, a series of sector specific policy, legal, and institutional reforms have been ongoing in the forestry sector in the EAC countries. The three EAC countries have engaged in reform processes that are largely aimed at creating dynamic structures for forestry management. In 1996, Kenya<sup>71</sup> adopted its National Forestry Policy followed by Tanzania in 1998<sup>72</sup> and Uganda in 2001.<sup>73</sup>

Through forestry sector reforms, the EAC States have aligned their policy objectives in ways that are compatible with the principles and commitments contained in Chapter 11 of Agenda 21 and the Rio Forest Principles. A number of salient common features stand out in the policies for the three countries.

First, the apparent tendency in all three countries is to increase the role of the private sector in forestry management and development.<sup>74</sup> The policy of the government of the United Republic of Tanzania is to create an enabling environment and regulatory framework for the private sector involvement in forestry through training, research, and transfer of technology. The government undertakes to promote incentives and credit facilities for investments and encourage joint ventures.<sup>75</sup>

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<sup>70</sup> For example, in all the EAC countries, there have been difficulties in creating appropriate linkages between the ministries of environment and ministries of finance, planning, energy, and agriculture, which deal with formulation of macro-economic policies.

<sup>71</sup> Since 1999, Kenya has been engaged in a process to formulate a new forestry policy and this process is still ongoing. KENYA FOREST POLICY, *supra* note 27.

<sup>72</sup> TANZANIA NATIONAL FORESTRY POLICY *supra* note 17.

<sup>73</sup> UGANDA FORESTRY POLICY, *supra* note 19.

<sup>74</sup> For example, policy statement (7) of the National Forest Policy of Tanzania states that "Private and community forestry activities will be supported through harmonized extension service and financial incentives . . ." TANZANIA NATIONAL FORESTRY POLICY *supra* note 17. As a strategy for implementing the policy statement on the permanent forest estate (PFE) the Uganda Forestry Policy provides that Government shall "support the development of responsible private sector enterprises that can harvest timber and non-timber forest products from natural forests." UGANDA FORESTRY POLICY, *supra* note 19, at 16.

<sup>75</sup> TANZANIA NATIONAL FORESTRY POLICY *supra* note 17, at 28. In 2000, the Tanzania Government took an IDA loan to finance reforms in the forest sector. Part of this loan is to be applied to complete institutional reforms while the other part will be used to privatize forest plantations.

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The Uganda Forestry Policy recognizes the important role that the “commercial private sector” can play in the development and management of the forest estate especially in the areas of “production and processing of wood products and in eco-tourism.” The government undertakes to promote “profitable and productive forest plantation businesses” and promote a “modern, competitive, efficient and well regulated wood and non-wood processing industry.”<sup>76</sup>

Although the 1996 Kenya Forest Development Policy does not contain specific provisions regarding the involvement of the private sector, some inferences point to the recognition that forestry development must be undertaken with the full participation of private business.<sup>77</sup> Actual forest practice on the ground shows that many forest areas including forest plantations are being taken over by individuals. The World Bank’s final report on the forest sector performance greatly criticized the government for its inability to move to privatize in a transparent manner.

Despite these policy commitments, there are still significant legal and structural limitations to effective private sector involvement in sustainable forestry management as envisaged under the Rio Forest Principles and the post-UNCED international forestry policy dialogue. Generally, the systems of coordination and administrative monitoring of harvesting and movement of forest products are still very poor and the systems of land and tree tenure are still not clear. This acts as a disincentive to commercial tree farming and there are market disincentives for investments and re-investments in the forestry sector.<sup>78</sup>

Moreover, since 1992, national forest policy reforms have increasingly attempted to integrate forestry issues into the overall macro-economic policy framework, making sure that forestry contributes to the overall national objectives of poverty eradication. The 1996 Kenya Forestry Development Policy, although making no explicit mention of poverty eradication, focuses on providing a policy framework for the development of

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<sup>76</sup> UGANDA FORESTRY POLICY, *supra* note 19, at 10 and 17.

<sup>77</sup> REPUBLIC OF KENYA MINISTRY OF ENVIRONMENT AND NATURAL RESOURCES, KENYA FOREST DEVELOPMENT POLICY (1996).

