REPORT ON THE PROCEEDINGS OF THE JUDICIAL SYMPOSIUM ON INTERNATIONAL ENVIRONMENTAL LAWS FOR JUDGES IN UGANDA.

HELD AT

RANCH ON THE LAKE, KAMPALA

10TH – 12TH JUNE, 2007

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Special mention is made of the various resource persons for your valuable contribution to this programme. Your papers and presentations enabled the participants to acquire more skills, learn and share practical experiences in environmental compliance and enforcement.

We particularly acknowledge the efforts of the **Greenwatch secretariat** for the input provided in the planning, design and selection of the various resource persons and experts on the different topics presented. We are thankful for the tireless efforts exhibited to ensure that the workshop was a success.

LIST OF ACRONYMS

ACODE	Advocates Coalition for Development and Environment
CIEL	Centre for International Environmental Law
EIA	Environment Impact Assessment
E-LAW	Environmental Law Alliance Worldwide
ELI	Environmental Law Institute
JSI	Judicial Studies Institute
JTC	Judicial Training Committee
JSC	Justice of the Supreme Court
LEAT	Lawyers Environment Action Team
MEA	Multilateral Environmental Agreements
NAPE	National Association of Professional Environmentalists
NEA	National Environment Act
NEAP	National Environment Action Plan
NEMA	National Environment Management Authority
NEMP	National Environment Management Plan
NFA	National Forestry Authority
NGO	Non Government Organisation
SI	Statutory Instrument
UWA	Uganda Wild life Authority
WRI	World Resources Institute

INTRODUCTION

Since the enactment of the National Environment Act (NEA) in 1995, other substantive legislation (Acts of Parliament) and a number of subsidiary legislation (regulation, by-laws, ordinances) have been enacted for the good management and protection of the environment and natural resources in Uganda.

The required institutions have been in place and are functional. However there is no significant improvement in the state of the environment in Uganda. It is largely agreed that this is because of one factor, lack of enforcement.

The law provides for a wide range of measures for the protection of the environment and management of natural resources. Some of these are administrative such as Environmental Impact Assessment (EIA), some are judicial or quasi judicial such as environmental restoration orders, criminal/ civil proceedings.

Since 1995, emphasis has been put mostly on sensitization, education and administrative aspects of compliance. This has had limited success in the area of compliance but largely successful in the aspect of public awareness and sensitization. The country is now ready for the enforcement of environmental law.

Environmental law provides for three major aspects of enforcement and compliance namely; administrative, civil and criminal. As already noted above, a lot has been done administratively. A number of civil suits have been filed in courts of law for enforcement of environmental law and have been largely successful. But civil procedure is long, expensive and complicated. Criminal aspects of environmental law have been largely un explored yet it has the greatest potential of effectively dealing with a wide range of environmental violations especially at grassroots level. It has been determined by NEMA, **Greenwatch** and other civil society organisations that the reason hindering enforcement of environmental law through criminal procedure is lack of capacity.

Criminal law is enforced by the police, prosecutors and the judiciary. Judges are mandated to enforce a large number of laws that relate to the environment. This necessitates an informed bench that will grant decisions consistently that do not undermine the confidence of civil society and the public in the legal order of the environment. **Greenwatch** and NEMA have since 2000 been conducting training of judicial officers in environmental law, both civil and criminal in all courts of law. This advanced course for judicial officers is aimed at equipping the judges with knowledge on emerging environmental law issues and to generate a common understanding on the environmental litigation process.

This training by **Greenwatch** in collaboration with Judicial Studies Institute and NEMA is geared towards this goal. This is the seventh of the training for a period of three years funded by the John D and Catherine T. MacArthur Foundation.

EXECUTIVE SUMMARY

This report contains the proceedings and technical papers presented at the judicial symposium on International environmental law for judges in Uganda from 10th – 12th June at Ranch on the lake Country club, Kampala, Uganda.

The judicial symposium was attended by twenty five judges, registrars, and facilitated by various resource persons. They included officials from United Nations Environment Programme (UNEP), Environmental Law Institute (ELI), National Environment Management Authority (NEMA), the Executive Director, Advocates Coalition for Development and Environment (ACODE), the Executive Director Center for Environmental Policy and Advocacy-Malawi, and advocates in private practice**.** The training was conducted by **Greenwatch** in conjunction with the Judicial Studies Institute and NEMA.

The aim of the symposium was to equip judges with knowledge on emerging environmental law issues and generate a common understanding of the environmental litigation process. The symposium provided a forum for review of decided cases on environmental matters from Uganda, Kenya, Tanzania and other countries. The participants from the judiciary had an opportunity to discuss how similar issues, principles and doctrines are handled in their jurisdictions.

The overall objective of this programme is to strengthen Government's ability to enforce environmental laws which will ultimately save the country's natural resources from depletion and to improve governance of the natural resources.

The workshop was officially opened by His Lordship Hon Mr. Justice T J.W.N Tsekooko, Justice of the Supreme Court and Chairman Judicial Training Committee and the Executive Director **Greenwatch,** Mr. Kenneth Kakuru made opening remarks. The workshop lasted three days and was closed by Ms. Racheal Musoke, Assistant Commissioner in the Department of Environment Affairs in the inspection of the environment.

During this period, the participants covered the following topics:

- International Environmental Law and Policy
- Overview of the State of Environment in Uganda: Emerging Challenges
- The Legal Regime on Trans-boundary water resources for the shared Water resources in the East African Region
- International Regime on Hazardous Wastes and Chemicals and their impacts: International and national responses
- Ecosystem Services and Environmental Law
- Environmental Remedies
- Intellectual Property Rights, other Rights and the International Regime on Biological Resources
- Practice and Procedure; Rethinking Legislative Procedural Rights in Uganda

1.0 SUMMARY OF THE WORKSHOP CONTENT

1.1 Overview of the Workshop Objectives

The overall objective of the workshop was to enhance the capacity of judges in enforcement of environmental laws. The workshop also aimed at equipping the judges with knowledge on emerging environmental law issues and to generate a common understanding on the environmental litigation process.

The specific objectives of the workshop were to:

- Equip the Judges with knowledge, skills and techniques in environmental law in order to strengthen their enforcement capacity;
- Provide an opportunity for dialogue among the judges on the practical ways of enforcing environmental laws and to provide a forum for review of decided cases on environmental matters both in Uganda and in other countries;
- To forge a lasting link between NEMA, the judiciary and civil society for the purpose of enforcing environmental law.

1.2 Workshop Organization

Each topic was followed by thirty minute plenary discussions. Towards the end of the symposium, the participants were given an evaluation questionnaire to comment on the workshop program, topics ad the presentation of the facilitators. On the whole, the participants were appreciative of the symposium.

DAY TWO

11TH JUNE 2007

9.00am.

2.0 OPENING REMARKS

2.1 Remarks by Mr. Kenneth Kakuru, *Director, Greenwatch.*

Mr. Kenneth Kakuru, the Director of *Greenwatch* introduced himself to the participants. He also introduced *Greenwatch* as a local environmental Non Government Organization that has been in existence since 1995, whose main objective organization is "to enhance public participation in the management of the environment and natural resources and in enhancing management of the law". *Greenwatch* therefore focuses on enforcement of environmental laws.

He stated that since 1995, many laws have been passed both substantive and subsidiary. These Laws must inevitably be brought before the Judiciary for interpretation and enforcement. He said before enforcement, the issue of environmental law needs to first be emphasized. He also noted that environmental law was a relatively new discipline. *Greenwatch* in conjunction with National Environment Management Authority, Judicial Studies Institute, United Nations Environment Programme and Environmental Law Institute started conducting trainings in environmental law. This training had been on going for the past seven years.

He also noted that the results of this training have been tremendous, with ground breaking judgments in the different courts. He cited the enactment of National Environmental (control of smoking in public places) regulations of 2004 by NEMA being a result of one such court decision.

He informed the participants that *Greenwatch* has been working with NEMA in conducting the trainings for judicial officers. This workshop is the second phase and more advanced. He observed the need to progress form the basics and stated that today a litigant must first exhaust all local remedies before taking a case to an international court. Local courts need to be well grounded in international law.

He observed that the workshop focused on International Environmental Law and hoped the participants in one way or another would grasp the basic principles of environmental law.

He thanked the **John D. and Catherine T. MacArthur Foundation** for availing funds which made the training possible. He extended his thanks to **Environmental Law Institute** and United **Nations Environment Programme** for providing both technical and material contribution and also to the resource persons for preparing materials to be presented at the symposium.

2.2 Remarks by Mr. Robert Wabunoha, *Legal Officer, UNEP*

Mr. Robert Wabunoha introduced himself as a legal Officer working with United Nations Environment Programme (UNEP) in its division of Environmental Law and Conventions in Nairobi, Kenya.

He stated that UNEP's duty is usually to facilitate governments and countries in providing necessary tools and support countries in development of environmental law. He noted that of recent, science shows that the rate of the degradation is increasing at an alarming rate that is to say increase in global temperature, desertification, and reduced levels of Lake Victoria. The impact of these changes is going to affect Africa most because we do not have the capacity to handle this that is to say; we are vulnerable especially in term of decrease in food security.

He urged the judiciary to play an active role in enforcement of the environmental laws. He further noted that in the areas of population reduction, UNEP believes that the role the judiciary will play is very real. There is therefore need to note whether the judgments being passed will increase the economic and social wellbeing of the people.

Mr. Wabunoha informed participants that currently UNEP is undertaking a global judicial program to assist countries especially in Africa to develop their judicial capacities. Thus in Uganda they have been in partnership with other NGOs like *Greenwatch*. These trainings of the judiciary have been going on for sometime now. However, there is a need to look at the impact of this type of training and whether there are methods in place to check the impacts of the training.

He emphasized the need for public awareness for people to be able to use the judiciary in upholding justice and seeking redress.

2.3 OFFICIAL OPENING CEREMONY

Remarks by Justice T J.W.N Tsekooko, Justice of the Supreme Court and Chairman, Judicial Training Committee.

His Lordship Hon Mr. Justice J.W.N Tsekooko, Justice of the Supreme Court and Chairman, Judicial Training Committee officiated at the opening of the judicial symposium on International environmental law and practice in Uganda

Justice Tsekooko said he was honoured to officiate at this Advanced Judicial Symposium on Environmental Law and Practice. He noted that the judiciary has been conducting training for judicial officers in environment law since the year 2000 as part of its broad program of continuing judicial education whose overall objective is to enhance judicial skills.

He informed participants that most of the High Court Judges, Justices of the Court of Appeal and Supreme Court had gone through training which was intended to equip judicial officers with the basic principles of environmental law.

His Lordship commended the National Environment Management Authority (NEMA) for its efforts in protecting our environment inspite of the challenges they face like shortage of manpower and resources. He urged each individual to get involved in environmental protection because we have a constitutional obligation to do so and also because we are beneficiaries and trustees of these natural resources. He stressed the important role of the judiciary in fairly interpreting and applying the law. This is central to people's concept of justice and rule of law.

He expressed his gratitude to The **John D and Catherine T. MacArthur Foundation,** for sponsoring the training.

He also commended ***Greenwatch*** and the **Judicial Studies Institute** for organizing the training, and **United Nations Environmental Programme** for contributing to the preparation of the materials and **NEMA** for their support. Special mention was made of **Mr. John Pendergrass of Environmental Law Institute-Washington D.C,** for his personal commitment to this programme, and to **Environmental Law Institute** for its past financial and material contribution to the training programme.

His Lordship wished the participants fruitful deliberations.

At this juncture the workshop was officially declared open.

3. 0 PAPER PRESENTATIONS.

3.1 International Environmental Law and Policy

By: *John Pendergrass, Senior Attorney, Co-Director International Programs, Environmental Law Institute*

Chaired by Mr. Kenneth Kakuru, Director, Greenwatch

His presentation focused on what international law is, key international environmental events, and international environmental principles.

Mr. Pendergrass noted that International Law consists of treaties, protocols, custom, general Principles of Law and judicial decisions. He stated that article 38 of the International court of Justice statute recognizes international conventions, whether general or particular in establishing rules expressly recognized by the contesting states. This includes conventions, treaties, and agreements.

He highlighted the key elements in Customary International Law which include practice i.e. the custom must have been practiced by sufficient number and type over a sufficiently long time, and the conception that the practice is required by, or consistent with prevailing international law, termed as *Opinio juris.* The general principles of law are recognized by civilized nations and are usually understood to be obvious maxims of jurisprudence of a general and fundamental character. He emphasized that these principles are not principles of moral justice, nor are they ethical rules of equity. Judicial decisions and the teachings of the most highly qualified publicists of the various nations, are also subsidiary means for the determination of rules of law.

He observed that International Law is applicable to Nations/States and Individuals/Firms. Some of the Multilateral Environmental Agreements (MEA) are part of hard law ie the Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES), the Basel Convention on hazardous waste. However, other MEAs are part of soft law for instance the Rio Declaration on Environment and Development of the United Nations Conference on Environment and Development (UNCED) arising out of the Earth summit of 1992.

He also highlighted some of the key international events noting that the 2002 World summit on Sustainable development held in Johannesburg, South Africa was a follow up of the Earth Summit of 1992, and was focused more on implementation. While expounding on the United Nations Millenium Development Goals , he noted that among the plans is the purpose halving by 2015, the proportion of the people without sustainable access to safe drinking water and basic sanitation and to , to have achieved a significant improvement in the lives of at least 100 million slum-dwellers by 2020. (Detailed paper in annex 2)

Discussion.

Participants discussed the paper extensively, the highlights of which were the following:

- It was noted that attention should be given to people in terms of proper sanitation to reduce on illness and death.
- It was further noted that the poor may not be able to afford the improved housing structures that are envisioned by the Millennium Development Goals to be in place by 2020.
- Participants observed that when dealing with issues of environmental law, focus is rarely placed on the basic things in our society especially for people in the rural areas regarding issues like sanitation but rather on things on the international scene. There is need for a consented effort to address such issues and also involve the local people.
- It was observed that the dumping of hazardous wastes in developing countries was a great problem.
- Participants also observed that USA is one of the biggest funders of UNEP, an environmental organisation and yet the US greatly contributes to environmental degradation by failing to comply with environmental considerations and puts economic considerations and its state sovereignty ahead of environmental considerations.
- It was agreed that International Law stems from the local and national law and should be appreciated and also complied with and states should not forfeit their international obligations in favor of national law.
- It was emphasized that the biodiversity in a country are things people relate to or use. If trade is not regulated and the species are not used sustainably, they may become extinct. International law builds and strengthens local norms relating to management of the resources both on which resources can be used. CITES is a convention which also protects the endangered species in Uganda.
- Participants also noted that International law ought to be strengthening the conservation and management of natural resources where it exists. The principles mentioned by the presenter directly relate to the people on the ground. That is say access to justice, public participation, access to information.. It presents an opportunity for legal redress an individual can go to court to enforce their rights in access to information.
- The participants further observed that laws and policies are better implemented with public participation.
- Participants agreed that International law is very relevant to states. Issues of smuggling across borders still exist today and therefore International law is very relevant especially when issues of transboundary natural resources are to be dealt with and the impacts will be felt across borders. It is therefore necessary to teach those on the ground the importance of the law. .
- Participants noted that ELI is not political organisation, is non partisan, and does not get involved in lobbying the US government. ELI has already emphasized that the United States should be a leader in environmental protection.

- In Uganda once a treaty has been ratified, it has to be domesticated before parliament. Ratification is an executive function but, implementation requires domestication of a treaty to apply the principles as if not is Ugandan law.

3.2 Overview of the State of Environment in Uganda: Emerging Challenges
By:*Christine Echookit Akello, Senior Legal Counsel (NEMA)*

Chaired by His Worship Mr. Lawrence Gidudu, Chief registrar, High Court.

Ms. Christine Akello began her presentation by giving a brief background on the environmental sector in Uganda. Her paper contained pictures used to clearly illustrate environmental degradation in the range lands and the agricultural practices in Uganda.

She noted that the National Environment Management Policy (NEMP) and sectoral policies as well as the 1995 Constitution, the National Environment Act and sectoral legislation provide the legal basis for management of the environment. These instruments set out policy statements, protect natural resources in public trust, create rights and obligations in respect of environmental management, and oblige compliance and enforcement of the law.

She stated that the environment and natural resources sector is the backbone of Uganda's economy and contributes approximately 54% of the Gross Domestic Product of Uganda. However, despite the importance of the environment and natural resources sector and the development of the law to regulate and manage this sector, the state of environment in Uganda is far from rosy. There are a lot of challenges which impact on the management of the environment, compliance and enforcement.

She highlighted some of the challenges faced, including population growth- approximately 26.7 million people who depend directly on natural resources for their livelihoods. Over 80% of the population is engaged in agriculture as its main economic activity, but poor agricultural practices are leading to soil degradation. Population growth has led to increased encroachment on wetlands, riverbanks and hilly and mountainous lands that are now being destroyed.

Other challenges noted include widespread poverty and income inequalities, deforestation, increased energy demands, soil and land degradation, wetland degradation, solid waste management, water pollution, and climate change which influences the economic and ecological situation in Uganda. It is characterized by drop in water levels in most water bodies in Uganda, increased intensity of drought, floods and changes in growing seasons. These changes are evidenced by reductions in food productivity and food security, reduction in human welfare and poverty, reduction in water supply and shorter rains and disorganized seasons. As a result of climate change there has been a reduction in the ice cover on the Rwenzori Mountains. The disappearance of ice cover would result into reduced water flow in the streams downstream which feed into lakes George and Edward, and the Semliki River discharging water into Lake Albert and

ultimately into the Nile. The biodiversity and tourism potential of the Rwenzori Mountains National Park will also be affected.

She concluded her presentation by stating the important role all citizens have in maintaining and enhancing a clean environment in our respective areas of work and of influence. (Detailed paper in annex 3) ***This presentation was discussed together with Dr. George Wamukoya's paper that followed.***

3. 3 The Legal Regime on Trans-boundary water resources for the shared Water resources in the East African Region

By: *Dr. George Wamukoya, Private Consultant-Nairobi Kenya*

Chaired by His Worship Mr. Lawrence Gidudu, Chief registrar, High Court.

Dr. George Wamukoya stated that his paper was concerned with three broad issues namely:

- The legal regime and whether it provides enabling framework for conservation and sustainable use of shared water resources?
- what procedural rights and responsibilities accrue to States sharing a watershed?; and
- What are the responsibilities to other States and international community in general to protect the environment of transboundary watersheds?

Dr. George Wamukoya emphasises a point during his presentation

He gave a brief overview of the regional cooperation by the governments of Kenya, Uganda and Tanzania which was revived under auspices of the Permanent Tripartite Commission on 30th Nov 1993, noting that from the onset, environment and natural resources sector was one of the identified key significant areas where joint cooperation was essential for purposes of spearheading sustainable development in the region. Some of the critical significant natural resources of common concern are the shared water resources such as Lake Victoria.

The presenter observed that the East African Community (EAC) law can be divided into primary and secondary categories. The primary sources of EAC law is the principal treaty and also those that have been enacted in order to amend the original treaty. Secondary sources include secondary legislation, as enacted by the institutions of the Community, case law, which is derived from the judgements of the EACJ, general principles, as articulated by the ICJ and international agreements entered into by the EAC. He emphasised that the EAC laws are not self executing and are not part of municipal law of Kenya, Uganda and Tanzania unless and until it has been incorporated into the law by legislation.

He noted that a central principle is the obligation of States not to cause environmental harm. Under this principle, States shall, individually and where appropriate, jointly, prevent, reduce and control the pollution of shared water resources.

In highlighting the role of the East African Court of Justice, the presenter said the court was established under The Treaty for the Establishment of the East African Community which entered into force on 7th July 2000. The main object of the Court is to ensure the adherence to law in the interpretation and application of and compliance with the Treaty. He explained that while enforcing community law rights before Municipal courts, dualist States (such as Kenya, Uganda and Tanzania) recognise international law as only binding on national courts if it has been adopted by the national authorities and made part of domestic law. On the other hand, in monist states (such as the Netherlands), once ratified, international law forms part of the national legal system. (Detailed paper in annex 4)

Discussion

In the extensive discussions that followed, participants noted, observed and made suggestions as follows:

- Laws and judgments made in court should be complied with and enforced to reduce on environmental degradation.
- Unless people are sensitized and made aware of alternative sources of livelihood, they will continue to degrade the environment ie where people depend on firewood as their main source of energy, they need other alternatives.
- There is need to look at alternative methods and help the people adopt and comply with the environmental laws in place. Other compliance alternatives should also be looked into rather than taking court action because people may tend to regard the law enforcer as a sabotoner.
- The issue of presidential directives is a problem. NEMA sometimes has audience with the Executive and have written technical papers on various issues to advise the Executive on decisions relating to the environment in Uganda.
- NEMA has community '*Baraza*'s' to try to come to a consensus in local communities as resource users especially where they are encroaching on different resources.

- Environmental management can not succeed in any country unless you have political will to involve the people who are in daily contact with biodiversity in public participation.
- There is need for people to distinguish the political federation from an economic federation. Such issues need to be dealt with to avoid chaos in the type of federation or cooperation we aim at achieving as East Africans
- If and when the East African Federation materializes, East Africa will end up with a federal constitution and resources will cease to be Trans boundary but will become federal resources.
- Article 30 of the East African Community treaty has been amended to provide for national remedies to be exhausted before a case is filed in the East African Court of Justice.
- The judiciary needs to take judicial notice of the figure attached to the environmental resources and the impact of the degradation
- For statistics to be accepted in Uganda, and to be authentic, they should be released by Uganda Bureau of Statistics That is the law and all other departments and institutions are supposed to comply.
- There is an urgent need for the Executive branch of government to respect NEMA's authority and opinions to prevent NEMA's credibility from being undermined.

3.4 International Regime on Hazardous Wastes and Chemicals and their impacts: International and national responses

By: ***Prof Francis D.P. Situma, Ph.D., University of Nairobi School of law***

Chaired by His Lordship, Hon Mr. Justice Eldad Mwangusya, Judge of the High Court.

Professor Francis Situma began his presentation by stating that the use of hazardous wastes and chemicals has become an essential means for the achievement of economic and social development of countries.

He noted that the life styles enjoyed by modern societies depend to a large extent on the use of chemicals for a variety of purposes ie many of the goods and services enjoyed, ranging from simple articles like forks, knives and instant foods, to more complex machines such as motor vehicles, computers and refrigerators, involve the use of chemicals. Chemicals are used in the extraction and refining of raw materials needed for these products as well as in the manufacturing and packaging processes. They also find their way into the environment when these products are discarded or dumped.

He stated that generally, the toxicity of a substance is identified by a number of factors, including the length of time it will persist in the environment, how it builds up in the tissues of lower species, the extent to which it reacts with other substances to form contaminants, and whether it produces a cancer causing, gene-altering, or birth defect-causing effect in humans. These characteristics are of special concern to the public and make regulatory decisions both more visible and more difficult.

He informed participants that a chemical substance is considered hazardous where it exhibits certain characteristics that can cause injury, disease, economic loss, or environmental damage. Most toxic chemicals and hazardous wastes are used directly while others are base chemicals used as raw materials in the manufacture of millions of end products for human use. There is virtually no sector of human activity which does not make use of chemical products, some which have brought beneficial effects to man and the environment.

Prof Francis Situma during his presentation, next to him is His Lordship Hon Mr. Justice Eldad Mwangusya

He observed that if it were possible to confine hazardous wastes and chemicals to the vicinity of their sources of release there would, perhaps, be less concern regarding their impacts; it would be possible to contain these impacts. However, these substances are transported by air, water and deliberate human action, locally, regionally or globally to cause widespread contamination of the environment. Deliberate transfrontier movement of the substances creates environmental problems including the possibility of accidental harm to transit states or the global commons and importing states are at risk when the movement takes place without their knowledge or where they possess inadequate management facilities or limited understanding of the risks involved.

He informed participants that international attention to the health and environmental hazards associated with the management and transfrontier movement of hazardous wastes and chemicals gained momentum in the 1980s when both the Organisation for Economic Cooperation and Development (OECD) and the United Nations Environment Programme (UNEP) expanded work on the management of hazardous wastes and chemicals.

He stated that the Basel convention on the Control of Transboundary Wastes and their Disposal of 1989 regulating, international instrument with respect to transboundary

movements of hazardous wastes. Other conventions highlighted include the Bamako Convention, for African countries on the Ban of Import into Africa and the Control Transboundary Movement and Management of Hazardous Wastes within Africa, The 1998 Rotterdam Convention on Prior Informed Consent, The 2001 Stockholm Convention on Persistent Organic Pollutants

He concluded his presentation by emphasizing that the international community and individual states have to take diverse measures to address the impacts of hazardous wastes and chemicals. He further noted that the success of the legal frameworks in place depends on the readiness of states to co-operate in enhancing and protect the global environment. (Detailed paper in annex 5)

Discussion.

The participants thanked the presenter for the good presentation and also made the following contributions:

- They noted that environmental management in general requires the increased level of political support in general.
- Participants observed that if Uganda in exercise of it's authority decides to use DDT, then it would be justified. But if the effects of its use transcend borders, then it becomes an international issue hence should be prohibited
- The participants also noted that indoor residual spraying is DDT is now going to be used in Uganda. However there are fears that some houses like mud and wattle houses will disintegrate and the DDT will find its way in the environment. Yet such people need to stop malaria.
- Participants emphasized the need for both technological and the human capacity to enforce the environmental laws the own statute books.
- Participants also agreed that there is need to take a stand and the most important thing is for all those engaged in environmental law is to sensitize the various groups of to ensure that the decisions NEMA will make will be implemented and also those made by court.
- They also emphasized the need for judicial officers to make a just decision which helps in the process of environmental protection.

3.5 Ecosystem Services and Environmental Law

By: *Robert Wabunoba, Legal OfficerDivision of Environmental Law and Governance, UNEP*

His presentation was technical with emphasis on the essential components of ecosystems services, their relation to national development processes and how environmental law can facilitate such processes. He observed that humans influence and are influenced by, ecosystems through multiple interacting pathways. Long-term provision of food in a particular region, for example, depends on the characteristics of the local ecosystem and local agricultural practices as well as global climate change, availability of crop genetic resources, access to markets, local income, rate of local population growth.

Mr. Wabunoha defined the ecosystem as a dynamic complex of plant, animal, microorganism communities and the nonliving environment interacting as a functional unit, of which humans are an integral part. Ecosystem services are the conditions and processes through which natural ecosystems, and the species that make them up, sustain and fulfill human life. In addition to the production of goods, ecosystem system services are the actual life-support functions, such as cleansing, recycling, and renewal, and they confer many intangible aesthetic and cultural benefits as well.

Ecosystems provide a variety of benefits to people, including provisioning, regulating, cultural, and supporting services. He stated that the fundamental challenge lies in providing an explicit description and adequate assessment of the links between the structure and functions of natural systems, the benefits derived by humanity, and their subsequent values.

While analyzing the link between Ecosystems, human well-being and poverty, he noted that human well-being and progress toward sustainable development are vitally dependent upon Earth's ecosystems. The ways in which ecosystems are affected by human activities will have consequences for the supply of ecosystem services-including food, freshwater, fuelwood, and fiber-and for the prevalence of diseases, the frequency and magnitude of floods and droughts, and local as well as global climate. He further stated that the environment and its natural capital constitute the most important asset for the poor. Human demands for ecosystem services are growing rapidly. At the same time, humans are altering the capability of ecosystems to continue to provide many of these services. Changes in availability of all these ecosystem services can profoundly affect human well-being- ranging from the rate of economic growth, health, livelihood security and prevalence and persistence of poverty.

He concluded his presentation by highlighting the processes of mainstreaming ecosystem Services into law including improving court procedures, integrating community service system into ecosystem services management. (Detailed paper in annex 6)

Discussion

Below are some of the issues that came out of the lively discussion that followed the presentation:

- Participants noted that New York City is recognized as having good/safe drinking water. Other cities have to treat their water with chemicals while New York gets its water from the headwaters of the Delaware River which has a natural water filter. The city is willing to spend 1billion and to protect their water supply that is to say are willing to pay land owners, capitalize the valve of land, protect the forest, maintain the eco system in order to protect their water supply. It is therefore cheaper than treating bad water.

Participants listen attentively to the discussions. Center is His Lordship Hon Mr. Justice J.W.N Tsekooko, Chairman Judicial Training Committee

- The participants also noted that New York scenario is the same as the Nakivubo channel, in that the Nakivubo channel also acts as a natural filter. However, the channel is being degraded by solid waste and dumping which leads to water pollution.
- They emphasized the need for awareness of the likelihood of vulnerability, causing environmental degradation.
- It was also noted that there is need for proper guidelines on sustainable use of natural resources
- Participants suggested that the collapse of societal system through liberalization of the economy has caused problems ie the absence of local leaders like chiefs
- They further emphasized the need to work in the local communities to improve their environment and wells to provide reliable clean water and also encourage activities like tree planting.
- Participants observed that decisions on the best course of action to take when elements of an eco system out compete other elements and it has an impact on the environment require polices to prevent further environmental degradation. The Basogola herdsmen who have resorted to grazing their animals in a game reserve, Queen Elizabeth National park were cited as an example of part of an eco system because these herdsmen claim they have no land on which to graze and cattle keeping is their source of livelihood. Yet they have encroached on a game reserve.
- Participants also noted that courts need to know what the environment is and their role protecting the environment.

