A CRITICAL ANALYSIS OF THE ENVIRONMENTAL LAW IN ACHIEVING SUSTAINABLE DEVELOPMENT IN WAKISO DISTRICT UGANDA

BY

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DECLARATION

I Nakanwagi Grace declared that this work presented in this research proposal is original and done on my own, that no information of this proposal has ever been given before or submitted to any university for any award of degree. All required effort therefore should be accorded in protecting this proposal in its original form.

Signed .....

NAKANWAGI GRACE

[STUDENT]

Date .....

DEDICATION

I dedicate this piece of work to my sponsor; Mr. Augustine Ssemakula and my lovely children; Owen, Loyola, and Leonard, friends and my lovely classmates in the faculty of Law and my supervisor Mr. Afunadula Isaac.

APPROVAL

This is to certify that this research report titled, "critical analysis of the environmental law in achieving sustainable development in Wakiso district Uganda" is under my supervision and is now ready for submission for award of a degree of Bachelors of Laws at Kampala International University.

AFUNADULA ISAAC

SUPERVISOR

Sign .....

Date 8th/Nov./2017

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I extend a vote of thanks to a number of people who unreservedly contributed towards the accomplishment of this research work. I also would like to acknowledge the assistance and role played by the following personalities to the successful completion of this study. I cannot say exactly how grateful I am to my supervisor, Mr. Afunadula Isaac, his guidance in this study was beyond measure. Thank you also for providing me with professional advice, encouragement and your time that has spurred me to success.

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May the Almighty God Bless you abundantly.

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LIST OF ABBREVIATIONS

WCED	World Commission on Environment and Development
NEMA	National Environment Management Authority
UNCTAD	United Nations Conference on Trade and Development
UNIDO	United Nations Industrial Development Organization
UNDP)	United Nations Development Program
FAO	Food and Agricultural Organization
UNESCO	United Nations Education, Scientific and Cultural Organization
UNEP	United Nations Environment Program
IUCN	International Union for the Conservation of Nature and Natural Resources
NEAP	National Environment Action Plan
PMA	Plan for the Modernization of Agriculture

ABSTRACT

The study was carried out to assess the environmental law issues towards achieving sustainable development in Wakiso district Uganda. The study was done basing on three objectives which were to: analyze the environmental law as a tool for sustainable development in the context of Uganda, assess the legal and institutional frame work on separation of powers and analyze cases of environment and to discuss the challenges facing implementation of the law on environment towards sustainable development in Wakiso district, Uganda. The research was descriptive and explanatory based on results from the study where qualitative method of data analysis was applied in the process collecting data for the study. A qualitative research design was opted for because it is characterized by findings that can be expressed and described verbally. The study findings showed that the existing institutional frame work like at the district, city authorities and the lack of an environmental policy implies the poor implementation of the sustainable development and lack of legislation on the environmental status of operations with regard to the security and an institution to provide safeguard of the sustainable development. The stipulations provide an utmost environment law of need a security organ to enable the execution of the environmental duties for the operations of the environment. The study recommends that there should be a new tool in the management of public affairs for instance Public interest litigation that presents a strategic opportunity to engage the Judiciary in ordinary societal issues. This tool allows the public to jump from conference tables and lamentations to strategic, decisive and enforceable action.

CHAPTER ONE

1.0 Introduction

This chapter looked at the background of the study, statement of the problem, purpose of the study, objectives of the study, scope of the study, significance of the study, methodology and the literature review.

1.1 Background of the study

1.1.1 Precolonial Perspective

Regardless of the overarching focus on the intrusive colonial and capitalist systems in African environmental history and the foreign conservationist ideas and practices they brought with them, there are regional differences, strengths and weaknesses in African environmental scholarship. West African literatures are at the forefront in investigations of indigenous knowledge and practices, and in historicizing strategies for mitigating drought and famine in times when the region was less affected by colonization. East African environmental historians have been preoccupied with demography and disease histories, especially given the strong evidence of population decline in the late nineteenth and early twentieth centuries.

North Africa has the longer history of imperial rule, stretching back to Roman times. Southern African scholars have lagged behind on these themes, but are strong on the invasive reorganization by white settlers of African land use and wildlife conservation. Great attention has been given to the environmental policies pursued by southern African colonial and settler states. A common thread and shared emphasis in African environmental historiography is African resistance to a wide range of unpopular outside environmental interventions, whether by the state or other actors. There have also been more continuities than changes in the key issues examined by African environmental historians over the last half of the 20th century. A political economy approach dominates the writings emphasizing Africa's long-term exploitation and marginalization in the global sphere.

1.1.2 Colonial perspective

The major contribution of Africans to global history has not been so much to inhabit and make usable a difficult environment, but rather to involuntarily supply hugely significant resources in slaves, minerals, farm and forest produce to an insatiable world capitalist system. A key feature of African environ mental historiography lies in its emphasis on colonial capitalism and imperialism as environmental contexts and processes. African environmental history has been dominated by analyses of the colonial experience and its legacies.

The colonial state has also been characteristically prominent in these works. Studies of the environmental consequences of colonial and imperial encounters have largely fuelled the rapid growth of African environmental historiography, but there are exceptions to this rule in some of the themes and questions emphasized in the literature. The ecological implications of the colonization process have been looked at from intellectual, institutional and ecological perspectives emphasizing themes such as acclimatization, plant and animal exchange, the role of colonial science on the periphery, and the various networks that linked colonial encounters in Africa to other colonial sites.

African environmental historiography is rich in lessons about the dangers of preservationist and desiccationist rhetoric, and the tendency of foreign technocratic authorities and representatives to misrepresent Africans and their landscapes. Some scholars have subjected Western observations and notions about environmental degradation to close scrutiny. African environmental history offers innovative models for thinking about disease and public health as imperial, environmental and local problems. Tying together many of these strands is what defines African environmental historiography, because the history of human land management on the continent is deep, complex, and non-linear. Degradation narratives must be treated with great scepticism, as they often have served colonial and post-colonial critiques of traditional African land use practices.

1.1.3 Regional perspective

Environmental Law in Uganda is a body of rules and regulations which have as their object and the protection of the environment from pollution and the wasteful depletion of natural resources and ensure sustainable development.[1] There is the proposition that environmental law has not been developed as a self-contained discipline, but has simply borrowed concepts from other areas of law[2]. One result is undoubtedly a degree of incoherence but another is that; *"the objective of the protection of the environment is not always served by the legal mechanisms available, because these other areas are not developed with the particularly problems of environmental protection in mind"*.

Environmental Law is a complex combination of state, federal, and international treaty law pertaining to issues of concern to the environment and protecting natural resources. For example, environmental laws often relate to issues such as pollution of soil, air, or water; global warming; and depletion of oil, coal, and clean water.[3] In the United States, the chief government agency for administering environmental regulations is the Environmental Protection Agency. Additionally, many states have their own environmental enforcement agencies. In both cases, these bodies administer the laws designed to protect both human health and the natural environment. They usually have the capacity to pass regulations on environmental issues and to enforce those regulations through the imposition of fines, legal action, or even institution of criminal proceedings.

Environmental laws are the standards that governments establish to manage natural resources and environmental quality. The broad categories of "natural resources" and "environmental quality" includes, air, water pollution, forests, wildlife, hazardous waste, agricultural practices, wetlands, and land use planning. In the United States, some of the widely known environmental laws are the Clean Air Act, the Clean Water Act, the National Environmental Policy Act, and the Endangered Species Act. The body of environmental law includes not only the text of these laws but also regulations, implementations and the judicial decisions that interpret this legislation[4].

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[1] The combined effect of the inventory of relevant national legal and administrative frameworks on the environment in Uganda

[2] Such as criminal law, constitutional law, law of contract, tort, equity and property law or public and private law generally.

[3] US. Environmental Protection Agency

[4] National Environment Act No. 4 of 1995

Environmental law touches on practically every facet of society. It seeks to protect human health, manage natural resources and sustain the biosphere. This is frequently done, among other ways, through laws that set standards for environmental planning, wildlife, plant, mineral resources, land use management and other activities that can affect the air, water and soil.

In general, the standards set forth in environmental laws can apply to either private parties or the government. The Clean Air and Clean Water Acts, for example, are frequently used to regulate the polluting activities of private enterprises. These laws mandate certain pollution-reducing technology or limit the levels of pollution from power plants and factories. The National Environmental Management Authority (NEMA) applies only to the actions of the Ugandan government. NEMA requires that the federal government undertake a comprehensive environmental impact assessment before it can proceed with projects that are likely to harm the environment[5].

1.2 Problem statement

The major problem Uganda courts and policy-makers face when enforcing, implementing or promoting sustainable development in environmental governance in Uganda is whether it is a moral or legal concept and this has metamorphosed into a legal principle or the rule of law having a normative value. The normative value of sustainable development bestows on it its legal weight, which in turn influences its application in environmental governance, legislative and academic discourses and by the courts in settlement of the environmental dispute

However, like the policies, the legislation has been sectoral, ineffective and lacked the participation of the local people. The result was that the laws could not be enforced, which has negative impacts on the very resources that they are meant to protect. Institutional conflicts, rivalry and the lack of effective cooperation and coordination both; within and outside government have resulted in ineffective implementation of programmes geared towards sustainable resource management and reversing environmental degradation. Poverty, low levels of environmental awareness, poor technology development, lack of managerial and technical expertise in resource management are the other underlying factors in environmental degradation. A sizeable population of Uganda are illiterate and natural resource management is based on

[5] [Environmental Management and Co-ordination Amendment Act 2016].

indigenous knowledge, which does not take into consideration scientific and technological developments.

Despite of the above background and inadequate understanding of the implications of the various activities on the environment, little consideration is given to the environment. As a result, the researcher shall conduct a research on critical analysis of the environmental law in achieving sustainable development in Wakiso district Uganda.

1.3 General objective of the study

The overall objective of the study was to assess the environmental law issues towards achieving sustainable development in Wakiso district Uganda.

1.4 Objectives of the study

(i) To analyze the environmental law as a tool for sustainable development in the context of Uganda

(ii) To assess the legal and institutional frame work on separation of powers and analyze cases of environment

(iii) To discuss the challenges facing implementation of the law on environment towards sustainable development in Wakiso district Uganda

1.5 Research Questions

(i) What are the aspects of environmental law as a tool for sustainable development in the context of Uganda?

(ii) What is the legal and institutional frame work on separation of powers and analyzed cases of environment?

(iii) What are the challenges facing implementation of the law on environment towards sustainable development in Wakiso district Uganda?

1.6 significance of the study

The study majorly is to make a critical analysis of the environmental law in achieving sustainable development.

