

**AN EXAMINATION OF ENFORCEMENT OF THE RIGHTS TO A
CLEAN AND HEALTHY ENVIRONMENT IN UGANDA.
A CASE STUDY OF KAMPALA DISTRICT**

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DECLARATION

I Kimani W Maryam do hereby declare that this research report “an examination of enforcement of the rights to a clean and healthy environment in Uganda , a case study of Kampala district” is my original work and has never been submitted to any institution for any academic award what so ever.

KIMANI W MARYAM

LLB/20069/82/DF

SIGNATURE



.....

DATE.

18 JULY 2013
.....

DEDICATION

To my mother Vicky Kimani who has been there for me through thick and thin. My son Sherwin Wrights for his patience and support.

APPROVAL

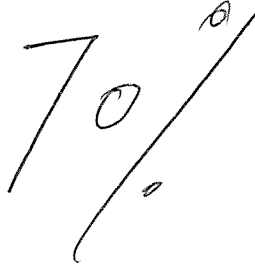
This research “examination of enforcement of the rights to a clean and healthy environment in Uganda” has been under supervision and is now ready for submission to the faculty of law at Kampala International University for the award of Bachelor of law. The work was carried out under my supervision and approval to the best of my knowledge, as the student’s original work.

NAME

MISS KISUBI ESTHER

SIGNATURE


.....



DATE:

16/07/2013
.....

ACKNOWLEDGEMENT

I would like to express my deepest gratitude to my mother ,I acknowledge the tireless efforts of Mrs. Milka Njeri Mbugua who ensured my education run smoothly.

My sincere to the whole of my family for their support and love through out this time.

I acknowledge the assistance of my supervisor miss Esther Kisubi. Am grateful for her patience and guidance throughout the compilation of this dissertation.

Thanks to my friend Esther Marigu Karanja for being there for me through thick and thin.
My sincere gratitude to Mr. Tajudeen Sanni for his guidance and assistance.

My special gratitude to My Uncle Sammy Mbugua, Nancy Asha Waruiru and her Family, Antonette Gathoni and Sr Mary Brendan Kimani.

ABSTRACT

The right to a clean and health environment if often overlooked within the context of discussion on human right. Against this background, this dissertation examines how the right to a clean and healthy environment can be realized and be implemented by Ugandans. Recognition of the constitutional right to a healthy and clean environment can facilitate the implementation and enforcement of environmental laws. This research has demonstrated that the incorporation of the right to a clean and healthy environment in the country's constitution leads directly to important legal out comes, stronger environmental laws and court decision defending rights to violation.

The study recommends, the importance of educating the public, including the private industry on the importance of protecting the environment and the right to a clean and healthy environment in particular.

LIST OF STATUTES

REGIONAL STATUTES

Constitution of the republic of Uganda, 1995, reproduced by law development center,
Kampala.Environmental Impact Assessment Act No 13 /1998.

Investment Code Act, cap 92, laws of Uganda.

The National Environment Act cap 153, laws of Uganda, 1995.

Penal Code Act, cap 120 laws of Uganda

THE INTERNATIONAL CONVENTIONS.

The Stockholm Declaration , United Nations Conference On The Human Environment
1992.

The Rio Declaration On Environment 1992.

United Nations Conference On Human Environment, June ,1972.

World Summit On Sustainable Development ,Johannesburg (1994)

Brudtland Commission Of The United Nations March 20th 1927.

CHAPTER ONE

1.0 INTRODUCTION

Environment is defined as the sum of all external conditions and influences affecting the life and development of an organism. The National Environment Act¹ defines environment as the physical factors of the surroundings of human beings including land water, atmospheres climate sound and taste.

Biological factors of animals and plants and the social factors of animals and plants the social factors of aesthetics and includes both the natural and the built environment Section 1 of the National Environmental Act Cap153² therefore, clean and healthy environment means quality environment free from any pollution of any kind the right to a clean and healthy environment is an emerging rights it owes its origins to the recognition of international law rules protecting human rights against state violations which are largely post 1945. In the 1972, Stockholm Declaration on Human Environment.³

It was stated that man has a right to freedom, equality and adequate conditions of life, in an environment of quality permits a life of dignity and well being and he bears a solemn responsibility to protect and improve the environment of present and future generation ‘‘

Therefore, environment must be used responsibly which means both present and future generations have a right to a clean and healthy environment.

The Rio Declaration on the environment was adopted in 1992⁴ at the United Nations conference on the environment and development of nations and individual. Its built on the **Stockholm Declaration of 1972** and introduces the mandate of sustainable

¹ The National Environment Act

² Section 1 of the National Environment Act Cap 153

³ 1972 Stockholm Declaration

⁴ The Rio Declaration on the environment was adopted in 1992

development as a local action. In the 1995, Constitution in Uganda there was no express provision for the rights to a clean and healthy environment .

By such a time issues such as clean air and pure water , freedom from noise pollution were of less importance .

1.1 Statement of the problem.

The right to a clean and healthy environment in Uganda has not been fully achieved, the legal machinery has been put in place so as to ensure the obligations or observance of rights are guaranteed. This work analyses how effective the existing law relating to the right to a clean and healthy environment has been applied for most people.

They only write or speak about such a right but never the less its known to every body that the environment is to a larger extent unclean and un healthy⁵

The study therefore sought to analyze the law relating to the right to a clean and healthy environment to investigate why the environment is abused to examine whether people of Uganda know about the right to a clean and healthy environment and if yes how is the right enforced ?.