Participants were shown a documentary film titled "*An Inconvenient Truth*" about climate change, specifically global warming in the world today. In the documentary, former United States Vice President Al Gore discusses scientific opinion on climate change, the politics and economics of global warming, and describes the consequences he believes global climate change will produce if the amount of human-generated greenhouse gases is not significantly reduced in the very near future.

DAY THREE

12TH JUNE 2007

9.00 am

3.6 Environmental Remedies

By: ***Mr. Gracian Banda, Center for Environmental Policy and Advocacy-Malawi***

Chaired by Prof Francis Situma.

Mr. Gracian Banda began his presentation noting that the the law applicable is an interactive system of substantive, procedural and institutional norms: both domestic and international law. He said the intimate relationship between national and international environmental law is obvious as most environmental problems are or have potential trans boundary impacts; they are both conditioned by the same milieu and shaped by the same pressures and processes; and the enforcement of international environmental law is dependent on national systems

He observed that the concept of sustainable development to ensure that current development imperatives do not undermine the capabilities of future generations to meet their own development needs is key in conceptualising environmental law remedies. Sustainable development cannot be achieved simply by legislating or by recourse to traditional legal concepts: the law must balance economic, cultural, aesthetic and moral issues and inter and intra-generational issues.

He emphasized the environment is the hub of life especially for agricultural economies such as that of Uganda. He noted that many new environmental problems are global, their time frame trans-generational, their impacts often irreversible and irreparable. This has resulted into new demands on the state to set responsive rights and obligations for its citizens as well as in its relationship with other states and a shift of emphasis from compensatory fault based to preventive norms and purposeful enforcement measures.

He further observed that the ability of the state to cope with these demands has been severely tested. The compensatory remedies operate where there is definable damage to property, personal dignity or patrimonial rights and where these can readily be traced to an external source.

Mr. Gracian Banda, Executive Director, Center for Environmental Policy and Advocacy-Malawi explains during his presentation

Mr. Banda informed participants that today's environmental harms are diffuse in time and space involving cumulative sources and touch not only individual interests but also and, increasingly, communal ones; Where large scale environmental harm occurs, the damages may be such that the defendant may not be able to pay. He cited examples of policy and legislative responses which include imposing no fault liability, insurance or bank guarantees or bonds, procedural mechanisms to facilitate collective actions and access to courts or funds to compensate future victims. He however noted that compensatory legal remedies are inept to dealing with potentially irreversible and irreparable harm surrounded by uncertainties of cause and effect. Criminal law also applies after the event and generally there is low political will to enforce non violent 'white collar' crime in the face of limited resources.

He also observed the importance of statistics which show where we need to prioritize and stated that data is important in identifying what kind of remedies to put in place. He noted that there has been a move from compensation to prevention even at international level.

He concluded by stating the need for a courageous bench and an imaginative and innovative bar through judicial intervention in espousing applicable principles used in environmental law remedies. (Detailed paper in annex 7)

Discussion.

In the discussions that followed, participants made the following contributions:

- The participants observed that sometimes it is difficult to find defendants to punish or to sue because defaulting companies have learnt to hide behind different corporate identities.

- Participants suggested that regarding corporate veil- more subtle controlling means can be used. The issue therefore should be about conducting opposite investigations to find out who really is behind it. Even in civil law, legal action can be taken which will be civil action. The civil law provides for compensation but for criminal cases, the compensation may not be effective. It may take a prison term to deter individuals.
- They emphasized the fact that land users must protect the environment irrespective of their tenure.
- They also observed that courts realize and quite often carry out their responsibilities of being proactive and sometimes go beyond what is required of them to be just.
- They further noted that it is essential for lawyers to present evidence upon which court will be able to make a proper and just decision rather than criticize courts judgment. Each individual should therefore do their part.
- Participants emphasized that the quantity of institutions is important in ensuring they work with people who can take decisions and implement them.
- It was observed that there is an outer space treaty of 1967 governing the moon and other suggestive bodies categorized as heritage of human kind. It imposes a responsibility on astronauts and human kind to ensure no dumping of hazardous waste in such places (outer space).
- Participants agreed that the law must balance economy, cultural, moral and aesthetic issues so as to achieve sustainable development.

3.7 Intellectual Property Rights, other Rights and the International Regime on Biological Resources

By: ***Godber Tumushabe, Executive Director, Advocates Coalition for Development and Environment (ACODE).***

Chaired by Justice Anna Magezi

Mr. Gober Tumushabe began by introducing himself as an advocate and Executive Director of ACODE an independent public policy research, analysis and advocacy think tank.

He briefly defined Intellectual Property Rights (IPR) as property rights in something intangible and that protects innovations and rewards innovative activity. He noted that the debate of IPR and biodiversity dates back to the days of Charles Darwin. Darwin in his publication *On the Origins of Species by Means of Natural Selection (1858)* where *evolution* was presented as the driving force of life, with successive selective pressures over time endowing living beings with optimized characteristics for survival.

Mr. Godber Tumushabe, Executive Director ACODE stresses a point to the participants

He gave an overview on the history of patents stating that the first patent was granted to Ananda Chacrabrty of US General Electric. He also highlighted judgement of the court in upholding what was patentable and cited the case of ***Diamond v. Chakrabarty***, where the US Supreme Court held that genetically altered living organisms were patentable as manufactures or composition of matter because human agency had effectively removed such organisms from the category of items occurring in nature.

While expounding on the debate between Intellectual Property Rights and Biodiversity - Foundations, the presenter noted that the subsequent adoption of the Convention on Biological Diversity in 1992 changed the entire discourse as countries recognized the economic, ecological and cultural importance of Biodiversity especially given the increasing biotechnological applications of genetic material. He observed that issues of sovereignty, property and control concerns became the linchpin for international public policy discourse on Biodiversity.

Mr. Tumushabe noted that there is widespread concern about the impacts of Intellectual Property Rights especially patents on the principle of sovereign rights of nations over their biological resources as restated in the Convention on Biological Diversity, the continuing direct and indirect misappropriation of genetic resources including Traditional Knowledge –often referred to as biopiracy and the potential genetic erosion arising out of patent driven seed systems that crowd traditional seed systems from the global seed industry. He observed that because new industrial sectors such as cosmetics, gene therapy and crop protection are opening new economic possibilities, issues of benefit sharing are now arising. There are still major concerns that the providers of the biological material are not benefiting in any possibilities in these huge economic benefits.

He concluded his presentation noting that in African countries, Intellectual Property Rights is seen and applied by both Government and the courts as an end in itself rather

than a means to achieve certain society developmental objectives. He stated that Africa countries cannot benefit from biological resources unless they develop there science, technology and innovation capacity and infrastructure. (Detailed paper in annex 8)

Discussion:-

The following were some of the key issues highlighted during the discussions that followed the presentation:

- Participants noted that the cases relating to patent infringement will soon be filed in court but will be based on protection of certain rights including community rights.
- They also noted that Uganda does not have any law that deals in the application of genetically modified products, and field level trails in genetically modified products is the second last step in the biodiversity.
- Participants further observed that patent infringement issues may not take so long to be filed in courts of law. Locals have already started applying for patents in the register of companies.
- They also observed that there are minimum requirements for granting a patent. Traditional knowledge historically has been protected by trade secrets. Novelty, inventivety are some conditions and requirements that materials need to meet before being granted a patent.
- They noted that local scientists in developing countries do not have the gadgets and the science to analyze substances to a patentable level, they would require help from the government.
- Participants suggested that there should be shared benefits from resources that are owned by communities with regard to communities that earn multiple resources. Thus the state should organize for exploitation of these resources.
- The participants also agreed that Judges are men and women who have when been vested with unique wisdom and therefore are able to make good judgments for the protection of the environment and natural resources.
- It was observed that developing countries are so weak and incompetent. Exploitation of resources needs to be organized at a macro level and therefore dependent on the state for organized exploitation. Weak states are unable to carry out this important function.
- The participants agreed that states have been able to protect some communities from alienation from their resources. i.e the Batwa communities whose salvation may now be on courts. They have not been able to come to court due to lack of resources and information.

3.8 Practice and Procedure; Rethinking Legislative Procedural Rights in Uganda.

By *Phillip Karugaba, Advocate, MMAKS.*

Chaired by Mr. Robert Wabunoha

In his presentation, Mr. Phillip Karugaba depicted justice in the form of a woman. He observed that the traditional Grecian model of justice is a sightless Goddess, balancing scales of justice.

He observed that justice applied without regard to circumstance, particularly in the arena of human rights, can be harsh and oppressive. So there is need to move on to another model rather than the ancient one of the famous Lady Justice statute, holding the scales of justice in one hand and a sword in the other. She was depicted as blindfolded by artists to show that justice was not subject to influence.

He stated that human rights cases affect everyone including members of the Judiciary and Uganda's history shows members of the Judiciary are not immune to the grossest violation of their rights, neither too is the very Temple of Justice. Using a model of the traditional African woman collecting water, fetching firewood, caring for her children and her husband, he portrayed justice as a traditional African woman, fully engaged in community and fully affected by its good and ills, he said the judiciary would be able to make decisions to advance our societies.

He observed that the procedure under Article 50(2) of the Constitution of Uganda provides that any person or organization may bring an action against the violation of another person's or group's human rights. This procedure for actions under Article 50 is spelt out in the current Judicature Rules (S.I 13-14). The main forum for this action is the High Court, though the provision may also be invoked in Article 137 proceedings in the Constitutional Court. However the actual form of the pleadings, whether by Notice of motion or plaint, is a subject of great contention and anguish. He further observed that the that the once clear provision on proceeding by Notice of Motion was lost on account of a misprint or more accurately mis-binding, in the photocopied volumes of the laws of Uganda.

He also noted that the Uganda Human Rights Commission, a specialised forum for the adjudication of human rights violations is doing a tremendous job. .The Commission has dealt with several claims for damages for violation of individual human rights arising from such scenarios as unlawful detention and torture. In several cases it has awarded damages quite off the scale from what we would routinely see in the High Court. Satisfaction of these awards against Government remains the perpetual challenge.

Using various examples he urged for the judiciary to rethink procedural rights. He cited the example of the set of cases that perished on the 30 day rule. Rule 4(1) of the Judicature, Directions (S.I 13-15) which has now been repealed, hitherto required that a petition be filed in the Constitutional Court within 30 days of the breach of the

Constitution complained of. He noted that it was only after the dismissal of several cases, followed by a period of contortions to ameliorate the rule, that the Constitutional Court was eventually won over to finding the 30 day rule unconstitutional.

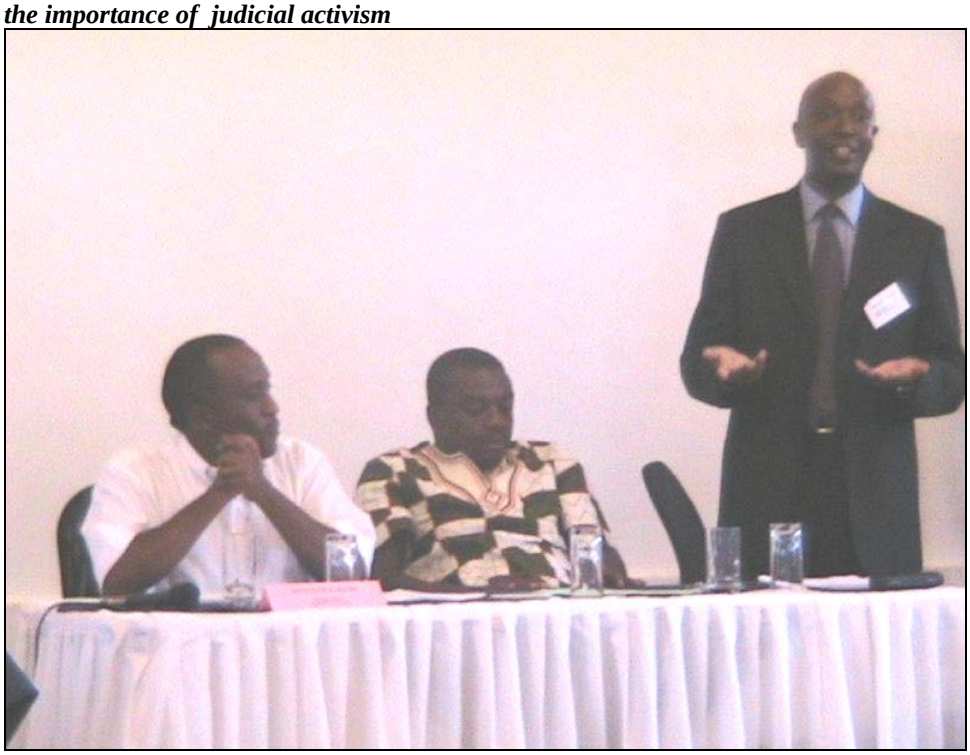
He concluded his presentation by urging the members of the judiciary to take full advantage of their security to do that which the Constitution so dearly requires of them. (Detailed paper in annex 9)

Discussion.

Participants commended that presenter for his lively presentation and made the following contributions:

- The participants noted that in law it is necessary to follow the right procedure and channels.
- They also noted that reliance on scientific evidence does not always resolve issues. Article 137 (3) being evoked.
- The participants agreed that there is no need to overburden the constitutional Court. In some countries like Canada, the accused should show exceptional reason why he should be released on bail. While in others, offenders accused of crimes such as rape, murder are not granted bail.
- They observed that as activists, sometimes there is need to challenge the status quo. Case by case should be looked at and human rights should not be infringed even when court may not always have a reference to base on.
- The participants also observed that it is important to appreciate the need for the court to be and always appear neutral and independent. It inspires confidence, and parties to come for justice and protect judges. However for court to move by its self can present a problem for the individual judge.
- They emphasized the important role of the court in assisting members of the public to bring about their problems that is to say in assisting them, counseling them and telling them what to do. They also offer guidance.
- They also emphasized the need for the public should appreciate the role played by the judiciary in this country which is not always easy.
- It was suggested that decisions based on technicalities may also have underlying matters, thus it is important for individual coverage on the part of the judicial officer and where the cause of justice demands it, there should be no infringing on it.
- Participants observed that a tortoise also depicts justice. It moves step by step, slow but sure. Therefore, where there is a problem in litigation involving vulnerable people especially in regard to property and men selling it leaving women and children to suffer, Court sometimes takes initiative because of vulnerable people. But this may present an issue of bias when dealing in human rights.
- They also suggested that judicial officers should be commended for assisting litigants in achieving justice. There is need for judicial officers not to be constrained.

Mr. Phillip Karugaba, Mr. Robert Wabunoha listen as Mr. Kenneth Kakuru reiterates the importance of judicial activism



- Regarding courts in East Africa acting in a *suo motto* manner, the participants agreed that this was a good sign of things to come. However, the *suo motto* Jurisdiction is arrived at sparingly to avoid bias. In this event, costs should be received by bodies like the law society etc. just as there is creativity in community service orders, there should be creativity in such matters.
- It was emphasized that everyone has a duty to defend the constitution.
- Participants also noted that Court has not always been seen as a sanctuary for the vulnerable and the needy. People need to be safe and thus this will highlight the concept of justice as envisaged by court. Courts must learn towards justice, which is two way traffic.
- They noted that because some laws are unjust, justice is always in the interest of the strong parts. Justice is not a question of faith, it is also a spirit.
- Participants suggested that the law should remain blind to most of the things apart from issues of human rights. In law, there is an exception to the general rule if the matter relates to human rights and affects majority of the people.
- It was agreed that removing the blindfold on justice should be an exception but not the rule.
- It was further noted that Acts of Parliament in Uganda have been interpreted using English acts of Parliament where Parliament is supreme. This presents a problem because in Uganda what is supreme is the Constitution not the executive or Parliament.
- Participants also suggested that in making laws we should follow the provisions in the Constitution.
- They further observed that the issue of courts being able to move without someone moving it is not new that is to say move chamber summons have to be

signed by court. Court inquires without pleadings where there is need for clarity. The example of applicable for bail was cited because this application does not have to be formal in the High Court. For bail one does not need to have a notice of motion and an affidavit.

- Participants noted the need for the judiciary to be more pro active.

4.0 CLOSING REMARKS

4.1 Remarks by Mr. Kenneth Kakuru.

Mr. Kenneth Kakuru thanked the participants for sparing time away from their busy schedules to attend the judicial symposium. He hoped the participants had benefited from the fruitful discussions especially in environmental matters.

He informed the participants that *Greenwatch* will continue to work with her partners like Judicial Studies Institute, Environmental Law Institute to conduct more training in environmental laws and to share materials and judgments from other jurisdictions. He stated that *Greenwatch* is ready to work with individuals and judicial officers in environmental management and enforcement of environmental law. He emphasized that it is time for us to build on our existing institutions and enforce and uphold the existing laws in place.

He expressed his gratitude to the **John D. and Catherine T. MacArthur Foundation** for providing funding for the workshop and to **Environmental Law Institute (ELI) – Washington DC** and **UNEP** for providing materials for the workshop. He particularly thanked **Mr. John Pendergrass of ELI** for his commitment to this training program, and to **ELI** for their support both financial and material.

4.2 Remarks by His Lordship Hon Mr. Justice Augustus Kania

His Lordship Hon Mr. Justice Kania said that the partnership between *Greenwatch* and Judges in the field of education has been going on for sometime. He observed that this partnership had led to training which has been an enriching experience for the members of the judiciary. He appealed to *Greenwatch* and its entire sister organizations to increase the regularity of this training and expressed his appreciation for the materials that were distributed during the workshop. He urged his fellow judges to be equal to the challenge that had been bestowed upon them.

4.3 OFFICIAL CLOSING CEREMONY.
By Ms. Rachel Musoke, Assistant Commissioner in the Department of Environment Affairs in the inspection of the environment.

The Assistant Commissioner in the Department of Environment Affairs in the inspection of the environment Ms. Rachel Musoke, represented the Minister for Environment Hon Jessica Eriyo at the closing of the Judicial Symposium on International law for judges .

Ms. Musoke sad she was honoured to officiate at the closing of this important workshop for Judges where intriguing topics in the area of environmental law had been covered. She commended the participants for having completed the workshop and for having fully participated in it.

She was happy to note that *Greenwatch* continues to undertake Environmental Law training especially in conjunction with **Judicial Studies Institute,** J**ohn D. and Catherine T. Mac Arthur Foundation**, **UNEP** and **Environmental Law Institute.**

She emphasized the need for Judicial officers to appreciate the contribution of the environmental and natural resources sector in order to fully appreciate the need to make pragmatic decisions touching on environmental management and natural resource use. She hoped that the workshop had enabled the participants to understand and conceptualise the legal issues under the respective topics covered and urged them to put their skills to test and create opportunities to do so. She also urged them to utilize the materials they had been given, to enhance their knowledge in environmental law and to draw from experiences else where.

She commended ***Greenwatch*** **and the Judicial Studies Institute for organizing the workshop. She extended her thanks to t**he **John D. and Catherine T. Mac Arthur Foundation** for sponsoring the training and to **Environmental Law Institute for technical and material support**.

She thanked the participants for being able to find time from their busy schedules to attend to this workshop.

The workshop was declared closed at 4.00pm on 12th June 2007.

6.0 WORKSHOP EVALUATION

At the end of the training, the participants were provided with an evaluation form and requested to comment on how the workshop was organized and conducted, the nature of topics presented, facilities provided and generally how they rated the workshop. Below is a detailed summary of how they responded.

6.1 Participants stated that the timing of the workshop was convenient for them and majority of them had received their invitations on time.

6.2 (a) The venue was convenient and accessible to the participants who came for the workshop. However, a few of the participants stated that they would have preferred the workshop to be held in the center of Kampala town.

(b) Most of the participants rated the venue chosen for the workshop as good but stated that the hotel needed to improve on some of its facilities to make participants more comfortable in a relaxing environment.
(c) Majority of the participants said they were well received upon arrival by the workshop organizers.

6.3 Comments on the workshop program

(a)Topics

Participants noted that the topics chosen were very relevant and educative to judicial officers. They stated that the topics were quite good in terms of their content and interesting and would provide further insight on the different aspects of international environmental law.

(b) Duration

Most participants observed that the duration of the workshop was appropriate for judicial officers. They however observed that some of the presentations took a long time.

6.4 Ratings of the presentations by topic.

A) International Environmental Law and Policy- Mr.John Pendergrass

The presentation was rated as good by most of the participants. The presenter was eloquent and his paper was well researched, and concise.

B) Overview of the State of Environment in Uganda: Emerging Challenges –Ms Christine Echookit Akello

Participants noted that the presenter was articulate and very knowledgeable about the state of the environment in Uganda. Her paper was detailed and well researched and she gave a good lecture on her topic.

C) The Legal Regime on Trans-boundary water resources for the shared Water resources in the East African Region- Dr.George Wamukoya

The presentation was noted as very good and majority of the participants stated that the presenter was very eloquent, authentic and knowledgeable and had a well researched paper. The presenter was a good communicator and very concise in his explanations using examples to enable them to clearly comprehend the issues being discussed

D) International Regime on Hazardous Wastes and Chemicals and their impacts: International and national responses- Prof Francis D.P. Situma

Majority of the participants stated that the presentation was very good, educative and enlightening. The presenter highlighted the various international conventions on hazardous wastes and the implication for the countries that are signatories to these treaties and conventions. He was elaborate and well organized in his presentation.

E) Ecosystem Services and Environmental Law- Mr. Robert Wabunoba

The presenter was noted to be very knowledgeable on the topic and gave detailed explanations to enable the participants to understanding the components of an eco system. He had a good understanding of the different concepts and was well understood by the participants.

F) Environmental Remedies - Mr. Gracian Banda

Participants rated the presentation very good, and commended the presenter for his presentation. They stated that the presenter demonstrated a thorough understanding of the different environmental remedies in and their impacts citing legal cases from the various countries in terms of national and international law.. His paper was informative, insightful and well researched.

G) Intellectual Property Rights, other Rights and the International Regime on Biological Resources – Mr. Godber Tumushabe

The presentation was very good and educative, well researched and the presenter was very clear and knowledgeable though his paper was technical. The presenter used practical examples to enable the participants to comprehend the necessity for patents and the role of the court in intellectual property rights. His paper was brilliantly presented.

H) Practice and Procedure; Rethinking Legislative Procedural Rights in Uganda- Mr. Phillip Karugaba

Participants also rated the presentation very good. They stated that the presenter had provided food for thought in terms of judicial activism and how justice should now be perceived. The presenter was eloquent and engaged the participants in a lively discussion to allow an exchange of ideas as he advocated for change.

6.5 Comments on whether participants' expectations were met.

Majority of the participants stated that their expectations were met. They had acquired knowledge on International environmental law and an insight in resolutions of environmental cases and disputes.

6.6 Suggestions to improve on future trainings

It was suggested that

- Workshops should be held every three months to monitor progress being made
- Environmental laws should be harmonized and implemented.
- Duration of the workshops be increased to one week in order to have enough time and avoid congesting topics.
- Participants should be encouraged to do research prior to the workshop.
- Current issues in particular climate change and its impacts should be discussed as priority topics
- Workshops should be conducted on a regional basis.
- Workshops should include other stakeholders including forestry officers, fisheries, and also involve health workers, different policy makers and civil leaders. Politicians be included among the participants.
- Participants should be sent updates on the impact of the trainings through email.

6.7 Comments on whether there is need to hold another workshop covering other aspects of environmental law.

Most of the participants said that there is need for another workshop covering other aspects of environment to be held. This is because the subject of environmental laws is wide and cannot be exhausted in only three days. Participants noted that issue of environmental remedies, procedure, assessment of damage and compensation need to be discussed comprehensively. Other areas also largely remain unexplored. More training would also help in availing case studies from the different courts outside Uganda like India to help the judiciary gain more insight in making well informed decisions.

They stated that environmental issues are dynamic and therefore there is need for more training workshops on emerging issues in the field of environment. The participants also noted that there is need to monitor whether the environmental laws are being complied with.

ANNEX 1

OPENING REMARKS AT THE JUDICIAL SYMPOSIUM ON ENVIRONMENTAL LAW AND PRACTICE IN UGANDA BY HIS LORDSHIP HON MR. JUSTICE J.W.N TSEKOOKO, JUSTICE OF THE SUPREME COURT AND CHAIRMAN, JUDICIAL TRAINING COMMITTEE.

> ***The great tides and currents which engulf the rest of men, do not turn aside in their course , and pass the judges by.***
> *Justice Benjamin Cardozo, Nature of the Judicial Process, 168 (1921)*

My Lords
Your Worships
Members of the Bar
Distinguished Resource Persons,
Distinguished Participants
Ladies and Gentlemen

I am pleased and honoured to officiate at this Advanced Judicial Symposium on Environmental Law and Practice.
The judiciary has been conducting training for judicial officers in environment law since the year 2000 as part of its broad program of continuing judicial education whose overall objective is to enhance judicial skills..

At present most of the High Court Judges, Justices of the Supreme Court and Court of Appeal have gone through this training. This training is intended to equip judicial officers with knowledge on emerging environmental law issues and to generate a common understanding of the environmental litigation process.

Unlike other aspects of law, environmental law is in many ways a new branch of the law. I suspect that most of our judicial officers especially the Judges of the High Court and superior courts did not have the opportunity to study environmental law at their law schools as it was not offered as a subject. So recent is environmental law that it was only introduced at Makerere University a few years ago and I understand that even then, it is still an optional subject.

With the enactment of the National Environment Act in 1995 and the subsequent adoption of the 1995 Constitution, the role of natural resources in our economy and consequently their protection and conservation has become increasingly significant. Natural resources are God-given and the Constitution enjoins us to preserve them for the use and enjoyment of the present and future generations. This is clearly spelt out in

a) National objectives and Directives Principles of state policy No. 27
b) Chapter 15 of the Constitution (Article 245) etc

Given Uganda's rapid economic growth, the threat to our natural resources and to our environment grows everyday. Economic activity ranging from industrial concerns, large scale agriculture, floriculture, horticulture and agro-processing industries is growing.

Hardly a week goes by, without a media report on the environmental threats of a particular economic activity. A recent case in point is the Mabira forest, a natural forest reserve, a natural habitat for thousands of bird species, whose value is beyond trees. The forest reserve was cited as an option of land wanted by a developer to expand sugar cane plantations.

The National Environment Management Authority (NEMA) established in 1995, should be commended for its efforts in protecting our environment. However, I am informed that NEMA has a shortage of manpower and resources and therefore it can not cover the entire country despite Uganda's relatively small size.

There is a challenge for each one of us to get involved in environmental protection. It is not just a matter for the non-governmental organisations and NEMA but for all of us as beneficiaries and trustees of the natural resources. Article 39 of the Constitution recognises the right of every Ugandan to a clean healthy environment, while Article 17(j) imposes a duty on every citizen of this country to create and protect a clean and healthy environment. The constitutional duty to protect the environment falls heavily on us as members of the legal profession, for the defence of rights is our domain. It is only by working together through such efforts as this Symposium and hopefully in litigation, that our constitutional duty can be effectively and truly discharged. We thus fall short of our constitutional duties when we observe environmental degradation taking place and do nothing.

Much of this apparent apathy maybe a result of lack of proper knowledge and adequate skills on our part, hence the significance of this symposium. It is hoped that this symposium will equip participating members of the Bench with more necessary knowledge and relevant skill to play an effective role in protecting a clean and healthy environment.

The environmental cases ideally are no different from other cases, and the role of a judge is always the same. However in environmental matters are not just arising disputes between two parties. The issues to be adjudicated have far reaching consequences, the impact of which no judge may escape. Pollution of air, Lake Victoria, rivers are examples.

A judicial decision has capacity to impact on lives of every citizen of Uganda alive and yet to be born. For this reason they deserve an appropriate measure of seriousness. Environmental cases be they unfamiliar or even complex, but judges as guardians of the law must still secure them and give environmental law the force and the effect it often deserves.

Judges need to be familiar not only with domestic environmental law but also with international environmental law, norms, and standards as constituted in international treaties and conventions, declarations, protocols and such other documents. The awareness of these laws would ease the work of the judiciary in handling complex cases expeditiously and effectively.

In this regard the objective of this working symposium, is among others, to:

1. Increase the judges understanding of the nature of environmental problems in Uganda globally so that they may respond to environmental cases with a clear picture.
2. Introduce, and expand a common area environmental law principles , their expression and applicability.
3. To expose participating judges to judicial experience in other countries in environmental law context.
4. To show past experience in environmental law jurisprudence in Uganda and forge a common understanding
5. Share experiences form other jurisdictions especially within East African Community

The Uganda Bench is challenged to be proactive in protecting the environment like other jurisdictions. The Bar has risen to the challenge of protecting the environment and has brought several public interest litigation matters. While these cases have met with varying degrees of success, these are nonetheless a welcome development. Public interest litigation represents an opportunity for the indigent, the illiterate, other disadvantaged or simply uninformed groups in society to be represented by persons or organisations having specialised knowledge, all for the common good.

