AN EXAMINATION OF THE FRAMEWORK FOR PROTECTION OF THE ENVIRONMENT IN UGANDA

BY

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Declaration

I, Asiimwe Fred do hereby declare that the work presented in this dissertation arises out of my own research; I certify that it has never been submitted or examined in any university as an academic requirement for any award.

Sign Date

..... 28th June, 2019

ASIIMWE FRED

Approval

This dissertation has been submitted with the approval of Dr. Chima Magnus as the university supervisor.

Signed

..... (Supervisor)

Date of Approval

28/06/19

Dedication

This research is dedicated to the Almighty God, my dear beloved parents. I also dedicate this work to the people who have been so close to me and also not forgetting all my classmates whom we have endeavored to accomplish this journey together.

Thank you All!

Acknowledgement

First and foremost I am most grateful to my parents Asiimwe Moses and Natamba Harriet for their contribution towards my curricular achievements. Thank you very much for all your blessings and efforts rendered.

I am deeply indebted to my supervisor Dr. Chima Magnus for his overwhelming support and supervision in the compilation of this research; you have not only been a supervisor to me but also a role model.

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List of Abbreviations

CBDR	Common but Differentiated Responsibility
CDF	Clean Development Fund
CDM	Clean Development Mechanism
COP	Conference of the Parties
EB	Executive Board
EIA	Environmental Impact Assessment
ERA	Electricity Regulatory Authority
ERT	Energy for Rural Transformation
GDP	Gross Domestic Product
GHG	greenhouse gases
IET	International Emissions Trading
IPCC	Intergovernmental Panel on Climate Change
JI	Joint Implementation
MDCs	More Developed Countries
NEAP	National Environment Action Plan
NEMA	National Environment Authority
NEMP	National Environment Management Policy
NFA	National Forestry Authority
NGOs	Non-Governmental Organisations
PCF	Prototype Carbon Fund
PRE	Permanent Forest Estate
RETs	Renewable Energy Technologies
UNFCCC	United Nations Framework Convention

List of cases

Advocates Coalition for Development and Environment vs. AG

Green vs. AG & Another Misc. Cause No. 140/2002

Rylands vs Fletcher [1866] ALLER 1.265

Green vs AG & Another Misc. Cause No.140/2002

Byabazaire Grace Thaddeus vs Mukwano Industries Misc. Application No.909/2000

List of National Legislation

1. The Constitution of Republic of Uganda 1995

2. National Environmental Act Cap 153 Vol.7

3. Penal Code Act Cap 120 Vol.6

4. Public Health Act Cap 281 Vol.11

5. Factories Act Cap 220 Vol.9

6. The Mining Act, 2003

7. The National Environmental Management Policy 11 .The National Environmental Action Plan, 1995

8. Environmental Impact Assessment Regulations, 1998

Abstract

The livelihood of most Ugandans intimately depends on the environment both as a resource of subsistence and a basis for production. However environmental degradation is rampant mostly in the more populated areas. The Ugandan government has formulated a number of policies to regulate land use and impacts on land use. However, the alarming rate at which natural resources are being depleted shows that these laws and policies are not enforced effectively. The methods used while conducting this research include library research from the relevant materials, internet research and a critical analysis of the international and Ugandan instruments on the conservation of the environment. The study reveals a glaring gap between the existence of laws and policies and the reality of implementation in regard to restoration and conservation of the environment. The study calls for effective implementation of the existing laws and policies. it also calls for meticulous review of the existing environmental policy regime with a view of tailoring, customizing and localizing it for practical purposes.

CHAPTER ONE

INTRODUCTION OF THE STUDY

1.1 Background

Faced with the results of pollution and destructive actions, many international treaties and laws and regulations on environmental protection have been introduced in the second half of the 19thcentury. Over the past 50 years, humans have changed the eco systems more rapidly and extensively to rapidly growing demands for food, fresh water, timber, timber fiber and fuel.

This has resulted in a substantial and largely irreversible loss in the diversity of life on earth although some gains in human wellbeing and economic development have been as well. The degradation of many eco systems and exacerbation of poverty unless addressed substantially diminish the benefits that the future generations obtain from them.

During the Rio Earth Summit (UNCD) in 1992 Uganda joined the rest of the world in adopting Agenda 21, a programme for sustainable development. Many countries all over the world committed themselves to plan and manage land use in an integrated manner, to promote action to combat deforestation, drought and conserve biodiversity among others.

Objective xiii of the national objectives and directive principles of state policy states that the state shall protect important natural resources including land, water, wetlands, minerals, oil, flora and fauna on behalf of the people. Article 39 of the 1995 constitution of the republic of Uganda provides for a clean and healthy environment.

In the Stockholm Declaration on Human Environment 1972 principle 1, is to the effect that 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 and he bears a solemn responsibility to protect and improve the environment present and future generations.

This research shall entail the practicability of legislations in the protection of the environment. It involves addressing environmental problems such as pollution, degradation, biocides affecting animals and plant life and un controlled depletion and ravaging of the world's natural resources.

1.2 Statement of the problem

Protection of the environment in Uganda has not been fully achieved. The legal machinery and the institutional frame work have not been fully enforced to ensure proper protection of the environment. This work analyses how effective the existing laws and institutional frame work have been applied in the protection of the environment.

Most people always write, speak about the protection of the environment nevertheless its known to everybody that our environment has not been fully protected by the existing legal frame work. Therefore this study sought to analyze the efficacy of the legal frame work in the protection of the environment.

1.3 Objectives of the study

General objective:

The study seeks to address the extent to which the legal frame work has been effectively enforced towards the realization of environmental protection in Uganda.

1.4 Specific objectives of the study

I. To investigate Uganda's environmental legal and institutional frame work and its adequacy in guaranteeing protection of the environment.
II. To establish the obstacles to effective implementation of environmental laws in Uganda.
III. Assess the relevance of current environmental laws and institutions in Uganda.
IV. To propose necessary changes for effective management of resources for sustainable development.

1.5 Research questions

I. What is Uganda's environmental legal and institutional frame work and its adequacy in guaranteeing protection of the environment?
II. What are the obstacles to effective implementation of environmental laws in Uganda?
III. What is the relevance of current environmental laws and institutions in Uganda?
IV. What are the necessary changes for effective management of resources for sustainable development?

1.6 Scope of the study.

Content scope

The study will be examining the legal frame work on the environmental protection. It basically looked at the effectiveness of the environmental laws and institutions in the protection of the environment in Uganda.

Time scope

The time frame of this research will be from 2007 to date. This is because I wanted to start from the time where the most controversial law was passed by parliament for the ban of kavera and they are still around up to today.