Objective of the study,

1.2 General objectives of the study

The study seeks to address the extent to which the right to been conceptualized in Uganda and its specific realization.

Specific objective

1. To assess the practicability of the existing laws in Uganda respect to the right to a clean and healthy environment.
2. To examine the implementation of the right.

⁵ J C Van Der Levin, Effect of Ozone Layer Depletion on human Health 1991 pg 206

1.3 Research question.

1. To what extent have laws governing the right to a clean and healthy environment in Uganda has been implemented?
2. How are the existing laws in Uganda been put into practice in respect to the right to a clean and healthy environment?

1.4 Scope of the study.

Content Scope.

The study will analyze the implementation of the law relating to the right to a clean and healthy environment, how the law is effective in achieving the objective of enforcing it.

Theoretical Scope.

The research will be done with reference to different authors who advocate for the right to a clean and healthy environment for example Justine Thontorn, author of environmental law, vies the right to a clean and healthy environment as an image of environmental law, he also states that the rights are a link between environmental protection and human right.

Different sources of information will be used. The sources which will contribute to the theory of this research. Journals, and news paper articles will be used to get information about the effects of the existing laws in Uganda as to the right to a clean ad healthy environment

The green watch Brochure established in 1995 in Uganda plays a great role in educating the locals and the importance of keeping a clean and healthy environment. The green watch movement also includes a community transformation program that builds the economic empowerment model for communications in poverty stricken areas such as Nabutiti slum areas Kawempe, Gabba and Kansanga

Geographical scope

The study is carried out in Kampala district specifically Ggaba fish market which is a famous market for fresh fish got from lake Victoria. Another study is carried out in Kansanga a center found in the out skirts of Kampala.

Time scope

Study will cover a period of 3 years from 2011-2013 when the law was expressly included to 2011 . This research focuses on this period coz this when the right to a clean ? Healthy environment was introduced to our laws.

1.5 Significance of the study.

The research discusses those salient features of the right to a clean and healthy environment and the law in Uganda.

It looks at how environmental law has strived to protect and Promote the right to a clean and healthy environment .

1.6 Justification of study.

The study will be useful to a number of people who include students, researchers, lecturers and policy makers. It will make an impact in Uganda's effort to address issues of clean and healthy environment in a more effective manner.

The study also encourages public participation in creating and maintaining a clean and healthy environment in Uganda.

I have used the qualitative analysis because today more than ever society has come to recognize that the anthropogenic destruction of our planet's sustainable biodiversity negatively impacts human kind.

There is indisputable statistics make the need to address the link between human rights and environment urgent.

The qualitative analysis will help us understand this relationship clearly and develop the necessary mechanisms laws and protection to curve socially environmentally sustainable development.

1.7 Research design (descriptive)

This research paper is based mainly on journal articles from related filed local and internal law , text books and news publications local and internal law will form the bulk of this research selected internet materials will also have a bearing on the writing of this research

1.8 Synopsis of the study

Chapter 1 Introduction

It consists of the introduction of the study , statement of the problem, objectives of the study ,scope of the study , significances of the study , synopsis and literature review .

Chapter 2 Background

The growth and development of the right to a clean and healthy environment looking at the international regional and national instruments (law) international instrument that includes, **The Stockholm Declaration and The Rio Declaration**⁶ .

Chapter 3 Enforcement and critique of the law

Enforcement and critique of the law relating to clean and healthy environment looking at the enabling law case law and comparison of the understanding of the rights in Uganda and other mechanisms of enforcement .

⁶ The Stockholm Declaration and The Rio Declaration

Chapter 4 Conclusions and recommendations

1.9 Research Methodology .

The study entailed basically research which involved an examination of primary and secondary sources such as international human rights instruments , national legislation and policies as well as scholarly works and documents .

Research tools.

Questionnaires and observation methods are used so as to help us find out whether the environment we live in is clean and healthy .

CHAPTER TWO

LITERATURE REVIEW

Professor Fitzmaurice at a World bank seminar that an international right to a clean and healthy environment is a complex question with a practical problems and debates. Fitzmaurice also questions whether the right to a clean and healthy environment is an individual right whether it is a collective right, whether it is an economic or political or future generation right. Fitzmaurice also questions whether it is an individual right whether it is a collective right, whether it is an economic or political right for the future generation⁷,

Phillip Sands, in his book *Principles of International Law* implies that a clean and healthy environment is one free from radioactive or nuclear poisoning. The implication also from international environmental treaties and declarations is that a safe environment is one at peace and free from fatal pollution⁸.

Article 42 of the Bill of Rights, every person has the right to clean and healthy environment, which includes the right to have the environment for the benefit of the present and future generations through legislative and other measures and to have obligations relating to the environment fulfilled⁹.

Article 70 (1) of the Constitution of Uganda 1995, if a person alleges that a right to a clean and healthy environment recognized and protected under article 42 has been, is being likely to be denied, violated, infringed or threatened, in addition to any other legal remedies that are available in respect to the same matter¹⁰.

Maria Adeboale, Chris Church, Boris Vasylykivsky and Yelena Panina in their book *Environment and Human Rights a new approach to sustainable Development*, imply that environmental human rights encompasses in three main areas

⁷ Professor Fitzmaurice, World bank seminar, (2001)

⁸ Phillip sands, *principles of international laws*(1994)

⁹ The Bill of Rights, Article 42, 1995 (Uganda)

¹⁰ The Constitution of Uganda, Article 70 (1) of 1995 (Uganda)

1. The right to clean and healthy environment is a substantive , basic right provided even in the UNCHR draft principles Declaration on Human Rights and Environment from 1994¹¹

The right to act and protect environment. This is inherent in the United Nations Declarations and associated Conventions ,through the right to organize and to a free assembly but it is under threat in many nations.