This study will be of great importance to organizations like National Environmental Management Authority, and the judicial organ of government while making laws concerning environmental protection and sustainable development.

Government officials will use the findings to suggest ways of reducing problems that arise from environmental degradation.

The policy makers will also use the finding to come up with laws and regulations governing environment and as well as sustainable development.

1.7 Scope of the study

1.7.1 Geographical scope

Geographically, the study was carried out using Wakiso district as a case study. Wakiso District lies in the Central Region of the country, bordering with Nakaseke District and Luweero District to the north, Mukono District to the east, Kalangala District in Lake Victoria to the south, Mpigi District to the southwest and Mityana District to the northwest. Wakiso, where the district headquarters are located, lies approximately 20 kilometers, by road, northwest of Kampala, the capital of Uganda and the largest city in the country. This area was selected because it is fond of many environmental law cases towards sustainable development.

1.7.2 Scope of Context

The content of this study was mainly be scrutinized basing on the analysis on the environmental law and sustainable development. The study considered the content about environmental law, implementation of law on environment, legal and institutional frame work on separation of powers, other laws like criminal law, constitutional law, law of contract, tort, equity and property law or public and private law.

1.7.3 Time scope

The study covered a period of 6 months that is from April 2017 to September 2017. This period was chosen because the researcher believed that she was able to coherently collect all information needed and do all the necessary work required for this research to come to an end.

1.8 Research methodology

This study was conducted in Wakiso about the environmental law and sustainable development. The research was descriptive and explanatory based on the study where qualitative methods of data analysis was applied in the process collecting data for the study. A qualitative research design was opted for because it was characterized by findings that could be expressed and described verbally; and if there are any numerical presentations they are in terms of frequencies, percentages. (Bailey 1994, 50).

1.9 Literature review

An indication of what the environment encompasses at an international level is given by the broad range of issues now addressed by international law; including conservation and sustainable use of natural resources and biodiversity; conservation of endangered and migratory species; prevention of deforestation and desertification; preservation of Antartica and areas of outstanding natural heritage; protection of oceans, international water courses, the atmosphere, climate, and ozone layer from the effects of pollution; safeguarding human health and the quality of life. Inevitably, however, any definition of the environment will have the quality of meaning we want it to mean. Hence understandably, many international conventions avoid the problem of definition, however, no doubt, as Caldwell remarks 'it is a term that everyone understands and no one is able to define.[6]

Lower priority is often given to environmental issues. Governments frequently lack the financial resources necessary to effectively develop, implement, and enforce environmental laws and policies. Thus, for example, the World Bank provides practically all the funding for Uganda's National Environment Management Authority (NEMA) in the 1990s and 2010s. As a result, governmental agencies often lack professional personnel in the environment sector due to

[6]Caldwell, International Environmental law and Policy (1980), 1st Edn., Durharm, N.C. p. 170.

financial constraints. Many government environmental institutions are designed to coordinate efforts between the various lead agencies and ministries. These lead agencies, however, usually have priorities that frequently are at odds with environmental protection.

Many African countries have adopted environmental laws framework. These laws usually establish a national agency (or vest powers with the Ministry of Environment), including provisions for environmental impact assessment, and set out a number of basic provisions for different environmental sectors (such as air, water, soil, hazardous waste, wildlife, genetic resources) that require development or harmonization with existing legislation or regulations. In East Africa, Uganda (1995) and Kenya (January 2000) have such legal framework; Tanzania by 2004, was to enact its framework on environmental legislation.

Sustainable development provides a framework for humans to live and prosper in harmony with nature rather than living, as we have done for centuries, at nature's expense. Nonetheless, sustainability does not now have an adequate or supportive legal foundation, in spite of the many environmental and natural resources laws that exist. If we are to make significant progress toward a sustainable society, much less achieve sustainability, we will need to develop and implement laws and legal institutions that do not now exist, or that exist in a much different form. Since their clients in government, business, and nongovernmental organizations increasingly demand legal work that addresses sustainable development issues, lawyers have now begun to respond to that demand.

Sustainable development has become an unavoidable paradigm that should, as commonly accepted, underpin most, if not all, human action(s). It pervades the environmental, social, political, economic, and cultural discourses from the local through to the 'global' level by both the public and private sectors. Sustainable development has also widely penetrated the legal domain. This emblematic 'concept'[7] has found its way into an ever increasing number of international legal instruments. Promoted by the United Nations, it is central to a vast number of Resolutions, Declarations, Conventions, and international judicial decisions. Sustainable development unarguably interests international lawyers, but the uncertainty surrounding its nature also sparks their perplexity. Its most cited definition is that of the World Commission on Environment and Development (WCED), known as the Brundtland Commission, in its landmark

[7] See *Gabc'ikovo-Nagymaros Project*

report for the dissemination of the concept, posits it as development that 'meets the needs of the present without compromising the ability of future generations to meet their own needs'.[8] Though symbolic, this definition remains relatively unhelpful when it comes to providing clues for the legal characterization of the notion. Coupled with its multifaceted nature – its texture will inevitably vary according to who makes use of it and for what purpose – academic commentators have dealt with the legal nature of sustainable development with either scepticism or suspicion.

For some, the answer to the question of its relationship to the law is straightforward: sustainable development does not belong to law; it may be an important philosophical or political objective, but it is not a legal one.[9] Its connection with the law is restricted to the fact that it may contribute to law formation. As a political objective, it will exert an impact on international negotiations, and as such may influence the content of the law while remaining separate from it[10]. Others avoid the issue of ascertaining the legal nature of sustainable development by pointing to its lack of relevance. Beyond its potential characterization as an international legal norm, these commentators argue that a more relevant and fruitful approach is to concentrate, not on the legal nature of sustainable development itself, but on the various principles essential to its realization which aggregate themselves around this 'conceptual matrix'. A variant of this approach is to consider sustainable development, not as a legal principle, but as a new branch of international law altogether.[11] A last trend that has received considerable support is Lowe's analysis of sustainable development as an interstitial norm, whereby the concept's legal relevance is to be found through considering judicial reasoning process.[12]

To achieve sustainability, we also need to recognize that, while environmental law is a key to achieving sustainability, it is only part of the necessary legal framework. Other needed legal involve a wide range of other laws, including land use and property laws, tax laws, laws involving our governmental structure, and the like.

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[8] Report of the WCED, *Our Common Future* (1987), at 51.
Fievet, 'Réflexions sur le concept de development durable: pretentions economies, principles strategies et protection des droids fondamentaux', *RBDI* (2001) 128, at 143

[10] Noah Vardi & Vincenzo Zeno-Zencovich, *From Rome to Nice: A Historical Profile of the Evolution of European Environmental Law*, 12 Penn St. Envtl. L. Rev. 219, 221-222 (2004).

[11] See, e.g., Schrijver, 'The Evolution of Sustainable Development in International law', 329 *Recueil des Cours* (2007) 217.

[12] See Lowe, 'Sustainable Development and Unsustainable Arguments', in A. Boyle and D. Freestone (eds), *International Law and Sustainable Development: Past Achievements and Future Challenges*'(1999), at 19.

This special issue of *Sustainability* is not just about the relationship between law and sustainability. The contributors to this issue also attempt to answer, in various ways, the question of how law can and should be used to achieve sustainability. The phrase, "law *for* sustainability," captures this idea. In a fundamental way, "law for sustainability" is also about governance for sustainability, because law provides essential tools and institutions for governing sustainably. The urgency of the task before us requires this kind of engaged scholarship: providing information, tools, and ideas that policy makers, practicing lawyers, and others can use to address the challenges and opportunities of sustainability.

The contributors to this special issue bring a wide variety of professional, academic, and geographic perspectives to bear on this question. They are widely recognized for their knowledge and expertise.

In this introduction to the special issue, we attempt to synthesize some of the key lessons from the ten substantive articles. Rather than simply summarize each article, we identify and describe their cross-cutting lessons respecting what "law for sustainability" requires. Reading this introduction is thus not a substitute for reading the thoughtful and provocative articles included in this special issue.

While sustainable development is commonly understood as involving the relationship between the social, environmental, and economic domains of human existence, Klaus Bosselmann insists on the primacy of protecting and restoring ecological sustainability. There needs to be an ecological bottom line, he argues, because "the ecological basis for human survival is at risk". Environmental law has not prevented the continuation of widespread environmental degradation around the world; the "global commons—climate, biodiversity, the oceans—are in rapid decline and the human ecological footprint both in absolute terms and *per capita* is getting larger". Bosselmann suggests amending New Zealand"s well-known Resource Management Act so that its purpose would be "to achieve ecological sustainability in New Zealand." While changes such as this would not automatically "set us on a sustainable path," he argues, they could at least "provide the direction for such a path".

The protection and restoration of ecosystems is also a subtext of a number of the other articles. For example, Schutz"s proposal to use the law of common-interest communities on lands that are

now devoted primarily to livestock grazing is specifically intended to increase biodiversity conservation on those lands.

Sustainable development requires public participation and effective access to the courts. Without an engaged public and an independent judiciary, laws on the books may not be implemented or enforced. The articles in this special issue provide evidence of the importance of nongovernmental organizations. The California litigation that ultimately forced local governments to consider their climate change impacts was originally brought by a nongovernmental organization, the Center for Biological Diversity. Although the case was settled rather than decided by a court, the availability of an effective court system provided impetus for the settlement.

It is easy for any environmentalist to claim that sustainable development has been integrated into the Ugandan environmental law, but determining its legal status or weight may not be as easy as expected. The 1999 Constitution contains environmental provisions, but there is no specific provision on sustainable development. Since it is not possible to examine the legal status of sustainable development in the plethora of Ugandan legislation on the environment,[13] the focus here is on the National Policy on Environment Act because of their overarching effect on all aspects of the environment. This section also examines the status of sustainable development in the Desertification Control and Drought Mitigation Regulations and the Wetland, River Banks and Lake Shores Protection Regulations made under the National Policy on Environment Act.

[13] Emmanuel E Okon 'The Constitution and the Protection of the Environment in Uganda

CHAPTER TWO

ENVIRONMENTAL LAW AS A TOOL FOR SUSTAINABLE DEVELOPMENT

2.0 Introduction

Sustainable development is defined as development that meets the needs of the present without compromising the ability of future generations to meet their own needs. Sustainable development, which conserves land, water, fish, plant and animal resources, is considered environmentally sound and non-degrading, technically appropriate, economically viable and socially acceptable.