<sup>78</sup> UGANDA FORESTRY POLICY, *supra* note 19, at 10.

forestry business.<sup>79</sup> However, as clearly stated in the 1999 Draft Kenya Forestry Policy, one of the broad policy objectives is to “support the Government policy of alleviating poverty and promoting rural development, by income based on forest and tree resources, by providing employment, and by promoting equity and participation by local communities.”<sup>80</sup>

On the other hand, the Uganda Forestry Policy provides that “the improvement of livelihoods should be a major goal in all the strategies and actions for the development of the forest sector so as to contribute to poverty eradication.”<sup>81</sup> This means that key policy interventions should address some of the constraints to forestry-related investments: information on high value alternative land uses, lack of information about markets and wood prices, and lack of technical skills in forest management. Indeed, some of the strategies stipulated in the policy, such as collaborative management,<sup>82</sup> reflect the spirit and the letter of the Rio Forest Principles.

Similarly, the National Forest Policy of the United Republic of Tanzania recognizes that forestry sector policy and development ought to be undertaken within the broad national macro-economic policy objectives, which *inter alia* include “combating poverty and deprivation in order to improve peoples’ welfare.”<sup>83</sup>

The emphasis on poverty eradication<sup>84</sup> as the planning framework for forest sector development in the three EAC countries is well reflected in the Poverty Reduction Strategy Papers (PRSPs) for all the three countries.<sup>85</sup> Among other

<sup>79</sup> It may be important to note that the non-explicit references to poverty eradication in the 1996 Kenya Forestry Development Policy is explained by the fact that Poverty Reduction Strategy Papers (PRSPs) were only adopted as country policy framework papers about 1998.

<sup>80</sup> At the time of writing this paper, it was confirmed that the 1999 draft Kenya Forestry Policy was not yet adopted by the government. Telephone Interview with Dr. Patricia-Kameri Mbote, Senior Lecturer-Faculty of Law, University of Nairobi.

<sup>81</sup> UGANDA FORESTRY POLICY, *supra* note 19, at 13.

<sup>82</sup> *Id.* at 18. The Policy states that collaborative partnerships with rural communities will be developed for the sustainable management of forests. *Id.*

<sup>83</sup> TANZANIA NATIONAL FORESTRY POLICY *supra* note 17, at 7.

<sup>84</sup> Although the three EAC countries have highlighted poverty eradication as the overarching goal of economic development, there is no established practice to who how this convergence in forestry policy and poverty eradication objectives are being achieved.

<sup>85</sup> REPUBLIC OF KENYA, INTERIM POVERTY REDUCTION STRATEGY PAPER 2000-2003 (2000), available at <http://www.imf.org/external/NP/prsp/2000/ken/01/INDEX.HTM>;



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things, the new approach to forestry management and development within the framework of the PRSPs is to focus on a market-led approach emphasizing sustainable forests for production of timber and other non-wood products. Nevertheless, although forestry is mentioned in the PRSPs as a key factor in achieving poverty reduction, they do not contain any instruments (legal, administrative, policy or otherwise) that aim at achieving integration between sustainable forestry management and poverty eradication objectives.

## C. SUBSIDIARITY ISSUES

The third common approach among the three EAC countries is the policy commitment to consider issues of “subsidiarity”<sup>86</sup> including assigning and recognizing the increasing role of NGOs in the forestry management regime. While the forest policies for the three EAC countries recognize that local authorities should take on added responsibilities for forest management, they do not clearly articulate what these responsibilities should be. In addition, none of the policies articulate a clear definition of boundaries of responsibilities between central government agencies and local authorities. On the other hand, the roles assigned to civil society organizations (CSOs) lean heavily towards forestry education and raising awareness without recognizing the relevance of these organizations in policy research, analysis, capacity building, monitoring, accountability and proactive policy advocacy.<sup>87</sup>

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UNITED REPUBLIC OF TANZANIA, POVERTY REDUCTION STRATEGY PAPER (PRSP) 27 (2000); UNITED REPUBLIC OF TANZANIA, POVERTY REDUCTION STRATEGY PAPER: PROGRESS REPORT 2000/01 (2001), available at <http://www.imf.org/external/NP/prsp/2000/tza/02/>; REPUBLIC OF UGANDA MINISTRY OF FINANCE, PLANNING AND ECONOMIC DEVELOPMENT, REVISED VOLUME 1 OF THE POVERTY ERADICATION ACTION PLAN (PEAP): FINAL DRAFT 128 (2000); REPUBLIC OF UGANDA, MINISTRY OF AGRICULTURE, ANIMAL INDUSTRY AND FISHERIES/MINISTRY OF FINANCE, THE PLAN FOR MODERNIZATION OF AGRICULTURE: ERADICATING POVERTY IN UGANDA (2002).

<sup>86</sup> The principle of subsidiarity is the tenet, which holds that nothing should be done by a larger and more complex organization, which can be done as well by a smaller and simpler organization. In other words, any activity which can be performed by a more decentralized entity, should be.