1.7 Significance of the study

The study of this nature is timely at the time when the environment is facing serious challenge like deforestation, pollution and general degradation with many laws and institutions in place such as the constitution, the local Government Act and NEMA and one wonders why the environment keeps on being degraded. It's hoped that findings of this study will help raise awareness on issues pertaining to effective environmental protection. These issues include; adequate implementation mechanism, development of sufficient institutional arrangements, the need to revisit international treaties, public participation, environmental awareness through education and training in assessment, evaluation and management procedures and finally complimenting (command and control) with economic incentives as enforcement mechanisms of environment legislation.

1.8 Review of related literature.

The main purpose of this conceptual frame work is looking at role of available institutions and laws and how to overcome some of the deficiencies in the present literature on the efficiency of these environmental laws and institutions in the protection of the environment.

In the hand book; **Environmental law in Uganda** published by **NEMA, UNEP, and Greenwatch** gives a belief history of environmental law. it connotes that environmental law touches on practically every facet of society and seeks to protect and manage human resources

and human health. This being done among other ways through laws that set standards and activities that affect the natural resources.

Jones Kamugisha in his book **Management of Natural resources and environment in Uganda, policy and legislation land marks.** Tries to examine the state of the environment in the pre-colonial era. He again looks at the evolution of legislation concerning the environment that started as far as 1890 under the African order in council. He also examines the implementation which led to environmental degradation due to factors like financial penalties provided for under the old laws being so old and they acted much less than different to infraction. While he looks at deficient mechanisms which led to environmental degradation, he doesn't provide ways and ways of avoiding such problems. However he sets out ways which the current legislations have been employed to guard against such situations.

John kigula. In The law relating to water and wetland conservation in Uganda. Recognizes the fact that the institutional framework for environmental management which is established under The National Environmental Act Cap 153 and The Local Government Act may with meet a number of problems and these include improper constitution of the relevant local institutions, institutional conflicts and lack of financial and logistical support. He notes that there is an added problem concerning the people in the higher level of management positions who may get pre-occupied with personal aggrandizement. This has led to non performance of public duties as far as environmental planning and enforcement of the relevant measures of the welfare to meet lowest local strata. He also points out that there are limitations of the financing of national environmental management authority (NEMA). This is semi automous and it starts with the Ministry of water, lands and limit or compromise its effectiveness in carrying out superintendence and environmental policing duties as it's assigned to do.

John Ntambwireki. In the legal and policy framework for natural resources management in Uganda discusses the common law position. In his paper he talks about the future and even presently how the law is dominated by common law that is not susceptible to change. He has that its not the means to be adopted to achieve immediate and revolutionary change. He also points out the role of customary law and practices as regards to environmental conservation that can be best taken care of through community participation and awareness. He says that there is no better means of bringing awareness to communities except through their own practices or customs.

Judy Obiter Gama. In An overview of the policy, legal and institutional framework for environmental management in Uganda. He makes useful study by highlighting that government should balance between environmental protection or management and industrialization in Uganda. Environmental management ensures regulatory compliance and effective management of natural resources. She pointed out that NEMA should consult with lead agencies and the districts to ensure that the measures adopted in environmental protection are adoptable, acceptable and practicable. This is enabled through environmental awareness campaigns. the constitution of the republic of Uganda 1995 under article 50 provides for fundamental rights including the right to a clean and healthy environment and other rights and freedom to apply to court for redress under article 39. It has not however provided for means and ways by which people can access the courts of law easily and cheaply. Under article 126 judicial powers are derived from the people and shall be exercised by courts of law and the process being long and expensive one.

Godber .W .Tamushabe and Arthur Bainomugisha. Describes how environmental democracy can be accessed through public access to information, participation and justice in environmental decision making.

Henry Steiner and Delta in the book Henry Steiner and Delta. University case book series, minellas NY The foundation press1998. Deals with the maxim of pacta servanda which is core of treaty law law and emphasizes that commitments made by nations publicly, voluntarily and formally should be honored. Uganda being a party to some international treaties and conventions is expected to meet its international obligations and duties.

Martin lau. In Human rights approaches to environmental protection discusses the relationship between Islamic law and public interest litigation in environmental protection in the Islamic Republic Of Pakistan and says Sharia law and public interest litigation are integrated en forcing environmental rights. He also discusses other rights like right to descent living, right to life, health and how they can be used to enforce environmental rights.

The environmental Law Institute discusses how a citizen can participate in environmental enforcement through access to information of both government and public information with mechanisms of participation and the requirements for effective citizen participation.

1.9 Methodology

In handling this research, reliance will be on the use written materials for example various statutes on environment, the constitution of the republic of Uganda 1995 and other relevant reports and books; written material and observable facts at a particular time depending on their relevance to the environment. These are at Kampala International University Library centre of basic research, National Environmental Management Library, the internet will also be of good use.

CHAPTER TWO

INSTITUTIONAL AND LEGAL REVIEW OF THE ENVIRONMENTAL LAW IN UGANDA

2.0 Introduction

This chapter seeks to explain how environmental laws came about in Uganda and what necessitated their coming into existence. The chapter will also explain how environmental law is based on common law and the principles of equity. The chapter also gives a detailed discussion of how environmental law in Uganda has evolved over the years.

2.1 The concept of environmental law

Environmental law means the law governing the environment and its resources. It is the ensemble of norms, rules, procedures and institutional arrangements found in civil and criminal law. It includes statutes and implementing regulations, case law, treaties and soft law instruments that deal with or relate to protection, management and utilization of environment and natural resources for sustainable development or intergenerational equity.

Section 1(0) of the National Environmental Act Cap 153 herein referred to as the NEA defines the environment as any physical factors of the surrounding of human beings, including land, waters atmosphere, climate, sound, order, taste, the biological factors of animals and plants and the social factors of aesthetics and includes both the natural and the built environment.

The above definition does not include factors but emphasizes scientific certainty like spiritual values. The definition emphasizes both the natural and man made environment. Environmental law is relatively new but rapidly growing and expanding field of law that aims at protecting the natural resources and the total context within which they exist.

The environment like life covers all forms of human existence life does not exist in a vacuum but in an environment conducive to life. In Sheila Zia V. Wapda, it was noted that if the environment is changed significantly, it is likely that life will cease to exist on earth as well.

2.2. History and Evolution of Environmental Law

Environmental law is relatively new science dating back to the early 1970s. The first law on environment was passed by the USA in 1970. It was called the **National Environmental Policy Act**. Prior to that, other states had their own laws governing the environment. Mans relationship to the environment has always been governed by the state of his technology to exploit his resources and the law has also tended to follow the state of mans knowledge and technology.