The Judiciary needs to encourage these initiatives particularly in environmental protection. We as members of the Bench ought to be able to distinguish between public interest litigation and private litigation by recognising the wider public interest at stake. This may occasionally call for our liberal discretion in the application of procedural rules or in the sad event of an unsuccessful case, in the award of costs. There is no reason why a party that seeks bona fide to vindicate public rights, bearing neither ill nor selfish motives, should suffer the burden of costs.

Even as the Bench prepares to take on this challenge, there remains a challenge to the Bar. The Uganda Law Society must encourage its membership in particular its senior membership, to spare resources for public interest litigation. One possible method is to recognise public interest litigation as qualifying as legal aid envisaged under the amendments to the Advocates Act.

We are constantly reminded that all judicial power rests in the people of Uganda who exercise it through courts. Our legal system is therefore based on the people (the bench) that is independent, fair and competent judiciary will interpret and apply the law that govern the people of Uganda. The role of the judiciary in this case is thus central to people's concept of justice and rule of law.

I would like to thank all those organizations and individuals who have made this training possible. Special thanks go to **The John D and Catherine T. MacArthur Foundation** for sponsoring the training, and **Environmental Law Institute -Washington D.C for their past financial support, Greenwatch** and The **Judicial Studies Institute** for

organizing the training, **United Nations Environmental Programme** for contributing to the preparation of the materials and **NEMA** for their support.

I would like to thank **Mr. John Pendergrass of Environmental Law Institute-Washington D.C,** his personal commitment to this programme.

I also wish to commend and thank the **Judicial Studies Institut**e together with the **Judicial Training Committee** for enabling the training of Judicial officers in environmental law.

It is Now My Distinct Pleasure, To Declare This Judicial Symposium on Environmental Law, Officially Open.

I wish you fruitful deliberations.

FOR GOD AND MY COUNTRY!

Thank you for listening to me.

ANNEX 2

INTERNATIONAL ENVIRONMENTAL LAW AND POLICY
By: John Pendergrass, Environmental Law Institute, Senior Attorney, Co-Director International Programs

ENIVRONMENTAL LAW INSTITUTE.

The Environmental Law Institute makes law work for people, places, and the planet. With its non-partisan, independent approach, ELI promotes solutions to tough environmental problems. The Institute's unparalleled research and highly respected publications inform the public debate and build the institutions needed to advance sustainable development.

Overview

1. What is international law?
2. Historical overview of key international environmental events
3. Overview of international environmental principles
4. What do they "mean"?

What is international law? International law consists of the following:-

- Treaties, protocols, etc.
- Custom
- General Principles of Law
- Judicial decisions and other

Treaties, Protocols, etc

Art. 38(a) ICJ Statute: "international conventions, whether general or particular, establishing rules expressly recognized by the contesting states" Conventions, Treaties, Agreements Framework Conventions
Protocols

Customary International Law

Art. 38(b): "international custom, as evidence of a general practice accepted as law"
Key elements:

- Practice (by sufficient number and type over a sufficiently long time)
- *Opinio juris* ("conception that the practice is required by, or consistent with prevailing international law")

General Principles of Law

Art. 38(c): "the general principles of law recognized by civilized nations" Usually understood to be "obvious maxims of jurisprudence of a general and fundamental character"
Not:

- Principles of moral justice
- Not ethical rules of "equity"

Judicial decisions and other

Art. 38(d): "judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

Who Does International Law Apply To?

- Nations/States
- Individuals/Firms

Where Does International Law Fit in National Law?

- U.S. (typical)- Supremacy
- Ratification
- Implementation in national law

Is there a difference between international environmental policy and international environmental law?

Hard" vs "Soft" Law

- Enforceable responsibilities
- Declarations of principles or desired outcomes

International Environmental Law

- 700 Multilateral Environmental Agreements
- Common Approaches

Multilateral Environmental Agreements (MEAs) – "Hard" Law
Convention on International Trade in Endangered Species of Wild Flora and Fauna (CITES)

- Montreal Protocol - ozone
- Basel Convention – hazardous waste

MEAs
-United Nations Framework Convention on Climate Change

- Kyoto Protocol

-Stockholm Convention on Persistent Organic Pollutants

-Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (PIC)
-Convention on Biological Diversity

UN/ECE Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (Aarhus Convention)

MEAs – "Soft" Law"

Rio Declaration on Environment and Development of the United Nations Conference on Environment and Development (UNCED)

-Agenda 21

A Short History of International Environmental Law and Policy

- Water treaties (e.g., 1909 Boundary Waters Treaty)
- Migratory Bird Treaty
- Trail Smelter case (1930s to 1941)
- Growing environmental awareness

1972 U.N. Conference on the Human Environment (Stockholm)

Stockholm Declaration
Established UNEP
Established an Environment Fund
Stockholm Action Plan (Earthwatch)

Development of numerous treaties

1970s: IMO, Regional seas treaties, Ramsar (1971), CITES (1973), World Heritage Convention (1972), CMS (1979) and regional wildlife treaties
1980s: UN Convention on the Law of the Sea (1982), Vienna Convention (1985), Montreal Protocol (1987), Basel Convention (1989)

Development of "Sustainable Development"

Club of Rome and "Limits to Growth" (1972)

- The Brudtland Commission and "Our Common Future" (1987)
- UN Conference on Environment and Development (Rio, 1992)
  - UN Framework Convention on Climate Change
  - Convention on Biological Diversity

UNCED cont'd

- Rio Declaration
- Non-binding Forest Principles
- Agenda 21
- Commission on Sustainable Development
- Launched process to develop Convention to Combat Desertification

Following UNCED (RIO)

- Globalization
- Trade & Environment debate (NAFTA, GATT/WTO)
- Development of domestic environmental laws
- Further MEAs (POPS, PIC, UN Fish Stocks Agreement, …)
- Increasing frustration at lack of implementation

UN Millennium Development Goals

- 2000 with goals for 2015
- Halve, by 2015, the proportion of the people without sustainable access to safe drinking water and basic sanitation
- By 2020, to have achieved a significant improvement in the lives of at least 100 million slum-dwellers

World Summit on Sustainable Development (Johannesburg 2002)

- Focus on implementation
- Johannesburg Declaration
- Johannesburg Plan of Implementation
- "Type II" Partnerships

Shift toward compliance

- UNEP Guidelines on Compliance with and Enforcement of Multilateral Environmental Agreements (2002)
- UNEP Manual on Compliance and Enforcement (2006)
- Increased interest in C&E: INECE, IUCN, …

Overview of Principles of International Environmental Law

- State Sovereignty
- Common but Differentiated Responsibilities
  - Developed Country Leadership
  - Extended Time for Compliance for Less Developed Countries
- State Responsibility
- Obligation not to Cause Environmental Harm
- Principle of Pollution Prevention
- Precaution
  - "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."
- Polluter and User Pays Principle
- Duty to Assess Environmental Impacts
- Public Participation

Other Principles

- Right to Development
- Common Heritage of Humankind
- Common Concern of Humankind
- Inter-generational Equity
- Subsidiarity
- Good Neighborliness and the Duty to Cooperate
- Duty to Provide Prior Notification and to Consult in Good Faith
- Principle of Prior Informed Consent

Common Approaches

- Control of Trade to Protect Environment
  - Endangered Species (protect species)
  - Hazardous Substances (protect human health and environment)

Use of International Environmental Principles

- Inform development of international environmental law
- Inform interpretation and implementation of international environmental law
  - Rules of decision for resolving disputes
- Inform development of national and sub-national environmental law
- Inform interpretation (and enforcement) of national environmental law

- Provide guiding principles for integrating international environmental law with other fields (e.g., human rights, trade, intellectual property)

- Possibly a basis for a general covenant of international environmental law (à la Universal Declaration of Human Rights)

Case Study

- Ivory Coast dumping of Hazardous Wastes
  - Is this an example of a conflict?
  - Violation of Basel?
  - Not specifically a trade issue
  - Hazardous waste is a “good” – an article of trade

ANNEX 3

OVERVIEW OF THE STATE OF ENVIRONMENT IN UGANDA: EMERGING CHALLENGES

By Christine Echookit Akello, Senior Legal Counsel (NEMA)

1.0 Brief background

In Uganda's environment sector, the National Environment Management Policy (NEMP) and sectoral policies[1] as well as the 1995 Constitution, the National Environment Act Cap. 153 (which is the framework environment legislation) and sectoral legislation[2]provide the legal basis for management of the environment. These instruments set out policy statements, protect natural resources in public trust, create rights and obligations in respect of environmental management, and oblige compliance and enforcement of the law.

This is in recognition of the importance of the environment and natural resource (ENR) sector as the backbone of Uganda's economy. The ENR sector contributes approximately 54% of the Gross Domestic Product of Uganda, both in direct financial gain/revenue and indirectly through the provision of environmental services.

However, despite the importance of the ENR sector and the development of the law to regulate and manage this sector, the state of environment in Uganda is far from rosy. There are a lot of challenges which impact on the management of the environment and compliance and enforcement.

2.1 Population growth

Uganda's population size, growth rate, structure and distribution are key factors governing environmental integrity. Over 90 per cent of a population of approximately 26.7 million (with a population growth rate of 3.3 per cent) depend directly on natural resources for their livelihoods. Over 80 per cent of the population is engaged in agriculture as the main economic activity. Poor agricultural practice is leading to increased soil erosion. As the population increases there is need for more land. Consequently fragile ecosystems like wetlands, riverbanks, lakeshore, hilly and mountainous areas are being encroached and destroyed.[3]
The challenge is to reduce dependence on natural resources and to have a sustainable population growth rate.

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[1] Such as the Wetlands Policy 1994, Wildlife Policy 1996, Fisheries Policy 2000, Forestry Policy 2001 and the National Energy Policy 2000, among others.

[2] Such as the National Forestry and Tree Planting Act, 2003, the Water Act Cap. 152, the Uganda Wildlife Act, Cap 200, the Land Act Cap 227; including subsidiary legislation made under the respective Acts.

[3] The extent and quality of Uganda's natural capital is on the decline driven largely by demographic factors; See UNDP Uganda Human Development Report 2005.

Population Density of Uganda, 1948-2002

Index	1948	1959	1969	1980	1991	2002
Population Density (Persons/Km2	25	33	48	64	85	124

2.2 Widespread Poverty and Income Inequalities

Although headcount poverty has declined from 56% of the national population in 1992 to 38% by 2004, poverty still presents special challenges. There is a high dependency of the poor on the environment and natural resource (ENR) sector. The poor are preoccupied with current survival, ignoring the long term benefits; and the gap between the poor and the rich is increasing. In addition, there is general lack of alternative livelihood opportunities for the poor and this has the effect of limiting their income generating opportunities, thereby increasing their dependence on the ENR sector. The poor are also victims of environmental degradation because their coping abilities are limited.

The solution to this problem may lie in effective poverty alleviation strategies, the provision of alternatives and the promotion of a culture of hard work, among others.

2.3 Deforestation

Deforestation rates are worryingly high. Forest and woodland cover dwindled from 12.5% of the total area of Uganda in 1900 to 3% in 1987.[4] Uganda's forest cover is estimated to be shrinking at 55,000 hectares per year. Already 30 per cent of the tropical high forests which provide high value forest products, environmental services and biodiversity are estimated to have been degraded with all their associated dependent biodiversity, mostly due to agricultural expansion and unsustainable harvesting, charcoal production, urbanization and industrialisation.

This is particularly worrying given that as of 2001 what was left of forest cover was approximately 4.9 million hectares of which 70% is on private or customary land and only 30% is in protected areas (forest reserves, national parks and wildlife reserves). In the absence of appropriate interventions, forests and woodlands on private land could be wiped out in 17-62 years.[5]

Interventions called for include promoting the value of forest cover, forest products and forest services; respect of forestry laws and policies; intervention through court action and court declarations like in the Butamira case[6] on public trust where the Hon. Mr. Justice Aweri Opio ruled that:

[4] Uganda National State of Environment Report 2004/5.

[5] UNDP Uganda Human Development Report 2005. The country's natural capital is being "mined" without much effort for replenishment, Uganda National State of Environment Report 2004/5.

[6] ACODE & anor. Vs Attorney General & NEMA. H.C MISC. CAUSE NO. 100 OF 2004.

Butamira Forest Reserve is land which the government of Uganda holds in trust for the people of Uganda to be protected for the common good of the citizens. Government has no authority to lease out or otherwise alienate it. However, Government or a local government may grant concessions or licenses or permits in respect of land held under trust with authority from parliament and with consent from the local community in the area or district where the reserved land is situated.

In Mehta –vs- Kamal Nath (1997), the Supreme Court of India quashed a grant of lease on the ground that the decision breached the public trust doctrine which enjoins government to protect all natural resources which are by nature meant for public use and enjoyment.

2.4 Energy Demands

Uganda has a variety of energy resources that include predominantly biomass, and petroleum products and electricity (mainly hydro electricity) representing consumptions of 93%, 6% and 1% respectively. Only about 8 per cent of the population have access to and use electricity. Of this, only 5% (and less than 1% of the rural population) have access to grid supplied electricity. The rest mainly depend on fuelwood. It is estimated that 16 million tonnes of firewood are consumed per year as domestic firewood while 4 million tonnes are consumed as charcoal per year.[7] There is increasing use of firewood in the brick and tile industry, lime production, fish smoking, tea and tobacco curing and sugar refining.

There is therefore need to invest in alternative renewable energy such as solar energy, wind energy and geothermal energy. Biogas introduced in Uganda over 20 years ago, also needs to be fully popularized as it provides a cheap, clean energy source for cooking and lighting and also generates slurry that can be used as agricultural fertilizer. Other affordable alternatives to biomass need to be looked into.

2.5 Soil and Land degradation

Soil erosion and land degradation are highly pronounced in the country, particularly in the hilly and mountainous areas. The annual economic value of soil nutrient loss is estimated at US $ 625 million.[8] Recent estimates of costs of natural resource degradation in the country put the costs at 17 per cent of the gross domestic product, of which 11 per cent is constituted by soil degradation. The major causes of soil and land degradation are deforestation and inappropriate farming methods.

The National Environment (Minimum Standards for Management of Soil Quality) Regulations,[9] the soil conservation efforts of the Ministry of Agriculture, Animal Industry and Fisheries (MAAIF) and NARO, need to be applied in concert with good agricultural

[7] Government must increase its investment in energy, short of which the achievement of environmental sustainability and Millenium Development Goals will be frustrated. See the UNDP Uganda Human Development Report 2005.

[8] UNDP Uganda Human Development Report 2005.

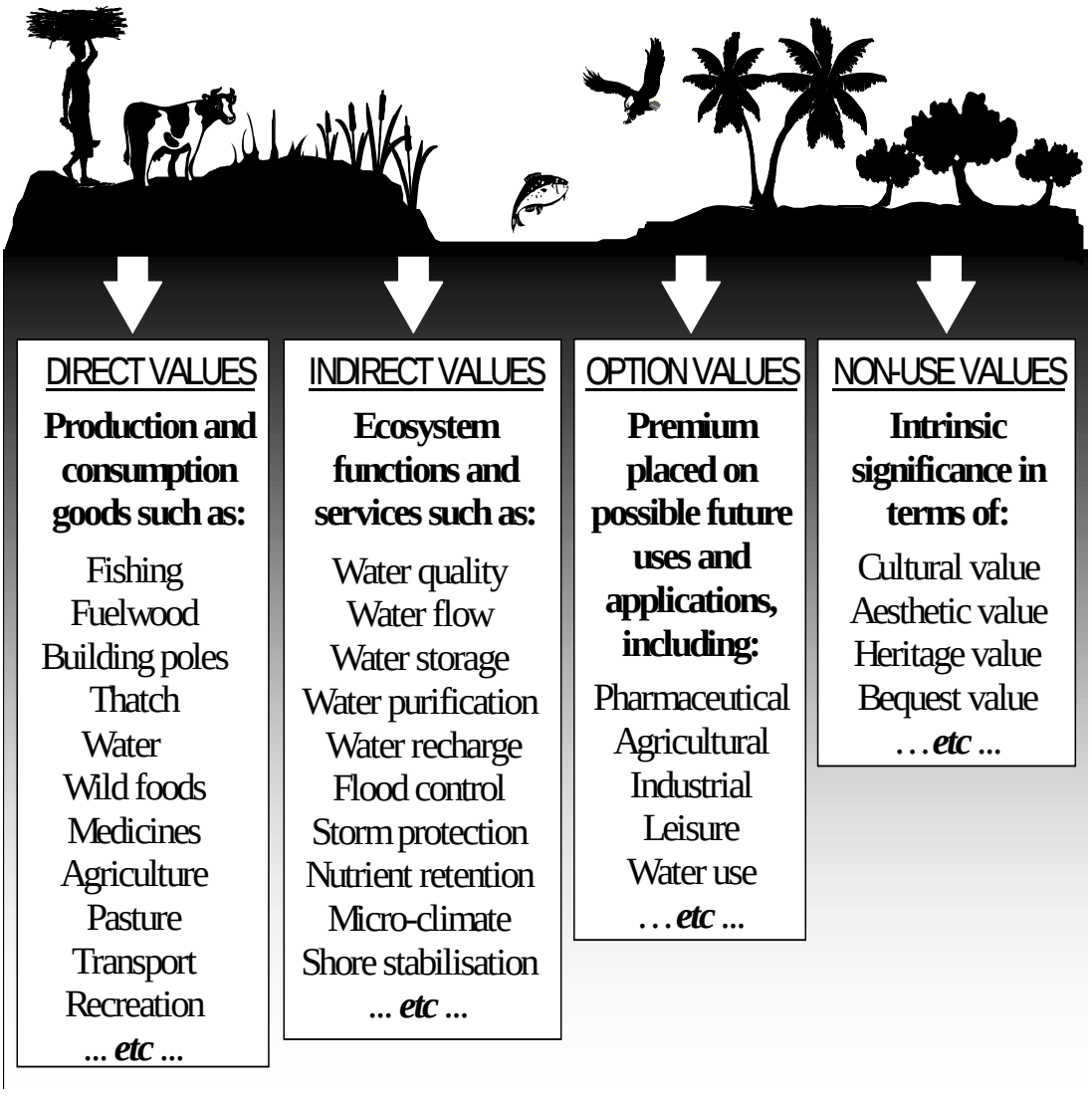
[9] S.I. No. 59 of 2001.

practices and enforcement measures, including the use of bye laws. The National Soils Policy needs to be finalised and the NEMA Committee on Soil Conservation facilitated to do its work. When the Soils Policy is finally completed MAAIF will be the implementing institution.

2.6 Wetlands

Wetlands occupy about 29,000 square kilometers or 13 per cent of the total area of the country. They comprise swamps (8,832 square kilometers), swamp forest (365 square kilometers) and sites with impeded drainage (20,392 square kilometers).

Importance of Wetlands



(National State of Environment Report 2004/5)
These kind of benefits/values are not always appreciated by stakeholders

Value of Wetland Resources

Sector	Value in Million US$ per Year
Surplus from Gorilla tourism	1.72
Wetland value to local households	11,400
Value of papyrus swamps to local households	3,420
Value of forest watersheds catchment	13.2
Pharmaceutical value of forests	1.15
Cost of soil degradation	625*
Cost of water contamination	21.8
Source Moyini and Muramira (2001) * UNDP Human Development Report 2005	

There has been and continues to be a continuous decrease in the wetlands as a result of increasing demand for land for agricultural purposes, industrial expansion and human settlement. And the cost of wetland encroachment to the economy is estimated at Uganda shillings two billion per year. The National Environment (Wetlands, Riverbanks and Lakeshores Management) Regulations[10] on wetland conservation and the Wetlands Policy are seriously undermined by wetlands encroachment and degradation. Poor planning by local authorities worsens the problem.

NEMA issues restoration orders and improvement notices to order compliance but its inspectors are in some instances shown land titles and their actions challenged. Issues of conflicting actions by government agencies come in and consequently there are claims for compensation. In respect of wetland areas to which titles were granted prior to the coming into force of the environmental legislation, the scenario is even worse. It is about time, in view of article 237(2)(b) of the Constitution on public trust and the fact that private persons have titles on fragile ecosystems, that courts put an interpretation to section 43 of the Land Act which provides that:

A person who owns or occupies land shall manage and utilize the land in accordance with the Forests Act (now National Forestry and Tree Planting Act), the Mining Act, the National Environment Act, the Water Act, the Uganda Wildlife Act and any other law.

NEMA has been using this provision to require compliance without requiring revocation of titles issued before the commencement of the environment legislation.

2.7 Degradation of Rivers Banks and Lakeshores

Riverbanks and lakeshores are very fragile ecosystems and traverse water catchment areas, a zone that includes the area where land and water meet. River banks and lakeshores support spawning beds for fish, trap runoff and excess nutrients from the land, provide shade and water and are also very important ecotourism assets. The main causes

[10] S.I. No. 3 of 2000.

of degradation of lake shores and river banks include overpopulation, declining upland soil fertility and consequent encroachment on riverbanks and lakeshores, and inappropriate land use practices in the catchment.

The challenge is to enforce the National Environment (Wetlands, Riverbanks and Lakeshores Management) Regulations on the no encroachment zone for riverbanks and lakeshores, in view of stiff land use issues and political "intervention" and directives.
We would like to see court pronouncements on the effect of such directives on implementation action by regulatory agencies under their respective mandates.

2.8 Solid Waste Management

Management of solid waste is very poor especially in urban centres. Inadequate infrastructure for the collection, transportation, management and disposal of solid waste is the main problem. Management and disposal of non-biodegradable wastes (for instance electronic wastes such as cell phone cards, batteries, scrap phones and their parts) is still a dilemma.

Festo Balegele & 794 Ors v Dar es Salaam City Council - the city council had argued that in dumping solid waste at Kunduchi Mtongani, it was 'reconditioning' the area and not polluting it. Justice Rubama (as he then was) stated in no uncertain terms that 'it is a statutory duty of the city council… to stop nuisance and not to create it.'

2.9 Water Pollution

Uganda is well endowed with fresh water resources including rivers and lakes. However the water resources are being polluted by effluents from industries, poor farming practices especially along rivers banks and lakeshores, destruction of the catchment and poor management of faecal matter.

Lake Victoria for example currently faces the problem of algae bloom as a result of pollution, deposition of soil nutrients (containing phosphorous and nitrogen) into the lake, naturally occurring phenomenon of water mixing in the lake thereby bringing the bottom soil rich in soil nutrients to the top, among other catchment issues. Such water pollution issues may give rise to transboundary environmental action in public interest. Where a factory is found to be discharging untreated effluent directly into water bodies it should be closed after compliance measures have failed.

In M C Mehta & Others –vs- Shriram Food & Fertilizer Industries & Union of India (AIR 1987 SC 965) the Petitioners asked the Supreme Court of India to close a chlorine plant following a disastrous gas leak. The closure affected 4000 employees and was firmly opposed by management and labour unions. The court held that in view of the large scale unemployment that would ensue from the closure, the plant should be reopened subject to detailed conditions such as weekly inspection, periodic health checks for workers, setting up safety committees and training workers in safety measures.

On the other hand in Rural Litigation and Entitlement Kendera –vs- Union of India (AIR 1985 SC 652) the Supreme Court ordered closure of the mines despite the looming unemployment. It however ordered that the retrenched workers should be re-employed in the reforestation and soil conservation works which it ordered be taken immediately.

In Vellore Citizens Welfare Forum –vs- Union of India (AIR 1996 SC 2715) the Supreme Court of India, in addition to ordering restoration of the polluted land, held the polluters liable for past pollution.

2.10 Fisheries

Fish is Uganda's leading non-traditional export and contributes between 2.2% and 3% of the GDP. However the country's fish richness is declining despite the introduction of new species. The current levels of fishing have also exceeded the Maximum Sustainable Yield (MSY) of 330,000 tonnes. The annual fish production and the average size of fish caught have greatly declined.

The main causes of the decline in fisheries includes depletion of fish breeding grounds, use of inappropriate fishing gears, fishing immature fish, use of chemicals to catch fish, presence of the water hyacinth, inadequate enforcement and the booming European market.

Administrative actions have been taken by the regulatory agencies but occasionally cases also end up in court for use of illegal fishing gear and bad fishing practices, among others. For instance, there are on-going criminal case in Nakasongola Chief Magistrates Court for bad fishing practices on Lake Kyoga, where fishermen deposited sandbags into the lake to anchor the moving sudds and bait fish.

2.11 Wildlife

By 1994, wildlife populations represented a small fraction of what they were in the 1960s, with some species such as both the black and the white rhino becoming extinct. By 2004, the populations of wildlife in protected areas had stabilised, and some even increased, although marginally so. Outside protected areas, the decline in wildlife populations continues almost unabated as a result of habitat loss, etc. The Uganda Wildlife Authority is piloting the conservation of wildlife populations outside protected areas through measures such as the operationalisation of the different classes of wildlife use rights provided for under the Wildlife Act. Also, communities adjacent to wildlife protected areas are being encouraged to appreciate the presence of wildlife through benefits (including revenue) sharing.

2.12 Climate Change

There is increasing concerns regarding climate change and global warming. Recently from 7th to 18th May 2007 Sessions of the Subsidiary Bodies of the United Nations Framework Convention on Climate Change and the G8 were held to discuss further long term cooperative action to enhance the implementation of the Convention. India, like most developing countries, was concerned that the developed world is not taking its

obligation to reduce emissions seriously and is instead putting more focus on carbon trade. In India's view, the priority of developing countries is poverty alleviation.
In general, Africa as a whole, emits only 3.5% of the world's total carbon dioxide at present and this is expected to increase to only 3.8% by the year 2010 (World Bank 1998). However, atmospheric gases know no national boundaries and Uganda is also impacted adversely by increases and fluctuations in the earth's temperature due to the effect of greenhouse gases over the last 40 to 50 years. People living in poverty are more susceptible to climate change.

Climate change influences the economic and ecological situation in Uganda and is characterized by drop in water levels in most water bodies in Uganda, increased intensity of drought, floods and changes in growing seasons. These changes are evidenced by reductions in food productivity and food security, reduction in human welfare and poverty, reduction in water supply and shorter rains and disorganized seasons.

As a result of climate change there has been a reduction in the ice cover on the Rwenzori Mountains and if the current trends in global warming persist, the ice cover will disappear altogether by 2023.[11] The disappearance of ice cover will mean reduced water flow in the streams downstream which feed into lakes George and Edward, and the Semliki River discharging water into Lake Albert and ultimately into the Nile. The biodiversity and tourism potential of the Rwenzori Mountains National Park will also be affected.

We all need to play our part as citizens with a duty to maintain and enhance a clean environment, and in our respective roles. Citizen watch groups, community service action with a biase on the environment and corporate responsibility will go along way in conserving our earth.

2.13 Development and Conservation

There are mounting social and economic development pressures on the ENR sector and little investment in conservation and sustainable use. The Investment Code Act was however amended to provide for EIA procedures to ensure that environmental concerns are taken into consideration before an investment activity commences.

The challenge is to guard against persons who encroach on the environment in the guise of bringing development into the country. The challenge too is in resisting the "State House" syndrome by people who claim to have been cleared by the State House, whose mandate in elsewhere.

2.14 Other Issues

a) Atmospheric/air pollution build up. The carbon fumes, the noxious smells, the refrigerants, the coolants, etc.

b) Trans-boundary issues, including environmental crimes.

[11] National State of Environment Report 2004/5

c) Implementation of national tree planting days under the National Forestry and Tree Planting Act.

d) Invasive alien species such as the water hyacinth whose dense mats block waterways, inhibit water transport and disrupt fishing, etc.; lantana camara which releases chemicals into the soil to prevent other plants from germinating; the flowering senna spectabilis, a tree that out-competes useful tree species; mimosa pigra, a shrub that forms dense stands that replace all native vegetation in wetlands; and cymbopogon nardus (omutete) a tussock forming grass that is unpalatable to cattle and very resistant to fire and too-frequent burning.

e) The environment management approach which emphasizes the subsidiarity principle (management of environment at the lowest possible level) seems not to be put to work. It could work well with bye laws, community service actions and simplified rules of access to courts.

f) The poor compliance culture of Ugandans. There is lack of respect for established environment authorities/institutions and laws; limited incentives for compliance with environmental laws; limited analysis of the social, economic and environmental impacts of the environmental laws (impact on the poor, the disadvantaged, the women; impacts of poor compliance on business and trade).

g) The high costs of enforcement - trained personnel with specialised knowledge, appropriate equipment and technology, proper facilitation. Since environment is about life itself, investment in the management and enforcement actions should be high in the list of priorities.

h) High Costs of Compliance. Compliance may involve investment in high technology, research and development (e.g. the US$ 7m investment by Uganda Breweries in effluent treatment).