Section 3,Local Government Act, Cap 265 prescribes thee general powers and duties of the local authorities in Uganda. municipal council are required to provide and maintain sanitary services , sewage and drainage facilities ,take measures for the control , destruction of rats ,vermin, insects, and pests ,control or prohibit industries which emit smoke ,fumes, chemicals, gases, dust, smells ,noise vibrations, discomfort to the neighbor hood¹².

The National Environment Act Cap153, laws of Uganda states that the frame work for Legislation for environmental management in Uganda. The main objectives of the Act are¹³.

To provide for sustainable management of the environment and to establish NEMA as the coordinating , monitoring and supervisory body for that purpose.

It prohibits the discharge of hazardous substances into any part of the environment except in accordance with the guidelines of the National Environmental Management Authority.

It prohibits pollution contrary to established standards, prohibits the illegal traffic of hazardous wastes and imposes on any person generating hazardous wastes the duty of the management of his or her waste.

¹¹ Maria Adeboale, Chris Church ,Boris Vasylykivsky andYelena Panina, *Environment and Human Rights a new approach to sustainabsle development*.(1994)

¹² The Local Government Act Section 3, , Cap 265 (1994)

¹³ The National Environment Act, Cap153, laws of Uganda(1994)

Section 52 of the Act makes it mandatory requirement for the authority in consultations with the lead agency to identify materials and with processes that are dangerous to human health and environment¹⁴.

The National Environmental Policy for Uganda 1994). This is a specific policy dealing with the management of the environment. The overall policy goal is to achieve sustainable social and economic development Which maintains or enhances environmental quality and resource productivity on a long term basis that meets the needs of the present generations without compromising the ability of future generations to meet their own needs¹⁵.

Some of the basic policies include:

Enhance the health and quality of life of all people in Uganda and promote long term sustainable socio economic development through sound environmental and natural resources.

Integrate environmental concerns in all development policies, planning and activities at a national ,district and local levels.

Optimize resource use and achieve a sustainable level of resource consumption.

Ensure individual and community participation in environmental improvement activities.

Carla W Montgomery an author views that ,navigable streams should be treated as community property, accessible to all , and she sums up the essence of the Riparian Doctrine ,That whoever owns land adjacent to a body of surface water ,has a right to use that water and all those bordering on a given body of water have an equal right to the water¹⁶.

¹⁴ The National Environment Act, section 52, laws of Uganda

¹⁵ The National Environmental Policy, Uganda (1994)

¹⁶ Carla W Montgomery, *Riparian Doctrine* (1985)

David R Boyd a lawyer, insists that the right to a healthy environment is key. He views that a clean up restoration and regional environmental health plans must be put in place¹⁷.

JC Van Der Levin views that the right to a clean and healthy environment in Uganda has not been fully achieved the legal machinery so as to ensure the obligations or observance of rights guaranteed. Michael A Berry emphasizes that there is importance in protecting the built environment cleaning the environment is mandatory¹⁸.

Robin Kundis Craig according to his book *The clean water and the constitution* views that environmental quality in turn has direct implications for the health and welfare of the people, with the result that the benefits of environmental regulation has repeatedly been shown to outweigh costs¹⁹.

ST Bajah in his book, wrote that our immediate environment consist of our house, our compound, and the surrounding area near the home. A healthy environment is important if we want to stay healthy. Sometimes people keep their surrounding dirty with the result that it badly affects their health. Wherever we live its important that we keep it clean "the clean home equals great health"²⁰

Franklin Delano Roseevelt(1933 to1945)an ardent conservationists, he used numerous programs of the department s of agriculture and interior to end wasteful land use while mitigating the effects of "Dust BOWL" and efficiently develop natural resources in the west²¹.

The Clean Water Act which was amended in 1977,regulated public drinking water systems, toxic substances, pesticides and a clean dumping. Protected wildlife, wilderness and wild scenic rives. The laws provide for pollution research standard setting, contaminated site clean up, monitoring and enforcement²².

¹⁷ David R Boyd

¹⁸ JC Van Der Levin, *legal machinery* (1995)

¹⁹ Robin Kundis Craig, *The clean Water and the constitution*, (1993)

²⁰ ST Bajah, *The clean home equals great health* (1965)

²¹ Franklin Delano Roseevelt, Dust bowl, 1933 to1945

²² The Clean Water Act, (1997)

In the RIO +20 SUMMIT, Bjorn Lomborg an author says that the United Nations did not address the issue on where people might die from global warming, many of them will die from health problems caused by lack of clean water and pollution²³.

Richard Faulkner, Albert G. Millbank, T. in their book they respond creatively and convincingly to the greatest ecological threat that has ever faced the human species, relying on their profound knowledge of environmental issues, law and Human Rights. They depict and propose a drastically new paradigm of governance that has the potential to save the peoples of the world from a catastrophic future²⁴.

David B Boyd an author views that today, the concept of the right to a clean environment is widely recognized internationally in law. He views that environment rights are included in more than 90% of national constitution and provisions are having a remarkable impact ranging from stronger environmental laws and landmark court decisions to the clean up and pollution²⁵.