In pre-industrial societies, the principle attitude of man towards the environment was that environmental resources were so abundant and inexhaustible that it was up to man to bring them under his control. This is illustrated in a famous debate between two re known jurists, **the Dutch Jurist called Hugo Grotious and English jurist called Jerome Sheldon.**

Grotious in his argument on the law of the sea was of the view that the sea should be seen as the common property of all nations and that due to its abundance, and that of its resources, it could not be appropriated by a single nation or group of nation. It should be free for all nations. He also argued that however much the sea was used and abused, it could not change. His thinking led to the birth of the international law doctrine of **"freedom of the high seas"** which to date governs the high seas.

Jerome Sheldon was not convinced. He said that, if the sea were opened to all nations, then it will be abused and will eventually affect the right of all nations to use it. Since the beginning of 20th century, a number of international rules have developed to cub pollution of the sea and to control the way in which states use its resources. Grotious view remains dominant. Experiences of the 20th and 21st centuries have demonstrated that resources lacking control are likely to be abused. There are two reasons that can be advanced as to why the management regime was the way it was during those days.

1. Population was small and nature was so abundant so the capacity of humans to overwhelm nature was limited.
2. The state of mans technology at the time was equally limited.

2.3 The Period of Industrial Revolution.

The industrial revolution changed and improved positively mans ability to make new products. It also increased his capacity in making the old products in so doing; the capacity of man to consume environmental resources was equally enhanced. The industrial revolution itself depended on industries which stress the consumption of natural resources.

Industrial revolution resulted to interference with the ecology and ecological links and chains, It also led to the production of products and byproducts. These by products created the first signs of pollution of water air and land. Later on the products had to be disposed off. Initially the environment had the capacity to absorb those things.

By the end of 1 9c most European countries had found it necessary to enact laws and regulations addressing the issue of living conditions of workers in the cities. To date, the question of the living environment remains a principle concern in environmental law policy.

It was indeed in the 1 9c that the rules relating to nuisance, trespass, and strict liability as under **Reyland V. Fletcher** were perfected.

During this period the working conditions were poor and it therefore became necessary to regulate the working environment by requiring sanitary conditions, occupational safety among others.

By the beginning of the 20c many European states had put in place a number of laws and regulations for the management of certain aspect of the environment which arose direct from the effects of industrial revolution, it was this same legal system that was received in Africa during the colonial period. After the end of colonialism, most African countries had the freedom to decide whether to utilize their natural resources and set their priorities for development and pubic health.

While many African nations faced challenges that strained the scarce national resources and test the carrying capacity of the land on which so many people depend, lower priority

is always given to environmental issues, Populations have boomed in urban areas putting pressure on water sources and forests and other wild animals continue to be cleared to meet agricultural, commercial and domestic needs and as a result many countries including Uganda

have adopted framework environmental laws and policies; which are vest in the Ministry of Environment and provide for environmental impact assessment and provide for the different actors with the environment sphere.

2.4 Functions of Environmental Laws

The key functions of modern environmental law may be outlined as follows;

- To establish regulatory structures for environmental management including regulator agencies and specialized Courts and tribunals.
- To empower regulators to manage environmental impacts using plans, policies, standards, licenses and incentives
- To require activities of environmental significance to be assessed before permission can be granted. Section 19 of the National Environmental Act Cap 153 provides for environmental impact assessment which should be taken by a developer where the project may have an impact on the environment, is likely to have a significant on the environment,
- To provide administrative, civil and criminal sanctions for non compliance within the law.
- To allow the legality of decisions of regulators to be challenged by members of the public and to allow the merits of certain decisions of regulators to be challenged by members of the public.

2.5 Common law principles and their application in environmental law

Common law is the part of the law of England formulated, developed and administered by common law Courts based originally on the common customs of the country and unwritten. Common law approach is applicable in environmental litigation. It is distinguishable from statute law because statute law is passed by parliament. Common became applicable in Uganda through the 1989, 1902 and 1911 Orders in Council and was retained by the **Judicature Act of 1967** and the current **Judicature Act.**[1] **Section 14** of the Judicature Act confers upon the High Court

[1] Cap 13 Laws of Uganda

subject to the Constitution; unlimited original jurisdiction in all matters and such appellate and other jurisdiction as may be conferred to it by the constitution or this act or any other law.

There are many common law causes of action that can occasionally be useful to prevent or obtain damages for environmental wrongs. These wrongs in environmental law can be regarded as environmental torts.

A tort is a crooked conduct, a wrong, an act which causes harm to a determinate person, whether intentionally or not being a breach of duty arising out of a personal relationship or contract and which is either contrary to law or an omission of a specific legal duty or a violation of an absolute duty (Osborn's Law Dictionary)

2.5.1 The following are tort action that can be applied in environmental law

1. Nuisance

Nuisance is the most useful common law tort in environmental cases. It can provide a remedy for air and water pollution, noise, vibrations, smells, soil, contamination, flooding and many other intrusions upon peaceful use and enjoyment of property.

A nuisance was described by **Justice E. S Lugayizi in Dr. Bwogi Richard Kanyerezi V. The Management Committee of Rubaga Girls Schools.**[2] The judge made reference to **Winfield in tort** and stated that *a nuisance is an unlawful interference with the persons use in enjoyment of land.* Such interference in essence being either of a continuous of recurrent nature and usually stenches and smoke would qualify under the description.

There are two types of nuisance;

i) **Private nuisance**

Private nuisance was described by Justice E.S Lugayizi in **Dr. Bwogi Richard V. The Managçment Committee of Rubaga Girls School**. That a nuisance is private where it exclusively affects a private person and not a sizeable number of the community where it occurs. In this case, the applicant sought an injunction to restrain the respondent from using 12 VIP

[2] Civil Appeal No. 3 of I 96

latrines situated on the lower end of the school because the smell constituted a nuisance by unreasonably interfering with and diminishing the applicant's ordinary use and enjoyment of his home. It was found as a fact that the toilets were being used by over 600 girls and constantly emitted smelly gases which went directly into the applicant house thus making life very uncomfortable for its inhabitants. Court held that those gases constituted a nuisance and an injunction was granted.

ii) Private nuisance

A public nuisance was defined by Lord Denning in **Attorney General V. PYA Quarries Ltd**[3] as follows; it is a nuisance which is so widespread in its range and 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 it should be taken on the responsibility of the community at large.

To amount to a public nuisance the relevant act or omission must amount to interference with the use and enjoyment of a public right e.g. the right to use highway or water way, or right to fish by pollution of public waters.