3.0 Way Forward

a) Mobilization of sufficient human, financial and technological resources for the management of the ENR sector, including law enforcement and public awareness programmes.

b) There is need to catalyze community action and acceptance of good environmental management through showing/demonstrating possibilities for sustainable natural resource management and developing interventions that link natural resource management to income generation among the poor (eg conservation of the shea nut tree for Shea nut butter production and bee keeping).

c) There is need for political commitment to the management of the ENR sector and enforcement of environmental law. The “trees do not vote” syndrome should change.

d) There is need to balance economic development and environmental integrity.

e) Promotion of awareness and training in natural resource management and environmental law enforcement.

f) Encourage active participation of local government, local communities, civil society and private sector in environmental management.

g) Need to strengthen the capacity of civil society for advocacy on environment issues.

h) Enhancement of decentralized governance for environment management at district and community levels. For instance support should continue for local authorities to develop bye-laws in key areas such as protection of valuable tree species against indiscriminate cutting.

i) Finalization and adoption of a land use policy could go a long way to contribute to improved decision making for environment and natural resources management.

j) Achieving sound environmental management will require further integration of environment into policies, strategies, planning and budget processes at national and local levels.

k) Decisions concerning any proposed change in land use for protected areas require a much more rigorous evaluation for informed decision making.

4.0 Some Positive Aspects

a) Public awareness has been stepped up through a multi-media approach, publication of the National State of Environment Reports every two years, the District Environment Reports and establishment of District Resource centres.

b) There is improved capacity for environmental planning at District levels through environment action planning involving parish to District levels; and wetlands management planning in a few areas.

c) The Sector Wide Approach (SWAP) to environment and natural resources (ENR) planning was adopted. Environmental Management is now a key criteria for national socio-economic development decisions.

d) Mechanisms and guidelines for mainstreaming environmental issues into development planning at national and local levels have been elaborated.

e) Partnerships are being strengthened with Government ministries, other public organisations, the private sector and civil society to enable the different actors assume their responsibilities in environment management.

f) The ecosystem approach to natural resources management has been initiated in some districts such as in the Mount Elgon area, Ibanda and Bushenyi.

g) The sawlog production grant scheme is being promoted by the National Forestry Authority (NFA) and supported by the European Union.

h) The judiciary is being equipped to handle environmental cases.

i) There is forthcoming civil society advocacy.

ANNEX 4

THE LEGAL REGIME ON TRANS-BOUNDARY WATER RESOURCES FOR THE SHARED WATER RESOURCES IN THE EAST AFRICAN REGION: A COMPARATIVE APPROACH

By Dr. George Wamukoya, Private Consultant, Nairobi Kenya

This paper is concerned with three broad issues:

(1) Does the legal regime provide enabling framework conservation and sustainable use of shared water resources?
(2) What procedural rights and responsibilities accrue to States sharing a watershed?; and
(3) What are the responsibilities to other States and international community in general to protect the environment of transboundary watersheds?
(4) Is there a framework for ensuring compliance and enforcement of the Treaty?
(5) What is the institutional framework for dispute resolution:
(6) What remedies are available?

1.0 INTRODUCTION

1.1 Background

1.1.1 The regional cooperation by the governments of Kenya, Uganda and Tanzania was revived under auspices of the Permanent Tripartite Commission on 30th Nov 1993. Right at the onset of this revival, environment and natural resources sector was one of the identified key significant areas where joint cooperation was essential for purposes of spearheading sustainable development in the region. Some of the critical significant natural resources of common concern are the shared water resources such as Lake Victoria. Under the Treaty for the Establishment of the East African Community, 1999, chapter nineteen, Articles 111 – 116 cover aspects relating to environment and natural resources, including shared water resources.

1.1.2 The EAC law can be divided into two categories; namely primary and secondary. The primary sources of EAC law is the principal treaty and also those that have been enacted in order to amend the original treaty.

1.1.3 Secondary sources include secondary legislation, as enacted by the institutions of the Community, case law, which is derived from the judgements of the EACJ, general principles, as articulated by the ICJ and international agreements entered into by the EAC.

1.1.4 The EAC laws are not self executing. Quite simply EAC law is not part of municipal law of Kenya, Uganda and Tanzania unless and until it has been

incorporated into the law by legislation.

1.2 Primary sources of EAC Law

1.2.1 The principal source of law for the East African Community in respect with the management of shared water resources is The Treaty for the Establishment of the East African Community, 1999 (which entered into force in 2000).

1.3 Secondary sources

(i) EAC

1.3.1 Article 14 of the EAC provides that the Council shall "make regulations, issue directives, take decisions, make recommendations and give opinions…" It provides that all regulations and directives made or given by the Council under the Treaty shall be published in the Gazette and shall come into force on the date of publication unless otherwise provided therein.

1.3.2 Article 16 of the EAC Treaty provides that "subject to the provisions of the Treaty, the regulations, directives and decisions of the Council taken or given in pursuance of the provisions of the Treaty shall be binding on the Partner States…"

(ii) EC

1.3.3 Article 249 of the EC Treaty provides that "…the European Parliament acting jointly with the Council and the Commission shall make regulations and issue directives, take decisions, make recommendations and deliver opinions."

1.3.4 All binding Community Secondary legislation is subject to review by the ECJ which may adjudicate on its validity. It is particularly important that the correct procedures are followed when creating such legislation, as failure to do so may render the legislation invalid.

(i) Regulation

1.3.5 Art. 249 of the EC Treaty provide that 'a regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.'

1.3.6 The fact that a regulation will have 'general application' and is 'binding in its entirety' simply means that a regulation will be effective throughout the Community, on every Member State and in full. Regulation must be published in the Official Journal and come into force on the date specified by the regulation or, if no such date is specified, on the 20th day following publication.

1.3.7 The exact meaning of 'direct applicability' has been cause of some debate, but it is now accepted that it denotes that regulation automatically take effect in each Member State without the need for national adopting measures. The ECJ has gone as far as to provide that Member States shall not pass any measure which professes to incorporate a Community regulation into national law *(Case34/73, Variola),* as this could result in each Member State placing its own interpretation on the legislation.

1.3.8 Thus, regulations achieve uniformity of law throughout the EC.

(ii) Directives

1.3.9 Art. 249 of the EC Treaty provides that 'a directive shall be binding, as to the *result to be achieved*, upon each Member State to which it is addressed, but shall leave to the *national authorities* the *choice of form* and *methods.'*

1.3.10 Directives differ from regulations in a number of ways. They do not have to be addressed to all Member States. In addition, only Directives that are addressed to all Member States and those which are created by means of the 'co-decision procedure, which requires the Commission to put forward a draft proposal to the Council, who, in turn, pass it to the European Parliament for its opinion, need be published in the Official Journal.

1.3.11 Directives are not directly applicable and normally, the rights and obligations created by them only become effective once they have been incorporated into national law by the appropriate national authorities. They do, however, place an obligation on Member States to ensure that a particular aim is achieved by a particular date, leaving national authorities to decide on the implementation details. This allows a far greater degree of flexibility, providing Member States with the opportunity to introduce a measure in the manner best suited to that State.

(iii) Decisions

1.3.12 Article 249 of the EC Treaty provides that 'a decision shall be binding in its entirety upon those to whom it is addressed.' In this regard, a decision is similar to a Regulation in that it has direct applicability, requiring no national implementation framework in order to take effect.

1.3.13 All Decisions must be published in the Official Journal, taking effect at a prescribed time or on the 20th day following publication. It should be noted however, that decisions are only binding upon those to whom they are addressed. Decisions may be addressed to individual Member States and both natural and legal persons.

1.3.14 Decisions are often the chosen method where harmonization, rather than uniformity of law is the aim.

(iv) Recommendations and Opinions

1.3.15 Article 249 of the EC Treaty provides that recommendations and opinions have 'no binding force', although they are persuasive and should be taken into account by national courts (*Case C-322/88, Grimaldi).* Such sources of law are sometimes known as 'soft law'. Other sources of soft law may include guidelines or codes of conduct issued by the Community Institutions.

1.4 Operative International Law Principles

(i) State sovereignty

1.4.1 States have the sovereign right to exploit their own resources pursuant to their own environmental and developmental policies. *(Rio Declaration, Principle 2).*

1.4.2 Article 63 of the EAC Treaty provides that "A Bill lapses if a Head of State withholds assent.

1.4.3 The concept of shared resources requires international regulation. It is obvious that a resource which for physical reasons constitutes a unity, but which is subject to the territorial sovereignty of several states or is situated beyond the limits of national jurisdiction, can only be managed by an international agreement among the states concerned.

(ii) State responsibility

1.4.4 Under the principle of State responsibility, States are generally responsible for breaches of their obligations under international law. In the *Chorzow Factory case,* the Permanent Court of Justice, the predecessor to the International Court of Justice, held:

> *"It is a principle of international law, and even a general conception of law, that any breach of an engagement involves an obligation to make reparation. In Judgement No. 8… the Court has already said that reparation is the indispensable complement of a failure to apply a convention, and there is no necessity for this to be stated in the convention itself."*

(iii) Good neighbourliness and the duty to cooperate

1.4.5 This binding principle of international law requires States to cooperate generally in addressing international issues. It is reflected in part in Article 1.3 of the UN Charter. Principle 24 of the Stockholm Declaration stated the obligation in the following manner:

International matters concerning the protection and improvement of the environment should be handled in a cooperative spirit by all countries… Cooperation through multilateral or bilateral arrangements or other appropriate means is essential to effectively control, prevent, reduce and eliminate adverse environmental effects resulting from activities conducted in all spheres, in such a way that due account is taken of the sovereignty and interests of all States.

(iv) Equitable and reasonable utilization

1.4.6 The doctrine of equitable utilization obligates States in their respective territories to utilize shared water resources in an equitable and reasonable manner. In particular the use, development and protection shall be done with a view to attaining optimal and sustainable utilization thereof and benefits therefrom, taking into account the interests of other riparian States.

1.4.7 Similarly, the ICJ has on a number of occasions indicated that it considers the principles of equity to constitute an integral part of international law. In the *Diversion of Water from the Meuse Case (1937)*, Judge Hudson declared:

"What are widely known as principles of equity have long been considered to constitute a part of international law, and as such they have often been applied by international tribunals."

1.4.8 In the *Continental Shelf (Tunisia v Libya Arab Jamahiriya) Case 1982*, the ICJ stated:

"*Equity as a legal concept is a direct emanation of the idea of justice. The court whose task is by definition to administer justice is bound to apply equitable principles as part of international law, and to balance up the various considerations which it regards as relevant in order to produce an equitable result."*

(v) Obligation not to cause environmental harm

1.4.9 A central principle is the obligation of States not to cause environmental harm. Under this principle, States shall, individually and where appropriate, jointly, prevent, reduce and control the pollution of shared water resources.

1.4.10 The obligation not to cause environmental harm has its roots in the common law principle of *sic utere tuo ut alienium non laedus* (i.e. do not use your property to harm another). In the international law, States are under a general obligation not to use their territory, or to allow their territory to be used, in a way that can harm the interests of another State.

1.4.11 The obligation not to cause harm other States was extended to environmental damage in the well known Trail Smelter arbitration. In that case, fumes from a Canadian smelter were damaging U.S. citizens and property. After the two countries agreed to arbitration, the US-Canada International Joint Commission issued the following opinion:

> *"Under the principles of international law, as well as the law of the United States, no State has the right to use or permit the use of its territory in such a manner as to cause injury by fumes in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence."*

(vi) Duties to provide prior notification and to consult in good faith

1.4.12 The principle of prior notification obliges States planning an activity to transmit to potentially affected states all necessary information sufficiently in advance so that the latter can prevent damage to its territory.

1.4.13 In this regard, such States shall exchange information and consult each other and if, necessary, negotiate on the possible effects of planned measures on the condition of the shared water resources watershed. Before any State implements or permits the implementation of planned measures which may have a significant adverse effect upon other States, it shall provide those States with timely notification thereof. Such notification shall be accompanied by available technical data and information, including the results of any environmental impact assessment, in order to enable the notified States to evaluate the possible effects of the planned measures.

1.4.14 Under Article 19 of the Rio Declaration, for example, "States shall provide prior and timely notification and relevant information to potentially affected States on activities that may have a significant adverse transboundary environmental effect".

1.4.15 Another general principle which has often been invoked by the ICJ is good faith. The principle of good faith is fundamental to international relations. Article 2(2) of the United Nations Charter obliges Member States to fulfil their Charter obligations in good faith and General Assembly Resolution 2625 (XXV) (Declaration on Principles Concerning Friendly Relations and Cooperation among States, 1970) recognizes the duty on States to undertake their international law obligations in good faith. For example, in the *Nuclear Tests Case (1974)*, the ICJ stated:

> *"One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith."*

(vii) Application of the precautionary approach

1.4.16 States shall apply the precautionary approach widely to conservation, management and exploitation of shared or transboundary resources. In this regard, States shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.

(viii) The Principle of Subsidiarity

1.4.17 The principle of subsidiarity reflects a preference for making decisions at the lowest level government where the issue can be effectively managed. Decisions made at the local level are often viewed as more likely to take account of local environmental conditions and the opinions of the local people who often bear the highest environmental costs of development decisions.

(ix) Equal Right of Access to Justice

1.4.18 The EAC Treaty provides locus standi to the citizens to bring actions on violations of matters under the Treaty.

1.4.19 The EC has taken the lead in ensuring access to transfrontier plaintiffs. In 1976, in the *Bier v. Mines de Potasse d'Alsace, 1976 Eur. Comm. Ct.J.Rep. 1735*, the ECJ held that within the EC the victim of transfrontier pollution may sue either in his or her own or in the polluter's country, and that a decision by either country's court can be executed in any community country.

2.0 EAC LEGISLATIVE PROCEDURES AND PROCESSES

2.1 Legislative Procedures

2.1.1 Community legislators must demonstrate that they have the necessary authority to enact secondary legislation. Article 253 of the EC Treaty provides that the preamble to regulations, directives and decisions should contain a statement as to the legal basis on which the legislation is made. Such authority will derive from a Treaty article empowering the institutions to legislate and is known as "legal base".

2.1.2 The Community's legislative process is complicated, providing a total of six procedures by which secondary legislation may be enacted. The procedure to be adopted in any one set of circumstances does not depend on the form that the legislation is to take but on the procedure identified by the legal base.

2.1.3 Generally, the Commission is the initiator of draft legislation. This can be at their own instigation or following a request from the Council (art 208) or the

Parliament (art. 192).

2.1.4 In most instances, the Council will be the adopting institution. The primary distinguishing feature of each procedure is the degree of involvement that it provides to the European Parliament, although it may also have an effect on which method of voting must be followed by the Council - that is simple majority, unanimity or more usually, qualified majority.

2.2 Legislative Processes

2.2.1 The original Treaty split power between the Council and the Commission and so, at the time it was necessary to ensure that correct balance was reached between the federal interests of the Commission and the intergovernmental nature of the Council. With the establishment of a directly elected Parliament, this has added another interest that must be balanced.

2.2.2 The basis for finding the correct balance is that each of these institutions represents different interests. For example the Council, the Member States, The Parliament, the citizens and the Commission, the community as a whole. Consequently, the legislative processes have to ensure that all such interests are appropriately balanced.

2.2.3 As legislative procedures have developed, there has been far greater need to ensure inter-institutional cooperation, both in the planning of legislative strategies and with regard to the content of legislative acts. As a result, the Commission consults widely with interested parties before putting forward legislative proposals. Such consultation allows the interests of the Member States, citizens, the community as a whole and other non-state actors to be taken into consideration.

2.2.4 Once the Commission has formulated draft legislation, it will be sent to the Parliament and/or the Council (depending on the procedure to be followed), which will consider the proposal, usually via a number of working groups or committees. Once the Council and the Parliament have agreed their individual positions with regard to a legislative proposal, if their opinions diverge, it will often be left to the Commission to broker agreement between the two if the legislative proposal is to succeed.

3.0 Composition and Structure

3.1 The EACJ

3.1.1 The East African Court of Justice is established under The Treaty for the Establishment of the East African Community which entered into force on 7th July 2000. The main object of the Court is to ensure the adherence to law in the interpretation and application of and compliance with the Treaty. The EACJ is made up of six Judges.

3.1.2 In the East African Court of Justice Case No. 1 of 2006, it was held that:

(1) it had jurisdiction over the interpretation and application of the Treaty establishing the East African Community;
(2) Article 30 of the EAC Treaty conferred on any person resident in a Partner State the right to refer the specified matters to the EACJ for adjudication;
(3) the EAC Treaty being an international treaty …is subject to the international law on interpretation of treaties pursuant to the Vienna Convention on the Law of Treaties;
(4) the National Assembly of Kenya did not undertake or carry out an election within the meaning of art. 50 of the EAC Treaty;
(5) The National Assembly of a Partner State was bound to make rules that conform to the primary purpose of the article that conferred the power. As a consequence the election rules infringed on article 50 of the Treaty.

3.2 The ECJ

The ECJ is made up of a number of personnel including Judges and Advocates Generals (AGs). While the judges act as the decision makers of the court, AGs assist the judges by delivering a non-binding written opinion, which provides advice to the court prior to their deliberations.

4.0 Enforcing Community Law Rights before Municipal Courts

4.1 EAC

In dualist States (such as Kenya, Uganda and Tanzania) international law is only binding on national courts if it has been adopted by the national authorities and made part of domestic law. On the other hand, in monist states (such as the Netherlands), once ratified, international law forms part of the national legal system.

The problem in dualist States which considers that Treaties would not provide rights which could be invoked domestically by citizen unless specifically incorporated into national law ought to be addressed if the EAC Treaty was to be implemented uniformly in all Member States.

4.2 EC

4.2.1 The ECJ in its decision in the *Case 26/62 van Gend en Loos (Van Gend)* declared that '*the European Community constitutes a new legal order of international law which confers both rights and obligations on individuals as well as on the participating States, without the need for implementing legislation.'* The Court further concluded that '*national courts must protect such rights.'* In other words, the ECJ provided that EC law has ***direct effect***

which can be seen as two pronged concept under which:

Community law provides not only Member States with rights and obligations but individuals also; and

Such rights and obligations can be enforced by individuals before their national courts.

4.2.2 The European Community law, unlike the EAC Treaty, has direct effect, and it has been left to the Member States discretion to designate which national courts will be appropriate to hear actions founded on Community law and also the procedures to be followed. As the ECJ stated in *Case 45/76, Comet BV v Produktschap voer Surgewassen (Comet):*

> "*It is the domestic law of each Member State to designate the courts having jurisdiction and the procedural conditions governing actions at law intended to ensure the protection of the rights which subjects derive from the direct effects of community law."*

4.2.3 It is however important to note that although the appropriate court and procedures are left up to the Member States, the States still have an obligation to ensure that national procedures do not discriminate against any individual wishing to enforce an EC law, rather than national law right.

4.2.4 In addition, national procedures must not make it excessively difficult to obtain a remedy for a breach of EC law. In *Case 199/82, Amministrazione delle Finanze dello Stato v San Giorgio (san Giorgio),* the ECJ explained that national rules and procedures must not make it, in practice, impossible for rights referred by the Community to be exercised.

4.2.5 The ECJ has been particularly careful to ensure that appropriate remedies are available with regard to breaches of Community law rules. In *Case 33/76, Rewe-Zentralfinanz v Landschwirtschafts Kammer,* the court explained that although it has been made possible for individuals to bring direct actions based on EC law before national courts, 'it was not intended to create new remedies in the national courts to ensure the observance of Community law.' This means that the remedies available for similar breaches of national law should be made available for breaches of EC law.

4.2.6 In *Case 14/83, Von Colson,* the ECJ explained that Art. 10 of the EC Treaty provides Member States, and therefore their national courts with the obligation of facilitating the achievement of the aims of the Community. Consequently, Member States and national courts must ensure that remedies available for breaches of EC law must be 'effective' have a 'deterrent effect' and be 'adequate in relation to the damage sustained' (in other words, be proportionate).

4.2.7 In *Case C-271/91, Marshall v Southampton and South West Hampshire AHA (Marshall 2),* the ECJ enunciated that *'if no effective remedy was available under national law, national courts should either improve upon what was available or devise a new, suitable remedy.'*

5.0 Enforcement actions against Member States

5.1 EAC

5.1.1 Articles 28 – 30 confer powers to Partner States, Secretary General and the any person resident in any of the Partner to refer the to Court for adjudication where the Partner State has failed to fulfil the obligations under the Treaty or on the legality of any Act, regulation, directive, decision or action of a Partner State.

5.2 EC

5.2.1 Article 10 of the EC Treaty clearly provides all Member States with the duty to fulfil the specific obligation placed on them by both the Treaty and secondary sources of Community law. It also provides that the Member States may not do anything that could jeopardize the aims of the Community.

5.2.2 When a Member State breaches its obligations, the Treaty provides that the Commission or a second Member State may bring an action before the ECJ in order to ensure compliance. In addition, a Member State may find itself a defendant in an action before a national court under the doctrine of vertical direct effect and/or, where the claimant wishes to pursue an action for damages, under the principle of 'State Damages'.

5.2.3 Often, Member States will find themselves the subject of an action brought by an individual in a national court, while at the same time being the subject of an enforcement action by the Commission or Member State.

5.2.4 Other than in actions relating to contractual liability, Community institutions can be brought before the EACJ should they breach Community rules. Any challenge to the validity of legally effective acts of the institutions will normally be brought under art. 230 of the EC Treaty (judicial review) although due to the difficulties associated with proving locus standi; individuals should also consider the possibility of employing the preliminary reference, plea of illegality and/or action for damages.

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    (e) The Budgetary Treaties 1970 and 1975;
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ANNEX 5

INTERNATIONAL REGIME ON HAZARDOUS WASTES AND CHEMICALS AND THEIR IMPACTS: INTERNATIONAL AND NATIONAL RESPONSES

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1. INTRODUCTION

The use of hazardous wastes and chemicals has become an essential means for the achievement of economic and social development of countries. The life styles enjoyed by modern societies depend to a large degree on the use of chemicals for a variety of purposes. So many of the goods and services enjoyed, ranging from simple articles like forks, knives and instant foods, to more complex machines such as motor vehicles, computers and refrigerators, involve the use of chemicals. Chemicals are used in the extraction and refining of raw materials needed for these products as well as in the manufacturing and packaging processes. They also find their way into the environment when these products are discarded or dumped.

The generation of hazardous wastes and chemicals around the globe is estimated to have increased more than sixty-fold, from approximately five million metric tons, between end of World War II and 1990.[12] The United Nations Environment Programme's estimates, published ten years ago, indicated that 400 million tones of hazardous wastes were being generated annually, representing about 16% of total industrial wastes.[13] Over 75,000 synthetic chemicals are now in commercial use in pharmaceuticals, plastics and other products. Over 10,000 organochlorines are currently in commerce, used to make plastics, solvents and disinfectants, refine crude petroleum, bleach pulp and paper, to treat wastewater, and for dry cleaning.[14] Each year, between 1000 and 2000 new chemicals are introduced on to the world market, without in all cases being tested or evaluated for their potentially harmful effects on human health and the environment. Estimates indicate that up to 500 anthropogenic chemicals are present in the body fat of every person, potential poisons that did not exist before 1920, and most of them persistent organic pollutants[15]. These chemicals could be both toxic and hazardous.

In general, the toxicity of a substance is identified by a number of factors, including the length of time it will persist in the environment, how it bioaccumulates or builds up in the tissues of lower species, the extent to which it reacts with other substances to form contaminants, and whether it produces a carcinogenic (cancer causing), mutagenic (gene-

[12] See David Hunter et al., International Environmental Law and Policy, 2nd ed. (Foundation Press, New York, 2002), at p. 832.
[13] United Nations Environment Programme, The World Environment 1972-1992 (UNEP, Nairobi 1997), at p. 264.
[14] Alexandre Kiss & Dinah Shelton, International Environmental Law, 3rd ed. (transnational Publishers, Inc./UNEP, Nairobi, 2004), at p.329
[15] See Anne Platt McGinn, "Phasing Out Persistent Organic Pollutants," in Lester R. Brown et al, The State of the World 2000 (Worldwater Institute/W.W. Norton & Co. Inc., New York, 2000), p. 79 at p.80.

altering),or teratogenic (birth defect-causing) effect in humans.[16] These characteristics are of special concern to the public and make regulatory decisions both more visible and more difficult.

A chemical substance is considered hazardous where it exhibits certain characteristics that can cause injury, disease, economic loss, or environmental damage. The substance may be explosive, flammable, oxidizing, poisonous, infectious, corrosive, or any substance capable of forming another material which possesses any of these characteristics after disposal. Substances having heavy metallic compounds, halogenated organic, solvents organohalogen compounds, asbestos, organo-phosphorous compounds, organic cyanides, and phenols are considered hazardous.[17]

Most toxic chemicals and hazardous wastes are used directly while others are base or intermediate chemicals used as raw materials in the manufacture of millions of end products for human use. There is virtually no sector of human activity which does not make use of chemical products, some which have brought beneficial effects to man and the environment.[18]

2. ENVIRONMENTAL AND HUMAN HEALTH IMPACTS

Toxics often impact ecological food chains by bioaccumulating in the tissues of aquatic organisms. Bioaccumulation begins when a toxic contaminant present in the ambient environmental medium is absorbed by plants that are later ingested by a lower animal. The contaminant will increase in the animal beyond the level of the ambient environment. The higher the concentration of the contaminant, the more it will be taken up by plants and passed from plants to plant-eating animals, culminating in a very high concentration in predatory animals.[19]

High concentrations of toxic metals in the environment present a danger to human health as well. Metals exist as a unique contaminant because they are elemental compounds which never decompose. Toxic metals like mercury, lead, cadmium, and arsenic find their way into the air through the burning of coal and oil for energy, ore refining, trash burning, cement production, and use of automobiles. Fertilizers and pesticides often contain arsenic and cadmium which can run off into surface waters and, eventually, end up in ground water. High levels of metal concentrations are not only a threat to human health but may be lethal. Lead poisoning can cause convulsions, brain damage or degeneration, and death; arsenic, beryllium, cadmium, and chromium cause lung cancer.

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[16] See FAO International Code of Conduct on the Distribution and Use of Pesticides; 23 FAO Conf. Res. 10/85

[17] See Annex I of Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, reprinted in 28 International Legal Materials 657 (1989)

[18] According to Agenda 21 there are approximately 100,000 chemical substances in commerce, many of which appear in food, commercial products and various environmental media.

[19] In the 1960s bald eagles, peregin falcons and other predatory animals died as a result of reproductive failure caused by excessive DDT in their tissues. The birds had fed on fish in which the DDT had bioaccumulated from feeding on plankton to which the pesticide had passed from algae in the lakes and ponds to which the surface run-off had carried the DDT from USA farmlands.

Toxic chemicals, such as DDT and other organochlorine insecticides that persist in the environment for more than ten years and bioaccumulate in food chains, cause cancer and cirrhosis of the liver.[20]

Where hazardous wastes and toxic chemicals are discharged into water bodies, they bioaccumulate in the tissues of aquatic organisms. When humans consume animals with elevated concentrations of contaminants in their tissues, the result may be serious health effects or even death. The oft-cited tragedy that took place in Minamata, Japan, in the 1950s offers an example. Japanese villagers in the in the fishing village of Minamata were poisoned by mercury that had been discharged into the water by a nearby chemical company, and had bioaccumulated in fish eaten by the villagers. This resulted in a number of deaths and several thousand cases of permanent nervous disorders.

3. TRANSFRONTIER MOVEMENTS

If it were possible to confine hazardous wastes and chemicals to the vicinity of their sources of release there would, perhaps, be less concern regarding their impacts; it would be possible to contain these impacts. However, these substances are transported by air, water and deliberate human action, locally, regionally or globally to cause widespread contamination of the environment. Deliberate transfrontier movement of the substances creates environmental problems which are international in two senses. First, there is the possibility of accidental harm to transit states or the global commons. Secondly, importing states are at risk when the movement takes place without their knowledge or consent or where they possess inadequate management facilities or limited understanding of the risks involved. The transfrontier movement in such circumstances may be a consequence of lower standards of regulation or of a willingness to accept for use or disposal substances banned or regulated elsewhere or of less expensive disposal costs in the foreign country than the country of origin. Taking advantage of these circumstances involves a transfer of environmental costs from manufacturers in developed industrial economies to the peoples and environment of developing states who may be least able to bear them. Most of the dramatic incidents of transfrontier movement of hazardous wastes and chemicals have involved fraudulent concealment of the nature of the wastes and chemicals shipped to the developing countries; these have been the basis of national and international concerns about the human health and environmental consequences of transfrontier movement of these substances. The developing countries of Africa, Latin America and Eastern Europe, have been the major recipient countries where the wastes have caused health and environmental problems to unsuspecting populations who have no capacity to dispose of them in an environmentally sound manner.[21]

A quite different picture is apparent when considering the transfrontier movement of hazardous wastes and chemicals among developed countries for purposes of recycling or reprocessing to generate raw materials for use in other industrial products or for

[20] World Resources Institute, World Resources 1994-95 (Oxford University Press, New York, 1994) at p. 114.