The first formal recognition of the right came in Stockholm Declaration that emerged from pioneering global eco-summit in 1972²⁶.

Regional human rights agreements recognizing the right to a healthy environment have been ratified by more than 30 nations spanning Europe Asia and the Americas. The inter American Commission on human Rights have issued decisions in cases involving violations of this right.

In Portugal the right to healthy environment was included in their constitution. Article 66 of Portugal's constitution states that "Everyone has a right to a healthy and ecologically balanced environment and the duty to defend it"²⁷.

According to Anne Angwenyi, workshop in Nairobi Environmental Legislations and Domestication on International Environmental Law in Kenya, the penal Code (cap

²³ Bjorn Lomborg, *Rio +20 Summit*,

²⁴ Richard Faulkner, Albert G. Millbank, T. *The greatest ecological threat and human rights*(1943)

²⁵ David B Boyd *Environmental Law* 6th edition OUP, (1994)

²⁶ Stockholm Declaration, Global Eco-summit (1972)

²⁷ The constitution of Portugal, Article 66, (1977) Portugal

65)comes the offence of common nuisance identical to that in the public Health Act. As provided by section 191²⁸.

The Traffic Act Nairobi Environmental Legislations and Domestication on International Environmental Law in Kenya prohibits air pollution in section 51 which requires that motor vehicles use proper fuels. The rules propagated under the act provided that every vehicle be so constructed, painted and used as not to emit any smoke or visible vapor²⁹.

A case in example, Wangari Mathaai Vs The Kenya Times Media Trust DUGDALE J, held that the applicant had no standing since she had not alleged that "the defendant company was in breach of any rights, public or private in relation to the plaintiff nor had the company caused damage to her"³⁰

Scovazzi and Treves 1995 world Treaties for the Protection of the environment, states that it is important to unearth the relation between the global environmental and international law. The working part environmental law consists of collection of important standard setting conventions devoted to particular problems. A number of such instruments relate to the conservation of nature and living resources³¹.

Christine Echokit Akello and Ronald Kagwa in their book Environment Socio-economic Development In Uganda; They emphasized that, environment is a strategic sector in Uganda's development process making major contributions to economic growth, poverty reduction, food security, employment revenue generation, foreign exchange earnings and millennium Development Goals³².

Indeed, the poverty Eradication Action Plan recognizes that Uganda's economic growth and its sustainability will depend on how well the environment and natural resources are managed and used. Wetlands occupy about 300,000 KM and 13 percent

²⁸ Anne Angwenyi, *Nairobi Environmental Legislations and Domestication on International Environmental Law in Kenya* (2004)

²⁹ The Traffic Act, section 51, (1994)(Uganda)

³⁰ Wangari Mathaai Vs The Kenya Times Media Trust (1992) KLR20 (DUGDALE J)

³¹ Scovazzi and Treves, *world Treaties for the Protection of the environment* (1995)

³² Christine Echokit Akello and Ronald Kagwa, *Environment Socio-economic Development In Uganda* (1966)

of the total Area in Kampala District, Wetlands need to be conserved for the present generations and future generations. There is need to curb wetland encroachment to the economy is estimated at Uganda 2 billion shillings per annum.

Namubiru Sylvia and Opio Silvanus in their book *Goals towards organization of a clean environment* point out the diseases those results out of pollution of the environment. They give an example of frequent out break of cholera in the poverty stricken areas of Kampala district as a result of poor sanitation and failure to enforce the urban law regarding the rights in clean and healthy environment, they goes ahead to conclude that there is need for enforcement of the law on the same as enshrined in the Uganda constitution³³.

Green watch organization has been instrumental in appraising the national environment bill that was passed in may 1995. It has also made contribution to the national constitutional review commission by giving recommendation on matters concerning environment. The recommendations were largely accepted and found their way into the new constitution, notably the right to a clean healthy environment.

Musinguzi Patrick in his book, review on non formal environmental education in Uganda, notes that the interdependence of a society and the need to protect the present and future generations from harmful effects of human activities. It is about economic and technological activities which tend to pollute the environment, through industrial wastes making the environment unclean and unhealthy for human existence. The book examines how sustainable development as environmental principle is upheld to achieve and maintain a healthy and clean environment.

Hussein p Kasibante in his report on development and harmonization of environment standards in Uganda views that human rights are supposed to be collective rights such as relating to environmental quality. This means that the right to a clean and health environment encompasses many things such as freedom from pollution and environmental harm. He emphasized that this right includes access to publically held

³³ Namubiru Sylvia and Opio Silvanus, *Goals towards organization of a clean environment 2nd edition* .(1994)

information and the opportunity to participate in decision making process and provision of effective access to environmental justice³⁴.

L.N Kakaire notes the interdependence of a society and the need to protect the present and future generations from harmful effects of human activities. That is about economic and technological activities which tend to pollute the environment, through industrial wastes making the environment unclean for the people. This brings to light the impact of unclean environment and this work examines the role of stake holders in enforcing the rights to a healthy environment. It thus prevents outbreak of disease in the Uganda context.

Article 5 universal declaration of human rights, states that sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs³⁵.

Poverty eradication action plan (PEAP) recognizes that Uganda's economic growth and its sustainability will depend on how well the environment and natural resources are managed and used³⁶.