Sustainable development dictates that whatever man or woman does on this planet should not put the life of future generations into jeopardy. The protection of the environment has been perceived as being of paramount importance to the future of humankind. It contains the concept of needs whereby development serves human needs especially the needs of the world's poor, the concept of limitations to development imposed by the state of technology and social organization to ensure that the environment meets future human needs.[14]

Uganda, like her counterparts in Africa, has not been passive in promoting and advocating for sustainable development. There is still, however, need to achieve sustainable development in both the economic and social spheres. Faced with poverty due to low income per capita, threats to the environment and the need to promote industrialization in the new wake of modernization, the need to use law to protect the environment and ensure sustainable development becomes crucial. Uganda, in the 1990s enacted laws that uphold the concept of sustainable development.

2.1 Historical Development of Environmental Law and Sustainable Development inUganda

2.1.1 Outmoded Legislation and its Concern with Exploitation of Natural Resources

Legislation on the management of natural resources in Uganda mainly originated from the colonial period. In the 1960's and the 1970's, a number of amendments were made to the basic legislation inherited from colonialism. Most of the amendments were mainly directed at

[14] WCED; Over Common Future Report of the World Commission on Environment and Development, cap. 2 P.4.

changing institutional structures to make them fit into the new reality of an independent Uganda. Where sweeping reforms were attempted for example the Land Reform Decree, 1975, the necessary political climate and will to implement the reforms was lacking. The law remained on the Statute books and yet old undesirable practice targets of the reform continued.

A notable feature of the existing laws on natural resource management before 1995 was the lack of provisions aimed at conserving the natural resource base. The driving force behind these laws was enhancement of purposes of socio-economic exploitation of natural resources. This omission is not surprisingly a feature of that time. The grounding philosophy of the times posited nature as man's enemy, which had to be conquered for development. This philosophy has now been discredited in favor of a view that advances the compatibility of man and nature, the concept of sustainable development.

2.1.2 A number of critics who reviewed the laws before 1995 noted the following in relation to environmental law in Uganda;

Legislation was sectoral in nature and addressed sectoral concerns; legislation mainly addressed natural resource utilization and not the conservation of the natural resource base; legislation lacked effective sanctions to deter infraction; legislation did not provide a sufficient mechanism for co-ordination; and legislation was not comprehensive enough; The need for "basic" or "framework" legislation on the environment as the remedy to the malaise affecting Uganda's environmental law was reiterated.

In addition to these popular criticisms of the then legislation on natural resources management and the environment, the following issues were raised. The place of environmental and natural resources legislation, *vis-a vis*, other elements in the legal system; and (ii) the internalization of the conservation ethic in the legal system.

2.1.3 Review of Legislation

One issue that cut across all reviews of legislation in Uganda prior to 1995 revealed that there was the misunderstanding of the nature and role of customary law and practices and their importance in the conservation of the environment. Customary law and practices are regarded as

negative factors in environmental conservation. The most important area where this view comes out is on the question of land law, tenure and property rights.

Underlying this view, is the conception that customary law is based on the belief that it is a system of land tenure originating from the pre-colonial days. This conception positions customary law as an unchanging system with no capacity for growth or adaptation. This view is contrary to the law as it exists in Uganda. A number of cases decided by the colonial courts and the courts of independent Uganda, have asserted the view that customary law changes and is adaptable to new circumstances. These cases assert further, that new economic, political and social forces generate new norms of customary law.[15]

2.2 Coordination in the Existing Legal Framework for Natural Resources Management and Conservation of the Environment.

As the law stood by 1995, each Act seemed to stand on its own, administered by a commissioner, a board, or Commission usually under the general direction of a Minister. This state of affairs gave the impression of lack of a coordinating mechanism in the area of natural resource and environment management. In reality, it may be true that there was no active co-ordination between the various departments, boards, commissions and ministries in charge of various aspects of natural resources and the environment. The need to introduce any subsidiary agencies for the coordination of any government activities was to be harmonized with the existing system of Cabinet government. It had to be determined whether the addition of another layer to the bureaucracy was in the interest of the government to down size the bureaucracy through retrenchment and decentralization.

2.3 The Place of Natural Resources and Environmental Law in the Legal System of Uganda before 1995

In the effort to create an adequate system of environmental management based on law, the emphasis has been on the enactment of legislation. The supposition here is that apart from legislation, there is no other means for developing environmental law.

[15] The cases of (1) The Kabaka's Government v. Musa.

The Constitution of the Republic of Uganda, 1995, the Judicature Act, 1967 and the Magistrates Courts Act, 1970 as amended, define law applicable in Ugandan Courts. According to these statutes, the sources of law applicable by the courts are the Constitution, statutory law, customary law, equity, common law, and statutes of general application in force in England before 1902. What should be noted is that most of the reviews on environmental law concentrated on legislation and did not review other sources of law such as customary law and equity. These other sources of law are the basis of the principles of sustainable development.

2.4 Milestones in the Development of Environmental Legislation in Uganda since 1995

Uganda's laws have several checks and balances, which could have been used to manage the environment. The problem, however, is whether the necessary inter-connections between environment management and existing legal devices have been established.

2.4.1 The Constitution of Uganda, 1995

The Constitution, being the supreme law in Uganda, provides for environmental protection and conservation. It provides, in the National Objectives and Directive Principles of State Policy[16]that the State shall promote sustainable development and public awareness of the need to manage land, air, water resources in a balanced and sustainable manner for the present and future generations.

The Constitution further provides that the utilization of natural resources of Uganda is to be managed in such a way as to meet the development and environment needs of present and future generations of Ugandans. In particular, the State is required to take all possible measures to prevent or minimize damage and destruction to land, air, and water resources due to pollution or other causes. The Constitution also imposes a duty on the state to protect important natural resources, including land, water, minerals, oil, fauna and flora on behalf of the people of Uganda.

In article 245, the Constitution provides that Parliament shall, by law, provide for measures intended: to protect and preserve the environment from abuse, pollution and degradation; to manage the environment for sustainable development; and to promote environmental awareness.

[16] Principle xxvii

This has already been implemented through the National Environment Act, the Water Act, the Forest and Tree Planting Act, the Local Governments Act, and the Wildlife Act, among others.

The provisions of the Constitution protect property rights and other individual rights. Furthermore, the State is to promote and implement energy policies that will ensure that the people's basic needs and those of the environment are met. Above all, Article 39 of the Constitution provides for an individual right to a clean and healthy environment. This provision is complemented by Article 50, which gives any person the right to take judicial action to redress the breach of a fundamental right, irrespective of whether the breach affects him or another person. The above provisions are important in broadening the locus stand of citizens to redress environmental wrongs.

The State, including local governments, are required to create and develop parks, reserves and recreation areas and ensure conservation of natural resources and to promote the rational use of natural resources so as to safeguard and protect the biodiversity of Uganda. The public trusteeship of rivers, lakes, wetlands, national parks, game reserves and forest reserves is vested in the State.

2.5 Public Interest Litigation in Environmental Law, Practice and Procedure in Uganda

Public interest litigation describes legal actions taken to protect or enforce rights enjoyed by members of the public or large segments of it. It has been used as a tool of great social change in India, Pakistan, Bangladesh and the Philippines, just to mention a few countries, on such diverse issues as the environment, health and land issues.

According to **Bhagwati J, in *Bandhua Mukti Morcha v. Union of India* (Air 1984S.C),** Public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the Government and itsofficers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them socialand economic justice, which is the signature tune of ourConstitution.[17]Public interest litigation is a new tool in the management of public affairs. Itpresents a strategic opportunity to engage the Judiciary in ordinary societalissues. It allows the public to jump from conference tables and lamentationsto strategic, decisive and enforceable action.

[17] Reproduced in Narayama: Public Interest Litigation [2nd Edition 2001].

Article 39 of the Constitution of the Republic of Uganda gives a right to a cleanand healthy environment. The said Constitution puts the Government underan obligation to protect the environment from abuse and degradation, toconserve the environment and to restore the environment where it has beenpolluted or degraded. Article 245 of the said Constitution enjoins the Governmentto make laws that will ensure that the environment is protected.In other countries, such as South Africa, the Constitution provides the sameright. Section 24 of the South African Constitution provides that every person has the right to an environment that is not harmful totheir health or well-being.[18]

The South African Constitution was framed in the negative to avoid importingon obligation upon the State to provide an environment conducive to a healthy well-being. The intention seems to have been that the right of action wouldarise only if something which is being done that adversely affects the environment and has a resulting negative impact upon the health and wellbeing of any person, would constitute a right of action against pollution, but not conservation, if strictly interpreted.[19]

Uganda's Constitution, however, puts the obligations squarely in the hands of the state. The state's obligations include provision of clean water, clean air, and conservation of all natural resources and prevention of pollution of any form. In other words, the Government has a Constitutional duty to ensure that the environment is safe and clean at all times; a task that is almost impossible considering the state of the country's economy. Uganda is still among the 25 poorest countries in the world.184The National Environment Act, however, defines environment as the physical factors of the surroundings of the human beings including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factors of aesthetics and includes both the natural and the built environment.

A right to a clean and healthy environment would therefore almost encompass everything, including provision of clean water, protection for diseases that result from poor sanitation and poor environmental conditions, such as cholera and malaria, among others. Life and the environment are inseparable. Environment, like life. Covers all forms of human existence. Life does not exist in a vacuum but in an environment conducive to it. That is why of all the known

[18] The Constitution of the Republic of South Africa Act 108 of 1998.

[19] There will be a right of action against pollution but not conservation, if strictly interpreted.

bodies in the universe, life, so far exists, as we know, only on one planet, Earth[20]. This is simply because the "environment" on Earth is conducive to life. If the environment is changed significantly, it is likely that life will cease to exist on earth as well. When conditions existed to support particular forms of life, for example, the dinosaurs, they lived, but when environmental conditions set in to their detriment, they became extinct. The existence or non- existence of life of any form depends on the environment[21].

[20] The Impact of the Constitution on Environment, Cheryl Loots, Ass. Prof. of Law of the Wit waters and University, South Africa.
[21] Sheila Zia vs. WAPDA, Supra.

CHAPTER THREE

THE CRIMINAL ASPECTS OF ENVIRONMENT LAW AND PROCEDURALASPECTS IN PROSECUTING ENVIRONMENTAL CRIMES.

3.1 Introduction

An environmental crime is any deliberate act or omission leading to degradation of the environment and resulting in harmful effects on human beings, the environment and natural resources. Environmental crimes include all violations of environmental laws attracting criminal sanctions. Environmental crime prosecutions therefore refer to the prosecution of environmental cases in the criminal courts.

Historically, traditional criminal law did not take environment protection into consideration. Therefore, there has been a tendency to advocate for environmental protection to be included among crimes that affect, or are affected by public order, morality and social economic development. The question has always been whether the environment deserves criminal law responses.The objective of environmental law enforcement and compliance[22]is the same as other branches of law whose objective is to deter potential violators by sending a message that they too might experience adverse consequences of non-compliance.