[21] Jennifer Kit, "Waste Exports to the Developing World: A Global Response, "7 Georgetown International Environmental law Review 485 (1995)

environmentally sound disposal. Environmentally sound recycling or reprocessing can also provide substancial environmental benefits by reducing the need to exploit natural resources that might otherwise be mined in the absence of recycling materials.[22]

4. INTERNATIONAL POLICY/LEGAL RESPONSES

International attention to the health and environmental hazards associated with the management and transfrontier movement of hazardous wastes and chemicals gained momentum in the 1980s. In the early 1980s, both the Organisation for Economic Cooperation and Development (OECD) and the United Nations Environment Programme (UNEP) expanded work on the management of hazardous wastes and chemicals.

In 1984, the OECD promulgated the first international agreement regarding international movement with its Decision and Recommendation on Transfrontier Movement of Hazardous Wastes.[23] The Decision/Recommendation mandated OECD member states to ensure that competent authorities of countries affected by the shipment of hazardous wates are provided with adequate and timely information on the wastes' movement. The OECD had, previously, also adopted a series of far reaching, though non-binding, recommendations. These included the principle that prior consent from the importing and transit states should be obtained for intra-OECD shipments of wastes; that the exporters should provide detailed information to the importing country regarding the origin, nature, composition and quantity of the wastes to be shipped as well as environmental risks involved in the transport; and, that if an importer cannot safely dispose of the wastes then the generator must assume responsibility therefore.[24]

In 1986, these same guidelines were extended to transfrontier movement of wastes involving OECD members and non-member states. The Council Decision/Recommendation on Exports of Hazardous Wastes from the OECD Area[25] did, inter alia, prohibit both the export of hazardous wastes to non-OECD countries without prior consent from the receiving country or notice to transit nations, and the export of hazardous waste to non-OECD states that lack the proper disposal facilities.
In 1987, UNEP's Governing Council adopted the Cairo Guidelines and Principles for the Environmentally Sound Management of Hazardous Wastes[26] at a time marked by a series of high profile incidents involving the mismanagement and illegal shipment of hazardous wastes. The Guidelines were a non-binding, soft law agreement on environmentally sound management of hazardous wastes. The Governing Council also agreed to commence international negotiations on a binding legal instrument governing the transfrontier movement of hazardous wastes.

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[22] Patricia Birnie & Alan Boyle, International Law & The Environment, 2nd ed. (Oxford University Pess, Oxford, 2002) at pp. 405-406
[23] OECD Decision/ Recommendation on Transfrontier Movement of Hazardous Waste, OECD Doc. C (83) 180 (final), Appendix; reprinted in 23 International Legal Materials 241 (1984)
[24] OECD Res. C (71) 73 of May 18, 1971.
[25] OECD Doc. C (86) 64 (June 5, 1986); reprinted in 25 International Legal Materials 1010 (1986).
[26] UNEP/GC Decision 14/30 (1987); UNEP ELPG No 8 (1987).

UNEP also adopted guidelines to address trade in hazardous chemicals including but not limited to pesticides.[27] In 1987, its Governing Council adopted the London Guidelines for the Exchange of Information on Chemicals in International Trade,[28] aimed at the provision of access to information on hazardous chemicals in order to facilitate informed choices on importation, handling and use. As an overriding principle, the London Guidelines state that both importing and exporting countries should protect human health and the environment against potential harm by exchanging information on chemicals.[29]

The OECD steps , as well as both the Cairo and London Guidelines adopted under the auspices of UNEP to address transfrontier movement of hazardous wastes and chemicals greatly influenced both the content and shape of the subsequent legally binding international legal instruments on the subject.

4.1 The 1989 Basel Convention

The Conference of Plenipotentiaries on the Global Convention on the Control of Transboundary Movements of Hazardous Wastes was convened by the Executive Director of UNEP pursuant to decision 14/30 of UNEP's Governing Council on June 17, 1987. The conference met at Basel, Switzerland from March 20-22, 1989. The outcome of the conference was the adoption of the Basel Convention on the Control of Transboundary Wastes and their Disposal.[30] The Convention entered into force May 5, 1992.

The Convention is founded on four principles that determine the procedure and framework for the management of transboundary movements of hazardous wastes and their disposal. The first is the sovereign right of all states to ban imports of hazardous wastes,[31] a principle that reflects the general principles of territorial sovereignty and territorial integrity. Of course, the flip side of this principle is the sovereign right of all states to import hazardous wastes into their territory, coupled with the obligation to ensure that this does not cause damage to other states or to areas beyond the limits of national jurisdiction.

The second principle is that hazardous wastes must be reduced.[32] The chief short-term goal of the Convention is minimum waste generation. The Convention does not ban the movement of hazardous wastes between countries because a ban on the movement of all hazardous wastes would not serve the best interests of the environment and human health.

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[27] Besides UNEP, other international organistions were also concerned with and address the human health and environmental consequences of hazardous wastes and chemicals. For instance, the FAO had, in 1985 adopted the Distribution and Use of Pesticides to Reduce the hazards associated with the international use of pesticides. In 1989, the FAO amended the Code to adopt the principle of prior informed consent.

[28] UN Doc. UNEP/GC 14/17, Annex IV (1987.
[29] Ibid., Article 2. (a).
[30] Reprinted in 28 International Legal Materials 657 (1989).
[31] Ibid., Preambular para 7. and Article 4 (1) (a).
[32] Ibid., Preambular para 4. and Article 4 (2) (a).

The reason for this was to allow those countries with technological capacities to safely store or recycle or dispose of the wastes in an environmentally sound manner to continue importing the wastes from those countries that generate them, but for various reasons cannot manage them in an environmentally sound manner.

The third principle is that wastes should be disposed off in their country of origin.[33] The transboundary movements of the wastes should be reduced to a minimum and allowed only under very specific conditions and, in particular, such movements should take place under environmentally sound conditions in conformity with the provisions of the Convention.[34]

Finally, developing countries must be helped to build the capabilities and capacities for effective waste management as soon as possible.[35] Before the conference, the developing countries had charged the developed countries of exploiting their lack of technological capacity and expertise to turn them into garbage receptacles for the industrialized world.

The Convention also incorporated points such as the duty of exporting states to take back wastes if their importers cannot dispose of them safely,[36] a ban on hazardous wastes movement to and from countries which are not parties to the Convention, [37] and international standards regarding packaging, shipping and labeling of hazardous wastes shipments.[38]

The Convention established a Conference of the Parties and a Secretariat to supervise and facilitate its implementation.[39] The Secretariat plays an important role in receiving and conveying information to and from parties and in handling the notification system provided for by the Convention. Otherwise, States parties are required, within their municipal legal regimes, to "take appropriate legal, administrative and other measure to implement and enforce the provisions of this Convention including measures to prevent and punish conduct in contravention of the Convention."[40] They are also required to designate or establish competent authorities and focal points to facilitate the implementation of the Convention.[41]

Fundamental to the Convention is the establishment of the Prior Informed Consent procedure. Under Article 6, the state of export, the generator or exporter of hazardous wastes must give written notification to the states of import and provide, in language acceptable to the latter, the declarations and information specified in Annex VA of the Convention. Only when the state of export has received written consent from the state of import, and confirmation that there exists a contract between the exporter and the

[33] Ibid., Preambular para 9. and Article 4 (2) (b).
[34] Ibid., Preambular para10. and Article 4 (2) (d).
[35] Ibid., Preambular para 22.
[36] Ibid., Article 8.
[37] Ibid., Article 4 (5).
[38] Ibid., Article 4 (7) (b).
[39] Ibid., Article 15 and 16 respectively
[40] Ibid., Article 4 (4).
[41] Ibid., Article 5.

disposer specifying environmentally sound management of the wastes in question, may it move or allow the generator or exporter to commence transboundary movement of the wastes. The notification and response must be transmitted to the competent authority of the parties concerned, or to such governmental authorities as may be appropriate in the case of non-parties.[42]

Article 12 of the Convention directed the parties to cooperate with a view to adopting a protocol on liability and compensation for damage resulting from the transboundary movements and disposal of hazardous wastes and other wastes. Following ten years of negotiation, the fifth meeting of the Conference of the Parties held at Basel adopted the Protocol of Liability and Compensation for Damage Resulting from Transboundary Movements of Hazardous Wastes and their Disposal.[43] The purpose of the Protocol is to provide a comprehensive regime for liability and for adequate and prompt compensation for damage resulting from transboundary waste movement, including illegal traffic. Under Article 6 of the Protocol, any person who is in operational control of the wastes must take all reasonable measures to mitigate damage arising from an incident. Under Article 3 (1) and (4), the Protocol applies to damage due to an incident occurring during a transboundary movement including illegal traffic and in respect of re-import " from the point where the wastes are loaded onto the means of transport in an area under the national jurisdiction in the state of export."

As per Article 3, the Protocol covers all damage suffered in an area under the national jurisdiction of a party, but only damage to persons and property and preventive measures in areas beyond national jurisdiction and provides particular rules where the state of import, but not the state of export, is a party to the Protocol. Special provision is made for damage to transit states.

Article 5 provides generally for strict liability, with fault liability where there is a failure to comply with the Convention or damage occurs because of international, reckless or negligent acts or omissions. The Protocol does not, however, affect the rights and obligations of parties under general international law. Under a regime of liability, the notifying entity is generally liable for damage until the disposer takes possession of the wastes, at which point liability shifts to the disposer, with a special provision being made for hazardous wastes within the meaning Article (1) (b)of the Convention, that is, wastes determined to be hazardous by a party, but not included in the Annex I of he Convention. Article 4 (5) excludes liability in cases of damage occurring as a result of natural phenomena, armed conflicts and insurrections and the wrongful conduct of third parties.

Under Article 12 liability is limited for non-fault based incidents to amounts determined by domestic law, but there are no liability limits from fault-based incidents. Annex B of the Protocol sets minimum liability for damage, and liable persons must also have insurance or financial guarantees covering these amounts.

[42] Ibid., and Article 6 (10).
[43] See Report of the 5th COP; UNEP/CHW.5/29(1999) Annex III.

Articles 17 and 21 of the Protocol allow claims to be brought to the courts of the party where the damage was suffered or where the incident occurred or where the defendant has his habitual residence or principal place of business with provision made for mutual recognition and enforcement of judgments.

Claims under the Protocol are, as per Article 13, inadmissible unless brought within 10 years of the incident and within 5 years of the date where the claimant knew or ought reasonably to have known of the damage.

4.2 The Bamako Convention

Most developing countries, especially the African countries that had suffered the brunt of hazardous wastes, expected the Basel Convention to be a prohibiting, rather than a *regulating*, international instrument with respect to transboundary movements of hazardous wastes. From their point of view the Convention did not go far enough to address their concerns and fears. They argued that the Convention was so diluted during negotiations that it amounted to a sell-out of their rights. They feared that because of their lack of trained specialists as well as technical expertise and knowledge to assess information concerning hazardous wastes, they would still be exploited by industrialized countries which would continue to dump the wastes in their territories.

It was partly due to the failure of the Basel Convention to impose a total ban on the transboundary movements of hazardous wastes that the African countries refused to sign the Basel Convention and, later, adopted the Bamako Convention on the Ban of Import into Africa and the Control Transboundary Movement and Management of Hazardous Wastes within Africa.[44]

The Bamako Convention was adopted under the aegis of the Organisation of African Unity at Bamako, Mali, on January 29, 1991. The Convention came into force April 22, 1998 and bans the import of hazardous wastes generated outside of Africa;[45] it does not, however, ban the importation into one African state of hazardous wastes generated in another African state.

In order to contextualize the Bamako Convention, it is important to note that it was preceded by the OAU Council of Ministers Resolution of May 23, 1998, which evidenced concern regarding the practice of developed countries dumping nuclear and industrial wastes on African soil.[46]

In the Resolution, the Council of Ministers expressed its awareness of the growing practice of dumping of nuclear and industrial wastes in African countries by transnational corporations and other enterprises from industrialized countries, and its concern about the growing tendency of some African countries to conclude agreements which facilitate the

[44] Reprinted in 30 International Legal Materials 775 (1991)
[45] Ibid., Article 4.
[46] OAU Resolution CM/Res.1153 (XLVIII), reprinted in 28 International Legal Materials 567 (1989).

dumping of such wastes into territories.[47] The Resolution then declared the dumping of nuclear and industrial wastes to be a crime against Africa and the African people.[48] It further condemned all transnational corporations and enterprises involved in the introduction in any form of nuclear and industrial wastes on the continent and demanded that the culprits clear up the areas they had already contaminated.[49] It also called upon African states which had concluded or were in the process of concluding agreements for the dumping of these wastes to put an end to those transactions. Besides, the Resolution called for the initiation of public information campaigns among African countries and their people about the dangers of nuclear and industrial wastes, the establishment of proper monitoring and control procedures and ended with an invitation to the OAU member countries to participate in the working group charged with the drafting of the Convention on the Control of the Movement of Dangerous Wastes Across Borders.[50]

Although the Resolution, as such, did not have any legally binding effect on the OAU member countries, it served to reinforce the African resolve against importation of hazardous and nuclear wastes into Africa. More importantly, its protective and prohibitive language not only paved the way for, but served to spur the OAU into the adaptation of the Bamako Convention.

A perusal of the Bamako Convention shows that its format, language, and pattern are a replica of the Basel Convention. There are, however, a number of significant and substantive differences. First, the scope of the Convention is wide. Under Article 2, radioactive and nuclear wastes are under the scope of its provisions and hence subject to its regime. The inclusion of radioactive wastes within the scope of the Convention was not only influenced by the OAU Council of Ministers' Resolution referred to above, but also by the relevant provisions of the Lome IV Convention.[51] Article 39 of the Convention banned the direct or indirect export of any hazardous or radioactive wastes from the European Union to the African, Caribbean and Pacific (ACP) countries. The ACP countries are also prohibited from accepting any wastes imports from the European Union or any other states. The ability of radioactive wastes to adversely affect areas far from the target area for a considerably long time makes the handling and disposal a complex and expensive undertaking.

The Bamako Convention also covers "hazardous substances which have been banned, cancelled or refused registration by government regulatory action, or voluntarily withdrawn from registration in the country of manufacture, for human health or environmental reasons."[52] Accordingly, substances such as DDT, dieldrin and other pesticides which have been banned in industrialized countries due to their adverse effects to human health and the environment, are covered by the provisions of the Bamako Convention.

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[47] Ibid., Preambular para 2.
[48] Ibid., Article 1.
[49] Ibid., Article 2.
[50] Ibid., Article 4, 5 and 9.
[51] Reprinted in 29 International Legal Materials 783 (1990)
[52] Supra note 33, Article 2 (1) (a)-(c).

Compared to the Basel Convention, the Bamako Convention creates more stringent rules for the African parties. The most significant difference, as already indicated, is that it bans the imports of hazardous wastes into African states from non-party states.[53] It also provides for unlimited liability as well as joint and several liability on hazardous waste generators.[54] Besides, the Convention provides for a stronger commitment to the precautionary approach which emphasizes cleaner production methods rather that permissible emissions,[55] and disallows general notification procedures for regular shipments for the same wastes.[56]

Although the Bamako Convention creates more stringent conditions than the Basel Convention, an African state can, nonetheless, be party to both. Article 11 (1) of the Bamako Convention allows a party to enter into other agreements so long as these do not "derogate from the environmentally sound management of hazardous wastes" as required by the Convention. Several African states are party to both instruments.[57]

One major issue that Basel and Bamako Conventions do not address is the export of obsolete and hazardous technologies which are readily accepted especially by developing countries, in their endeavours to industrialize and earn foreign exchange for their treasuries and create jobs for their large numbers of unemployed. These manufacturing plants have been known to cause major hazards to health and environment in their countries of import.[58]

4.3 The 1998 Rotterdam Convention on Prior Informed Consent

The increase in transboundary movements of hazardous wastes and chemicals in the 1980s had raised concern about the adverse impacts such substances had on human health and the environment. Developing countries that lacked adequate infrastructure to monitor the imports and use of such chemicals were seen to be particularly vulnerable; the nou-legally binding guidelines were inadequate in providing the procedure for the assessment of the risks of the hazardous chemicals and their management.

Concluding that there was need for mandatory controls, *Agenda 21* called for a legally binding instrument on the prior informed consent procedure by the year 2000.[59] Following the work of the FAO and UNEP, negotiations begun in march 1996 and on

[53] Ibid., Article 4 (1).
[54] Ibid., Article 4 (3) (b).
[55] Ibid., Article 4 (3)(f) and (g)
[56] Ibid., Article 6 (6)
[57] These include Benin, Cameroon, Comoros, Cote d' Ivoire, Egypt, Ethiopia, Gambia, Libya, Mali, Mauritius, Mozambique, Niger, Senegal, Togo, Tunisia, Uganda and Tanzania.
[58] The July 1976 release of tetrachlorodibenzo-p-dioxin at the Swiss Hoffman-LaRoche Givaudan chemical plant at Seveso, Italy and the December 1984 leakage of toxic methylisocyanate from the Union Carbide pesticide plant in Bhopal, India, are instances where hazards were caused to host countries by industries that were not only hazardous, but operating under less stringent environmental regulations and standards than in their home countries.
[59] UNCED Report, A/CONF.151/26/Rev 1 (Vol. I) (1993), at para. 19.38 (b)

September 10, 1998, the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade was adopted at Rotterdam, the Netherlands.[60] It entered in force February 24, 2004.

The Convention creates the framework for a legally binding obligation for the implementation of prior informed consent procedure and applies only to banned or severely restricted chemicals and severely hazardous pesticides that may cause health or environmental problems.[61] The objective of the Convention is "to promote shared responsibility and co-operative efforts among parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use by facilitating information exchange about their characteristics, by providing for a national decision making process on their import and export and by disseminating these decisions to Parties."[62]

The Convention does not, however, apply to narcotic drugs and phsychotropic substances; radio-active materials; wastes; chemical weapons; pharmaceuticals, including human and veterinary drugs; chemicals used as food additives; food; and chemicals in quantities unlikely to affect human health or the environment provided they are imported for the purpose of research or analysis or by an individual for his or her personal use in quantities reasonable for such use.[63]

Article 4 then requires each party to designate national authorities and endow them with resources to enable them to effectively perform their functions under the Convention.

The Convention then sets out provisions governing the prior informed consent procedure with respect to banned or severely restricted chemicals and severely hazardous pesticide formulations.[64] Chemicals subject to the prior informed consent procedure are listed in Annex III to the Convention and these include aldrin, captafol, chlordane, DDT and dieldrin.

The prior informed consent procedure is in two phases, that is, first, the phase of information exchange and, second, the inclusion of chemicals into Annex III of the Convention and the resulting mandatory procedures governing import decisions. The information exchange process is triggered by individual country actions. A party which has banned or severely restricted a chemical, that is, taken a final regulatory action, is to notify the Secretariat, through designated national authority, within ninety days of such action. The notification must contain information about the action and chemical itself, as per the requirements of Annex I to the Convention. The Secretariat then forwards the information to all parties to the Convention.[65] Besides notifying the Secretariat, the party is also required to notify the designated national authorities in countries intending to

[60] Reprinted in 38 International Legal Materials 1 (1999).
[61] Ibid., Article 2 (b), (c) and (d), respectively, define a 'banned chemical", " a severely restricted chemical", and "a severely hazardous pesticide formulation", for purposes of the Convention.
[62] Ibid., Article 1.
[63] Ibid., Article 3 (2).
[64] Ibid., Article 5 & 6.
[65] Ibid., Article 5(1) and (2).

import shipments of the chemical, giving the details set out in Annex V to the Convention.[66]

Central to the prior informed consent procedure is the placing of a chemical on the multilateral list in Annex III to the Convention. Parties are then required to provide their informed responses to consent, or not, to import that chemical. The placing of a chemical on the list in Annex III may be done by either restriction notification or by problem pesticide proposal. A party that provides notification of a ban or severe restriction may trigger the listing process if its notification conforms to the requirements of Annex I and is supported by another country's notification. With regard to pesticides, any party that is a developing country or a country with an economy in transition and is experiencing problems caused by a severely hazardous pesticide formulation under conditions of use in its territory may propose to the Secretariat the listing in Annex III of the severely hazardous pesticides formulation.[67] The Secretariat will then forward the proposal to the Chemical Review Committee which will review the information and make appropriate recommendation to the Conference of the Parties.[68] The power to list a chemical or to remove it from the list rests with the Conference of the parties and comes into effect on the date set by the Conference of the Parties.[69]

Articles 10 and 11 establish the prior informed consent procedure in respect of imports and exports of Annex III chemicals. The export of banned or severely restricted chemicals but which are not listed in Annex III is governed by a separate notification procedure.[70] Notwithstanding the requirements of the importing party, exported chemicals which are listed in Annex III or which are banned or severely restricted must be labeled to ensure "adequate availability of information with regard to risks and/or hazards to human health or the environment, taking into account relevant international standards."[71]

The Convention provides for technical assistance to developing countries and countries with economies in transition in order to facilitate the development of the infrastructure and capacity needs to manage the chemicals in conformity with the Convention.[72]

4.4 The 2001 Stockholm Convention on Persistent Organic Pollutants

The adoption of the 2001 Stockholm Convention on Persistent Organic Pollutants[73] was the culmination of an initiative started in the 1995 by the UNEP Governing Council for the assessment of twelve persistent organic pollutants. In response, an ad hoc Working Group on Persistent Organic Pollutants was convened which developed a work plan for

[66] Ibid., Article 12.
[67] Ibid., Article 6(1).
[68] Ibid., Article 5(6) and (3)-(5).
[69] Ibid., Article 7, 9, and 22 (5).
[70] Ibid., Article 12. The notification with respect to such chemicals must include the information set out in Annex V.
[71] Ibid., Article 13 (2).
[72] Ibid., Article 16.
[73] Reprinted in 40 International Legal Materials 532 (2001)

assessing available information on the chemistry, sources, toxicity, environmental dispersion and socio-economic impacts of these pollutants. The Working Group recommended immediate action and an inter-Governmental Negotiating Committee was established. The Committee held a number of negotiating sessions culminating with the fifth and concluding session in Johannesburg, South Africa, in December 2000.[74] In May 2001, at a diplomatic conference in Stockholm, Sweden, the international community adopted, and opened for signature, the Stockholm Convention on Persistent Organic Pollutants. The Covention entered into force May 17, 2004.

Persistent organic pollutants are those hazardous chemicals that are persistent and toxic, that bioaccumulate in fatty tissues (achieving higher concentration as they move up a particular food chain), and that are prone to long-range mobility in the environment. The Convention creates an international legal framework that aims to eliminate and restrict the production and use of targeted pollutants, in order to protect human health and the environment from their adverse impacts.[75] The Convention takes a precautionary approach and initially targets a total of twelve persistent organic pollutants, Annex A listing those targeted for elimination, while Annex B lists those targeted for restriction.[76] Parties are required to prohibit and/or take legal and administrative measures to eliminate the production and use and the import and export of chemicals listed in Annex A and to restrict the production and use of chemicals in Annex B.[77]

Parties are required to permit imports of chemicals listed in Annex A or B only for the purposes of environmentally sound disposal as set forth in the Convention or for a use which is permitted for the importing party under Annex A or Annex B.[78] Parties are also required to allow export only for environmentally sound disposal, or to a party which is permitted to use that chemical under Annex A or B, or to a state which is not a party to the Convention but which has provided an annual certification to the exporting party.[79] Further, a party may only export an Annex A chemical for which production and use exemptions are no longer in effect for it for the purpose of environmentally sound disposal.[80]

With respect to new chemicals, parties are required to take measures to regulate the prevention of production and use of new industrial chemicals which exhibit the characteristics of persistent organic pollutants, taking into account the criteria set forth in Annex D, that is, chemical identity, persistence, bioaccumulation, potential for long-range environmental mobility, and adverse effects.[81] These criteria are also to be taken

[74] See UN Doc. UNEP/POPS/INC.5/7 (2000).
[75] Supra, note 62, Article 1.
[76] Ibid., Article 3(1). Annex A lists aldrin, chloridane, toxaphene, and polychlorinated biphenyls (PCBS), while Annex B lists DDT.
[77] Ibid.
[78] Ibid., Article 3(2) (a).
[79] Ibid., Article 3(2)(b).
[80] Ibid., Article 3(2)(c).
[81] Ibid., Article 3(3).

into account when assessing other pesticides or industrial chemicals already in use but not listed in Annex A or Annex B.[82]

Annex A and Annex B identify "specific exemptions" in relation to the production and/or use of some chemicals and Annex B, additionally identifies certain "acceptable purposes." The requirement here is that production or use pursuant to a "specific exemption" or "acceptable purpose" must be carried out in a manner that minimizes human exposure or release into the environment.[83]

With respect to unintentional production, parties are required to take certain measures to reduce releases from anthropogenic sources of the chemicals listed in Annex C, including action plans to identify and address releases, the use of substitutes and the use of "best available techniques" and "best environmental practices."[84] The Convention also commits parties to develop implementation plans and provides for information exchanges, public awareness and information, research and monitoring, and the provision of technical assistance to developing countries and economies in transition.[85] Furthermore, parties are required to report on the measures taken to implement the Convention, their effectiveness and also on the data/estimates for the total quantities of the pollutants traded and the states involved.[86]

5. NATIONAL INITIATIVES AND RESPONSES

The genesis of global environmental issues is domestic activities carried on at the national level either by individual persons or corporate bodies. Their globalization is a product of various factors, including the rapidly expanding scale of economic activity and the improvements in communication. Due to the interdependence of nations, both economically and ecologically, environmental problems that are regional or global in scale are becoming more widespread and complex. Thus, their prevention, reduction and control entail national measures, both administrative and legislative. The human health and environmental problems occasioned by the production and use of hazardous wastes and chemicals are no exception. In this section, we look at the initiatives and responses taken by three African countries to address the problems of hazardous wastes and chemicals in their territories, that is, Nigeria, Uganda, and Kenya; these are illustrative cases.

Following the much publicized Koko Island incident of 1988, the Federal Military Government of Nigeria promulgated the Harmful Waste (Special Chemical Provisions, etc) Decree 1988.[87] Section 1 of the Decree declared all activities relating to the purchase, sale, importation, transit, transportation, deposit, and storage of harmful wastes prohibited and unlawful. "Harmful waste" is defined under the Decree to mean "any

[82] Ibid., Article 3(4).
[83] Ibid., Article 3(6).
[84] Ibid., Article 5.
[85] Ibid., Article 7 and 9-12.
[86] Ibid., Article 15.
[87] Decree No. 42 of November 25, 1988.

injurious, poisonous, toxic or noxious substance and, in particular, includes nuclear waste emitting any radioactive substance if the waste is in such quantity, whether with any other consignment of the same or of different substance, as to subject any person to the risk of death, fatal injury or incurable impairment of physical and mental health; and the fact that the harmful waste is placed in a container shall not by itself be taken to exclude any risk which might be expected to arise from the harmful wastes."