The environmental management agency (EMA) works towards ensuring that every Ugandan has a safe, clean and health environment. This is a major component that averts health risks to the public. A recurrence of the 2007/2008 situation where at least 4,200 lives were lost due to cholera outbreak due to poor sewerage management would be unbearable. It is therefore against this background that people should understand their environment as well as its related right.

³⁴ Hussein p Kasibante, *Report on development and harmonization of environment standards*, (2011) Uganda

³⁵ Universal Declaration of Human Rights, Article 5, 1999 (Uganda)

³⁶ Poverty Eradication Action Plan (PEAP), 2000, (Uganda)

CHAPTER THREE

3.0 THE DEVELOPMENT OF RIGHTS

In the 1970s, the link between human rights and the environment have been progressively recognized. People more and more started to see that a clean environment was essential to the realization of fundamental human rights. Such as right to life, personal integrity, family life, health and development.

Due to each human being independent on protecting the environment as the resource base for all life. It all started when the human rights movements were acknowledged and hence they were linked to cases of environmental disruption a case in example, are the Bhopal and Chernobyl disasters, it has been concluded over the years that Human Rights and the Environment are so inherently interlinked.

Another case that illustrates the above is MC Mehta VS Union of India (1991) AIR SC 813. The supreme Court dealt with the problem of air pollution caused by motor vehicle operating in Delhi. It was a public interest petition and the court made several directions towards the ministry of environment and forests³⁷.

3.1 History of the rights to a clean and healthy environment in Uganda

An appraisal of the historical background to the clean and healthy rights in Uganda would indicate that forests & wildlife were considered as vital ingredients of the global system. Here, the entire scheme of environmental preservation was essentially duty-based. In this sense, the Ugandan society accepted the protection of the environment as its duty to do so.

3.2 Contribution of the British in The Development of the rights

The British conquest in Uganda brought about a plunder of natural resources coupled with a complete indifference towards environmental protection. A general survey of early environmental legislation reveals that apart from the forest laws, nineteenth

³⁷ MC Mehta VS Union of India (1991) AIR SC 813

century legislation also partially regulated two other aspects of Indian environment water pollution and wildlife. These laws, however, had a narrow purpose and limited territorial reach.³⁸

In addition, negligent acts were penalized with poisonous substances that endangered life or caused injury and prescribed public nuisances. Laws aimed at controlling air pollution were put in place. In the field of wildlife protection, early legislation was limited to specific areas and particular species, there by aiming at the conservation of biodiversity.³⁹

It is clear that legislative measures were taken by the British Government for prevention of pollution and for conservation of natural resources. Although critics point out that the British enacted these legislations, not with the object of protecting the environment but with the aim of earning revenue for themselves, it should be regarded as the first step towards the scientific conservation of natural resources.⁴⁰

Despite the fact that these measures were made with ulterior motives, British on a large scale occurrence of environmental crises, the global community has expressed major concern over the rights and environmental development. Amidst some serious endeavors, significant developments took place in the international scenario.

3.3 United Nations Conference on the rights to a clean and healthy environment

In the backdrop of some sincere efforts of tackling pollution control, for the first time, the attention of the world was drawn towards environment in the United Nations Conference on Human Environment was held at Stockholm in June 1972⁴¹.

³⁸ Environmental Pollution and its Management (1992) pg 89

³⁹ Report by British COUNCIL on Environment (1995)

⁴⁰ United Nations Conference on Environment, June (1972) Stockholm

⁴¹ United Nations Conference on Human Environment, June (1972) Stockholm

The Declaration on Human Environment was passed containing twenty-six principles, with the main object of overcoming environmental problems related to the development of States and to provide clean & healthy living conditions. An important aspect of the Stockholm Declaration was a strategy to draft an action plan for the development of human environment.

Moreover, the declaration stated that economic and social development were necessary for ensuring a healthy environment for man. This, in turn, has been called the Magna Carta on environment from which two important conclusions can be reached:

1. Man has the fundamental right to freedom, equality and adequate conditions of life in an environment of quality that permits a life of dignity and well-being
2. Man bears a solemn responsibility to protect and improve the environment for present and future generation.

3.4 United Nations Conference on Environment and Development

In the last decade, the most revolutionary step towards the preservation of the environment was the Earth Summit convened by the UN General Assembly at Rio de Janeiro from 3rd to 14th June, 1992⁴². The Conference saw the largest gathering of world leaders ever in the history - deliberating and chalking out a blue print for the survival of the planet. It added a new dimension on the issues of environment and development in international negotiations.

3.5 World Summit on Sustainable Development

The World Summit on Sustainable Development was held at Johannesburg, where after 10 years of the Rio Conference, the Summit reaffirmed sustainable

⁴² Earth Summit, UN General Assembly, Rio de Janeiro 3rd to 14th June, (1992)

development as a central element of the international agenda and gave new impetus to global action to fight poverty and protect environment⁴³.