The objectives of applying criminal law in environmental law enforcement are to confirm standards established in the interest of protecting the environment or public health; ensuring government credibility and control; ensuring fair competition among competing activities; and protecting or restoring environmental damage to ensure sustainable development. The modern environmental laws are regarded as "public welfare laws" because they create public awareness of environmental offences. The law is aimed at protecting human health and the environment. The offender, presumed to be a reasonable person, is deemed to know that his or her conduct is subject to stringent public regulation and may seriously threaten the community's health or safety.

[22] Environmental enforcement relates to those sets of actions that Government or other persons take to achieve compliance within the regulated community and to correct or halt situations that endanger the environment or public health.

3.2 The Legal Framework for Environmental Crimes

There are a few provisions in the Ugandan Penal Code Act relating to environmental protection in the sense of protecting the right to a clean and healthy environment. These relate to nuisances and offences against health and convenience under Part XVII, offences endangering life or health under Part XXII, negligent acts likely to spread infection of disease, adulteration of food or drink and fouling water and air. The effectiveness of the above provisions in protecting the environment and/or public health is limited because the crimes are generalized and not specific and therefore difficult to interpret. They also do not offer alternatives to penal sanctions that could lead to protection of the environment.

Therefore, the National Environment Act provides for a more comprehensive and effective legal framework for criminalization of, and sanctions against environmentally degrading activities as one of the ways of ensuring compliance with environmental protection provisions. The Act introduced a fundamental change in the management of all aspects of the environment by new legal methods, concepts and tools for environment and natural resource management. The phenomenon of environmental law enforcement is similar to law enforcement in other branches of law. The objective of law enforcement is to deter actual and potential violators from future violations by sending a message that violators may experience adverse consequences for non-compliance with the law.

3.3. Legal Aspects of Environmental Criminal Law Enforcement in Uganda

The regulation of activities that have or are likely to have a negative impact on the environment is the main province of environmental crimes. The law is anticipatory in that even attempts to commit an offence are regarded as bad as actual commission of criminal offences. Even where a violation of the law may not necessarily result in any direct or immediate injury to person or property, failure to comply with the law is an offence. In such cases, the law seeks to guard against the danger or probability of injury or damage and thereby minimize it. This is especially true in areas of EIA, management of hazardous wastes and toxic chemicals and in Trans boundary movement of hazardous wastes.

Several criminal measures have been introduced in Uganda's legislation in order to achieve environmental goals. These may be divided into several aspects: prohibition, prevention, licensing and inspection, orders, restoration to previous conditions, penalties and public participation, among others.

(a) Prohibitions

The prohibitions in the National Environment Act are absolute, dispensing of the need to prove intent or negligence. In case of pollution or degradation violations (e.g. prohibition of water pollution, soil erosion, the condition of the area in question prior to pollution or degradation is not a factor in the considerations leading to conviction. This makes the burden lighter since it is a form of strict liability offence. Examples here include; Waste management,[23] for which the law provides that every person is under a duty to manage wastes generated by his establishment in such a manner that he does not cause ill health to people or damage the environment. It is also provided that every person is under obligation to treat, reclaim and recycle the wastes as a waste minimization measure. No person is allowed to dispose of wastes into the environment, unless he or she follows the law and established standards.

(b) Anticipatory Prevention

Environmental law is anticipatory, as it requires preventive measures to be taken prior to commencement of proposed activities. The provisions relating to environmental impact assessment, environmental audits and where damage has occurred, the "polluter pays principle" plays the role of ensuring that anticipated modification or any modification of the environment does not adversely affect the environment. In environmental impact assessments, the criminal implication is that failure to submit or creates a criminal offence which can lead to18 months imprisonment or fine of not less than Ug. Shs.180, 000 and not more than Shs.18 million or both. Further, developing a project without an EIA is, *per se*, an environmental crime. The burden is on the developer to conduct and submit an EIA report. The obvious evidence in EIA related environmental crime is absence of an approval from NEMA and the developer's activity, for example, a building or farm.

[23] Wastes are defined under section 2 of the National Environment Act as any matter which has been prescribed to be a waste

(c) Permits and licenses

An especially effective means of ensuring compliance with environmental management regulations in the granting of licenses and permits by regulatory authorities, such as NEMA and other lead agencies. The law confers power on the regulatory authorities to issues, revoke or incorporate conditions in licences and permits. As regards the criminal aspects of permitting and licensing, the very act of managing a project without a licence or permit, even where no environmental damage has occurred, constitutes an environmental offence under the law.

3.4 Prohibitions relating to environmental standards

The law also provides for regulation of environmental damage through the setting of limits, standards and measures for emissions, discharges and other environmental degrading activities. Maximum environmental standards are prescribed for the discharge of effluent and waste-waters, noise, soil quality, ozone and solid waste, among others. Every person who operates an establishment is under a legal duty to operate within the prescribed environmental standards, criteria and measurements. Failure to operate within the prescribed standards or guidelines attracts imprisonment of not more than 18 months or a fine of not more than Ug.Shs.18m, or both. The breach of an environmental standard is both a strict and vicarious liability. Environmental standards, however, require scientific measurement and proof. The measurement is carried out using specialized and prescribed equipment.

3.5 Legal and institutional frame work on environmental management.

Environment protection raises a host of questions involving practically every discipline-political, technical, social, economic, legal and institutional. The extent to which each of these disciplines predominates in any country is determined by a number of factors at work. Among these factors are those relating to the conditions of nature with regard to the quantity, quality and degree of exploitation of the available natural resources, the level of economic development financial means available social needs population growth standard of living, the level reached by science and technology, industrialization and urbanization in relation to characteristics of its legal and institutional framework.

At the national level, from the legal and institutional point of view, several problems of major importance are encountered. In the first place, there is the problem of internal administrative subdivisions which, being created by man and thus artificial perfecting are rarely compatible with nature. The problem of different administrations with sectorial jurisdictions rarely showing adequate coordination or liaison among is a setback themselves.

3.6 International framework on environmental management

3.6.1 Environmental Law in the United States of America (USA)

The United States of America (USA) has one of the oldest and most developed systems of environmental law and policy. As such, the U.S.A experience offers a wealth of lessons to be learned. While many countries have looked to the U.S.A. laws and institutions for guidance on how to protect the environment, it is important to recall that the U.S.A. laws and institutions take place within a political, economic and cultural heritage that may limit its application by other countries.

Initially, environmental issues were viewed primarily as local issue to be addressed by state and local governments. The federal role was largely to facilitate the development and implementation of these activities through financial assistance to states.[24]This led to a number of innovations, such as the first citizen suit provision (in Michigan) that allowed citizens to enforce environmental laws. This structure, however, was largely ineffective because states frequently did not have the political will necessary to impose meaningful constraints on businesses located in the state, particularly, where the impacts were felt in another state. The fear that businesses would relocate if subjected to strict environmental laws perceived as onerous contributed to maintaining the *status quo*.

The 1960s saw an explosion of federal laws designed to preserve natural areas and sustainably Manage federal lands.[25]These laws, however, focused on government activities, rather than tackling the environmental impacts of private actions.

[24] Percival et al., environmental regulation, 105
[25] e.g., the 1960 multiple use, sustainable yield act, the wilderness act of 1964,and the wild and scenic rivers act of 1968.

A number of pivotal events in the 1960s raised public awareness of the pending "ecological crisis", and led to consequent proliferation of federal environmental law.[26]In 1962, Rachel Carson published "*Silent Spring*", a book written for the public that drew attention to the broad range of environmental and public health impacts of pesticides, particularly DDT. Throughout the 1960s, stories rolled in about the impacts of chemicals, for example methyl mercury in swordfish and DDT in mothers' milk. In 1963, the Federal Bureau of Land Reclamation (whose Engineers were described as beavers because they couldn't stand the site of running water"),[27]proposed to dam the Colorado River, to flood part of the Grand Canyon. After a nationwide campaign by the Sierra Club, the proposal was dropped.[28]In the late 1960s, the world first saw an image of the brilliant blue and green planet floating in the blackness of space which emphasized the fragility of life on planet earth (the universe). This was followed closely in 1969, by television news images of the Santa Barbara coastline devastated by an oil spill.

3.6.2 International Legal Protection of the Environment of the World Oceans and its Resources

Among the numerous international legal acts directed at protecting the marine environment, a central role is played by such international multilateral agreements as the 1954 London Convention for the Prevention of Pollution of the Sea by Oil (as amended in 1962, 1969 and 1971), the 1973 International Convention for the Prevention of Pollution from Ships, and the 1972. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters. *The London Convention of 1954* (entered into force in 1958) was the first international agreement to impose on States specific obligations as regards the pollution of the marine environment; The Convention prohibits the discharge of petroleum and petroleum-water mixtures from ships. Initially, special zones were established within which, discharges were prohibited, but subsequently (as a result of the amendments of 1969) such discharges were prohibited, with few exceptions, throughout the territory of the World's Oceans. The Convention also imposes on the signatory states the obligation to take measures to equip ports with facilities

[26] e.g., percival et al., environmental regulation, 4.
[27] John Mcphee, encounters with the archdruid.
[28] Celia Campbell-mohn, petroleum, in Celia Campbell- Mohn, Barry Green, and J. William Futrell(eds.), sustainable environmental law 1108(1993)

enabling them to receive from ships and tankers residual amounts of petroleum and petroleum mixtures.[29]

The 1973 International Convention for the Prevention of Pollution from Ships, which was amended by the 1978 Protocol, and entered into force in 1983 is based on the need to prevent all Kinds of pollution of the marine environment by any substances, including petroleum, liquid poisonous substances, waste waters and garbage discharged, into the sea from ships. Its term extend to virtually all types of sea-going ships, including hovercraft, submarines and stationary and mobile platforms. Exceptions are made only for warships, and naval auxiliary vessels and also ships that are utilized exclusively in governmental, non-commercial service.

The 1972 Convention for the Prevention of Marine Pollution by the Dumping of Wastes and Other Matter (entered into force in 1975), regulates the deliberate burial in the oceans of practically all known dangerous substances and materials. Under the terms of the Convention, the most dangerous substances may not be buried at all; for the burial of others special permission is needed, while for less dangerous substances general permission is sufficient

3.6.3 International Legal Protection of Multinational Rivers

All questions relating to the utilization of waters of multinational rivers call for a coordinated approach, cooperation among all interested riparian States. The practice of treaties points precisely in that direction. Norms governing any type of such uses (or some of them) are contained in special international agreements concluded by riparian States, with due consideration for specific factors relating to hydrological, climatic, and economic and other condition

That is specific for various river basins. These agreements are based on the principle of equal and equitable water utilization.