Under the Decree, any person who, without lawful authority, (a) carries, deposits or causes to be carried, deposited or dumped or is in possession for the purpose of carrying, depositing or dumping, any harmful waste on land or in territorial waters or contiguous zone or exclusive economic zone of Nigeria or its inland waterways; or (b) transports or causes to be transported or is in possession for the purpose of transporting any harmful waste; or (c) imports or causes to be imported or negotiates for the purpose of importing any harmful waste, shall be guilty of a crime.[88] Equally guilty are accessories to and after the fact.[89]

Any person found guilty of a crime under the Decree shall be sentenced to imprisonment for life and, in addition, any carrier or means used in the transportation or importation of the harmful waste and any land on which the waste was deposited or dumped shall be forfeited to the Federal Government.[90]

Where the crime is committed by a body corporate, and there is evidence of consent, connivance and negligence on the part of any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in that capacity, then both the body corporate and such person shall be guilty and liable to be proceeded against and punished accordingly.[91] Besides, diplomatic immunity is excluded and shall not extend to persons committing a crime under the decree.[92]

The Decree also imposes civil liability for any damage caused by the harmful waste, unless the damage was due wholly to the fault of the sufferer thereof or the sufferer voluntarily accepted the risk of the harmful waste.[93]
The above Decree was followed by the Federal Environmental Agency Decree which, inter alia, established the Federal Environmental Protection Agency as a body corporate.[94] The Decree also made provision for the management of hazardous wastes. The discharge of such wastes into the air, upon the land, in the water or at the adjourning shorelines of Nigeria in harmful quantities is prohibited save under permission or authority granted under any law in force.[95] Violation of this provision is an offense

[88] Ibid., section 1(2).
[89] Ibid., section 2-5.
[90] Ibid., section 6.
[91] Ibid., section 7.
[92] Ibid., section 9.
[93] Ibid., section 12.
[94] Decree No. 58 of December 30, 1988.
[95] Ibid., section 20(1).

punishable by a fine of not more than N500,000 and an additional fine of N1,000 for every day the offence continues.[96]

Where an owner or operator of any vessel or facility from which the hazardous substance is discharged, in violation of the Decree, cannot prove that such discharge was solely due to a natural disaster or an act of war or sabotage, he shall, in addition to the above penalty, pay for the cost of removal of the substances and restoration of the environment as well as damages to any persons injured thereby.[97]

The Decree also empowers the Minister responsible for the environment, on the advice of the Federal Environmental Protection Agency, to make regulations for, inter alia, standards and the control of hazardous substances and removal methods.[98]

In 1995 Uganda enacted the National Environment Act.[99] Part VIII of the Act, entitled "Management of the Environment", has a number of provisions addressing hazardous wastes and chemicals. First, there is imposed the general obligation to manage and minimize waste generation through treatment, reclamation and recycling.[100] Second, the National Environment Management Authority is then mandated, in consultation with the lead agency, to adopt standard criteria for the classification of hazardous wastes and to make regulations and issue guidelines for their management.[101] The Authority is also empowered to issue guidelines and prescribe measures for the management of toxic and hazardous wastes, including their classification; labeling; packaging; advertisement; imports and exports; distribution storage, transportation and handling; disposal; and the restriction and banning of extremely toxic and hazardous chemicals and materials.[102] The Act then criminalizes the importation into Uganda of any class of hazardous or any other waste and prohibits, with penal sanctions, the discharge of hazardous substances, chemicals and materials or oil in the environment.[103]

Pursuant to the provisions of the principal statute, the Authority did promulgate, in 1999, the National Environment (Waste Management) Regulations.[104] The Regulations provide for further and better particulars on the management of hazardous wastes and chemicals, including the requirements on generation, storage, movement into and out of Uganda, packaging, labeling, disposal facilities, land fills, sanitary fills and incinerators. Regulations 19 and 20 provide, respectively, for the duties of the Authority in relation to transboundary movement of hazardous waste and the procedures for notification and prior informed consent with regard to the export and import of hazardous waste out of and into Uganda.[105]

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[96] Ibid., section 20(2).
[97] Ibid., section 21.
[98] Ibid., section 37.
[99] National Environment Act, Chapter 153, Laws of Uganda.
[100] Ibid., section 53.
[101] Ibid., section 54.
[102] Ibid., section 56.
[103] Ibid., section 55 and 57.
[104] Notice No. 52 of 1999 (October 19, 1999).
[105] Ibid.

Kenya's Environmental Management and Co-ordination Act,[106] similarly, has provisions on the management of hazardous wastes and substances. In language similar to the Ugandan legislation, the Act mandates the National Environmental Management Authority to establish standard criteria for the classification of hazardous wastes and to issue guidelines and regulations for the management of each category of hazardous wastes.[107] The Act then prohibits the importation into Kenya of any hazardous category of waste; imposes requirements for a permit from the Authority as well as written consent from a competent authority of receiving country for the export of any hazardous waste from Kenya; and forbids the transportation of any hazardous waste in transit through Kenya without a permit from the Authority.[108] Violation of these provisions is an offence punishable by imprisonment for at least two years and a fine of not less than one million shillings or both such imprisonment and fine.[109]

The Minister responsible for environment is empowered, on the advice of the Authority, to make regulations prescribing the procedure for , inter alia, classification of toxic and hazardous chemicals and materials; imports and exports; monitoring their effects on human health and the environment; and their disposal.[110]

The discharge of any hazardous substance, chemical, oil or oily mixture into any waters or other environmental media contrary to the provisions of the Act or any regulations thereunder is a punishable offence. Besides any sentence imposed on such offender, the person will be required to pay the cost of clean-up and restoration of the damaged or destroyed environment as well as damage for any injuries suffered by third parties.[111]

In exercise of the powers conferred by the Act, the Minister responsible for environment did, in 2006, promulgate the Environmental Management and Co-ordination (Waste Management) Regulations, 2006.[112] Part IV of the Regulations on "Hazardous and Toxic Wastes" impose a number of legal and administrative requirements for the management of such wastes. First, the engagement in any activity likely to generate hazardous wastes requires an EIA license from the Authority.[113] Second, every generator of hazardous waste is required to label every container or package, in English and Kiswahili, and provide the prescribed information.[114] Then, there are requirements for treatment of hazardous wastes using means and through methods prescribed or approved by the Authority; a valid export permit issued by the Authority and a valid prior informed consent document issued by the designated authority of the receiving country for the export of the waste from Kenya; a valid transit permit for transport of hazardous wastes

[106] Act No. 8 of 1999
[107] Ibid., section 91(1)and (2).
[108] Ibid., section 91(3)-(5).
[109] Ibid., section 91(6).
[110] Ibid., section 92.
[111] Ibid., section 93.
[112] Legal Notice No 121 of 2006 (September 29, 2006)
[113] Ibid., Regulation 17.
[114] Ibid., Regulation 18.

through Kenya; and an insurance cover for the risks likely to arise out of these activities.[115]

With respect to pesticide and toxic substances Regulation 24 applies the provisions of the Pests Control Products Act[116] relating to their registration, labeling, advertising, packaging and importation and exportation.

6. CONCLUSION

Whatever the actual or potential risks to human health and the environment, it is manifest that the international community and individual states have taken diverse measures to address the impacts of hazardous wastes and chemicals. Recent international legal instruments as well as national legislation demonstrate the resolve to protect human health and environment from the dangers of these substances. Taken as a whole, it can be concluded that the international community of nations has put in place adequate legal and institutional frameworks to address the subject.

However, since states are the primary actors at the international level, the success of these frameworks will depend on their readiness to co-operate in enhancing and protecting the global environment. At the domestic level, and for the developing countries, the key challenge is the building of the capacities – institutional and human – to enable them translate their international commitments into effective national policies and programmes of action, to create awareness regarding the effects of these substances and to translate legal provisions into positive action for the protection of human health and the environment.

[115] Ibid., Regulation 19-22.
[116] Chapter 346, Laws of Kenya (Revised Edition, 1985).

ANNEX 6

ECOSYSTEM SERVICES AND ENVIRONMENTAL LAW

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ECOSYSTEM SERVICES AND ENVIRONMENTAL LAW

1.0 Introduction

While it is obvious that humans depend on Earth's ecosystems, it is another matter altogether to identify, assess, and undertake practical actions that can enhance well-being without undermining the environment. Humans influence and are influenced by, ecosystems through multiple interacting pathways. Long-term provision of food in a particular region, for example, depends on the characteristics of the local ecosystem and local agricultural practices as well as global climate change, availability of crop genetic resources, access to markets, local income, rate of local population growth, and so forth.

Changes at a local scale that may seem to have positive impacts on the local supply of ecosystem services, such as clearing a forest to increase food production, may at the same time have highly detrimental impacts over larger scales: for instance, significant loss of forest cover in upstream areas may reduce dry-season water availability downstream.

Given these complex links between ecosystems and human well-being, this paper attempts to lay a basic foundation for understanding the essential components of ecosystems services, their relation to national development processes including the quest to reduce poverty. The paper also attempts to explain how environmental law can facilitate such processes. Above all, the paper highlights the contribution of the judiciary in ensuring the protection and sustenance of these vital ecosystem services.

Some Key Definitions:

Ecosystem: An ecosystem is a dynamic complex of plant, animal, microorganism communities and the nonliving environment interacting as a functional unit. Humans are an integral part of ecosystems. Ecosystems vary enormously in size; a temporary pond in a tree hollow and an ocean basin can both be ecosystems.

Ecosystem services: Ecosystem services are the benefits people obtain from ecosystems. These include *provisioning* services such as food and water; *regulating* services such as regulation of floods, drought, land degradation, and disease; *supporting* services such as soil formation and nutrient cycling; and *cultural* services such as recreational, spiritual, religious and other nonmaterial benefits.

Changes in these services affect *human well-being* through impacts on *security*, the basic material for a *good life, health, and social and cultural relations*. These constituents of

well-being are, in turn, influenced by and have an influence on the *freedoms and choices* available to people.

Well-being. Human well-being has multiple constituents, including *basic* material for a good life, *freedom and choice, health, good social relations, and security*. Wellbeing is at the opposite end of a continuum from poverty, which has been defined as a "pronounced deprivation in well-being." The constituents of well-being, as experienced and perceived by people, are *situation-dependent*, reflecting local geography, culture, and ecological circumstances.

***Natural Capital*:** The natural environment is a form of capital asset, i.e. natural capital. This can be seen from the other forms of capital such as human capital, intellectual capital, and social capital. Natural capital consists not only of specific natural resources, such as energy, water, wetlands, minerals, fish or trees, but also of interacting ecosystems. Ecosystems comprise the abiotic (nonliving) environment and the biotic (living) groupings of plant and animal species called communities. As with all forms of capital, when these two components of ecosystems interact, they provide a flow of services known as ecosystem services. Examples of such ecosystem services include water supply and its regulation, climate maintenance, nutrient cycling, and biological productivity.

Vulnerability: encompasses those people who can be easily pushed into poverty when the natural resource sector they depend on is degraded or otherwise compromised.

Accessibility: refers to those people who depend on a sustainable flow of natural resources for their daily livelihood who would be handicapped if access is restricted; this is especially important where people use common property or open-access resources.

2.0 Ecosystems and their Services

Ecosystem services are the conditions and processes through which natural ecosystems, and the species that make them up, sustain and fulfill human life. In addition to the production of goods, ecosystem system services are the actual life-support functions, such as cleansing, recycling, and renewal, and they confer many intangible aesthetic and cultural benefits as well.

Ecosystems provide a variety of benefits to people, including provisioning, regulating, cultural, and supporting services.

(a) **Provisioning** services are the products (or goods) people obtain from ecosystems, such as food, fuel, fiber, fresh water, and genetic resources.
(b) **Regulating** services are the benefits people obtain from the regulation of ecosystem processes, including air quality maintenance, climate regulation, erosion control, regulation of human diseases, and water purification.

(c) **Cultural** services are the nonmaterial benefits people obtain from ecosystems through spiritual and religious enrichment, heritage, cognitive development, reflection, recreation, and aesthetic experiences.

(d) **Supporting** services are those that are necessary for the production of all other ecosystem services, such as primary production, production of oxygen, and soil formation.

Regardless of how one defines and categorizes ecosystem services, the fundamental challenge lies in providing an explicit description and adequate assessment of the links between the structure and functions of natural systems, the benefits (i.e., goods and services) derived by humanity, and their subsequent values.

Biodiversity and ecosystems are closely related. Biodiversity is the variability among living organisms from all sources, including terrestrial, marine, and other aquatic ecosystems and the ecological complexes of which they are part. It includes diversity within and between species and diversity of ecosystems. Diversity is a structural feature of ecosystems, and the variability among ecosystems is an element of biodiversity. Products of biodiversity include many of the services produced by ecosystems (such as food and genetic resources), and changes in biodiversity can influence all the other services they provide. In addition to the important role of biodiversity in providing ecosystem services, the diversity of living species has intrinsic value independent of any human concern.

3.0 Ecosystems, Human Well-being and Poverty

Human well-being and progress toward sustainable development are vitally dependent upon Earth's ecosystems. The ways in which ecosystems are affected by human activities will have consequences for the supply of ecosystem services—including food, freshwater, fuelwood, and fiber—and for the prevalence of diseases, the frequency and magnitude of floods and droughts, and local as well as global climate.

The environment and its natural capital constitute the most important asset for the poor. This is the reason an environmental perspective dominates the social cultural and economic worldview of poor communities throughout the world. Indeed the social organization of virtually all of the world's poor rural populations very much reflects the ecological conditions in which they live. For example, the concentration of villages within locations of more fertile and higher agricultural potential attests to this reality. In other cases, homesteads of poor rural communities are normally strategically placed near forests, streams and hilltops all of which provide important ecosystem services that support livelihoods.

In the case of forests, for example, it provides a diversity of socio-economic benefits, including provision of food, medicine and shelter, as well as serving as important cultural and religious values. Therefore, ecosystems directly influence the well-being of the

communities. The absence, denial or unequal access to basic necessities and other environmental resources is the foundation of poverty.

Human demands for ecosystem services are growing rapidly. At the same time, humans are altering the capability of ecosystems to continue to provide many of these services. Changes in availability of all these ecosystem services can profoundly affect human well-being—ranging from the rate of economic growth, health, livelihood security and prevalence and persistence of poverty.

Changes in ecosystem affect human well-being in the following ways:

- **Security** is affected both by changes in (i) provisioning services - affecting supply of food and other goods, (ii) the likelihood of conflict over declining resources, (iii) regulating services - which influence the frequency and magnitude of floods, droughts, landslides, or other catastrophes. It can also be affected by changes in cultural services as, for example, when the loss of important ceremonial or spiritual attributes of ecosystems contributes to the weakening of social relations in a community. These changes in turn affect material wellbeing, health, freedom and choice, security, and good social relations.

- **Access** to basic material for a good life is strongly linked to both provisioning services such as food and fiber production and regulating services, including water purification.

- **Health** is strongly linked to both provisioning services, such as food production and regulating services, including those that influence the distribution of disease-transmitting insects and of irritants and pathogens in water and air. Health can also be linked to cultural services through recreational and spiritual benefits.

- **Social relations** are affected by changes to cultural services, which affect the quality of human experience.

- **Freedoms and choice** are largely predicated on the existence of the other components of well-being and are thus influenced by changes in provisioning, regulating, or cultural services from ecosystems.

According to UNEP and the International Institution of Sustainable Development (IISD), there are 10 constituents of well-being closely related to ecosystems. These are:

a) Being able to be adequately nourished.
b) Being able to be free of avoidable diseases.
c) Being able to live in and environmentally clean and safe shelter.
d) Being able to have adequate and clean drinking water.
e) Being able to have clean air.
f) Being able to have energy to keep warm and to cook.
g) Being able to use traditional medicine.

h) Being able to continue using natural elements found in ecosystems for traditional cultural and spiritual practice.
i) Being able to cope with extreme natural events including floods, storms and landslides etc.
j) Being able to make decisions that respect sustainable natural resources and enable the achievement of a sustainable income.

The emphasis of these constituents is on empowering individuals, especially the poor, to become agents of change rather than victims who are always vulnerable to effects of ecosystem changes.

4.0 Values Associated with Ecosystems

In view of the complex ecological processes that interact to produce this wide range of services, it is often difficult and possibly misleading to isolate and value just one type service of the ecosystem without simultaneously considering its other services.

Further, current decision-making processes often ignore or underestimate the value of ecosystem services. Decision-making concerning ecosystems and their services can be particularly challenging because different disciplines, cultures, philosophical views, and schools of thought assess the value of ecosystems differently. For instance, one cannot be sure that agricultural development of wetlands will be the best policy decision when only one service provided by the wetlands is valued and others are ignored.

Another example is where clean drinking water, food production, and recreation may all be benefits arising from a well-maintained lake ecosystem. The question is: how to value these benefits and collectively to resolve conflicts and tradeoffs over management options to provide different combinations of these benefits.

One paradigm of value, known as the utilitarian (anthropocentric) concept, is based on the principle of humans' preference of satisfaction (welfare). In this case, ecosystems and the services they provide have value to human societies because people derive utility from their use, either directly or indirectly (use values).
Within this utilitarian concept of value, people also give value to ecosystem services that they are not currently using (non-use values). Non-use values, usually known as existence value, involve the case where humans ascribe value to knowing that a resource exists even if they never use that resource directly. These often involve the deeply held historical, national, ethical, religious, and spiritual values people ascribe to ecosystems (values associated with cultural services of ecosystems).

A different, non-utilitarian value paradigm holds that something can have intrinsic value, that is, it can be of value in and for itself, irrespective of its utility for someone else. From the perspective of many ethical, religious, and cultural points of view, ecosystems may have intrinsic value, independent of their contribution to human well-being.

- ***Decision-makers should make sure the value of all ecosystem services, not just those bought and sold in the market, are taken into account when making decisions.***

5.0 Maintaining Ecosystems Services- are there Solutions?

5.1 Introduction

Human well-being can be enhanced through sustainable human interactions with ecosystems supported by necessary instruments, institutions, organizations, and technology. Creation of these management options may contribute to freedoms and choice as well as to increased economic, social, and ecological security. Ecological security entails minimum level of ecological stock needed to ensure a sustainable flow of ecosystem services.

However, the benefits conferred by institutions and technology are neither automatic nor equally shared. In this regard, (i) opportunities are grasped by richer than poorer countries and people; (ii) some institutions and technologies mask or exacerbate environmental problems; (iii) responsible governance, while essential, is not easily achieved; (iv) participation in decision-making, an essential element of responsible governance, is expensive to maintain in time and resources; and (v) unequal access to ecosystem services has often elevated the well-being of small segments of the population at the expense of others.

Thus, sustaining ecosystem services, and thereby human well-being, requires a full understanding and wise management of the relationships between human activities, ecosystem change, and well-being over the short, medium, and long term.

Achieving sustainable use requires effective and efficient institutions that can provide the mechanisms through which freedom, justice, fairness, basic capabilities, and equity govern the access to and use of ecosystem services. Such institutions may also need to mediate conflicts between individual and social interests that arise. *The Judiciary is one of such institutions that can carry out these important roles.*

5.2 Mainstreaming Ecosystems Services in the Development Processes

To manage wisely the relationships between human activities and ecosystem services, there is need to mainstream ecosystem services in the development process and in our day to day activities.

Mainstreaming ecosystem services refers to strategically addressing environmental issues as a cross-cutting dimension of development in order to enhance overall economic, social development and environmental sustainability. For developing countries, such as Uganda, the issue is to mainstream ecosystems services into the national development and poverty reduction strategies.

Within national development processes, environmental protection and poverty eradication are among the international commitments that countries have made to implement Multilateral Environment Agreements (MEAs). Some of the MEAs have attempted to influence global and national policies regulating the manner in which people can access ecosystem services. Some of the MEAs include those on intellectual property rights, biosafety, wildlife resources, forest resources, water resources, climate change, chemicals, desertification, biodiversity etc.

Focus on national integration of international commitments by Governments may include sectors such as land and human settlements, forestry, water and sanitation, health, transport, energy, industry, wetlands, agriculture, livestock, fisheries, wildlife, tourism and mining.

5.3 Mainstreaming Ecosystem Services in Environmental Law

Several environmental principles found in MEAs, such as precaution, polluter-pays, sustainable development, common but differentiated responsibility, and environment impact assessment do contribute to poverty reduction by helping to prevent or mitigate harm to communities, which harm may result in destroying livelihoods of the people and escalating cases of poverty. The table below shows some key policy actions that can be taken for mainstreaming poverty, environment and law.

Key Policy action areas Mainstreaming poverty and Environment

Improve governance	Integrate poverty-environment issues into national development frameworks
	Strengthen decentralization of environmental management
	Empower civil society, in particular poor and marginalized groups
	Address gender dimensions of poverty-environment issues
	Strengthen anti-corruption efforts to protect the environment and the poor
	Reduce environment-related conflict
	Improve poverty-environment monitoring and assessment
Enhance the assets of the poor	Strengthen resource rights of the poor
	Enhance the poor's capacity to manage the environment
	Expand access to environmentally-sound and locally appropriate technology
	Reduce environmental vulnerability of the poor
Improve the quality of growth	Integrate poverty-environment issues into economic policy reforms
	Increase the use of environmental valuation
	Encourage appropriate private sector involvement in pro-poor environmental management
	Implement pro-poor environmental fiscal reform
Reform international and industrial	Reform international and industrial country trade policies
	Make foreign direct investment more pro-poor and pro-environment

country policies	Enhance the contribution of multilateral environmental agreements to poverty reduction
	Encourage sustainable consumption and production
	Enhance the effectiveness of development cooperation and debt relief

The Problem

Environmental law has been used as part of sound environmental management strategies as part of national sustainable development strategies and actions for sometime now, (since the 1972 Stockholm Conference on environment and development). Several countries, especially in the 1990s developed and are currently implementing national environment action plans and strategies as the main tool for sustainable environment management. The least developed countries, especially those in Africa, are using poverty reductions strategies or papers (PRSPs) as the main framework for reducing or alleviating poverty in their countries.

Currently, most of the developing countries have come to realize that the use of ecosystem services will not only contribute to poverty reduction but also to sustainable environment management- a precondition for development. This realisation has been supported in development policies without having effectively been integrated into law. Also, there has been little or no attempt to link the new trends such as ecosystem services into environmental law.

More often than not, development of environmental law has lagged behind social, economic and technological developments. The evolution of environmental law has also been hampered by traditional legal concepts and devices, which are ill equipped to contend with contemporary environmental concerns including focusing on poverty-reduction.

Further, in many developing countries environmental law is erroneously perceived as diametrically opposed to socio-economic development with the result that environmental factors have, in most instances, been subordinated to social and economic exigencies.

Having looked at the linkages between ecosystem services, poverty and environmental law, the aim of law is to control the impacts of human activities on the environment so as to ensure maintenance and or enhancement of the ecosystem services. The role of environmental law in ecosystem services, poverty reduction and development is essentially about how it can protect and maximize the advantages associated with ecosystem services.

The challenge therefore is how to mainstream ecosystem services into environmental law.

It therefore becomes imperative to examine how ecosystem services can actually be mainstreamed into environmental law.

The following are among the priority activities for mainstreaming of ecosystem services into law:

(i) Improvement of legislation to facilitate ecosystems services,
(ii) Enhancement of access to justice in environmental matters,
(iii) Development of instruments to guide management of ecosystem services,
(iv) Development of innovative and effective methods of enforcement and compliance to maintain or restore ecosystem services,
(v) Enhancement of knowledge and capacity in ecosystem management and law, and
(vi) Strengthening relevant institutions for compliance and enforcement.

Elements of Environmental Law that Facilitate Mainstreaming Ecosystem Services and Poverty Reduction

Having generally discussed the priority topics for mainstreaming ecosystem services into environmental law, it is important to elaborate those topics that can enhance effectiveness of ecosystems.

These are:

(i) Right to clean and healthy environment,
(ii) Control over land or ownership of resources,
(iii) Rights and access over natural resources,
(iv) Environmental Impact Assessment (EIA),
(v) Intellectual property rights,
(vi) Governance, human rights and equity,
(vii) Benefits sharing,
(viii) Public participation, access to information and right of access to Justice,
(ix) Protection of indigenous/local knowledge and rights,
(x) Provision of incentive measures,
(xi) Conflict resolution or management, and
(xii) Effective enforcement mechanism.

It is pertinent to note that the Judiciary has a comparative advantage and plays a prominent role in matters relating to the above topics.

A brief explanation of some of these topics and how they can contribute to enhancing ecosystem services is provided below.

Ownership and control over natural resources and land:
The ownership of natural resources is a fundamental key to the poverty reduction. The poor often do not own the land on which they carry out their income-generating activities such as fishing and agricultural production or in some cases the poor are subjected to rental payments. Unfortunately this enhances the vulnerability of being dispossessed of their homes and livelihoods or for those paying rent, they may be forced to pay high rent. The advantage of ownership is that it provides an incentive for people to manage their ecosystem sustainably in order to achieve long-term benefits from, among others, planting trees and improving soil.

Another issue on land ownership with regard to the poor is the use of common lands. Areas under state ownership provide resources for poor communities; however, such people do not have a legal basis for the use of these common resources. Resources under this category may include forests and fishing grounds which have been governed locally for centuries by villages or tribes. When conflicts arise, the lack of legal recognition and disagreements with modern state-recognized ownership frequently threatens rural livelihoods.

Strengthening resource rights of the poor can either facilitate or impede sustainable use, protection, or resource- improving investment. Property rights represent key household and community assets that may provide income opportunities and access to credit, the ability to meet essential household subsistence needs or a means to insure against livelihood risk. Therefore, any law that contains provision that can enhance ownership of natural resources would be considered as a positive for protecting ecosystems.

Access rights over natural resources

The right and access to natural resources can play a vital role in a poverty reduction initiative. It is evident that poorer people live in areas of high ecological vulnerability, which includes relatively low levels of access to resource use. With improved access to and control over different types of assets, poor people are better able to meet basic needs and to create more flexible livelihood options.

Intellectual property:

Intellectual property rights as an element of environmental law can contribute to poverty alleviation. For example, introduction of intellectual property rights in agriculture through patents and plant breeders' rights fosters the development of agro-biotechnology whose effect would be increased food production. Food security will undoubtedly result in reduced vulnerability and poverty among the communities.

Integrating the element of intellectual property in laws addressing environmental issues, will therefore make such laws poverty compliant, and become a tool of alleviating poverty.

Governance, human rights and equity:

Sustainable environmental governance constitutes one of the most important pillars for the full and effective implementation of international and national environmental laws. It requires the setting up of institutions from the local to the international level that can deliver effective, fair and equitable environmental management.

Sustainable environmental governance is intrinsically related to the fulfillment of human rights, in particular with regard to the links between environmental management and the realisation of specific human rights. Further, it is directly related to issues of equity, for instance concerning the situation of women in environmental management (gender concerns) or the relations between states in international law (differential treatment). This

raises a number of inter-related issues, which are of interest to poverty alleviation concerns in environmental law.

Public participation and access to information:
Education and awareness to the public can be a key player in the poverty reduction initiative. As a result, people dependant on ecosystem services can discover ways to maintain their environment, which in turn allows them to use their resources in a sustainable way for a longer period of time. Another incentive of providing environmental education is that the public can become more aware of their right to resources and land.

Processes of Mainstreaming Ecosystem Services into Law

The processes of mainstreaming ecosystem services in the law sector of any country can either be *pro-active* processes like policy formulation, action planning, institutional structures and law making, or *re-active* processes like compliance and enforcement. The following are some of the activities that can be used to mainstream:

(a) ***Procedural mainstreaming:***

This is the integration of ecosystem services issues into planning and decision making processes (when, how, by who). For example, before laws are passed, it is important to establish preferably how they should be tested for the likely contribution to enhancing ecosystem services and sustainable development. In that case, it is not only the laws on environment and natural resources, but they could also be other laws to be tested e.g. commercial laws.

(b) ***Methodological mainstreaming:***

This is the integration of different approaches, concepts and the involvement as well as participation of key actors at different intensities and points in time. Because of this, mainstreaming ecosystem services inevitably calls for a critical assessment of the mandates of the institutions under into the law and justice sector on one hand, and on their relationship with other institutions and structures (e.g. line ministries, local government structures, communities, private sector, civil society organization, etc) on the other.

(c) ***Substantive mainstreaming:***

This is the integration of environment (biophysical) with social, economic and other issues at different scales (local to global) and time perspective. This is the holistic approach. In other words, the justice and law sector should contribute to the long-run objectives of mainstreaming environmental issues in the development process.

Mainstreaming ecosystem services in other areas of laws:

To the extent possible, ecosystem services issues should equally be mainstreamed in other laws (e.g. commercial laws). The reason is that institutions charged with overseeing

that such other laws are implemented could be the best to identify and address the issues at hand, as opposed to waiting for or relying on institutions with environmental mandate.

(d) ***Mainstreaming ecosystem services in the Judicial System***

The whole essence is to develop innovative means of administering environmental justice without losing the foundations of a national Judiciary System.

Improving Court procedures/rules/processes: existing court rules and codes were designed for adjudication of civil and criminal cases. There is need to design suitable rules and codes for the adjudication of environmental offences and suites.

Integrating community service system into ecosystem services management: develop methods for un-custodial sentencing where the offender serves the community and enhances ecosystem services available locally whether the offender violated the ecosystem or not. This would also include use of restoration/improvement orders of court in civil matters. Issuance of consequential court orders – civil and criminal? See the case of Buganda Road Cr. Case No. 735/2001 *Uganda vs. Ddungu.*

Advancing liberal interpretation: the judicial officers can take efforts to develop skills and therefore have a wider view of the purpose, importance and interlinkages of ecosystem services to a community, the nation and world at large.

Adjudication issues like linking ecosystem services to "causation" in environmental matters, assessment of environmental loss/damage, compensation to the injured/harmed and to the environment, and of course access to justice.

Integrating ADR: as an instrument of access to environmental justice because of its lesser technicalities and potential for quick settlement of environmental disputes.

Involving local/traditional dispute settlement systems: because of their closeness to the ecosystem services, understanding of local issues and quick ability to settle natural resource use disputes.

Removing barriers to environmental justice. They are: drafting of laws, reporting of offences, alternative dispute resolution, investigation, prosecution, passing judgment and sentencing.

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ANNEX 7

ENVIRONMENTAL LAW REMEDIES.

By Gracian Banda, Executive Director, Centre for Environmental policy and Advocacy, Malawi.