A person may proceed under public nuisance regardless of whether or not he has an interest in the land. Actions for public nuisance are instituted by the Attorney General.

2. Trespass

Trespass to land occurs where a person directly enters upon another's land without permission or remains upon the land or places any object upon the land.

Walking onto land without permission, or refusing to leave when permission has been withdrawn, or throwing objects onto land are all examples of trespass to land.

There is also trespass to airspace. In **Keisen V. Imperial Tobacco Co.**[4] the defendant was held to have committed trespass by allowing an advertising board to project eight inches into the plaintiffs property at ground level and another above ground level **Section 58(2) of the Civil**

[3] (1994) I ALLER 910
[4] (1957) 2QB 334

Aviation Act[5] confers right of action in respect of physical damage caused by air craft unless the loss or damage was caused or contributed to by negligence of the person who experienced the loss or damage.

The tort of trespass developed to protect a person's possession of land and so only a person who has exclusive possession of land may sue.

3. The rule in Rylands V. Fletcher .Strict liability

The notion of strict liability for harm caused by escape of dangerous substances arises from the English decision of **Ryland .V. Fletcher** where it was established that a person, who for his purpose brings on his land anything likely to do mischief if it escapes must keep it at his peril, and if it does so is prima facie answerable for all the damage which is a natural consequence of its escape. For liability to ensue under this rule, three elements must be present

One, that the defendant brought onto the land something which is not naturally there and hence a non natural user. In order to determine the non natural use, Court will consider circumstances of each case independently.

Secondly; the thing must escape from the defendants land to the plaintiff's land. The third element is that the plaintiff must suffer damage in consequence of such escape.

4. Negligence

Negligence is the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulates the conduct of human affairs would do, or doing something which a reasonable and prudent man would not do.[6]

For a person to sue under negligence, he must show that the defendant owed him a duty of care, that the defendant breached that duty and that he suffered damage as a result of such breach.

To determine whether duty of care exists, the major question is whether it was reasonably foreseeable to the alleged wrong doer that a particular conduct or omission on his part would be

[5] Cap 354 Laws of Uganda

[6] Per Alderson B in Blyth V. Birmingham water works

likely to cause harm to climate and persons who have suffered damage or a person is the same position.

2.5.2 Contributions of common law actions to environmental protection

- It may be the only way to air legitimate grievances where government officials have refused to act or environmental law violators have failed to listen.
- It prdvides precedents for environmental issues
- Courts offer a decision making forum that is less prone to political pressure.

2.5.3 Limitations of common law actions in environmental protection

- A private legal action is always costly. Low income people may find litigation to be beyond reach.
- Collection of evidence in environmental cases requires higher scientific levels that may not be available in countries like Uganda.
- Injuries and harms that come after long gestation periods present harm may have a common law action. However, efforts to obtain injuries for speculative harms are not generally successful, statutory prohibitions may be the only answer to limit actions that may cause future harm such as cancer.

CHAPTER THREE

THE IMPLEMENTATION OF ADAPTATION MEASURES UNDER THE INTERNATIONAL AND LOCAL LEGAL POLICY ON THE ENVIRONMENT

3.0 Introduction

This chapter analyses how the Kyoto protocol deals with climate change adaptation in developing countries. The chapter is divided into five sections. The first section gives an introduction. The second section discusses the UNFCCC (which is the basis for the Kyoto protocol) provisions for climate change adaptation. The third section analyses the Kyoto protocol provisions and their relevance to climate change adaptation in developing countries. The fourth section discusses the post-Kyoto arrangements for climate change that focus on climate change adaptation in developing countries while the last section gives a conclusion to the chapter.

3.1 The United Nations Framework Convention on Climate Change

The United Nations Framework Convention on Climate Change (UNFCCC)[7] is an international environmental treaty produced at the United Nations Conference on Environment and Development (UNCED), informally known as the Earth Summit, held in Rio de Janeiro from June 3 to 14, 1992. The Convention was signed by 154 countries. Uganda signed the UNFCCC on 13 June 1992 and ratified it on 8 September 1993.

This Convention was designed to regulate the issue of climate change at the international level. The ultimate objective of this Convention is to achieve, in accordance with the relevant provisions of the Convention, the stabilization of greenhouse gas concentrations in the atmosphere at a level that will prevent dangerous anthropogenic interference with the climate system. Such a level should be achieved within a time-frame sufficient to allow ecosystems to adapt naturally to climate change, to ensure that food production is not threatened and to enable economic development to proceed in a sustainable manner.[8]

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[7] United Nations Framework Convention on Climate Change, Rio de Janeiro, 9 May 1992, 31 *Int'l Leg. Mat.* 822 (1992). Uganda signed on 13 June 1992 and ratified it on 8 September 1993.
[8] *Ibid,* Article 2

The state parties to the convention acknowledge that change in the earth's climate and its adverse effects[9] are a common concern of humankind.[10] Representing an effort to provide a basis for international action to protect the global climate, this concept (common concern of humankind‖) was first introduced in a 1988 resolution of the United Nations General Assembly[11] and it has since been supported by numerous international climate meetings. The legal problem is that climate change is not (physically) imposed by one state upon another state. As a result, the traditional legal principles governing transboundary pollution (which *is* imposed by one state upon another) do not apply.[12] But if the atmosphere is a common concern of humankind‖, all states have an interest and duty to protect it from serious harm. A state on one side of the globe is thus affected‖ by a state on the other side of globe that is emitting greenhouse gases into the atmosphere.[13]

The parties are also concerned that human activities have been substantially increasing the atmospheric concentrations of greenhouse gases, that this increases enhance the natural greenhouse effect, and that this will result on average in an additional warming of the earth's surface and atmosphere and may adversely affect natural ecosystems and humankind.[14]

The Convention restates the precautionary principle that states are under an obligation to take measures to prevent and minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious or irreversible damage, lack of full scientific certainty is not to be used as a reason for postponing such measures.[15]

Traditionally, activities were often not restricted or prohibited by legal rules until they had been proven to cause environmental damage. In other words, states were free in their activities unless and until a causal link between an activity and a particular damage had been established. This

[9] Adverse effects of climate change is defined in Article 1 (1) of the Convention to mean changes in the physical environment or biota resulting from climate change which have significant deleterious effects on the composition, resilience or productivity of natural and managed ecosystems or on the operation of socio-economic systems or on human health and welfare.
[10] The Preamble of the Convention.
[11] UN General Assembly Resolution 43/53 on the protection of global climate for present and future generations of mankind, 6 December 1988.
[12] UNEP, Fact Sheet 202
[13] Ibid
[14] The preamble of the Convention.
[15] Article 3.

approach may not work, however, in the case of activities contributing to climate change.[16] Scientists are still unsure about the exact timing and nature of climate change impacts, but if efforts to limit net greenhouse gas emissions are not initiated before scientific certainty is achieved, it may be too late to undo the damage. [17] Therefore, the precautionary principle provides that activities threatening serious or irreversible damage should be restricted or even prohibited *before* there is absolute scientific certainty about their impact. The climate convention embodies a precautionary approach, since states agreed to take action despite the existing scientific uncertainties about climate change.