International agreements on the utilization of international waters (such as the Convention on the Protection and Use of Trans boundary Watercourses and International Lakes, 1996, meant to strengthen national and international actions aimed at the protection and ecologically sound

[29] U.N. Doc. A/Conf. 48/PC(II)/Conf. Paper No. 3 (1971); *see also* Contini and Sand, *Methods to Expedite Environment Protection,* 66 Am. J. Int'l L. (Jan. 1972).

management of trans boundary waters special agreements relating to a particular water course or a water system (for example, the Convention Relating to the Development of the Chad Basin 1964 entered into by Cameroon, Chad, Niger and Nigeria, the Convention Creating the Niger Basin Authority and Protocol relating to the development Fund of the Niger Basin, 1980;[30]

Treaties on the regime of state borders, whose terms also cover certain questions of water utilization on border rivers (for example, treaties concerning the Nile waters off 1929 and 1959 between the Nile Basin Countries); and agreements concerning fishing in international (multinational) rivers (for example, the Convention for the Establishment of Lake Victoria Fisheries Organisation, 1994 between Uganda, Kenya and Tanzania).

3.1.4 International Legal Protection of the Earth's Atmosphere

The atmospheric air constitutes an exceptionally mobile element of the environment that does not recognize state borders. Pollutants entering into the atmosphere over the territory of one State are often carried over very large distances and cause damage to the natural environment and the health and well-being of the population of other States. Such, for example, is the origin of acid rains. Sculpture dioxide, which is discharged into the air over major industrial regions of Western Europe, precipitates together with rain in the form of a solution of sulphuric acid over the territory of Scandinavian countries. "Acid rains" cause great damage to the natural environment and to man, pollute water bodies, cause deterioration in the soil, and contribute to the erosion of architectural monuments. The All-European Conference on Cooperation in the Protection of the Environment, 1979, resulted in the adoption of the *Convention on Long-Range Trans-boundary Air Pollution,* which entered into force in 1983. Countries who are parties to the Convention agreed to limit air pollution as much as possible, to exchange information, to hold consultations, undertake scientific research and monitor air quality.[31]

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[30] Rio Declaration on Environment and Development, done at Rio de Janeiro, Brazil, June 13, 1992, U. N. Doc. A/CONF. 15/26 (vol. I) (1992) reprinted in 31 I.L.M. 874(1992); United Nations Economic Commission for Europe convention on Access to information, Public Participation in Decision making and Access to Justice in environmental Matters, done at Aarhus, Denmark, June 25 1998; Inter-American Strategy for the Promotion of Public Participation in Decision making for Sustainable Development.

[31] ECLA, ECAFE, ECA and, in particular ECE (Economic Commission for Europe), which organized a conference on the human environment at Prague in 1971.

The awareness of this serious danger led to the adoption in 1977 of the *Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques* (it came into force in 1978). States that are parties to the Convention undertook not to use means of influencing the natural environment which have wide-ranging, long-lasting or serious.

The United Nations Framework Convention on Climate Change has the objective of stabilizing Concentrations of greenhouse gases in the atmosphere at a level that does not affect food production, allow adapting naturally to climate change and enables economic development to Proceed sustainably.

3.1.7 Activities of International Organizations in the Protection of the Environment

There exist a large number of international (inter-governmental and non-governmental) organizations that are concerned with the most diverse aspects of the problem of environmental protection.

The United Nations plays a leading role in coordinating environmental conservation activities of States and international organizations, and devotes considerable attention to questions relating to The protection of the environment. The organs of the United Nations that are directly relevant in protection of the environment are: the General Assembly, the Economic and Social Council, and also its regional Economic Commissions, as well as United Nations Conference on Trade and Development (UNCTAD), the United Nations Industrial Development Organization (UNIDO), and the United Nations Development Program (UNDP), the United Nations Food and Agricultural Organization (FAO), United Nations Education, Scientific and Cultural Organization (UNESCO) and above all the United Nations Environment Program (UNEP). In accordance with its decisions and the General Assembly Resolution, a special body, namely, the United Nations Environment Program was established. UNEP enjoys very substantial autonomy and possesses a number of the attributes of an international organization. UNEP pays considerable attention to the development of international law concerning environmental protection. The Program promotes the development of universal and regional conventions and agreements. On its initiative, a program is being implemented to protect the marine environment of regional seas - the Mediterranean, the Red Sea, and also the Persian Gulf, including the formulation of corresponding international agreements. The UNEP mobilizes financial support

for and coordinates with other environmental related programs of the specialized United Nations agencies, such as UNESCO, WHO, FAO, IMO, ILO, WMO, ICAO and the International Atomic Energy Agency. Within the limits of their competence they all engage in various aspects of environmental protection[32].

Among non-governmental organizations, a central role is played by the *International Union for the Conservation of Nature and Natural Resources* (IUCN), established in 1948, whose members are States, national and international organizations and associations. The Union was created in order to promote cooperation among governments, national and international organizations, and also among individual persons involved in matters relating to the protection of the environment and the preservation of natural resources. With that objective, the IUCN organizes national and international measures, disseminates the latest scientific and technical achievements in this field, and expands education and awareness campaigns on nature conservation.

3.2 Regional framework on environmental management

In Africa, a number of factors have drawn increased attention to environmental law. The end of colonialism is perhaps the turning point in the history of African environmental development as this has allowed Africans to decide whether and how to utilize their natural resources, as well as to set their own priorities for public health and development.[33]In some countries, unfortunately, nepotism and corruption have led to what may be termed as "domestic colonization", whereby a few (African) people in power have simply assumed the mantle of the old colonial powers.[34]While African nations face many challenges that strain scarce national resources and test the holding capacity of the land on which so many African people depend, particularly in urban centers where there is high population density have boomed. This has placed severe pressure on water resources as well as on forests (for fuel, wood and timber). Forests and other wild lands continue to be cleared to meet agricultural, commercial and settlement needs. African governments, in a bid to alleviate poverty, promote development and to pay national debts, have exploited the natural resource for hard currency. These have taken a toll in the environmental issues.

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[32] World Peace through Law: Draft Convention on Environment Cooperation among Nations, 1971, and Draft Convention on Weather Modification, 1971

[33] See e.g., Benjamin J. Richardson, Environmental law in Postcolonial Societies: Straddling the Local-Global Institutional Spectrum,11 COLO. INT'LENVTL. L. & POL'Y 1(2000

[34] Mobutu Sese-Seko, former President of Zaire, is perhaps the most infamous. His systematic plundering of Zaire's natural wealth led to the term "kleptocracy" – rule of thieves.

Although most African nations have constitutional environmental provisions, there are problems of interpreting and applying them. These problems ranges from novelty of the subject matter of the provisions to lack of public interest on environmental litigation with public interest litigation, and the failure of governments to set up the machinery to implement their constitutional duties. In order to bring to fore ways of giving force to these constitutional protections, this chapter surveys various ways that judiciaries around the world have interpreted and applied the right to a healthy environment and the duty to protect it. In addition to providing the legal basis for cases of enforcing environmental protection, constitutional provisions can expressly enable legislatures to enact environmental laws towards implementing the policies (e.g., Central African Republic Constitution, art.58.1). In Mozambique, for example, the government relied on its constitutional environmental provision to provide the authority with a new framework environmental law. In Laguna Lake Development Authority Vs. Court of Appeals, the Philippines supreme Court upheld the authority of a government agency attached to the Department of environment to issue cease and desist orders against a city that was illegally dumping garbage.[35]In dismissing the challenge to the authority's police and regulatory powers to regulate the dumping, the court relied on the constitutional right to a "balanced and healthful environment" and the right to health to uphold the authority's charter and mandatory laws.

Governments frequently lack the financial resources necessary to effectively develop, implement, and enforce environmental laws and policies. Thus, for example, the World Bank provides practically all the funding for Uganda's National Environment Management Authority (NEMA) in the 1990s and 2010s. As a result, governmental agencies often lack professional personnel in the environment sector due to financial constraints. Many of the government environmental institutions are designed to coordinate efforts between the various lead agencies and ministries. These lead agencies, however, usually have priorities that frequently are at odds with environmental protection with other major emphasis on democracy, health of people, and rule of law and citizenship empowerment.

Many African countries have adopted environmental framework environmental laws. These laws usually establish a national agency (or vest powers with the Ministry of Environment), include provisions for environmental impact assessment, and set out a number of basic provisions for

[35] Laguna Lake Development Authority v. Court of Appeals, G.R. No. 110120 (Supreme Court of the Philippines, 3rd Div., Mar.,16,1994

different environmental sectors (such as air, water, soil, hazardous waste, wildlife, genetic resources) that require development or harmonization with existing legislation or regulations. In East Africa, Uganda (1995) and Kenya (January 2000) have such framework laws; Tanzania by 2004, was to enact its framework on environmental legislation.

3.3 Institutional frame work in Uganda

Between 1991 to 1994 the Government of Uganda developed a National Environment Action Plan (NEAP)[36]The NEAP provided a framework for addressing gaps in environment management as well as a strategy for integrating environment into the national socio-economic development.[37]One of the outcomes of the NEAP was the formulation of the National Environment Management Policy (NEMP) of 1994. The overall Goal of the NEMP is sustainable social and economic development which maintains or enhances environmental quality and resource productivity on a long term-basis that meets the needs of the present generations without compromising the ability of future generations to meet their own needs. This policy goal has informed subsequent policies such as the 2004/5- 2007/8 Poverty Eradication Action Plan (PEAP) and the Plan for the Modernization of Agriculture (PMA).

The Policy provides strategies to guide and assist decision makers and resource users in determining priorities in the national context and also at the sectoral, private sector and individual level. It provides for integration of environmental concerns in national socioeconomic development planning process, avenues for inter-sectoral cooperation, and comprehensive and coordinated environmental management. As a result, environmental management is now a key criterion for national socio-economic development decisions.

The Policy also recognized the need for sectoral policies in addressing the specific concerns of the identified environmental sectors. It therefore provided a framework under which several sectoral policies were developed. These include the 1995 Water Policy, the 1996 National Wetlands Management Policy, the 1996 Wildlife Policy, the 2000 Fisheries Policy, the 2001 Forestry Policy and several district environment management policies from 2000 onwards. In addition, the policy provided a basis for the formulation of a comprehensive environmental legal

[36]National Environment Action Plan (NEAP) will be reviewed after every five years or less. *See* section 17(1) of the National Environment Act, Cap. 153, Laws of Uganda-2000 (Uganda Law Reform Commission).
[37]National Environment Act, note 1 above, section 18 (2)(a).

framework under the 1995 Constitution and the National Environment Act. [38]It also provided a framework for multi-sectoral approaches to resource planning and management of natural resources. These approaches found expression in the various environmental and development policies and in legislation such as the Uganda Wildlife Act,[39] the Water Act, [40] the Land Act,[41] the National Forestry and Tree Planting Act,[42] among others.