Presentation Coverage

1. Introduction……
2. Limitations of traditional legal concepts……
3. From compensation to prevention…….
4. Compensatory remedies: some challenges……
5. Persuasion and inducements……..
6. Public law remedies……...
7. Private law remedies……..
8. Emerging principles……...
9. Conclusions……

Introduction:
Applicable law

The law applicable is an interactive system of substantive, procedural and institutional norms: both domestic (public and private) and international law. The intimate relationship between national and international environmental law is obvious: most environmental problems are or have potential trans boundary impacts; they are both conditioned by the same milieu and shaped by the same pressures and processes; and the enforcement of international environmental law is dependent on national systems

The concept of sustainable development, fully developed and popularised in international law, to ensure that current development imperatives do not undermine the capabilities of future generations to meet their own development needs is key in conceptualising environmental law remedies.
Sustainable development cannot be achieved simply by legislating or by recourse to traditional legal concepts: the law must balance economic, cultural, aesthetic and moral issues and inter and intra-generational issues.
On the other hand processes and institutions are as important as absolute norms.

Limitations of traditional legal concepts

Certainty and predictability are key elements of the civil and penal systems that define environmental law enforcement in general and its remedies in particular;
Uncertainties and limited knowledge regarding environmental phenomena adversely affect the compensatory system of enforcement; Environmental problems are no longer local or individually based as was the case in the traditional tort based system;

Many new environmental problems are global, their time frame trans-generational, their impacts often irreversible and irreparable

The result has been new demands on the state to set responsive rights and obligations for its citizens as well as in its relationship with other states and a shift of emphasis from compensatory fault based to preventive norms and purposeful enforcement measures

The ability of the state to cope with these demands has been severely tested. The compensatory remedies operate where there is definable damage to property, personal dignity or patrimonial rights and where these can readily be traced to an external source;

Today's environmental harms are diffuse in time and space involving cumulative sources and touch not only individual interests but also and, increasingly, communal ones; Where large scale environmental harm occurs, the damages may be such that the defendant may not be able to pay;

Policy and legislative responses include imposing no fault liability, insurance or bank guarantees or bonds, procedural mechanisms to facilitate collective actions and access to courts or funds to compensate future victims;

Nevertheless compensatory legal remedies are inept to deal with potentially irreversible/irreparable harm surrounded by uncertainties of cause and effect; Criminal law suffers the same fate: it applies after the event and generally there is low political will to enforce non violent 'white collar' crime in the face of limited resources.

From compensation to prevention

At national level the emphasis has been to move away from civil liability to imposing positive duties intended to prevent the occurrence of harm; The mechanisms used include licensing, approval mechanisms, general prohibitions, EIA, ERA, and specific technical norms and standards applicable to dangerous substances or activities;

For this purpose a number of states have formulated generic obligations in framework legislation providing for:

- absolute or conditional prohibitions,
- prior authorization requirements, including ERA or EIA,
- creation of corresponding regulatory and supervisory mechanisms, including special environmental protection agencies,
- technical norms setting quantitative and qualitative standards,
- emergency plans and damage containment schemes for high risk activities, public participation and access to environmental justice norms

Even at international level these concepts have been recognized since the *Trail Smelter Arbitration* (1941) which, though espousing compensatory obligations for harm caused by a state beyond its borders, nevertheless emphasized the need for preventive and control mechanisms. Subsequent conventions and treaties dealing with waste management, nuclear and ozone depleting substances have taken these on board. There are of course differences between the national and international environmental law regimes reflecting mainly the difficulties of enforcing international obligations: here the approach has been to impose duties on states to regulate, supervise, monitor on matters such as liability for damage or access to foreign courts; Both the national and international regime face two major

challenges; whether and to what extent to apply the preventive or mostly recently precautionary principle; and how to deal with the uncertainties of data and knowledge, hence the standard practice to regulate technical standards through subsidiary legislation or schedules or annexes.

Some challenges and opportunities

Choice of forum: the tendency is to bring jurisdiction closer to victims. In the *Bhopal* Case however the victims wanted a forum outside their own jurisdiction as did the defendants. In *Englebert Ngcobo & Others –vs- Thor Chemical Holdings Ltd* (1995) QBD the High Court allowed the case to proceed in England though South Africa would have been convenient. The court argued that there was grave danger of injustice in South Africa due to minimal damages payable under the SA legislation.

Corporate veil: a parent company may hide behind a maze of subsidiaries to escape liability. At common law the corporate veil can be lifted to make the parent company and in some cases the controlling shareholder individuals liable: In the *Canadian case of R –vs-Blackbird Holdings Ltd and George Crowe* (1990) CELR (N.S) 119 the accused controlling shareholder of companies which illegally disposed of waste materials was held liable despite his denial of knowledge of the illegally disposed waste.

State responsibilities

This imposes liability on states for their own acts or omissions and any other arising from their jurisdiction or under their control even if traceable to private parties: the ***Trail Smelter Arbitration.*** *The* ***Corfu Channel*** case (1949, ICJ4) on the other hand confirmed state responsibility to inform and notify the international community of existing hazards.

Responsibility to the global commons: in the ***Barcelona Traction*** case (1970, ICJ 4) the ICJ recognized a basic obligation to the international community over global commons. However the damages recoverable may be limited to costs of restoration and damage containment;

The Powers of the Court determine the Range of remedies that can be provided. Hence while in ***British American Tobacco Ltd –vs- Environmental Action Network Ltd*** (C A No. 27/2003) the High Court of Uganda at Kampala could not fully and sufficiently determine the kind of information to be included in the labels and publications on tobacco warnings requested by the petitioners, the Indian Supreme Court has power to order inquiries and expert advice to establish the requisite information for the enforcement of a fundamental right: section 32 of the Indian Constitution as applied in ***M C Mehta –vs- Shriram Food & Fertilizer and Union of India*** (AIR 1987 SC 1026).

Immunity from suit: international organizations such as the World Bank and the UN enjoy immunity from prosecution. An international financial institution may support exports of inherently dangerous equipment or technology or environmentally substandard plants. In ***Felicia Adjui –vs- The Attorney General*** (Sui No. Misc. 811/96) the High Court of Ghana declined to exercise jurisdiction brought against the World Bank for nuisance committed during construction of a sewerage system funded by the Bank on the

ground that the bank would be exposed to numerous actions arising merely from extending aid to a government project.

Collective remedies are still limited both under national and international environmental law. The Indian Supreme Court has however held that the primary responsibility of the court is to the community and that in the particular case involving the serious consequences of deforestation this duty took precedence: ***Ambica Quarry Works –vs- State of Gujarat & Others*** (AIR 1987 SC 1073). It is quite possible in a number of jurisdictions to justify this principle using constitutional provisions.

Public policy: financial constraints and fulfillment of rights

The fulfillment of many of environmental rights require financial outlays just like many socio-economic rights. Public bodies in developing countries have at times pleaded impecuniosity with little or no sympathy from the courts.
In *Festo Balegele & others –vs- Dar es Salaam City Council* (Civil Appeal No. 90 of 1991) the Respondent asked the court to allow it to continue to dump refuse in a residential area until it found an alternative site and therefore enable it to comply with its statutory duty to collect refuse. The High Court however rejected the plea and held that it is denial of basic rights to expose anybody's life to danger and 'eminently monstrous' to enlist the assistance of a court in the infringement.

A similar conclusion was reached by the Indian Supreme Court in *Ratlam Municipality –vs- Vardhichand* (AIR 1980 SC 1422) where the court observed that the statutory duty to stop public nuisance (the stench caused by open drains and public excretion by slum dwellers) applied to statutory bodies irrespective of financial standing, just like human rights under the Constitution.

Public policy: environment and employment

The enforcement of environmental regulations may result in rejection of development permission or closure of existing facilities leading to unemployment.

In ***M C Mehta & Others –vs- Shriram Food & Fertilizer Industries & Union of India*** (AIR 1987 SC 965) the Petitioners asked the Supreme Court of India to close a chlorine plant following a disastrous gas leak. The closure affected 4000 employees and was firmly opposed by management and labour unions.

The court held that in view the large scale unemployment that would ensue from the closure, the plant should be reopened subject to detailed conditions such as weekly inspection, periodic health checks for workers, setting up safety committees and training workers in safety measures.
On the other hand in ***Rural Litigation and Entitlement Kendera –vs- Union of India*** (AIR 1985 SC 652) the Supreme Court ordered closure of the mines despite the looming unemployment; it however ordered that the retrenched workers should be re-employed in the reforestation and soil conservation works which it ordered be taken immediately.

Persuasion and inducements

Fiscal incentives and disincentives such as:

- Energy saving programmes
- Pricing policy
- Surtax
- Rebates
- Investment credits

Public Law Remedies

- Mandamus
- Certiorari
- Prohibition
- Declaration
- Injunction
- Many of these remedies are obtained through judicial review, though they may also be obtained through originating summons or motions. The choice as to which procedure to use depends on a number of factors including the nature of the statutory duty, the time within which the action has been taken, etc. the principles to be used should also reflect the public nature of the obligation.

1. Public law remedies have been used to:

Quash a decision (certiorari) to use public property in a manner that adversely affects the environment. In *Mehta –vs- Kamal Nath* (1997) 1 Supreme Court Cases, the Supreme Court of India quashed a grant of lease on the ground that the decision breached the public trust doctrine which enjoins government to protect all natural resources which are by nature meant for for public use and enjoyment

Stop unlawful action (prohibition): The High Court of Kenya considered the use of legislative powers under the Wildlife Conservation Act and prohibited the removal of a rare and endangered species named 'Hirola' from its natural habitat by implying a duty to conserve the species in its natural habitat: ***Abdkadir Sheika Hassan & Others –vs- Kenya Wildlife Society*** (CC 2059/96)

Require performance of a duty (mandamus): In ***Vellore Citizens Welfare Forum –vs- Union of India*** (AIR 1996 SC 2715) the Supreme Court of India, in addition to ordering restoration of the polluted land, ordered that the government should create an authority to deal with the situation of the polluting tanneries. It also ordered that an industry that refused to pay compensation would be closed; those installing pollution control devises would still be liable for past pollution

Declare legal position of litigants: In ***Advocate K B Shrestha & Others -vs- HMG, Department of Transport*** (Writ Number 3109 of 1999) the Supreme Court of Nepal held that a government decision to ban three wheeler engine tempos found to be the main

source of air pollution was valid and rejected the claim by a business man that the decision violated his freedom to carry out business. The Court stated that the environment is interlinked with the right to life hence environmental protection measures were necessary. The Nepal Supreme Court also rejected an alternative plea that the ban should not apply outside Kathmandu merely because no standards had been prescribed for areas outside Kathmandu. The court stated that the right to a clean environment is universal.

Monetary compensation: In ***Mehta –vs- Kamal Nath*** (*supra*) the Supreme Court of India used the polluter pays principle to order the Motel owner, who had diverted a river course, to pay compensation for the restitution of the environment and the ecology of the riverbed and banks

Maintain status quo: In ***R –vs- Secretary of State for Trade & Industry, Ex parte Duddridge***, QBD, 7 Journal of Environmental Law the English High Court refused to compel the respondent to issue regulations restricting levels of electromagnetic fields which the applicants alleged would expose them to leukemia on the ground that there was no EU law imposing an immediate obligation to apply the precautionary principle. An inconclusive decision was also reached by the Supreme Court of Pakistan in ***Ms. Shehla Zia & Others –vs- WAPDA*** (Human Rights Case Number: 15-K of 1992 where the court refrained from making any orders due to the inconclusive scientific evidence.

Private law remedies

- **1.**The following are the causes of action:
    - Trespass
    - Nuisance
    - The Rule in Rylands v Fletcher
    - Negligence
    - Contract: positive or restrictive covenants

Trespass

This arises when a persons cause physical matter to come into contact with another's land Protects an occupier's right to enjoy his/her land without unjustified interference

Elements

- Limited to direct interference
- Actionable *per se*: depositing waste on
- someone's land will be trespass even if the waste can be removed without contaminating the soil or causing injury

Public nuisance

Public Nuisance is an interference with the public's reasonable comfort and convenience. It constitutes a criminal offence as well as a cause of action in private law

AG v PYA Quarries Ltd [1957] 2 QB 169, per Denning:

"it's a nuisance which is so widespread in its range & so indiscriminate in its effect that it would not be reasonable to expect one person to take proceedings on his own

responsibility to put a stop to it but that it should be taken on the responsibility of the community at large"

Private nuisance

Is an interference with an occupier's use & enjoyment of his land. It should be noted that not all interferences amount to nuisance:
There must be unreasonable causing material & substantial injury to property or unreasonable discomfort to those living on the property
A single act not enough. Most suited to resolving environmentally related disputes between neighbouring landowners: Smell, air & noise pollution *Halsey v Esso Petroleum Co Ltd [1961] 2All ER (oil distribution depot, which emitted smoke noise& smell-car, clothes damage*

Statutory nuisance

These constitute of actions created by statutes basis in response to pressing social needs
Public Health legislation often regulates noise & noxious fumes; Road Traffic legislation sometimes regulates vehicle emissions

- Advantages:
    - Private individuals can merely complain to appropriate local authority departments about nuisances troubling them & will be dealt with without the expense & inconvenience of bringing individual action
- In a number of cases states fail to provide for technical standards to measure pollution levels, hence the legislation remains unenforced

The rule in Rylands vs Fletcher.

This rule makes an occupier strictly liable for the consequences of escapes from his land of a thing having potential to cause harm
Elements:

- Thing brought & kept on the land under the control/operation of the defendant
- Non-natural use of land
- Thing must be mischievous & if it escapes could cause mischief

This rule was applied in ***MC Mehta v Union*** **of India** [1987]AIR SC1086, the *plaintiffs claimed for damages resulting from a gas leakage; the court held 'that where an enterprise is engaged in a hazardous/inherently dangerous activity & harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity the enterprise is strictly & absolutely liable to compensate those affected*

Relevance and limitations
Negligence

Arises from failure to exercise the care demanded by the circumstances resulting in injuries to the plaintiff.
Unlike trespass, etc basis for action not occupation of property
Plaintiff must prove duty of care & has been breached resulting into injury
Not ideal for environmental litigation because:

- Need proof of fault on part of deft & will be dismissed if action was reasonable
- Need to foresee type of harm that will result, e.g in ***Cambridge Water Co v Eastern Counties Leather PLC*** *[1994] 2 AC 264,plaintiff sued defendant for contamination of water services from chemicals that spilled from the defendant's factory. Court held that its is not sufficient to show that pollutions could have been foreseen as that is too wide a category of damages*

Remedies.

1. Damages
   - Compensation given to a party who has suffered an injury
   - Problematic in environmental damage: how should it be assessed i.e by reference to costs of measures of reinstatement or on basis of an abstract quantification calculated in accordance with a theoretical model? How do you assess value of biodiversity?

   Paul Nzangu v Mbiti Ndili, H.C of Kenya Civil Appeal No 8 of 1991: plaintiff sued defendant because of rubbish dumped on his land but magistrate declined to award damages. On appeal H.C also refused to award damages due to difficulties in assessing quantum & just ordered defendant to remove the rubbish

2. Injunction

Important in environmental litigation due to insufficiency of damages but also to stop continuing environmental degradation.

3. Declaratory Judgments

Court's declaration of the rights & duties of the parties before it
Resolves dispute by setting out clearly the legal position
Relevant in cases where the Minister/Director for environment not discharge his duties

Criminal liability

Enforcement of environmental crime has lagged behind because of the difficulties associated with discharging a beyond reasonable doubt burden of proof. Strict adherence to the requirement of proving *actus reus & mens rea*. Most environmental offences are of omission hence intent not easy to prove, for example river pollution

Punishments meted out normally not deterrent. In ***Republic v Maria Akimu***, H.C Review Case No.9 of 2003.The Malawi High Court was called upon to review the sentence of US$50.00 imposed on the convict found guilty of possession or trafficking of ivory contrary to section 110 of the National Parks & Wildlife Act. Convict was found in possession of 10 pieces of ivory worth $14,000.00 and was killing elephants at Liwonde National park using poison.

In statutes where environmental offences are strict liability offences the burden of proof is eased considerably

Human rights approaches

Owing to limitations of common law remedies reliance is now being placed on human rights & international efforts which have resulted in development of environmental rights & principles

The right to a clean and healthy environment or its equivalent has been incorporated in a number of constitutions or legislation

A lot of litigation has been conducted on *locus standi* and the right to a clean and health environment such that precedent is readily available for courts to develop their own.

It however requires enlightenment both on the bar and the bench to enable them appreciate their importance to environmental management

Reliance has been placed on other human rights

Enforcing the right to a healthy environment

In ***Minors Oposa v Factoran***, 33 ILM(1994), the petitioners pleaded that the acts of respondents constituted an impairment of natural resource property held in trust for their benefit & succeeding generations & that they had a constitutional right to a balanced & healthful ecology hence entitled to the protection of the state.

The Philippines Supreme Court held that, *inter alia,* the petitioners had a right to sue on behalf of succeeding generations because everyone has responsibility to the next to preserve the rhythm and harmony of nature for the full enjoyment of a balanced and healthful ecology: the fact that the right was included under the Declaration of Principles and State Policies did not make it any less important. In fact, the court continued, it was not even necessary to put such a right in the Constitution since it predated the Constitution. Its inclusion was merely out of precaution.

The principles

The full cost principle requires that all users of environmental resources should pay their full cost including restoration costs and the costs of those who have suffered damage

The cost effective principle requires that policy measures must achieve their objectives at the lowest possible cost

The property rights principle is premised on the assumption that specifying, protecting and respecting property rights provides incentives for efficient management and avoids perverse incentives.

The sustainability principle advocates for development and utilization of resources that meets the needs of present without jeopardizing the interests of future generations. Adopting the above three principles promote efficiency and sustainable outcome

The Precautionary principle aadvocates for postponement of an activity if there's threat of serious damage despite absence of scientific certainty

In ***Leatch v National Parks & Wildlife service & Shoalhave City*** *(1993) LGERA, 270, L objected to granting of license to S by L to kill or take endangered species so as to construct a road & court ordered revocation of license until more was known*

The polluter pays principle requires that those responsible for damage/loss must bear the cost (principle16) In **Vellore Citizens Welfare Forum v Union of India** (1996) AIR2715, untreated effluents form industries polluted fields, water & a river affecting families. Court ordered for compensation & restorations

The common but differentiated responsibility has developed from the realization that special needs of developing countries must be taken into account in development, application & interpretation of IEL. Common responsibility of states for protection of environment need to take into account differing circumstances: each state's contribution to the creation of a particular environmental problem & its ability to prevent, reduce & control any threat.

Conclusions

Environmental law remedies are mostly based on the traditional concepts of legal liability: tort, contract, criminal and have the limitations inherent in these.

Modern legislation has improved the breadth of remedies and leans more towards preventive measures than compensation and punitive ones.

A number of jurisdictions have espoused applicable principles in ways which would be easy to transplant by other jurisdictions through judicial intervention even without enabling constitutional or legislative provisions.

But these require a courageous bench and an imaginative and innovative bar. State attorneys can do their part at the bar since despite being employees of an interested party have a primary duty to the court and society.

ANNEX 8

PROPERTY RIGHTS AND DIVERSITY

By Godber Tumushabe, Executive Director, Advocates Coalition for Development and Environment (ACODE)

Background

Intellectual Property Rights (IPR) are property rights in something intangible and protect innovations and reward innovative activity;
Debate of IPR and biodiversity dates back to the days of Charles Darwin. Darwin in his publication *On the Origins of Species by Means of Natural Selection (1858)* presented evolution as the driving force of life, with successive selective pressures over time endowing living beings with optimized characteristics for survival;

Works of great scientists such as Louis Pastuer, James Watson (DNA) builds on this important work. Ninety Years after the death of Darwin (1980), the first patent was granted to Ananda Chacrabrty of US General Electric.
The patent related to a strain of *Pseudomonas aerugenosa* engineered to express genes for certain enzymes in order to metabolize crude oil;

In the case of ***Diamond v. Chakrabarty***, the US Supreme Court held that genetically altered living organisms were patentable as "manufactures" or "composition of matter" because human agency had effectively removed such organisms from the category of items occurring in nature. Also see the publication of full genetic blue print of the fruit fly *Drosophila melanogaster and the announcement of the first draft of the human genome sequence.*

IPR and Biodiversity –Foundations of the Debate

Discussions of ABS, IPR and Traditional Knowledge (TK) can be considered from at least four perspectives:

1. Property and control of genetic resources;
2. Impacts of IPR on conservation of biological diversity;
3. Benefit sharing arising from the use of genetic resources;
4. Benefit sharing from utilization of Traditional Knowledge embedded in genetic resources.

Property and Control

Pre-CBD era largely free movement of genetic material where biological resources are considered the "common heritage of mankind". This principle almost recognized in international law and codified in the FAO Undertaking on Plant Genetic Resources. This was characterized by the free, unregulated flows of biological resources across continents.

Post CBD discourse

The debate leading to, and the subsequent adoption of the Convention on Biological Diversity, 1992 changes the entire discourse; Countries had recognized the economic, ecological and cultural importance of BD especially given the increasing biotechnological applications of genetic material and associated TK; Sovereignty, property and control concerns have all of sudden become the linchpin for international public policy discourse on BD; The dichotomy between the biologically poor but industrialized and technologically rich North *viz avis* the biologically reach but technologically poor South.

IPR and the Conservation of Biological Diversity

There is widespread concern about the impacts of IPR especially patents on:-

- The principle of sovereign rights of nations over their biological resources as restated in the CBD;
- The continuing direct and indirect misappropriation of genetic resources including Traditional Knowledge –often referred to as biopiracy;
- Potential genetic erosion arising out of patent driven seed systems that crowd traditional seed systems from the global seed industry; etc

Benefit Sharing

There are wide ranging biotechnological and non-biotechnological uses or application of genetic resources; In addition, new industrial sectors such as cosmetics, gene therapy, crop protection, bioremediation and many others are opening new economic possibilities; There are still major concerns that the providers of the biological material are not benefiting in any possibilities in these huge economic benefits;

Traditional Knowledge (Article 8(j))

The major problem here relate to the illegal, unfair, unlawful flow and use of traditional knowledge; The agreement to protect TK through *sui generis* system have not helped address the issues because countries that need these *sui generis* protection regimes are the ones that do not have the capacity to develop such regimes.

Developments since the CBD

The adoption of the TRIPS Agreement of the WTO effectively bringing IPR issues within the ambit of the WTO; Introduction of minimum standards of IPR protection essentially codifying rules developed in national jurisdictions that would ordinarily have no universal application; Shifting the debate away from the CBD domain to the trade domain where African countries generally have little bargaining capabilities;

Adoption of the International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA); The Treaty attempts to address genetic material that is held by international gene banks that is excluded from the application of the CBD;

General conclusions.

In African countries, IPR is seen and applied by both Government and the courts as an end in itself rather than a means to achieve certain society developmental objectives;

Africa countries cannot benefit from biological resources unless they develop there science, technology and innovation capacity and infrastructure;

The debate over biological debate is not only a policy debate – it is also a legal as well as a political debate;

The judges can push the frontiers of legal protection of community access to biological resources by stepping out of the Red Volumes and seeing community rights in biological resources as a human right.

ANNEX 9

PRACTICE AND PROCEDURE: RETHINKING PROCEDURE IN ACTIONS FOR ENFORCEMENT OF HUMAN RIGHTS

By: Phillip Karugaba, advocate MMAKS, Spokesperson, The Environmental Action Network (TEAN)

1. INTRODUCTION

Your Lordships and your Worships, today I will not be praying for any orders. No prayers for judgment, nor dismissal nor adjournment or any such orders. Indeed I speak to you not as an Advocate. Today I wish to speak as a salesman.

I wish to sell you a new image of the judicial officer hearing a human rights matter. I wish to persuade you that the traditional Grecian model of justice as a sightless Goddess, balancing scales of justice is inappropriate. The famous Lady Justice statute, holding the scales of justice in one hand and a sword in the other was modeled after Themis, the Greek Roman Goddess of law and justice. While famed for her clear sightedness, around the 16th Century, artists begun to depict her blindfolded to show that justice was not subject to influence.

However justice applied without regard to circumstance, particularly in the arena of human rights, can be harsh and oppressive. So we must move on and find another model.

Scales of justice we must keep, for the weighing of rights is the essence of dispensing justice. But this Goddess must see! She must hear! She must smell! She must feel!

Human rights cases affect us all even you members of the Judiciary. Uganda's history shows members of the Judiciary are not immune to the grossest violation of their rights, neither too is the very Temple of Justice. In the context of environmental rights, how can you continue to uphold a sightless model when the very earth you too live off, the very air you breathe, the water you drink is the subject of the dispute before you? Is this not the ostrich defence, burying your head in the sand and presuming safety while the rest of you remains fully exposed.

We should look instead to the traditional African woman collecting water, fetching firewood, caring for her children and her husband. If you buy from me this model of justice as a traditional African woman, fully engaged in community and fully affected by its good and ills, we stand then on a premise to make decisions to advance our societies.

2. RECAPPING THE PROCEDURE

Let us recap the current procedure for rights enforcement.

a) Article 50 proceedings;

We have the procedure under Article 50(2) of the Constitution which provides that any person or organization may bring an action against the violation of another person's or group's human rights.

The procedure for actions under Article 50 is spelt out in the current Judicature (Fundamental Rights and Freedoms)(Enforcement Procedure) Rules (S.I 13-14). The main forum for this action is the High Court, though the provision may also be invoked in Article 137 proceedings in the Constitutional Court.

The actual form of the pleadings, whether by Notice of Motion or plaint, is a subject of great contention and anguish. It is the subject of an appeal to the Supreme Court in CHARLES HARRY TWAGIRA –V- ATTORNEY GENERAL AND OTHERS. (Supreme Court Civil Appeal No. 04 of 2007).

Suffice to say that on account of a misprint or more accurately mis-binding, in the photocopied volumes of the laws of Uganda, the once clear provision on proceeding by Notice of Motion was lost. This error has been brought to the attention of the office of the First Parliamentary Counsel and there is a correcting instrument before the Honourable Chief Justice as Chairman of the Rules Committee.

Several individual enforcement actions, as well as Public Interest Litigation cases have been filed under Article 50, on diverse subjects ranging from workers rights to unionize, rights to smoke-free environments, rights of chimpanzees, forests issues, even extending to economic rights and so on.

b) Article 137;

This provides for interpretation of the Constitution by the Constitutional Court at the behest of any person who alleges violation of the Constitution to have taken and there are two approaches to it. One may petition directly under Article 137(3), or may arrive at the Court by reference under Article 137(5).

The procedure here is governed by the Constitutional Court (Petitions and References) Rules 2005 (S.I 91 of 2005). These Rules consolidated the previously befuddling multiple rules that applied to the Constitutional Court, the Judicature (Interpretation of the Constitution)(Procedure) Rules (Modification) Directions (S.I 13-13), and the Judicature (Rules of the Constitutional Court)(Petitions for Declarations Under Article 137 of the Constitution) Directions (S. I 13-15).

However, the Judicature (Interpretation of the Constitution) (Procedure) Rules (S.I 13-12) (previously S.I No. 25 of 1992) remains on our rule books, a landmine awaiting its day.

Under Article 137, we have again seen the quest for vindication of all manner of rights ranging from the right to life, right to freedom of worship, right to equality of women, political rights (Rwanyarare/Ssemwogerere) and so on.

c) Uganda Human Rights Commission;

Often forgotten but doing a tremendous job is the Uganda Human Rights Commission, a specialised forum for the adjudication of human rights violations.

Provided for in the Constitution and brought to life by the Uganda Human Rights Commission Act (Cap. 24), its proceedings are brought under the Constitution (Uganda Human Rights Commission)(Procedure) Rules and the Constitution (Appeals to the High Court from the Uganda Human Rights Commission)(Practice) Directions.

The Commission has dealt with several claims for damages for violation of individual human rights arising from such scenarios as unlawful detention and torture. In several cases it has awarded damages quite off the scale from what we would routinely see in the High Court. Satisfaction of these awards against Government remains the perpetual challenge.

While methods a) and b) existed in the previous 1967 Constitution and can be traced as far back to the 1962 Constitution, the Human Rights Commission was a special creation of the 1995 Constitution.

Despite their longer pedigree, methods a) and b) have seen much more application in the Courts since the 1995 Constitution than ever before in the history of Uganda. This we must take not as a sign of a currently oppressive regime but rather as a manifestation of increased awareness and enlightenment following the gross human rights violations that characterised Uganda's early history.

These three are the principal methods of enforcing human rights. We now turn our attention to why we should be re-thinking the procedural aspects of rights enforcement.

3. WHY WE NEED TO RETHINK

Here we are going to draw on examples from the Courts that demonstrate a little of what has been faced in the struggle for expression of rights.

In CHARLES MUBIRU -V- ATTORNEY GENERAL [Constitutional Petition No. 1 of 2001] the petitioner contended that the law relating to the grant of bail was unconstitutional. The petitioner was released on bail before the determination of the petition and it was accordingly withdrawn. The Court however delivered a ruling on preliminary objections raised earlier one of which was an objection to the affidavit in support of the petition.