The parties taking into account their common but differentiated responsibilities and their specific national and regional development priorities, objectives and circumstances undertake to develop periodical update, publish and make available to the conference of parties, in accordance with article 12, national inventories of anthropogenic by sources and removals by sinks of all greenhouse gases not controlled by the Montreal protocol, using comparable methodologies to be agreed upon by the conference of parties.[18]

The Convention binds developed countries party to it to adopt national policies and take corresponding measures on the mitigation of climate change, by limiting their anthropogenic emission of greenhouse gases and protecting and enhancing their greenhouse gas sinks and reservoirs.[19] The Convention also makes provisions for the developed countries to provide financial assistance to developing countries to meet their obligations under the Convention. Therefore, the UNFCCC is based on the leadership paradigm the North will lead in reducing emissions and in providing developing countries with financial assistance and technology transfers to meet the agreed incremental costs of implementation.[20] It is this leadership paradigm that became conditional in 1997 when the United States refused to ratify the Kyoto Protocol for failing to secure the meaningful participation of key developing countries in emissions caps.

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[16] UNEP, Facts Sheet 202
[17] Ibid
[18] UNFCCC, Article 4 (1) (a)
[19] Ibid
[20] Gupta J (2005), International Law and Climate Change: Joyeeta Gupta, —International Law and Climate Change: The Challenges Facing Developing Countries‖ in Ole Kristian Fauchald & Jacob Werksman (Eds.), *Year Book of International Environmental Law*, (Oxford University Press. vol. 16), p. 126.

Critiques have also argued[21] that the ultimate objective in article 2 of UFCCC is possibly too vague to protect the planet from the potential serious impacts of climate change. Article 2's indeterminate formulation may suit some developed countries but it is possibly not in the interest of African countries, Uganda inclusive, because it allows for the postponement of measures and does not provide a framework for testing whether the current targets are consistent with preventing dangerous anthropogenic interference with the climate system.

3.2 The Kyoto Protocol to the UNFCCC

The UNFCCC was intended to be a framework for future agreement on specific commitments, and the creation of future agreements was explicitly envisioned.[22] This led to the Third Session of the Conference of the Parties to the UN Framework Convention on Climate Change (COP 3), in Kyoto, Japan, December 1st to 11th, 1997 which produced the Kyoto Protocol.

The Kyoto Protocol sets binding numerical targets for the limitation and reduction of greenhouse gas emissions during the period 2008-2012.[23] It is legally binding, with compliance measures determined at later negotiations.[24] The Protocol was adopted to impose more specific mitigation commitments on UNFCCC parties, because UNFCCC lacked these commitments to address the climate change problem. The aim of the Kyoto Protocol is to advance the objective of the UNFCCC.[25] To this end, the Protocol elaborates on the general commitments agreed upon in the UNFCCC. Like the UNFCCC, the Protocol recognizes that developed and developing country parties should have differentiated commitments and incentives.[26]

The developed country parties and economies in transition listed in Annex B to the Protocol agreed to reduce their GHG emissions to a specified percentage of their 1990 emissions by 2012.[27] Those parties commit themselves to make demonstrable progress in achieving their targets by 2005.[28] No numerical targets for the reduction of emissions were set for the

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[21] Ibid
[22] The Protocol was opened for signature on December 11 1997 at Kyoto. It entered into force on February 16, 2005.
[23] The Kyoto Protocol, Article 3 read together with Annex A to the Protocol.
[24] The Procedures and Mechanisms Relating to Compliance under the Kyoto Protocol, Doc. UNFCCC/CP/2001/13/Add.3 (2002).
[25] *Ibid,* the preamble
[26] *Ibid,* Article 10
[27] *Ibid,* Article 3
[28] *Ibid,* Article 3(2)

developing countries, but they are required to report on their emissions. This was because their priorities are economic growth and poverty reduction; and secondly, industrialized countries consume far more energy, and thus produce far more greenhouse gases.[29]

Article 10 of the Protocol reaffirms and elaborates on the commitments agreed to under Article 4(1) of the UNFCCC, and reiterates that these must be read taking into account the principle of common but differentiated responsibility and development priorities. Annex I parties are mandated to implement policies and measures toward meeting their commitments in such a way as to minimize the adverse effects on other parties, especially developing country parties.[30]

Parties included in Annex I, in achieving their quantified emission limitation and reduction commitments under Article 3, in order to promote sustainable development, are required to implement elaborate policies and measures in accordance with their national circumstances, such as enhancement of energy efficiency in relevant sectors of the national economy; protection and enhancement of sinks and reservoirs of greenhouse gases not controlled by the Montreal Protocol, taking into account its commitments under relevant international environmental agreements; promotion of sustainable forest management practices, afforestation and reforestation; research on, and promotion, development and increased use of, new and renewable forms of energy, of carbon dioxide sequestration technologies and of advanced and innovative environmentally sound technologies.[31]

Under article 7, each party included in Annex I shall incorporate in its annual inventory of anthropogenic emissions by sources and removals by sinks of greenhouse gases not controlled by the Montreal Protocol, submitted in accordance with the relevant decisions of the Conference of the Parties annually.

The Kyoto protocol defines three international policy instruments; the so called Kyoto mechanisms: Clean Development Mechanism (CDM); International Emissions Trading (IET); and Joint Implementation (JI). Each of these international policy instruments provides opportunities for annex 1 parties to fulfil their commitments cost effectively.

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[29] Darragh I (1998), A Guide to Kyoto: Climate Change and What it Means to Canadians, The International Institute for Sustainable Development (IISD) Winnipeg, Manitoba, Canada
[30] The Kyoto Protocol, Articles 2(3) and 3(14).
[31] *Ibid,* Article 2 (1).

International Emissions Trading essentially allows annex 1 parties to exchange part of their assigned national emissions allowances. International Emissions Trading implies that countries with high Marginal Abatement Costs (MACs) must acquire emissions reductions from countries with low MACs. Countries that have emissions units but not used can sell this excess capacity to countries that are over their targets. Countries not meeting their commitments will be able to buy compliance.