The constitution has provisions for enhancing conservation and management of the environment and natural resources. Objective XIII of the National Objectives and Directive Principles of State Policy and article 237(2)(b) of the constitution pronounce the public trust doctrine.[43]The content and scope of this doctrine is being tested in the Government efforts to study possible change of land use for parts of the Central Forest Reserves comprised in Mabira Forest and Bugala Island in Kalangala district. It is envisaged that in the near future a public interest action may be filed in the courts to define this doctrine and the role of the state as public trustee. The constitution also enshrines a constitutional right to a clean and healthy environment in its article 39. Civil society has used article 50 of the constitution to enforce this right using public interest litigation.

[38]National Environment Act, note 1 above.
[39]Uganda, Uganda Wildlife Act (1996), Cap. 200, Laws of Uganda - 2000 edition (Uganda Law Reform Commission).
[40]Uganda, Water Act, Cap.152, Laws of Uganda - 2000 edition (Uganda Law Reform Commission
[41]Uganda, Land Act, Cap. 227, Laws of Uganda (Uganda Law Reform Commission).
[42]Uganda, National Forestry and Tree Planting Act (hereafter Forest Act), Laws of Uganda (Uganda Law Reform Commission).
[43]Like the Constitution, the section 44 (1), (4) and (5) of the Land Act thereof enshrines the public trust doctrine and provides that the government or local government holds in trust and protects for the common good of all citizens of Uganda certain environmentally sensitive areas such as natural lakes and rivers, ground water, natural ponds and streams, wetlands, forest reserves, national parks and any other land reserved for ecological and touristic purposes.

CHAPTER FOUR

PRINCIPLES IN THE DEVELOPMENT OF A LEGAL FRAMEWORK FORENVIRONMENTAL MANAGEMENT

4.0 Introduction

A framework for environmental legislation should be conceived within certain parameters. These parameters should guide the policy maker and stakeholders in policy development. They should be based, both on the concrete analysis of each particular country's history, and the comparative experiences of other countries. There is no claim that the following parameters are "all-inclusive" or as the final word but, instead, that they are tools which may be employed in assessing a situation at hand.

The following guiding principles that have been used in the development of national environmental laws are picked as a semblance for the development of model environmental legislation.

4.1 The Social and Political Setting of Environmental Law

Environmental law must be seen within the entire political, social, cultural and economic setting of the country. If the goal of environmental law is to achieve sustainable development, as we would all agree, then environmental laws must be geared towards each particular country's development vision. There are no universal models of legislation, which are appropriate to all countries. Each country must, therefore, formulate environmental laws, which reflect its own realities and for prosperity.

The Brundtland Commission report underscored this need for particularity in environmental management, by defining sustainable development as development that meets the needs of the present, without compromising the ability of future generations to meet their own needs. It, therefore, follows that environmental legislation should be framed in such a manner that it acts as an aid to socio-economic development, rather than a hindrance. The principles, rules, standards and institutions established by legislation should be in harmony with each society's need to achieve better material standards and to defeat poverty (in the context of Africa).

The movement towards environmental legislation should be in harmony with the prevailing government's efforts and need to attract more foreign and local investment and to channel national energies into more productive endeavors in industry and the sustainable exploitation of natural resources[44].

4.2 Constitutional and Administrative Location of Environmental Law:

Environmental legislation should also be seen in the context of the constitutional and administrative setting of each country. The definition of individual rights especially those relating to a clean and decent environment, to ownership and management of property play a crucial role in the efficacy of environmental laws. The system of administration that takes care of the enforcement of laws has an important role in the achievement of sustainable development.

The laws framed must be made compatible with the entire legal system. A number of African countries have already adopted constitutions, which recognize and promote the right to a decent environment. In Uganda, Namibia and South Africa, for example, this right has been clearly set as an integral part of the Bill of Rights in their Constitutions.

The inclusion of a human right to a decent and healthy environment in the bill of rights has some major implications. Every right has a corollary duty. The right to a decent environment, therefore, imports the duty of each person to protect the environment and must create a complementary capacity, if it is to be meaningful. In this case, the individual should have the capacity to bring an action for breach of the right to a decent and healthy environment and for failure to observe the corollary duty. Such a capacity is general, notwithstanding that specific right in person or properties of the given individual have not been violated. In some countries (for example Uganda), the constitution which includes a right to a decent and healthy environment, provides that the violation of any human right entitles any person to sue for the redress of such violation, even if the violation did not affect the plaintiff personally[45].

[44] John Ntambirweki. Senior Lecturer at the Faculty of Law, Makerere University, Kampala and also Director of the Grotius School of Law- Busoga University, Uganda.
[45] Article 50 of the 1995 Constitution.

4.3 Environmental Law within the wider policy context

Environmental legislation is not the only tool for environment management. Other factors such as general policy, education and awareness are equally important. A decision-maker must, therefore, be able to determine whether the making of a law relating to a certain subject matter is the best means of achieving given policy objectives. In many cases, it may be more desirable to use tools that are less authoritative than law to achieve given environmental objectives. This is especially favoured where law would interfere with settled human rights and accepted standards of behaviour, or would be difficult to implement, take for example in the area of population growth.

While it is accepted that high population growth rates inevitably lead to environmental degradation, most countries have favored policies that stress family-life education rather than compulsory limits to the number of children each person may have. Likewise, in the sphere of land use in rural areas, most countries have favored a combination of economic incentives and education through extension services to promote the growth of certain crops or economic activities, rather than compulsory zoning laws which would interfere and be incompatible with constitutional rights to property ownership and international conventions prohibiting forced labor. The determination of what is appropriate for legislation and for policy is, therefore, an essential process in the steps leading to development of environmental legislation.

4.4 Prospective Approaches to Environmental Management

Modern environmental legislation concentrates more on the prospective approach (anticipation, management and prevention rather than the retrospective approach (punishment, compensation restoration). The adage that prevention is better than cure is best applicable here. The principal reason behind this approach is that it is more expensive to repair than to prevent damage to the environment.

The importance of pursuing precautionary approaches to the management of the environment has been emphasized by principle 15 of the Rio Declaration. It provides:

"*In order to protect the environment, the precautionary approach shall be widely applied by states to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific. Certainty shall not be used as a reason for postponing cost effective*

measures to prevent environmental degradation."

Within national jurisdictions, this principle may be active in planning for environment management at the local, regional and national levels. At the lower levels, planning helps take into account, the particulars of locality and local circumstance. At national level, the larger picture is taken into account. Planning involves periodic exercises, which enable revision to take into account lessons learned, and concretize the gains realized.

4.5 The Institutional Arrangement for Environmental Administration

Having determined the style of legislation to be adopted, and the objectives to be achieved, it is necessary to put in place the institutional arrangement to achieve those objectives. The size, nature and functions of the institutions depend upon the functions to be carried out and the capacity to afford the institution sought. The typical nature of institutional arrangements in any environmental legislation determines how successful such legislation can be. It is certainly contradictory in logic to seek to achieve sustainable development using an institution, which is inherently not sustainable in the social and economic circumstances. The participation of local people in the management of environmental resources here is a question pertinent to the institutional arrangement that should be addressed. Clear answers are required as to how, at what level and in what context they are required to participate. It should be noted, however, that the requirement for public participation is taken as a given necessity.

4.6 Framework Legislation

While the framework legislation should not seek to codify existing legal provisions on all sectors affecting the environment, it should nevertheless lay down some basic guiding principles in the conservation of those resources. These principles have a dual purpose; they enhance the coordination function of the institutional arrangement established under the law. Secondly, they act as residual general principles which can be applied to ensure the conservation of environmental resources where the sectoral laws are found wanting. Most framework legislation in various countries, therefore, have laid down general principles regarding air quality, water quality, disposal of effluent and solid wastes and conservation of energy resources. The elaborate definition and regulation of these specific sectors, however, should be left to specific sectoral

laws. Subsidiary legislation under the framework legislation could also be used to fill in some of the gaps.

It is necessary to lay down the basic principles regarding the various sectors affecting the environment in the framework legislation, it is also essential to include in such an instrument the basic tools of environmental management as general standards to be observed in all cases. These basic tools include the requirement for environmental impact assessments, environmental monitoring and environmental audits for all activities, plants and establishments that may significantly affect the environment. Other principles, which are relevant here, include compensation for those affected by environmental damage and the restoration of the affected environment. These principles are retrospective in character but are nonetheless important.

4.7 Novel Approaches for Enforcement of and Compliance to Environmental Laws

The enforcement of and compliance to environmental law, is an important issue, which has to be taken care of by all legislation. The traditional forms of enforcement by means of fines and terms of imprisonment may not be sufficient to ensure compliance. What has been urged and followed in many countries, is the movement away from the command theory of criminal law to the use of economic devices such as incentives and disincentives in the form of taxes and charges for behavior deleterious to the environment on the side of disincentives and tax credits, tax exemptions, rewards for good environmental performance, soft loans and subsidies on the side of incentives. In any case, it is the poor who are usually criminally punished and yet they may not be the major polluters or environment degraders. The rich normally pay their way through criminal punishment[46].

The primary motive behind this approach is to modify behavior by using economic factors rather than legal Compulsion. Economic factors are preferred because they have within them, an auto enforcement inner logic. This is preferable to the reliance on law enforcement officials and litigation in courts, which requires tremendous expense, and does not necessarily promote a

[46] 82 "Enforcement" means the range of procedures and actions employed by a State, its competent authorities and agencies to ensure that organizations or persons, potentially failing to comply with environmental laws or regulations that can be brought or returned into compliance and/or punished through civil, administrative or criminal action.

conservation ethic among the people. This approach is important for industry. Industry must see how to benefit from these benevolent approaches[47].

4.8Application of International Law

International law sometimes addresses issues of environmental concern that extend beyond national and regional boundaries. Some sources of international law, as described in Article 38 of the Act of the International Court of Justice, are as follows:

"...international conventions, general or particular, establishing rules expressly recognized by the contesting states; international custom, as evidence of general practice accepted as law; general principles of law recognized by most countries; and judicial decisions and teachings of the most highly respected and visible representatives of individual countries".

4.9International legal protection of the environment for appropriate sustainable development

The first treaties concerning the protection of the natural environment had already appeared at the turn of the 18th Century. They were primarily concerned with protecting and regulating the commercial hunting of certain species of animals (for example, the 1897 agreement on the protection of seals). It is only in recent decades that there has been a qualitative shift in the international legal regulation of environmental protection and that States have begun to adopt active measures in this field.