The Summit's plan of implementation is a seventy-one page document that is intended to set the world's environmental agenda for the next ten years and is expected to be a model for future international agreements. The plan of implementation aims at building further on the achievements made at UNCED and make commitments

3.6 Impact of the development of the rights in Uganda

In the early years of Ugandan independence, there was no precise environmental policy. Government tried to make attempts only from time to time as per the growing needs of the society. The period of 1980s witnessed a lot of changes in policies and attitudes of the Ugandan Government when its attitude changed from environmental indifference to greater and subsequently, manifold steps were taken to improve environmental conditions.⁴⁴

3.7 Environmental Developmental Goals

Millennium development goals established by the United Nations, in which they placed their main goals to be achieving sustainability which would enable the earth to continue supporting human life. Sustainability is the capacity to endure. It requires the conciliation of environmental, social equity and economic demands.⁴⁵

Environmental sustainability is the capacity to endure. In ecology the word describes how biological system remain deserves and productive overtime. Long lived and healthy wetlands and forests are examples of sustainability biological systems. For humans, sustainability is the potential for long term maintenance of well being which has economic, political and cultural dimensions sustainability requires the reconciliation of

⁴³ World Summit on Sustainable Development, Johannesburg, (1994)

⁴⁴ Centre for Health ,Human rights and Development

⁴⁵ The Millenium Summit Of The United Nations, 2000

environmental, social equity and economic demands, also referred to as the 3 pillars of sustainability.⁴⁶

Healthy ecosystem and environmental are necessary to the survival and flourishing of humans and other organisms , there are a number of major ways of reducing negative human impacts,.

Environmental management, this approach is based largely on information gained from earth. Science, environmental science and conservation, biology.

Management of human consumption of resources, which is based largely on information gained from economies.⁴⁷

Sustainability interfaces with economies through the social and environmental consequences of economic activities. Sustainability economics involves ecological economics where social aspects including cultural, health related and monetary / financial aspects are integrated moving towards sustainability is also a social challenge that entails international and national law urban planning and transport, local and individual lifestyles and ethical consumerism.⁴⁸

Some of the ways of living more sustainably can take many forms from re-organizing living conditions e.g. eco-villages, eco-municipalities, a sustainability of cities, re appraising, economic sectors, (permaculture, green building, sustainable agriculture) or new technologies e.g. (green technologies, renewable energy and sustainable fission and fusion power) to adjustments in individual lifestyle that conserve natural resources.⁴⁹

The Brundtland commission of the united nations, stated that sustainable development is development that meets the needs of the present with out compromising the ability of future generation to meet their own needs⁵⁰.

⁴⁶ Green watch Movement Uganda (1995)

⁴⁷ Environmental Law, Sweet and Maxwell(London) 2004

⁴⁸ The Environmental Greenwatch Organization(Uganda) 2011

⁴⁹ World Summit On a Sustainable Development(,Johannesburg)1994

⁵⁰ Brundtland commission of the United Nations, March 20th 1927

The Earth charter speaks of a sustainable global society founded on respect for nature, universal, human rights, economic justice and a culture of peace. According to the Guardian Newspaper. Thursday 4 august 2011, Niger delta oil spills clean up will take 30 years says United Nations it may cost and 1 billion dollars do rectify and take up to 30 yrs to clean it up. The United Nations environmental program (UNEP) has announced that shall and other oil systematically contaminated a 1000 sq km (386 sq miles) area of Ugoni land, in the Niger delta with disastrous consequences for human health and wildlife⁵¹.

Nigerians had “paid a high price” for the economic growth brought by the oil industry, said UNEP’s executive director.

The 3 years investigations found,

Heavy contamination of land and underground water courses; sometimes.
More than 40 years after oil was spilled.

Community drinking water with dangerous concentration of benzene and other pollutants.

Soil contamination more than five meters deep in many areas studied.

The Ugoniland study by John Vidal, an environmental worker, concluded that emergency measures taken to warn communities and to clean up drinking water, wells and sags shell and other companies working in the delta, should overhaul the way they operate.

The report provided the scientific basis for a long overdue restoration of Ugoni land. The offers a blue print for how the oil industry and public authorities might operate more responsibly; in Africa and beyond at time of increasing production and exploration across many parts of the continent⁵².

⁵¹ Guardian Newspaper. (Niger) Thursday 4 august 2011,

⁵² John Vidal, report on Ugoniland, (1964) Nigeria

The report by NNIMO Bassey, chair of friends of the Earth international and director of Environmental Rights Action Nigeria, will act as a base line study for a massive clean – up operation required by the united nations⁵³.

⁵³ NNIMO Bassey, Report on Earth international and Environmental Rights Action Nigeria

CHAPTER FOUR

4.1 DATA PRESENTATION AND ANALYSIS

Data for this study were largely obtained from primary sources such as internet, text books and these were methods that were used to find data.

The laws used include the 1995 constitution in Uganda.

Survey data collected were subject to appropriate electronic analysis using the statistical packages for the social, science data obtained from internet, key, information and case studies were analyzed along themes derived from specific objectives of the study to augment; cross check enrich and corroborate survey data, information obtained from secondary sources, notably literature drawn from text books, journals, media reports and documents generated by (SOS and government agencies-involved in implementation of the laws related to a clean and healthy environment⁵⁴.

4.2 Problems, constraints and limitations of the study.

- This study faced a few barriers that require mention. In order to justify some of the sampling and other errors that may have marred albeit in significantly, both its internal and external validity. These are mainly logistical barriers, including having had a few enumerators at the disposal of the researchers to assist in data collection.

However, case studies created the shortcomings;

⁵⁴ The constitution of the republic of Uganda, (1995) Uganda

4.3 Assessment of the practicability of the existing laws in Uganda.

The 1995 constitution, it is stated that clean water and healthy environment means quality environment free from any pollution of any kind the right to a clean and healthy environment is an emerging rights it owes it's origins to the recognition of international law rules protecting human rights against the state violations.