The joint implementation programme under the Kyoto Protocol allows industrialized countries to meet part of their required cuts in greenhouse-gas emissions by paying for projects that reduce emissions in other industrialized countries. The sponsoring governments will receive credits that may be applied to their emissions targets; the recipient nations will gain foreign investment and advanced technology (but not credit toward meeting their own emissions caps; they have to do that themselves). This system has advantages of flexibility and efficiency. Not only the state, but also companies, non-governmental organisations (NGOs) or households can participate.Joint implementation and emissions trading are designed for developed or industrialized countries with emission units. Accordingly, they have limited application in Uganda. Uganda has concentrated much on the Clean Development Mechanism that is designed for developing countries.

3.3 The National Environment Management Policy (NEMP), 1994 in Uganda

The National Environment Management Policy[32] is an output of the National Environment Action Plan (NEAP) process. The overall goal of the policy is to establish 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 generation without compromising the ability of the future generation to meet their own needs.[33]

In order to achieve the overall objective, the policy recommended for the following: the creation and the establishment of an appropriate institutional and legal framework; transformation of existing environment management systems; evolution of a new sustainable conservation culture; and revising and modernizing sectoral laws and regulations and establishing an effective

[32] The Republic of Uganda, Ministry of Water, Lands and Environment, The National Environment Management Policy for Uganda, 1994.
[33] Ibid

monitoring and evaluation system to assess the impact of policies and actions on the environment.

The policy directly addresses the issue of climate change. It recognizes the fact that climate is a vital natural resource necessary for socio-economic development. The objective of the policy in this regard is to monitor the climate and atmosphere of the country in order to better guide land-use and economic development decisions, and better manage air pollution and greenhouse gas emissions.[34]

To realize this objective, the policy lays down the following guiding principles: that climate is a vital natural resource which should be properly harnessed (or effects mitigated) for socio-economic development; the utilization of the climatic and atmospheric information is critical in agriculture and the efficient management of the environment; resource users (particularly farmers) should be involved in the monitoring and dissemination of climatic information; the promotion of international cooperation for smooth exchange of climatic information and control of trans-boundary atmospheric air pollution is important in the management of the resource; and access to climatic data/information should be guaranteed on terms determined by the relevant authority.

The policy also lays down certain strategies in respect of climate change. For instance, it advocates for the improvement of coordination and exchange of meteorological information among producers, managers and users; decentralization of the monitoring and dissemination of functions of the Department of Meteorology through the creation of regional or district meteorological communication networks, and involve resource users in the collection of climatic data; strengthening the existing national meteorological monitoring networks and data processing capabilities; where feasible, improve the flow of climatic information to the users by involving extension workers, local official communication channels, as well as traditional methods of communication; improving awareness among potential users and decision makers of climatic and atmospheric information including establishing demonstration projects in selected areas; and the enactment of an appropriate legislation for the management of the country's atmospheric environment, particularly with respect to climate and air pollution monitoring.

[34] Ibid

In relation to energy, the objective of the policy is to meet the national energy needs through increased use of hydropower, improved efficiency of energy use, increased use of alternative energy sources, increased production of (plantation and on-farm) trees and promotion of exploration and production of fossil fuels.[5] In this respect, the policy lays down a number of strategies. These are: develop a comprehensive energy policy which adequately addresses issues related to shortages and inefficient use of fuelwood; link energy policy more closely to forestry policy; focus extension programs on rural tree planting and reforestation; encourage the private sector to generate and distribute hydro-electricity by removing the monopoly in generating, transmitting and distributing electricity by the Uganda Electricity Board; and to encourage industries/institutions using furnace oil to switch to hydro energy.

These strategies are relevant to climate change mitigation and adaptation for instance, the strategy to encourage industries using furnace oil to switch to hydro energy reduces the emission of carbons which cause climate change. Further, with regard to CDM implementation, it is worth noting that the overall policy goal of the Policy recognizes the significance of the concept of sustainable development, which is a key component/feature of CDM.

3.4 Uganda Forestry Policy 2002

It is necessary to review the Forestry Policy because land use, land-use change and forestry (LULUCF) activities (also known as carbon sinks) can provide a relatively cost-effective way of combating climate change either by increasing the removal of GHGs from the atmosphere, or by reducing emissions.[35] The eligibility of LULUCF activities under the CDM is limited to afforestation and reforestation.[36] Consequently, the review of the Forestry Policy determines whether there exists an adequate framework for the implementation of CDM projects, related to afforestation and reforestation activities in Uganda.

The objective of the Uganda Forest Policy[37] is to establish an integrated forest sector that achieves sustainable increase in the economic, social and environmental benefits from forests and trees by the people of Uganda, especially the poor and vulnerable. The policy provides for

[35] Article 3 of the Kyoto Protocol
[36] Decision 17/CP. 7 on Modalities and Procedures for a Clean Development Mechanism as defined in Article 12 of the Kyoto Protocol.
[37] The Republic of Uganda, Ministry of Water, Land and Environment, The Uganda Forestry Policy, 2001.

the protection of Permanent Forest Estate (PRE) under government trusteeship and the development and sustainable management of natural forest on private land.[9] This is aimed at promoting profitable and productive forests. The policy provides a wider cross section of stakeholders' participation in the management of the forests. These include local government, the private sector, local communities and farmers in the conservation and sustainable use of the forest resources. The Policy also encourages partnerships with the rural community to develop sustainable management of forests.[38]

Sustainable management of forests as advocated for by the policy is relevant to climate change mitigation and adaptation because, as observed earlier, forests act as sinks; by removing the emitted carbon dioxide from the atmosphere that would otherwise cause climate change. Therefore sustainable forest management is a way of enhancing sinks. The policy therefore provides an adequate framework for the pursuit of massive human-induced afforestation and reforestation programmes relevant to CDM implementation. This Policy is a fundamental departure from the old Forestry Policy which placed emphasis on forests in protected areas exclusively in the control of the central government. Under the old policy, farm forestry, commercial forest plantations and forests outside protected areas received little attention beyond the rhetoric in government pronouncements. The new Forestry Policy sufficiently takes care of the previous short-comings in the forestry sector particularly in the context of CDM.[39]

3.5 The National Energy Policy, 2002

The Constitution under the National Objectives and Directive Principles of State Policy requires the State to promote and implement energy policies that will ensure that people's basic needs and those of environmental preservation are met.[40] The National Energy Policy has therefore been developed in line with this Directive Principle.