The attention being given today to problems of the environment is not surprising. The revolution in science and technology and the rapid development of the productive forces of society have intensified the impact of humankinds' economic activities on the natural environment, and have considerably widened the sphere of intervention in natural processes. The intensive utilization of natural resources and the pollution of the planet's biosphere have brought the human race to the brink of a serious ecological crisis. Consequently, the protection of the environment and the rational utilization of natural resources have become urgent global problems of the modern age.

[47] Compliance" means the state of conformity with obligations, imposed by a State, its competent authorities and agencies on the regulated community, whether directly or through conditions and requirements in permits, licences and authorizations, in implementing multilateral environmental agreements (UNEP, 2001).

Naturally, these problems cannot be solved by the efforts of individual States alone. National measures to protect the environment must be combined with the wider international cooperation at the global and regional levels. International law is called upon to play a leading role in establishing and developing such cooperation and regulating the measures undertaken by various States to protect the environment. The international legal protection of the environment is, relatively new but rapidly developing part of modern international law. At the present time, there are a number of international treaties governing various aspects of international protection of the environment and the rational utilization of natural resources. These agreements primarily concern the following, among others.

(a) the prevention of the pollution of maritime waters, the protection and rational utilization of the sea's living resources;

(b) the protection of the waters and resources of international (multinational) rivers;

(c) the protection of the Earth's atmosphere and circum-terrestrial outer space from pollution and other unfavorable influences;

(d) the protection and rational utilization of terrestrial animals and their ecosystems and plant world on land;

(e) the protection of unique natural objects and complexes and of individual ecological systems;

(f) the protection of the Earth's environment from radioactive contamination.

The international legal protection of the environment emerged and is continuing to expand within the general framework of the progressive development of international law. Thus, the international legal regulation of the environment protection measures undertaken by different States has unquestionably been influenced by the many universal international treaties which either contain important provisions relating to the protection of the environment, or else are directly or indirectly contributing to the improvement of the planetary environment.

The efforts made by States, to limit and fully prohibit nuclear weapons and other weapons of mass destruction and to reduce international tension, are particularly important for the protection of the environment. It is known that the arms race, the testing of nuclear weapons, the development of new types of weapons of mass destruction, neutron bombs, not only absorb enormous material and human resources, but are also one of the basic factors in the degradation of the environment. In addition to international treaties, international custom also plays an

important role in the protection of the environment (in particular, the protection of certain major components of the environment, such as international rivers, has developed largely on the basis of customs).

An important role in the development of the international legal protection of the environment is played by resolutions adopted by international organizations, and above all by the United Nations and its specialized agencies. One of the most important measures undertaken by the United Nations was the 1972 Stockholm Conference on the Human Environment, the Rio Conference on Environment and Development of 1992 and the World Conference on Sustainable Development held in 2002 in Johannesburg. These Conferences adopted plans of action containing recommendations to governments and international organizations, and declarations on the Environment that formulated the basic principles of the international protection of the environment and sustainable development.

4.10 Environmental protection perspectives

Environment protection raises a host of questions involving practically every discipline-political, technical, social, economic, legal and institutional. The extent to which each of these disciplines predominates in any country is determined by a number of factors at work. Among these factors are those relating to the conditions of nature with regard to the quantity, quality and degree of exploitation of the available natural resources, the level of economic development financial means available social needs population growth standard of living, the level reached by science and technology, industrialization and urbanization in relation to characteristics of its legal and institutional framework.

At the national level, from the legal and institutional point of view, several problems of major importance are encountered. In the first place, there is the problem of internal administrative subdivisions which, being created by man and thus artificial perfecting are rarely compatible with nature. The problem of different administrations with sectorial jurisdictions rarely showing adequate coordination or liaison among is a setback themselves.

4.10.1 International framework on environmental management

4.10.1 Environmental Law in the United States of America (USA)

The United States of America (USA) has one of the oldest and most developed systems of environmental law and policy. As such, the U.S.A experience offers a wealth of lessons to be learned. While many countries have looked to the U.S.A. laws and institutions for guidance on how to protect the environment, it is important to recall that the U.S.A. laws and institutions take place within a political, economic and cultural heritage that may limit its application by other countries.

Initially, environmental issues were viewed primarily as local issue to be addressed by state and local governments. The federal role was largely to facilitate the development and implementation of these activities through financial assistance to states.[48]This led to a number of innovations, such as the first citizen suit provision (in Michigan) that allowed citizens to enforce environmental laws. This structure, however, was largely ineffective because states frequently did not have the political will necessary to impose meaningful constraints on businesses located in the state, particularly, where the impacts were felt in another state. The fear that businesses would relocate if subjected to strict environmental laws perceived as onerous contributed to maintaining the *status quo*. The 1960s saw an explosion of federal laws designed to preserve natural areas and sustainably Manage federal lands.[49]These laws, however, focused on government activities, rather than tackling the environmental impacts of private actions.

A number of pivotal events in the 1960s raised public awareness of the pending "ecological crisis", and led to consequent proliferation of federal environmental law.[50]In 1962, Rachel Carson published "*Silent Spring*", a book written for the public that drew attention to the broad range of environmental and public health impacts of pesticides, particularly DDT. Throughout the 1960s, stories rolled in about the impacts of chemicals, for example methyl mercury in swordfish and DDT in mothers' milk. In 1963, the Federal Bureau of Land Reclamation (whose

[48] Percival et al., environmental regulation, 105

[49] e.g., the 1960 multiple use, sustainable yield act, the wilderness act of 1964,and the wild and scenic rivers act of 1968.

[50] e.g., percival et al., environmental regulation, 4.

Engineers were described as beavers because they couldn't stand the site of running water"),[51]proposed to dam the Colorado River, to flood part of the Grand Canyon. After a nationwide campaign by the Sierra Club, the proposal was dropped.[52]In the late 1960s, the world first saw an image of the brilliant blue and green planet floating in the blackness of space which emphasized the fragility of life on planet earth (the universe). This was followed closely in 1969, by television news images of the Santa Barbara coastline devastated by an oil spill.

4.10.2 International Legal Protection of the Environment of the World Oceans and its Resources

Among the numerous international legal acts directed at protecting the marine environment, a central role is played by such international multilateral agreements as the 1954 London Convention for the Prevention of Pollution of the Sea by Oil (as amended in 1962, 1969 and 1971), the 1973 International Convention for the Prevention of Pollution from Ships, and the 1972. Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matters. *The London Convention of 1954* (entered into force in 1958) was the first international agreement to impose on States specific obligations as regards the pollution of the marine environment; The Convention prohibits the discharge of petroleum and petroleum-water mixtures from ships. Initially, special zones were established within which, discharges were prohibited, but subsequently (as a result of the amendments of 1969) such discharges were prohibited, with few exceptions, throughout the territory of the World's Oceans. The Convention also imposes on the signatory states the obligation to take measures to equip ports with facilities enabling them to receive from ships and tankers residual amounts of petroleum and petroleum mixtures.[53]

The 1973 International Convention for the Prevention of Pollution from Ships, which was amended by the 1978 Protocol, and entered into force in 1983 is based on the need to prevent all Kinds of pollution of the marine environment by any substances, including petroleum, liquid poisonous substances, waste waters and garbage discharged, into the sea from ships. Its term

[51] John Mcphee, encounters with the archdruid.
[52] Celia Campbell-mohn, petroleum, in Celia Campbell- Mohn, Barry Green, and J. William Futrell(eds.), sustainable environmental law 1108(1993)
[53] U.N. Doe. A/Conf. 48/PC(II)/Conf. Paper No. 3 (1971); *see also* Contini and Sand. *Methods to Expedite Environment Protection,* 66 Am. J. Int'l L. (Jan. 1972).

extend to virtually all types of sea-going ships, including hovercraft, submarines and stationary and mobile platforms. Exceptions are made only for warships, and naval auxiliary vessels and also ships that are utilized exclusively in governmental, non-commercial service.

The 1972 Convention for the Prevention of Marine Pollution by the Dumping of Wastes and Other Matter (entered into force in 1975), regulates the deliberate burial in the oceans of practically all known dangerous substances and materials. Under the terms of the Convention, the most dangerous substances may not be buried at all; for the burial of others special permission is needed, while for less dangerous substances general permission is sufficient.

4.10.3 International Legal Protection of Multinational Rivers

All questions relating to the utilization of waters of multinational rivers call for a coordinated approach, cooperation among all interested riparian States. The practice of treaties points precisely in that direction. Norms governing any type of such uses (or some of them) are contained in special international agreements concluded by riparian States, with due consideration for specific factors relating to hydrological, climatic, and economic and other condition that is specific for various river basins. These agreements are based on the principle of equal and equitable water utilization.

International agreements on the utilization of international waters (such as the Convention on the Protection and Use of Trans boundary Watercourses and International Lakes, 1996, meant to strengthen national and international actions aimed at the protection and ecologically sound management of trans boundary waters special agreements relating to a particular water course or a water system (for example, the Convention Relating to the Development of the Chad Basin 1964 entered into by Cameroon, Chad, Niger and Nigeria, the Convention Creating the Niger Basin Authority and Protocol relating to the development Fund of the Niger Basin, 1980;[54]

Treaties on the regime of state borders, whose terms also cover certain questions of water utilization on border rivers (for example, treaties concerning the Nile waters off 1929 and 1959 between the Nile Basin Countries); and agreements concerning fishing in international

[54] Rio Declaration on Environment and Development, done at Rio de Janeiro, Brazil, June 13, 1992, U. N. Doc. A/CONF. 15/26 (vol. I) (1992) reprinted in 31 I.L.M. 874(1992); United Nations Economic Commission for Europe convention on Access to information, Public Participation in Decision making and Access to Justice in environmental Matters, done at Aarhus, Denmark, June 25 1998; Inter-American Strategy for the Promotion of Public Participation in Decision making for Sustainable Development.

(multinational) rivers (for example, the Convention for the Establishment of Lake Victoria Fisheries Organisation, 1994 between Uganda, Kenya and Tanzania).