It was contended that the affidavit in support of the petition offended 0.17r.3(1) CPR which provides that save in interlocutory applications, an affidavit must be restricted to such facts as the deponent is of his own knowledgeable to prove. It was argued that the affidavit was therefore defective since it included matters on information and belief.

The Court ruled that the affidavit offended O.17r.3(1) CPR and was therefore defective and ordered it to be struck out. The Court ruled;

> *"…clearly on the face of it, the provisions of S.14(A)(1) of the T.I.D as amended appear to conflict with Article 23(6)(a) of the Constitution. This Court therefore would have had jurisdiction in this aspect of the petition, if the petition was supported by evidence. As we have found the petition lacked evidence and could not be entertained".*

An early and by all appearances less contentious opportunity to address the fundamental question of bail was thus lost. A landmine discovered, identified yet left to lie! Is it not these very questions on the right to bail that led to the infamous Black Mamba invasions of the Temple of Justice?

Another example I wish to draw on is the set of cases that perished on the 30 day rule. Rule 4(1) of the Judicature (Rules of the Constitutional Court)(Petitions for Declarations under Article 137 of the Constitution) Directions (S.I 13-15)(now repealed) hitherto required that a petition be filed in the Constitutional Court within 30 days of the breach of the Constitution complained of.

The irony of a limitation provision for constitutional actions was well articulated by ODER JSC in ISMAIL SERUGO -V- KCC & ATTORNEY GENERAL [Constitutional Appeal No. 2 of 1998] where he stated;

> *"It is certainly an irony that a litigant who intends to enforce his right for breach of contract or for bodily injury in a running down case has far more time to bring his action than one who wants to seek a declaration or redress under Article 137 of the Constitution"*

It was however only after the dismissal of several cases, followed by a period of contortions to ameliorate the rule, that the Constitutional Court was eventually won over to finding the 30 day rule unconstitutional.

In UGANDA ASSOCIATION OF WOMEN LAWYERS & 5 OTHERS -V- ATTORNEY GENERAL [Constitutional Petition No. 2 of 2003], the Court took the position that R.4(1) had the effect of amending Article 3(4) of the Constitution which gave the citizens of Uganda the right and duty at all times to defend the Constitution. The Court held;

> *"To the extent that R.4(1) of Legal Notice No. 4 of 1996 imposes restrictions on the right of access to the Constitutional Court which the Constitution itself does not provide for, it is seeking to add to and or vary the Constitution and therefore to amend it without doing so through the amendment provisions of the Constitution. It is clearly against the spirit of the Constitution and it is now high time that this Court restored, in full, the citizen's right to access to the*

Constitutional Court by declaring that the rule is in conflict with the Constitution and is therefore null and void. I would so declare."

(See also FOX ODOI-OYWELOWO & ANOR -V- ATTORNEY GENERAL [Constitutional Petition No. 8 of 2003])

Thus was remedied an error that should never have been, and at what cost to the litigants and to the country in opportunities lost to advance human rights protection and enforcement.

The Constitutional Court (Petitions and References) Rules 2005, do not set a time limit for filing of actions.

4. WHAT WE NEED TO RETHINK

These examples demonstrate to us what has happened in the Courts and lays a basis for some consideration of what needs to be done going forward.

a) Access to the Courts

Fortunately our very liberal 1995 Constitution and the very early enlightened decisions on its provisions on *locus standi* has saved us some trouble on opening the doors to the Courts.

The liberalised *locus standi* has been justified on the basis of our large sections of our people being ignorant or unable to seek vindication of their rights. In the same enlightened way we should recognise the relative scarcity of skilled legal resource and the competition for this legal resource from financially rewarding briefs. Even though trained at the cost of many a peasant farmer, upon attaining qualification, the first goal of many a professional is to put as much distance as he or she possibly can, and as fast as can be from this peasant linkage.

How can we claim that the doors to the Courts are open when people often lack even the basic knowledge or the means to bring their grievances to Court?
We should move to allowing litigants to approach the Courts in human rights matters in the simplest of ways as a matter of the form of initiating the actions as well as issues such as filing fees.

And of course better still, if the custodians of justice, having laid out a banquet of remedies, still observe violations of the Constitution out there, they then must make so bold in their duty to defend the Constitution, and like the rich man in the Bible and go out and invite the aggrieved to the feast.

Here I am inviting the Courts to adopt *Suo Motu* jurisdiction despite the wrath this has earned me in the past. Let us learn from the courageous examples of Judges elsewhere.

In SHEILA ZIA –V- WATER & POWER DEVELOPMENT AUTHORITY (WAPDA) [Human Rights Case No. 15-K of 1992] the Supreme Court of Pakistan took action on a letter from individuals, that questioned the right of the respondent to endanger the lives of citizens by exposing them to electromagnetic hazards from the construction of a power grid installation in a residential locality.

The Court recognized that many citizens would not be able to move the Court properly on account of ignorance, poverty and disability and took the initiative to summon the Respondent and appoint a Commission to examine the matter.

In HUMAN RIGHTS CASE (ENVIRONMENT POLLUTION IN BALOCHISTAN) [Supreme Court PLD 1994 Supreme Court 102 Human Rights case No. 31 –K92Q] the Court was even more proactive. Having taken note of a newspaper article that nuclear waste was to be dumped in a coastal area in violation of Article 9 of the Constitution, issued orders to prevent such occurrence.

Dr. Ben Kunbor in his paper Epistolary Jurisdiction of the Indian Courts and Fundamental Human Rights in Ghana's 1992 Constitution: Some Jurisprudential Lessons[117] explores the Indian use of epistolary jurisdiction and advocates its relevance to Ghana.

He cites Baghwati[118] on the origins of this jurisdiction

> *'Social action litigation is the product of juristic and judicial activism on the part of some of the justices of the Supreme Court of India. Today we find that in the third world countries there are a large number of groups that are being subjected to exploitation, injustice, and even violence. In this climate of violence and injustice, judges have to play a positive role and they cannot content themselves by invoking the doctrines of self-restraint and passive interpretations'.*

And on its imperatives

> *'The summit judiciary in India, keenly alive to its social responsibility and accountability to the people of the country, has liberated itself from the shackles of western thought, made innovative use of the power of judicial review, forged new tools, devised new methods and fashioned new strategies for the purpose of bringing justice to socially and economically disadvantaged groups'.*

b) Focus on the merits

We have seen the folly of a technical approach to human rights cases. Consider what would have been the result if the bail question had been settled in the considerably less

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[117] (http://www2.warwick.ac.uk/fac/soc/law/elj/lgd/2001_2/kunbor/)

[118] **Bhagwati, P N (1987), 'Social Action Litigation: The Indian Experience', in Trivetelram and Coomaraswany (eds.),** ***The Judiciary in Plural Societies cited in*** Dr Ben Kunbor:

controversial CHARLES MUBIRU (supra), 5 years earlier instead of in the context of a politically charged treason trial.

Our jurisprudence is loaded with decisions favouring '*jettisoning formalism to the winds and overlooking several deficiencies … and proceed to a determination of the issues*'. This expression is culled from the judgment of UDO UDOMA CJ., in UGANDA – V-COMMISSIONER OF PRISONS exparte MATOVU [1966] EA 514.

The case came before the Court by way of two affidavits, one of which was sworn by Counsel. There was neither chamber summons nor a notice of motion nor any indication of a respondent. That this matter even came before the Court was truly miraculous, today it would not even get past the Registry Clerk. The Court was fully aware of the technical objections to the matter. It stated;

> *"In our view the application, such as it was, as presented to the High Court in the first instance was defective. Indeed but for the fact that the application concerns the liberty of a citizen the court would have been justified in holding that there was no application properly before it. In the first place the affidavits as intitutled and headed are defective. There is no respondent named against whom the writ is sought and to whom the writ should issue. Surely a person or official against whom an order if this court is sought ought at least to be named in, if not made party to the proceedings…*
>
> *In the second place the fact that the two affidavits were not accompanied by notice of motion or a motion paper signed by the counsel for the applicant setting out the relief sought and the grounds entitling the applicant to such a relief was so fundamental a defect as to be almost incurable. In effect it meant that there was in fact and in law no application capable of being entertained properly before the court….*
>
> *The affidavit sworn by counsel is also defective. Again as a general rule of practice and procedure an affidavit for use in court being a substitute for oral evidence should only contain statement of facts and circumstances to which the witness deposes either of his own personal knowledge or from information which he believes to be true. Such an affidavit must not contain an extraneous matter by way of objection or prayer or legal argument or conclusion. It is clearly bad in law… the affidavit by counsel in this matter contravenes 0.17r.3 of the rules of this Court and should have been struck out …."*

Then as now the application was dead in the water on account of the various defects. This is where the 1966 Court took the bold step. Instead of striking it out, it proceeded with the following words;

> *"On examining the papers in this matter our first reaction was to send the case back to the Judge with a direction that the matter be struck off as we were of the opinion that there was no application for a writ of habeas corpus properly before*

him. There was no motion in support of which the two affidavits were filed, it appearing that counsel for the applicant had erroneously treated the affidavits filed as the application. Further more, there was no respondent mentioned in the affidavits as headed.

On reflection, however bearing in mind the facts that the application as presented in the first instance was not objected to by counsel who had appeared for the state (Binaisa Q.C and P.J Nkambo Mugerwa): that the liberty of a citizen of Uganda was involved; and that considerable importance was attached to the questions of law under reference since they involved the interpretation of the Constitution of Uganda; we decided in the interests of justice to jettison formalism to the winds and overlook the several deficiencies in the application , and thereupon proceeded to the determination of the issues referred to us."

The Court considering that the liberty of a citizen was at stake, ignored the deficiencies and heard the matter on the merits, going on to establish some fundamental concepts in Constitutional Law for Uganda. This is the kind of approach that we need, that will protect the environment and foster further confidence in the Courts.

We heralded Article 126(2)(e) of the Constitution as a new darling of Counsel in distress, the statutory encapsulation of the MATOVU approach, focusing on the merits rather than procedure. It provides that subject to the law, justice be done without undue regard to technicalities. Alas, it came to nought with Courts rulings that the Article was not a magic wand in the hands of a defaulting litigant and that it was not the intention of our law makers to do away with the rules of procedure. [KASIRYE BYARUHANGA-V-UDB (S.C.C.A. NO 2 OF 1997)].

However in DR. BESIGYE KIZZA –V- MUSEVENI YOWERI KAGUTA [Presidential Election Petition No. 1 of 2001], Article 126(2)(e) was miraculously revived to save dozens of defective affidavits. No explanation was given for the departure from the earlier line of cases. Attempts to follow this decision in the lower Courts are however resisted on dubious distinctions based on subject matter.

The words of the Kenya Constitutional Court in KENYA BANKERS ASSOCATION –V- MINISTER OF FINANCE (NO. 4) [2002] 1KLR 61, capture the correct approach on this point rather well;

'…like human rights cases, public interest litigation, including lawsuits challenging the constitutionality of an Act of Parliament, the procedural trappings and restrictions, the preconditions of being an aggrieved person and other similar technical objections cannot bar jurisdiction of the Court or let justice bleed on the altar of technicality…."

See also ATTORNEY GENERAL –V- ALL & 4 OTHERS [1989] LRC (CONST) 474 where the Court said;

> *"In my view, a citizen whose constitutional rights are allegedly trampled upon must not be turned away from the Court by procedural hiccups. Once a complaint is arguable a way must be found to accommodate him so that other citizens become knowledgeable of their rights."*

Besides, our jurisprudence is littered with ordinary cases to the effect that rules of procedure are handmaidens of justice and calling for an investigation into merits of a case, over technical objections. (See IRON & STEELWARES-V-MARTYR COMPANY [1956] 23 EACA 175, ESSAJI –V- SOLANKI [1968] EA 218).

c) Costs orders

At present we would like to see it settled by reasoned judgment in a public interest litigation case, that order as to costs or even better as in Australia, that the public interest litigant who comes to Court bona fide, at great expense, for no personal gain, be paid costs in any event. ☺

While the latter costs proposition found some expression in EDWARD FREDRICK SSEMPEBWA –V- ATTORNEY GENERAL [Constitutional Case No. 1 of 1987] the case has not been followed.

In political cases such as PRINCE JOHN RUKIDI –V- PRINCE SOLOMON IGURU [Supreme Court Civil Appeal No. 18 of 1994], COL (RTD.) DR. BESIGYE KIZZA –V- MUSEVENI YOWERI KAGUTA [Presidential Election Petition No. 1 of 2001] the Courts have been pleased to make no order as to costs, despite the very direct and personal gain for the litigants.

In public interest litigation cases in Uganda, the position has not been as consistent. In FOX ODOI-OYWELOWO –V- ATTORNEY GENERAL [Constitutional Petition No. 8 of 2003], the Court awarded costs to the Petitioner, a Senior Presidential Advisor on Legal Affairs, for his successful challenge to the powers of the Inspector General of Government.

In BRITISH AMERICAN TOBACCO –V- TEAN [High Court Misc. Application No. 27 of 2003], costs were taxed and allowed against the unsuccessful public interest litigant in the sum of Ug. Shs. 41,450,000/=.

In fairness, in the majority of public interest cases in Uganda, no costs orders have been made though without benefit of full reasons for this besides a short reference to the nature of the litigation. The dicta in OSHLACK –V- RICHMOND RIVERS COUNCIL (1998) HCA 11, is most appealing;

> 'T*he appellants' … pursuit of the litigation was motivated by his desire to ensure obedience to the environmental law… he had nothing to gain from the litigation 'other than the worthy motive of seeking to uphold environmental law and the preservation of endangered fauna'. In the present case, a significant number of*

members of the public shared the stance of the appellant as to the development to take place on the site, the preservation of the natural features and flora of the site, and the impact on the endangered fauna. In that sense there was a 'public interest' in the outcome of the litigation. The basis of the challenge was arguable and had raised and resolved significant issues as to the interpretation and future administration of statutory provisions relating the protection of endangered fauna and relating to the ambit and future administration of the subject development consent; these issues had 'implications' for the Council, the developer and the public. It followed that there were sufficient special circumstances to justify departure from the ordinary rule as to costs.'

d) <u>The burden of proof and handling of scientific evidence</u>;

This will pose more of a challenge in environmental cases. How is the Judge to respond to volumes of scientific evidence so long after his or her encounter with the Bunsen burner, days probably best forgotten?

While the Precautionary Principle (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), may come in handy in addressing looming dangers, how do we handle claims for actual damage or injury sustained in circumstances of scientific uncertainty?

Lets keep in mind the circumstances of our country. The medical and scientific resource is subject to the same constraint as the legal resource.

I can only make the call for innovation without detailed suggestion.

e) <u>Stare Decisis</u>

It is necessary for legal certainty as to rights and for the stability of the legal system that once particular provisions and or a set of facts have been interpreted by a Court or record as leading to a defined legal conclusion and consequence, this decision be followed by the lower Courts. It may be departed from by a Court of equivalent jurisdiction or overturned by a superior Court but for the lower Court, the Judge is beholden to say '*my hands are tied'* much to the anguish of Counsel seeking remedy.

There are however recognised situations where these decisions can be departed from and ours here is just to point the way to this. These situations include where the decision is clearly *per incuriam*. It is not enough that the superior Court has reached a certain conclusion, it must have done so with full regard to the law. If a clear legal provision has been ignored then such decision can safely be departed from.

[See YOUNG –v- BRISTOL AEROPLANE [1944] 2 ALLER 293, which though dealing with the powers of the Court of Appeal to depart from its own decisions, is equally applicable to our situation.]

6. CONCLUSION

The National Environment Management Authority (NEMA), is tackling some of these issues in a proposed set of rules, the Judicature (Environmental Litigation) Rules. Still in draft, a lot more work remains to be done. Even then it would be perhaps too much to hope that these Rules if and when passed into law, will then be replicated or extended to all types of human rights enforcement actions.

Learning from the examples of India and Pakistan, I believe whole lot more can be gained from an enlightened, creative, courageous and innovative Bench. Shake out of that judicial comfort and security. Lose that blindfold! Take full advantage of your security to do that which the Constitution so dearly requires of you.

To harken to our hopefully new model of justice, one African woman (my wife), likes to say of me '*eziruma munno tezikulobela kwebaaka*' (the mosquitoes that bite your neighbour do not prevent you from sleeping). I understand this to mean that there is no obligation to lose sleep nor to sympathise over the woes of your neighbour.

We should have the wisdom to know that unless you have an agreement with this metaphorical mosquito not to visit you when it is done with your neighbour, it is best advised to join hands with your suffering neighbour and deal with the mosquito at the earliest opportunity.

I thank you for your patience in listening to me

Phillip Karugaba
The Environmental Action Network.(TEAN)

ANNEX 10

CLOSING REMARKS AT THE SYMPOSIUM WORKSHOP ON INTERNATIONAL ENVIRONMENTAL LAWS FOR JUDGES IN UGANDA.

BY THE STATE MINISTER FOR ENVIRONMENT HON. JESSICA ERIYO

My Lords,

Your Worships,

Distinguished Participants,

The organizers of this workshop,

Ladies and Gentlemen.

I am deeply honoured to officiate at the closing of this important workshop for Judges where intriguing topics in the area of environmental law have been covered.

I commend you for having completed this workshop and for having fully participated in it.

I am glad to note that Greenwatch continues to undertake Environmental Law training especially in conjunction with **Judicial Studies Institute,** J**ohn D. and Catherine T. Mac Arthur Foundation**, **UNEP** and **Environmental Law Institute.**

I am also happy to see that **UNEP** is present here and continues providing us with the necessary assistance both technical and in legal materials.

I am made to understand that the workshop was intended to equip the Judges with knowledge on emerging International Environmental Law issues and to generate a common understanding of the Environmental Litigation process in Uganda. I know that your Lordships have benefited from environmental training before but this is unique in the sense that it is more specialized and detailed.

I have had the opportunity to look through the training programme and I am convinced this particular training goes an extra mile in covering areas previously only briefly tackled.

As you are aware, Environment and Natural Resources sector is a dynamic sector and is the backbone of our economy. The environment and natural resources contribution to the GNP is to tune of about 54%. It is therefore important that Judicial officers appreciate this contribution of the ENR sector in order to fully appreciate the need to make

pragmatic decisions touching on environmental management and natural resource use.

With the East African Community and the Protocol on Environment and Natural Resources in place, issues of environmental management and enforcement have assumed a central role in the region. Some of your Lordships may be called upon to decide on transboundary matters. You may also need to make decisions on community rights vis- a vis personal intellectual property rights.

I therefore sincerely hope that this workshop has enabled you to understand and conceptualise the legal issues under the respective topics covered. I urge you to put your skills to test and create opportunities to do so.

I also urge you to utilize the materials you have been given, to enhance your knowledge in environmental law and to draw from experiences else where.

In conclusion, I would like to express my sincere appreciation to the organizers of this workshop, **Greenwatch, Judicial Studies Institute** and the **John D. and Catherine T. Mac Arthur Foundation** for sponsoring this training and to **Environmental Law Institute** for their support. I wish to give special appreciation to the staff from Greenwatch and Resource Persons, for their dedicated efforts in making this workshop a success. I urge them to continue with the good work

I also wish to extend my thanks to you the participants and the resource persons for being able to find time from your busy schedules to attend to this important workshop.

Lastly, I wish you all safe journey back to your respective Destinations.

With those few remarks, **IT IS NOW MY PLEASURE TO DECLARE THIS WORKSHOP OFFICIALLY CLOSED.**

ANNEX 11

JUDICIAL SYMPOSIUM IN INTERNATIONAL ENVIRONMENTAL LAW AND PRACTICE FOR UGANDAN JUDGES.

10TH- 12TH JUNE 2007

LIST OF PARTICIPANTS

No	Name	Designation /Address
1	Roy Byaruhanga	Deputy Registrar, Criminal
2	Justice Mwangusya Eldad	Judge, High Court Kampala
3	Henrieta Woloya	Registrar Supreme Court
4	Justice Anna Magezi	Judge Nakawa Court
5	Justice Rugadya Atwooki	Resident Judge, Fortportal Court
6	Lawrence Gidudu	Chief Registrar High Court
7	Gladys Nakibuule	Assistant Registrar, Court of Appeal
8	Justice Katutsi J.B.A	Resident Judge, Jinja
9	Justice Moses Mukiibi	Judge, High Court Kampala
10	Justice Augustus Kania	Resident Judge, Arua Court
11	Justice Remmy Kasule	High Court
12	Tuhimbise Valerian	J.S.I
13	Elizabeth Alividza	J.S.I
14	Justice John W.N.Tsekooko	JSC and Chairman Judicial Training Committee
15	Justice Margaret Oumo Oguli	Judge High Court Kampala

Resource persons/ Facilitators

NO.	Names	Designation/ Address
1.	Mr. Robert Wabunoha	Legal Officer and O.I.C, Division of Environmental Law & Conventions - UNEP
2.	Mr. John Pendergrass	Senior Attorney, Environmental Law Institute
3.	Dr. George Wamukoya	Private Consultant-Nairobi Kenya
4.	Mr.Kenneth Kakuru	Director, Greenwatch
5.	Mr. Godber Tumushabe	Executive Director, (ACODE).
6.	Ms. Christine Akello	Senior Legal Counsel,NEMA
7.	Prof. Francis Situma	University of Nairobi
8.	Mr. Gracian Banda.	Center for Environmental Policy and Advocacy-Malawi
9.	Mr. Phillip Karugaba	Advocate, MMAKS

Secretariat

1. Harriet Kezaabu	Ag. National Cordinator, Greenwatch
2. Ivan Twebembere	Research Assistant, Greenwatch
3. Faragi Ndyanabo	Financial officer
4. Harriet Bibangambah	Research Assistant, Greenwatch

ANNEX 12

JUDICIAL SYMPOSIUM IN INTERNATIONAL ENVIRONMENTAL LAW AND PRACTICE FOR UGANDAN JUDGES.
Ranch on the Lake Country Resort.
10th - 12th June, 2007.

PROGRAMME

Day 1: Sunday 10th June		
Time	**Description**	**Facilitator /In-charge**
3:00 p.m. on wards	Arrival of Participants	**Hotel, Greenwatch, JSI**
Day 2: Monday 11th June		
8:00 a.m.- 8:30 a.m.	Registration, Hand outs	**Greenwatch**
9:00 a.m. – 9:50 a.m.	**Welcome Remarks**:	
	Remarks from Director, Greenwatch	**Mr. Kenneth Kakuru**
	Remarks from UNEP	**Mr. Robert Wabunoha Legal Officer and O.I.C Division of Environmental Law & Conventions -UNEP**
	Remarks from NEMA	**Dr. Henry Armanya Mugisha Executive Director-NEMA**
	Remarks from the Judicial Studies Institute	**Hon. Mr. Justice D.K Wangutusi**
10.00 a.m.- 10:30 a.m.	Official opening By the Chairman **Judicial Training Committee.**	**The Hon. Mr. Justice John W.N. Tsekooko (JSC)**
10:30 a.m.- 11:00 a.m.	**Break Tea**	
11:00 a.m. – 11:20 a.m.	**Overview of the State of Environment**	Ms.Christine Akello-Senior Legal Counsel-NEMA
11:20 a.m.-11:40a.m	**Overview of International Law**	John Pendergrass-Senior Attorney Environmental Law Institute

12:00 p.m-12:40 p.m.	**The Legal Regime on Trans-boundary water resources for the shared Water resources in the East African Region:** *The East African Protocol, The East African Act, the Protocol on Lake Victoria* *The Lake Victoria Environment Management Programme* *The Kagera Basin Agreement etc*	**Dr. George Wamukoya** Private Consultant-Nairobi Kenya
12:00 p.m.– 1:00 p.m.	**Plenary**	**Hon.Mr.Justice D.K. Wangutusi**
1:00p.m.- 2:15p.m	**Lunch Break**	**Greenwatch**
2:15 p.m. – 2:40 p.m.	**Intellectual Property Rights, other Rights and the International Regime on Biological Resources**: *Intellectual Property Rights* *Traditional/ Indigenous knowledge and cultural rights* *Biotechnology and Bio-safety* *Access to Genetic Resources and Benefit sharing in the Albertine Rift*	Mr. Godber Tumushabe, *Executive Director, Advocates Coalition for Development and Environment (ACODE).*
2:40 p.m.- 3:10 p.m.	**Plenary**	**Hon. Mr. Justice Eldad Mwangusya**
3: 10 p.m.- 4:10 p.m	**Hazardous Wastes and Chemicals**: *International legal regime and their impacts* *International and national responses to ameliorate impacts*	**Prof. Francis Situma**: *University of Nairobi*
3:40 p.m. – 4:20 p.m.	Plenary	**Hon.Mr.Justice Remmy Kasule**
4:20 p.m. – 4.40 p.m.	**Evening Tea**	
	End of Day Two	
7:30 p.m. – 8:45 p.m.	**Documentary : An Inconvenience Truth:** *A documentary depicting the impacts of global warming*	**Greenwatch**
9:00 p.m.	**B.B.Q Dinner**	**Greenwatch & Hotel Management**
Day 3: Tuesday 12th June		
8:30 a.m. – 9:00 a.m.	Recap of Day One	**Prof. Francis Situma**

9:00 a.m. – 10:00 a.m.	Environmental Remedies	**Mr. Gracian Banda. Center for Environmental Policy and Advocacy-Malawi**
10:00 a.m. -10:30 a.m.	**Plenary**	**His Worship Lawrence Gidudu**
10:30 a.m.- 11: 00 a.m.	**Tea Break**	
11:00 a.m.- 12:00 p.m.	**Synergies between Sustainable Development, MEAs and Poverty Alleviation:** *The Concepts of Ecosystem Services* *Valuation of Ecosystems services* *Mainstreaming ecosystems and ecosystem services into the existing national development and poverty reduction strategies* *Multilateral Environment Agreements (MEAs)* *Millennium Development Goals*	**Mr.Robert Wabunoha**: *Legal Officer* *Division of Environmental Law and Governance, UNEP*.
12:00 p.m. – 12:40p.m .	**Plenary**	**Hon. Justice Anna Magezi**
12:40 p.m. – 2:00 p.m.	**Lunch Break**	
2:15 p.m-2: 40 p.m	**Practice and Procedure; Rethinking Legislative Procedural Rights in Uganda**	Mr. Phillip Karugaba
2:45 p.m.- 3:15 p.m.	**Wrap up and Way Forward**	Mr. Kenneth Kakuru
3:30p.m - 4:00 p.m.	**Official Closing : Minister of State for Environment**	**Hon. Jessica Eriyo**
4:00 p.m.	**Departure**	All

ANNEX 13

JUDICIAL SYMPOSIUM IN INTERNATIONAL ENVIRONMENTAL LAW AND PRACTICE FOR UGANDAN JUDGES.

10^{th} – 12^{th} JUNE, 2007.
RANCH ON THE LAKE COUNTRY RESORT.

EVALUATION FORM.

Please answer the following questions and return the filled form to the secretariat.

1. Did you receive your invitation on time, and was the timing of the workshop convenient?
Yes **No**

2. a) Was the venue convenient and accessible?

Yes **No**
Please explain

…….
b) Rate the venue

i) Very good ii) Good iii) Fair iv) Poor

3. Were you well received on arrival by the workshop organizers?
Yes **No**

If no, Please explain.
……

4. How did you find the workshop program?
a) Topics
……..

b) Duration
…….

5. Rate the presentations on each topic by the different Resource Persons.

a) A General Overview of the State of Environment

i) Very good ii) Good iii) Fair iv) Poor.

Comment on the nature of presentation and the presenter.

……..

b) Overview of International Law

i) Very good ii) Good iii) Fair iv) Poor.

Comment on the nature of presentation and the presenter

…….

c) The Legal Regime on Trans-boundary water resources for the shared Water resources in the East African Region.

i) Very good ii) Good iii) Fair iv) Poor.

Comment on the nature of presentation and the presenter.

……

d) Harzardous Wastes and Chemicals

i) Very good ii) Good iii) Fair iv) Poor

Comment on the nature of presentation and presenter.

…….

e) Intellectual Property Rights, other Rights and the International Regime on Biological Resources.

i) Very good ii) Good iii) Fair iv) Poor.

Comment on the nature of presentation

……..

f) Hazardous Wastes and Chemicals

i) Very good ii) Good iii) Fair iv) Poor

Comment on the presentation:

…….

g) Environmental Remedies

i) Very good ii) Good iii) Fair iv) Poor

Comment on the presentation:

……..

h) Synergies between sustainable Development, MEAs and Poverty Alleviation

i) Very good ii) Good iii) Fair iv) Poor

Comment on the presentation:

…….

i) Practice and Procedure; Rethinking Legislative Procedural Rights in Uganda.

i) Very good ii) Good iii) Fair iv) Poor

Comment on the presentation:

…….

6. Were your expectations met? Please explain.

……

7. Please suggest any way in which we could improve future training programmes.

……..

8. Do you think there is need to hold another workshop covering other aspects of environmental law?

Explain.

……

Thank you.

Signature: …….