This policy provides the Government's vision for increased and improved modern energy supply for sustainable economic development as well as improving the quality of life of the Ugandan population. The goal of this Policy is to meet the energy needs of Uganda's population for social

[38] Ibid
[39] Namanya B. (2004), The Climate Change Convention and its Kyoto Protocol: A Legal Analysis of its Relevance to Uganda with Specific Emphasis on the Clean Development Mechanism, LLM Thesis, Makerere University.
[40] Principle XVII (iii)

and economic development in an environmentally sustainable manner.[41] In relation to renewable energy sub-sector, its objective is to develop the use of renewable energy resources for both small and large-scale applications.[42]

The policy identifies key sub-sector issues for the new and renewable sources of energy as inefficient production and use of biomass energy resulting in adverse effects on the environment and the health of biomass energy users, especially in rural households; underdeveloped markets in Renewable Energy Technologies (RETs) equipment and services because of high initial investment costs and lack of financial capacity to cover the initial investment; lack of mechanisms to monitor standards and ensure quality control of RETs; and inadequate available data on the potential of indigenous renewable energy sources.[43]

The Policy, therefore, suggests a number of strategies to rectify these problems. These include: supporting the dissemination of biomass and other RETs to increase their positive impact on the energy balance and the environment; ensuring that RET producers and importers ascribe to certified performance and technical standards; supporting efforts to develop biomass resources in agreement with the Uganda Forestry Policy and the National Forest Plan; facilitating adequate financing schemes for RETs by establishing sustainable financing mechanisms to make them more accessible; and promoting geothermal energy development and exploration.

These strategies, if implemented, facilitate the implementation of CDM projects in Uganda. One limitation with this Policy is that whereas it seeks to promote investment in renewable energy resources sub-sector, that are more environmentally friendly, it as well seeks to promote petroleum exploration. Although this is in favour of the economic development of Uganda, there are serious environmental consequences and the positive role played by CDM projects may be neutralised by these developments.

3.6 The Renewable Energy Policy for Uganda

The overall goal of this Policy is to increase the use of modern renewable energy, from the current 4% to 61% of the total energy consumption by the year 2017.[18] In order to achieve the

[41] The Energy Policy for Uganda, pp. 1 & 35
[42] Ibid
[43] Ibid

Policy goal, Government undertakes to develop, implement, maintain and continuously improve the legal and institutional framework that responds to the prevailing conditions, in order to maintain interest in renewable energy investments; establish an appropriate financing and fiscal policy framework that will attract more investments in Renewable Energy Technologies; and promote research and development, technology transfer, international cooperation and adoption of standards in RETs.[44]

The Policy lays a number of strategies to achieve its objectives. Under the strategy of legal and institutional framework, Government undertakes to maintain and improve the responsiveness of the legal and institutional framework to facilitate renewable energy investments. This is to be done through publishing a Standardized Power Purchase Agreement with Feed-in Tariffs for renewable energy generation projects of up to 20 MW installed capacity; putting in place legislation and regulations to promote the use of renewable energy and Renewable Energy Technologies all sectors especially incorporation of solar water heating in building plans and energy farming to produce bio-fuels; developing appropriate regulations for grid connections and wheeling of electricity generated from renewable energy; create both Renewable Energy and Energy Efficiency and Conservation Departments at the Ministry of Energy and Mineral Development; and attracting qualified personnel into the sector so as to support renewable energy investments.

The Government also undertakes to raise public awareness on the benefits and opportunities of renewable energy technologies. This is to be done by continuously acquiring data on the renewable energy resource availability; developing capacity to process and retrieve this data by establishing an Energy Data Bank; developing and promoting knowledge and exchange of information on renewable energy to all stakeholders; and incorporating renewable energy technology into the primary, secondary and tertiary curriculum. These steps are fundamental for the success of CDM projects in Uganda. However despite the targeted time for implementation being 2007, most of them have not been implemented. The primary curriculum has not been reviewed to incorporate renewable energy technology. The energy data bank has also not been established yet established except for the scattered information found on various websites.

[44] Ibid

3.7 Implementation of CDM Projects in Uganda and their Implications for Climate Change Adaptation

Uganda, as a party to the UNFCCC and the Kyoto Protocol has undertaken the following projects which have the effect of mitigating the problem of climate change and at the same time promote climate change adaptation.

One of the projects is the West Nile Electrification Project. This project has financial support form the Prototype Carbon Fund (PCF). Since the signing of the Kyoto Protocol, a number of international funds have been created to support climate change mitigation projects worldwide. In 1999, the Word Bank created the PCF, with the objective of combating climate change, promoting sustainable development and demonstrating possibilities for public private partnerships.

The project in Uganda is the first-ever CDM deal in Africa. The project is part of the Government of Uganda's Energy for Rural Transformation (ERT) Scheme, which is supported by the World Bank and various bilateral partners.[45] This project supports the CDM's sustainable development objective. It helps put the West Nile region on a more sustainable energy path, which is replicable in other regions of the country and throughout many countries in Africa.[46] The US$20 million project involves the construction of two small hydropower stations, efficient diesel backup facilities, and the rehabilitation of the mini-grid in the region. The initiative will replace emissions from highly inefficient diesel and petrol-fuelled generators and engines in the district of Arua and Nebbi in north-western Uganda.[47]

The project aims to take advantage of the dual benefits of the CDM by promoting sustainable development in rural Uganda through investing in socio-economic development and poverty alleviation; and to reduce CO_2 emissions through renewable energy.

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[45] Kasimbazi E. (2005), —In the Defence of Prosperity: Challenges of Implementing Clean Development Mechanisms in Uganda,‖ in Ole Kristian Fauchald & Jacob Werksman (Eds.), *Year Book of International Environmental Law*, (Oxford University Press. vol. 16), p. 304.

[46] The World Bank, —Prototype Carbon Fund (PCF) Shows that Kyoto Protocol Works Selling emissions make marginal projects financially attractive‖ Press Release No:2002/118/S. See http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20016060~pagePK:64257043~piPK:437376~theSitePK:4607,00.html (accessed on December 02, 2010).

[47] Kasimbazi, *supra* note 31, p. 304.

Under the forestry sector, the CDM tree-planting projects can provide a win-win situation because such activities provide both environmental and socio-economic benefits to communities. Examples of CDM can be illustrated by the following forest projects: emissions from 27,000h regenerated forest in Kibale and Mount Elgon National Parks amounting 1500000 tones of carbon dioxide worth US$ 45 million and emissions from 7100h in Bukabaleba forests and the adjoining Norwegian managed forest amounting to 4 million tons of carbon dioxide worth about US$ 12million. Another project is Mityana Fruit Forest Initiative located in Ssekanyonyi parish, Mityana, Mubende District. The total investment in this project is US$3,000,000 and the total expected volume of credits is 44,000 in 25 years and 58,000 in 50 years.