4.4 Implementation of the right.

The rights can be implemented by involving the environmental management agency, which works towards ensuring that every Ugandan has a safe, clean environment. This is a key components that avert healthy risk to the public. A recurrence of the 2007 / 2008 situation where at least 4,200 lives were lost due to cholera out break due to poor sewerage management, which would be unbearable. It is against this back ground that people understand their environment as well as it's related rights.⁵⁵

The national institute of environmental healthy science minority worker training program. The program has awarded more than 30 communities in Kampala district to recruit and train individuals who lives in vulnerable communities at risk of exposure to contaminants for employment in the environmental field.⁵⁶

The affordable care Act, which is a healthy reform laws of 2010, includes a new community transformation grant program that builds on the economic empowerment zone model.

Healthy lifestyle is promoted especially among population groups experiencing the greatest burden of chronic disease, these grants help improve healthy, reduce health disparities and control health core spending.

⁵⁵ Daily Monitor,Uganda Thursday5 january 2012

⁵⁶ The National Institute of Environmental Health Science Training Program.2012

The release of the strategy and implementation plan, helps in renewing the commitment to working with other federal partners to promote environmental justice⁵⁷.

More so, environmental rights and responsibilities have been a cornerstone of indigenous legal systems for millennia. The first formal recognition of the right to a healthy environment came in the Stockholm Declaration, which emerged from the pioneering global eco-system in 1972

As of 2012, the UN member nations recognized, this right through their constitution, environmental legislation, court decision or ratification of an international agreement.

The only remaining hold outs are the United States, Canada, Japan, Australia, china and Oman.

A constitution being the highest and strongest law, protects and fulfill rights, occurs at the national level with in countries. A constitution must therefore be consistent with it. It also sets forth the obligations of the state and restricts government power. Constitutions reflects the most deeply held and cherished values of a society.

Portugal (in 1976) and Spain (1978) were the first countries to includes the rights to a health environment and they went ahead to implement it.

Despite the above process there is an ongoing debate about the scope and potential utility of the right to a health environment. Supporter argues that the potential benefits of constitutional environment rights includes.

- Stronger environmental laws and policies.

- Improved implementation and enforcements

- Greater citizen participation in environmental decision making.

- Increased accountability.

- Better environmental performance.

⁵⁷ The affordable care act, cap 75, 2010

New research demonstrated that the incorporation of the right to a healthy environment in a country's constitution leads directly to important legal outcomes, stronger environmental laws and therefore it proves that the clear cause and effective relationship is always challenging in the social sciences.

In some nations, the constitutional right to a clean and a healthy environment has become a unifying principle, permeating the entire body of environmental law and policy. An example of where this is applicable is Argentina, where the reform of the constitution for 1994⁵⁸ to include the right to a healthy environment “triggered the need for a new generation of environmental legislation, this is brought well by J Borrows, the indigenous constitution Toronto university of Toronto press 2010⁵⁹”.

In conclusion, the constitutional provision are not the only factors contributing to control of environmental system for example the European Union Accession process had a major influences on environmental legislation in eastern Europe. Other key factors include public pressure, the migration of ideas and legislation approaches from others jurisdiction and international assistance from agencies such as the United Nations Environment Program and the International Union for the Conservation of nature (IUCN)⁶⁰.

Recognition of the constitution right to a healthy environment can facilitate increased implementation and enforcement of environmental laws. Communities and Non governmental organizations have supplemented the enforcement efforts of the state, drawn attention to violation and provided impetus for the allocation of additional resources to environmental monitoring and protection.

⁵⁸ The constitution of the republic of Argentina, cap 75 (1965)

⁵⁹ J Borrows, *the indigenous constitution Toronto university of Toronto press* (2010)

⁶⁰ United Nations Environment Program and the International Union for the Conservation of nature (IUCN)

CHAPTER FIVE

5.1 Findings

A clean, healthy and proactive environment reduces the cost of public expenditure for provision of services by the different sector. For example over 90% of the disease burden in Kampala (malaria, cholera, and diarrhoea) is environmental health related. A healthy and clean environment reduces the cost of health care services delivery.

Water- Access to safe drinking water is a basic human right and essential for achieving sustainable development. Most households in Kampala do not have adequate access to water. A major issue associated within poor water supply and sanitation, insufficient water supply and sanitation facilities within the slum areas. Overcrowding, water pressure and broken water pumps accelerate the crisis according to Diana Paul an author *fulfilling the forgotten promise*. The protection of civilians in Northern Uganda (a study of protection of civilian, sponsored by members of Inter Actions working Group)⁶¹.

Access to a fresh water and sanitation, improves the health of a family sanitation, drainage and disposal of sewage. The need to dispose human excretion appropriately is an environmental and social concern in the country. Lack of sanitation and poor hygiene are responsible for the transmissions of disease e.g. cholera, typhoid and other parasitic infection. These diseases have a big red-impact on the health and nutrition of communities especially children sanitation concerns are mainly emphasized in urban and peri-urban centers, and have water is directly linked to sanitation. Number of latrines at slumps at community level tends to be less as compared to size of the families needed to access them.

⁶¹ Inter Actions working Group, *Protection of civilians in Northern Uganda*

Environmental Action Network V Ag & Nema Hcma No. 39/2001. Application brought a suit on behalf of non-smoking members of the public to protect their right to a clean and healthy environment, their right to life and for general good of public health in Uganda⁶².

A declaration that un regulated smoking in public place constitutes of a violation of the right of non smoking members of the public and that the respondent should take appropriate measure to regulate smoking in public places so that to provide a clean and health environmental to the none smoking members of the public.