4.10.4 International Legal Protection of the Earth's Atmosphere

The atmospheric air constitutes an exceptionally mobile element of the environment that does not recognize state borders. Pollutants entering into the atmosphere over the territory of one State are often carried over very large distances and cause damage to the natural environment and the health and well-being of the population of other States. Such, for example, is the origin of acid rains. Sculpture dioxide, which is discharged into the air over major industrial regions of Western Europe, precipitates together with rain in the form of a solution of sulphuric acid over the territory of Scandinavian countries. "Acid rains" cause great damage to the natural environment and to man, pollute water bodies, cause deterioration in the soil, and contribute to the erosion of architectural monuments. The All-European Conference on Cooperation in the Protection of the Environment, 1979, resulted in the adoption of the *Convention on Long-Range Trans-boundary Air Pollution,* which entered into force in 1983. Countries who are parties to the Convention agreed to limit air pollution as much as possible, to exchange information, to hold consultations, undertake scientific research and monitor air quality.[55]

The awareness of this serious danger led to the adoption in 1977 of the *Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques* (it came into force in 1978). States that are parties to the Convention undertook not to use means of influencing the natural environment which have wide-ranging, long-lasting or serious.

The United Nations Framework Convention on Climate Change has the objective of stabilizing Concentrations of greenhouse gases in the atmosphere at a level that does not affect food production, allow adapting naturally to climate change and enables economic development to Proceed sustainably.

[55] ECLA, ECAFE, ECA and, in particular ECE (Economic Commission for Europe), which organized a conference on the human environment at Prague in 1971.

4.10.5 Activities of International Organizations in the Protection of the Environment

There exist a large number of international (inter-governmental and non-governmental) organizations that are concerned with the most diverse aspects of the problem of environmental protection.

The United Nations plays a leading role in coordinating environmental conservation activities of States and international organizations, and devotes considerable attention to questions relating to The protection of the environment. The organs of the United Nations that are directly relevant in protection of the environment are: the General Assembly, the Economic and Social Council, and also its regional Economic Commissions, as well as United Nations Conference on Trade and Development (UNCTAD), the United Nations Industrial Development Organization (UNIDO), and the United Nations Development Program (UNDP), the United Nations Food and Agricultural Organization (FAO), United Nations Education, Scientific and Cultural Organization (UNESCO) and above all the United Nations Environment Program (UNEP). In accordance with its decisions and the General Assembly Resolution, a special body, namely, the United Nations Environment Program was established. UNEP enjoys very substantial autonomy and possesses a number of the attributes of an international organization. UNEP pays considerable attention to the development of international law concerning environmental protection. The Program promotes the development of universal and regional conventions and agreements. On its initiative, a program is being implemented to protect the marine environment of regional seas - the Mediterranean, the Red Sea, and also the Persian Gulf, including the formulation of corresponding international agreements. The UNEP mobilizes financial support for and coordinates with other environmental related programs of the specialized United Nations agencies, such as UNESCO, WHO, FAO, IMO, ILO, WMO, ICAO and the International Atomic Energy Agency. Within the limits of their competence they all engage in various aspects of environmental protection[56].

Among non-governmental organizations, a central role is played by the *International Union for the Conservation of Nature and Natural Resources* (IUCN), established in 1948, whose members

[56] World Peace through Law: Draft Convention on Environment Cooperation among Nations, 1971, and Draft Convention on Weather Modification, 1971

are States, national and international organizations and associations. The Union was created in order to promote cooperation among governments, national and international organizations, and also among individual persons involved in matters relating to the protection of the environment and the preservation of natural resources. With that objective, the IUCN organizes national and international measures, disseminates the latest scientific and technical achievements in this field, and expands education and awareness campaigns on nature conservation.

4.11 Regional framework on environmental management

In Africa, a number of factors have drawn increased attention to environmental law. The end of colonialism is perhaps the turning point in the history of African environmental development as this has allowed Africans to decide whether and how to utilize their natural resources, as well as to set their own priorities for public health and development.[57]In some countries, unfortunately, nepotism and corruption have led to what may be termed as "domestic colonization", whereby a few (African) people in power have simply assumed the mantle of the old colonial powers.[58]While African nations face many challenges that strain scarce national resources and test the holding capacity of the land on which so many African people depend, particularly in urban centers where there is high population density have boomed. This has placed severe pressure on water resources as well as on forests (for fuel, wood and timber). Forests and other wild lands continue to be cleared to meet agricultural, commercial and settlement needs. African governments, in a bid to alleviate poverty, promote development and to pay national debts, have exploited the natural resource for hard currency. These have taken a toll in the environmental issues.

Although most African nations have constitutional environmental provisions, there are problems of interpreting and applying them. These problems ranges from novelty of the subject matter of the provisions to lack of public interest on environmental litigation with public interest litigation, and the failure of governments to set up the machinery to implement their constitutional duties. In order to bring to fore ways of giving force to these constitutional protections, this chapter surveys various ways that judiciaries around the world have interpreted and applied the right to a

[57] See e.g., Benjamin J. Richardson, Environmental law in Postcolonial Societies: Straddling the Local-Global Institutional Spectrum,11 COLO. INT'LENVTL. L. & POL'Y 1(2000

[58] Mobutu Sese-Seko, former President of Zaire, is perhaps the most infamous. His systematic plundering of Zaire's natural wealth led to the term "kleptocracy" – rule of thieves.

healthy environment and the duty to protect it. In addition to providing the legal basis for cases of enforcing environmental protection, constitutional provisions can expressly enable legislatures to enact environmental laws towards implementing the policies (e.g., Central African Republic Constitution, art.58.1). In Mozambique, for example, the government relied on its constitutional environmental provision to provide the authority with a new framework environmental law. In Laguna Lake Development Authority vs. Court of Appeals, the Philippines Supreme Court upheld the authority of a government agency attached to the Department of environment to issue cease and desist orders against a city that was illegally dumping garbage.[59]In dismissing the challenge to the authority's police and regulatory powers to regulate the dumping, the court relied on the constitutional right to a "balanced and healthful environment" and the right to health to uphold the authority's charter and mandatory laws.

Governments frequently lack the financial resources necessary to effectively develop, implement, and enforce environmental laws and policies. Thus, for example, the World Bank provides practically all the funding for Uganda's National Environment Management Authority (NEMA) in the 1990s and 2010s. As a result, governmental agencies often lack professional personnel in the environment sector due to financial constraints. Many of the government environmental institutions are designed to coordinate efforts between the various lead agencies and ministries. These lead agencies, however, usually have priorities that frequently are at odds with environmental protection with other major emphasis on democracy, health of people, and rule of law and citizenship empowerment.

Many African countries have adopted environmental framework environmental laws. These laws usually establish a national agency (or vest powers with the Ministry of Environment), include provisions for environmental impact assessment, and set out a number of basic provisions for different environmental sectors (such as air, water, soil, hazardous waste, wildlife, genetic resources) that require development or harmonization with existing legislation or regulations. In East Africa, Uganda (1995) and Kenya (January 2000) have such framework laws; Tanzania by 2004, was to enact its framework on environmental legislation.

[59] Laguna Lake Development Authority v. Court of Appeals, G.R. No. 110120 (Supreme Court of the Philippines, 3rd Div.. Mar.,16,1994

4.12 Institutional frame work in Uganda

Between 1991 to 1994 the Government of Uganda developed a National Environment Action Plan (NEAP)[60]The NEAP provided a framework for addressing gaps in environment management as well as a strategy for integrating environment into the national socio-economic development.[61]One of the outcomes of the NEAP was the formulation of the National Environment Management Policy (NEMP) of 1994. The overall Goal of the NEMP is sustainable social and economic development which maintains or enhances environmental quality and resource productivity on a long term-basis that meets the needs of the present generations without compromising the ability of future generations to meet their own needs. This policy goal has informed subsequent policies such as the 2004/5- 2007/8 Poverty Eradication Action Plan (PEAP) and the Plan for the Modernization of Agriculture (PMA).

The Policy provides strategies to guide and assist decision makers and resource users in determining priorities in the national context and also at the sectoral, private sector and individual level. It provides for integration of environmental concerns in national socioeconomic development planning process, avenues for inter-sectoral cooperation, and comprehensive and coordinated environmental management. As a result, environmental management is now a key criterion for national socio-economic development decisions.

The Policy also recognized the need for sectoral policies in addressing the specific concerns of the identified environmental sectors. It therefore provided a framework under which several sectoral policies were developed. These include the 1995 Water Policy, the 1996 National Wetlands Management Policy, the 1996 Wildlife Policy, the 2000 Fisheries Policy, the 2001 Forestry Policy and several district environment management policies from 2000 onwards. In addition, the policy provided a basis for the formulation of a comprehensive environmental legal framework under the 1995 Constitution and the National Environment Act. [62]It also provided a framework for multi-sectoral approaches to resource planning and management of natural resources. These approaches found expression in the various environmental and development

[60]National Environment Action Plan (NEAP) will be reviewed after every five years or less. *See* section 17(1) of the National Environment Act, Cap. 153, Laws of Uganda-2000 (Uganda Law Reform Commission).
[61]National Environment Act, note 1 above, section 18 (2)(a).
[62]National Environment Act, note 1

utmost environment law of need a security organ to enable the execution of the environmental duties for the operations of the environment.

The researcher cites the poor implementation of the legal framework on the environment law towards sustainable development. The focus is that poor implementation of policies and lack of authorities to effectively implement the environmental laws explains the prevalence of the sustainable development issues.

5.2 Conclusion

The study focuses on the critical analysis of the environmental law in achieving sustainable development in Wakiso district in particular and Uganda as a whole. The study was based on the level of environmental law on the sustainable development in Uganda as whole and Wakiso in particular. This study shows that, despite the fact that Uganda has a number of laws and policies geared toward conserving the environment for the betterment of sustainable development, natural resources in particular continue to be encroached upon.

The Government of Uganda has strenuously attempted to implement the principle of sustainable development through enactment of laws on the management of the environment and natural resources. These laws have established institutional arrangements to implement the laws. The emphasis in the laws has been to create the necessary institutional coordination and harness available synergies in government for managing the resources. Participation of the public in achieving management objectives has been a key target of the law. The law has, therefore, emphasized creation of the necessary avenues for public involvement through awareness raising and another important trend in these developments has been the orientation of the law towards giving natural resources and the environment value by emphasizing economic and social instruments.

5.3 Recommendations

Based on the study findings, the researcher recommend for the adoption of the following in order to strengthen the operation of the legal framework on the environmental challenges in the Ugandan legal framework.

http://www.yale.edu/lawweb/avalon/magna.html
http://www.stella.als.edu/glc/ptd-hame.html
http://www.sierraclub.org/sierra/199711/humanrights.html
http://www.elaw.org/case/chile/trilliumenglish.html
http://www.igc.apc.org/elaw/updatespring 1995.html
http://www.kub.ni/date/topic/envartcult.html
http://www.fundepublico.co/html/logros.html
http://www.transparency.de/documents/workpapers/martin-feldman
http://www.UNESCO.org/whc/worldhe.html
http://www.fietcher.tufts.edu/multi/texts/Rio-DELL-txt