<sup>87</sup> The Tanzania Forestry Policy for example notes that “non-governmental organizations (NGO) in the field of forestry provide a potentially effective channel to reach farmers and communities with extension advice and other incentives.” TANZANIA NATIONAL FORESTRY POLICY *supra* note 17, at 28. It makes no mention of the other roles that NGOs can play such as holding Government and private sector accountable

Agenda 21 and the Rio Forest Principles enjoined States to put in place legal frameworks conducive to achieving sustainable forestry management. The policy commitments mentioned above need legislative backing in order to make them normative. A common feature of forest sector reforms in the EAC countries is that legislative and institutional reforms have proceeded at a slow pace. The forest sector in the three EAC countries is still governed by old and archaic pieces of legislation,<sup>88</sup> devoid of the principles of modern forest management.

Since 1992, the EAC countries have made policy commitments to draft new forest laws that are in conformity with their international legal commitments, national development policies, and conservation objectives. In the case of the EAC countries, either pieces of forestry legislation are in draft form,<sup>89</sup> the status of the legislative process is not clear, or the legal drafting process is only on the agenda. Yet, unless these countries progress more systematically completes the enactment of new forestry legislation, they will fall short of meeting their full commitments under the Rio Forest Principles and related decisions on sustainable forestry management.

#### D. INSTITUTIONAL RESTRUCTURING

The fourth common feature of forestry sector reforms in the three EAC countries in the post-UNCED era has been attempts to restructure forestry management institutions. Historically, forest management in the three EAC countries has been a responsibility of forest departments falling within the mainstream public service. Over the last decade, attempts at reforming these institutions have been characterized by the desire to remove them from the mainstream civil service and to make them more autonomous as service providers. However, these reforms have dragged on due to considerable uncertainty over the nature of the institutions that ought to be put in place. Decisions to reform these institutions to quasi-autonomous

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as well as monitoring compliance.

<sup>88</sup> The Forest Act, Chapter 246 of the Laws of Uganda was last revised in 1964. The Forests Act of Kenya, Chapter 385, was last revised in 1982. The current legal framework for forestry management in Tanzania is based on the Forest Ordinance of 1957.

<sup>89</sup> REPUBLIC OF KENYA, DRAFT FORESTRY BILL (Unpublished) (1999); REPUBLIC OF UGANDA MINISTRY OF WATER, LANDS AND ENVIRONMENT, THE FORESTRY ACT (DRAFT FOR CONSULTATION) (2001).

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government agencies have been politically driven which partially explains the sluggishness of these reforms.

In reviewing common forest sectors among the EAC countries, we can see that the three countries have made significant progress in reforming their forestry sectors to promote sustainable forest management. However, it is important to note that the most progress has been in the areas of generating scientific information through national biomass studies, National Forest Programmes and forest inventories.

## VIII. CONCLUSION

Since 1992, much progress has been made by the three EAC countries in moving towards more sustainable forest management regimes at the national level. At the regional levels, efforts are being undertaken to work towards harmonizing national policies that have implications for the forestry sector. The creation of the Inter-Ministerial Committee on the Environment and the implementation of regional projects such as the East African Cross Borders Biodiversity Project are promising regional initiatives. As the 2002 WSSD draws near, the experiences gained from these and other initiatives could provide key lessons for a future global forestry dialogue.

At the national level, the lack of progress on legislative and institutional reforms is still a major impediment to realizing the policy commitments that have been undertaken. It is tenable to argue that in the absence of strong legal frameworks and strong autonomous and dynamic forestry management institutions that can provide appropriate leadership, many of the policy commitments noted above could remain elusive. Consequently, the 2002 WSSD provides an opportunity for renewing commitments to legal and institutional reforms so as to realize the objectives of the UNCED forest commitments.

Second, the level of involvement of donors in the post-UNCED forestry sector reform agenda in East Africa raises questions of national ownership of the reform processes. Different countries have different objectives and reconciling the donor conditionalities with national policy priorities could further stall the processes of legal and institutional reforms in all three countries. While financial and technical assistance is part of the package of commitments contained in Agenda 21 and the Rio Forest Principles, such funding continues to be

provided in the form of conditionalities, which raises questions about the integrity of the entire financial assistance process.

Finally, as the EAC countries head for Johannesburg for the 2002 WSSD, they will be submitting national reports on the progress made so far in implementing Agenda 21. Experience has shown that national reports normally focus on broad implementation issues such as preparation of National Forest Programmes, Forest Sector Review, Forest Management Plans, and policy and legal reforms. It would be useful if the EAC countries shifted their reporting styles and focused more on how the Rio Forest Principles and other relevant UNCED instruments have assisted them in delivering tangible benefits to forest dependent communities as well as achieving national development objectives.