Advocate coalition for the development of environment and another Versus Attorney General HCMA 100/2004, granting of a permit to Kakira Sugar Works Limited by first responded contravenes article 39 of the constitution of the republic of Uganda. Defacto degazetting Butumira forest reserve is in violation of the applicants' right to a clean and healthy environment and protection natural resources. The failure to submit project brief is a violation of the applicant's constitutional and statutory right covered under article 39⁶³.

5.2 Conclusion.

Environment has been defined as the sum of all external conditions and influences affecting the life and development of an organism. Section 1 of the National Environment Act cap 153, states that "clean and healthy environment means quality environment free from any pollution of any kind"⁶⁴.

The right to a clean and healthy environment is an emerging right and owes it's organism to the recognition of international law rules protecting human rights against state violations which are largely post 1945.

⁶² Environmental Action Network V AG & NEMA (2001) HCMA No. 39

⁶³ Advocate coalition for the development of environment and anor Versus Attorney General (2004) HCMA 100.

⁶⁴ Environment Act cap 153

5.2.1 Assessment of the existing laws in Uganda

It is stated that clean water and healthy environment means quality environment free any pollution of any kind the right to a clean and healthy environment is an emerging right it owes its origins to the recognition o international law rule protection human rights against the state violations.

NEMA, administers the laws required to protect human health and to safeguard the natural environment, air, water and land up on which life depends in the same light, NEMA has established national ambient air quality standards so as to protect public health and public welfare and to regulate emissions for hazardous air pollutants.

The energy policy act (E.P.A) addresses energy production in Uganda including , energy efficiency , renewable energy , oil and gas ,coal and hydropower and gas thermal energy. The main mission of energy policy Act is to protect human health and to safe guard the natural environment upon which life depends.⁶⁵

NEMA has also ensured that the health hazards that are dangerous to human health are quickly resolved, a case in example is the creation of a dumpsite in the Kansanga area, the dumpsite is almost five hundered metres away from all the food businesses.

Kampala capital city authority (KCCA) has contributed to the putting in place the regulations to combat garbage in Kampala, it ensures that around the city suburbs, garbage is collected on a regular basis. This has lead to reduction of the health risks and concerns among the people and community.

5.2.2 Implementation of the right

In Uganda, there has been significant progress in the field of environmental protections through legal and policy strategies the judiciary has gone ahead to show how the right may be implemented however, they have concluded that there are still challenges facing judicial protections of the right.

⁶⁵ Energy Policy Act Cap 145

Environmental and human rights activists should not only educate the public on the right to a clean and healthy environment and its enforcement but also deduce necessary scientific and technical evidences in court.

The health of people and the environment in the lake Victoria basin project (HOPE LVB) project implementing the right around the lake Victoria basin to improve public health and reduce unsustainable population growth and its attendant environmental degradation, deforestation and overfishing in Ggaba, Kampala district⁶⁶.

The right to a clean and healthy environment is universally reorganized as reflected in various international and regional instrumental and Uganda's national legislation. The international organizations like the United Nations, under the national environment program finding and organizing environmental symposia and also influence national environmental laws.

5.3 Recommendations.

To surmount some of the challenges raised above, the empowerment of women as a vulnerable social category must be given prominence and priority.

There has been significant progress in the field of environmental protections through various legal and policy strategies.

NEMA, administers the laws required to protect, human health and to safe guard the natural environment, air, water and land up on which life depends.⁶⁷

The KCCA , should put in place garbage collector around Kampala district, given that the city generator on estimate 1,500 tonnes of garbage daily, but has capacity to pick up only 500 tonnes, the Kampala capital city authority ought to put in place mechanisms on garbage collection from all local markets and street corners and thus curbing the healthy risked and other environmental concerns.⁶⁸

⁶⁶ The lake Victoria basin project(HOPE LVB) report by Greenwatch movement 2011

⁶⁷ The National Environment Movement Association

⁶⁸ The Kampala Capital City Authority

5.3.1 Implementation of the right

The national water and sewerage corporation should put in place construction guideline so that people construct sewers. This will help curb the health risks passed by open sewers lines found in the different suburbs of Kampala district. This would lead to spread of diseases such as cholera and diarrhea.

Due to selective and tax application of existing public health laws many public eating place lack health licenses, the public should be educated on ensuring that in all areas that they sought to have their meals from, they must check whether the place is licensed.

I would recommend (NEMA) to administer the laws required to protect human health and to safe guard the natural environment. The energy policy Act (E.P.A) Should address energy production in Uganda and these include areas such as energy efficiency, renewable energy; oil and gas, coal and finally hydropower and geothermal energy.

There must be implementation of court decision , only decision from court may not always be sufficient. Environmental and human rights organizations must publicize and internationally and demands it's implementations.

5.3.2 Extension of jurisdiction on enforcement by court.

The law should be amended to give jurisdiction to magistrate to entertain matter based on article 39 and 50 of the constitution. The court penalized negligent Act which caused injury and prescribed public nuisance. Legislative measures were taken Ugandan government for prevention of pollution and for conservation of natural resources. All the legislation were enacted with the objective of protecting the environment.

5.3.3 Creation of public environmental awareness.

It is important to educate the public, including private industry, on the importance of protecting the environment generally and the right to a clean and health environment in particular.

The public should also be sensitized about the available complaint and mechanism. If for example a river is polluted or a factory is omitting obvious substances, the community should be able to bring it to the attention of the relevant NGO engaged in environmental activities and advocacy.

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