A reforestation project is also being implemented by UWA – Face Project in the Mt. Elgon National Park and Kibaale National Park. The UWA – Face Project is a joint venture between Uganda National Parks and Face Foundation of Holland. Under the above project, Face Foundation is funding a substantial part of the financing of the forest, and in return it gets carbondioxide sequestration and offset in the contract areas of Mt. Elgon and Kibaale National Parks during the term of 99 years (1994 to 2093).[48] The emissions from 27,000h regenerated forest in Kibale and Mount Elgon National Parks amount 1500000 tones of carbon dioxide worth US$ 45 million. Further, the emissions from 7100h in Bukabaleba forests and the adjoining Norwegian managed forest amount to 4million tons of carbon dioxide worth about US$ 12million.

Uganda has developed a number of policies on a range of environmental issues but none has been developed specifically addressing climate change. However, the implementation of these sectoral policies has implications for climate mitigation and adaptation programmes/initiatives conducted under those sectors. However, it is thought that it would have been more efficient if there is a policy addressing climate change issues across all sectors. This would be fundamental in streamlining the functions of the institutions created under those policies and the climate specific institutions. Uganda has also participated in international policy frameworks for climate change mitigation and adaptation, particularly the CDM. However, this being a new concept, its implementation is challenging.

[48] Magezi S.A.K (1998), Potential for Clean Development Mechanism Projects in Uganda, Kampala, p. 62.

CHAPTER FOUR

UGANDAN POLICY AND LEGAL FRAMEWORK

4.0 Introduction

The chapter seeks to look keenly into the various policies that have been created by government and the various legislations including the constitution of 1995 and how they have helped in the effectiveness of these policies. The policies include inter alia, The National Environment Management Policy of 1994, The National Policy for Conservation and Management of wetland Resources, 1995, The National Water Policy of 1995, The Wildlife policy, The Uganda Fisheries policy, 2004 and the Uganda Forestry policy of 2001.

4.1 Uganda's policy analysis on environment

4.1.1 The National Environment Management Policy

The National Environment Management policy is an output of the National Environment Action Plan (NEAP) process. The overall goal of the policy is to establish 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 generation without compromising the ability of the future generation to meet their own needs.

Specifically the policy seeks to meet the following objectives

- 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 resource management and use,
- Integrate environmental concerns in all developmental policies, planning and activities at national, district and local levels with full participation of the people,
- Conserve, preserve and restore ecosystems and maintain ecological processes and life support systems especially conservation of national biological diversity,
- Optimize resource use and achieve a sustainable level of resources consumption,

- Raise public awareness to understand and appreciate linkages between environment and development and

Ensure individual and community participation in environmental improvement activities.

All the above strategies when worked at will ensure proper management of environmental resources for the benefit of present and future generations hence the attainment of sustainable development. This will only be possible if the development of Uganda's economy is based on sustainable natural resource use and sand management and the use of environmentally friendly, socially acceptable and affordable technology which should be developed and disseminated for efficient use of natural resources.

4.1.2 The National policy for Conservation and Management of Wetland Resources, 1995

The overall aim of this policy is to promote the conversation of Uganda's wetlands in order to sustain their ecological and social economic functions for the present and future well being of the people. In support of the above aims, the policy strives to achieve the following goals.

- Establishment of principles by which wetland resources can be optimally used and their productivity can be maintained into the future;
- End existing unsustainable exploitative practices in wetlands to avert the decline in their productivity,
- Maintain biological diversity in wetlands either n natural community of plants and animals or n the multiplicity of agricultural activity,
- Maintain the functions and vales derived from wetland resources throughout Uganda and
- Promote the recognition and integration of wetland functions in resource management and economic development decision-making with regard to sector policies and programs such as forestry, agriculture, fisheries wildlife and sound environmental management.

The policy makes provision for recovery of previously drained wetlands otherwise referred to as restoration. Many wetlands have been drained or modified especially in Southwest and Eastern Uganda. This has led to loss of many would-be valuable resources before assessment has been carried out. As a strategy therefore, government may require that some wetlands which have already been drained should be allowed to regenerate.

The policy also lays down specific strategies which are deemed to be of great importance for the success of the policy. The policy for instance requires **Environmental Impact Assessment** and monitoring of activities in areas where they are likely to have adverse effects on wet land resources, this will help minimize the economic and social costs of preventing damage before occurrence.

4.1.3 The National Water Policy of 1995

The overall objective of the policy in this regard is to manage and develop the water resources of Uganda in an integrated and sustainable manner so as to secure and provide water of adequate quantity and quality for all the social and economic needs of the present and future generations with the full participation of the stakeholders.

The policy lays down strategies for instance institutional development, planning and prioritization of water resource management issues, data collection and data dissemination, water resources management functions, development of management structures and involvement of the private sector in water resource management.

Chapter two of the policy acknowledges that fresh water is a key strategic resource vital for sustaining life and promoting development. That rapid population growth, increased agriculture, urbanization and industrial activities and poverty in rural and pen-urban areas and habits of environmental carelessness are causing a serious depletion and degradation of the available water resources

Chapter 5 deals with domestic supply of water. In this regard, the objective of the policy is sustainable provision of safe water within easy reach and hygienic sanitation facilities based on management responsibility and ownership by the users; to 75% of the population rural areas and 100% of the urban population the strategies laid down for realization of these are, technology and service provision, financing, subsides and tariffs, management and sustainable aspects and private sector participation.

4.1.4 The Wildlife policy, 1999

Wildlife is one of Uganda's most significant biological resources and over years a number of different types of protected areas have been established in Uganda to help conserve the country's wildlife and forested areas and to encourage the country's wildlife and forested areas and to encourage sustainable utilization of its resources. Some of the project districts include national parks like Queen Elizabeth, Bwindi Impenetrable, Rwenzori Mountains and Mgahinga National parks, Kigezi and Kyambura wildlife reserves.

In this regard; the overall aim of the policy is to promote long-term conservation of the wildlife and diversity in a cost effective manner that maximizes the benefits of wildlife resources to the people.

4.1.5 The Uganda Fisheries Policy, 2004

The goal of the policy is to ensure increased and sustainable fish production and utilization by properly managing fisheries, promoting agriculture and reducing post harvest losses. The objective is to ensure the long-term future of the fisheries sector to ensure that it contributes to sustainable manner to the national economy.

4.1.6 The Uganda Forestry Policy, 2001

The objective is to establish an integrated forest sector that achieves sustainable increases in the economic, social and environmental benefits from forests by the people of Uganda especially the poor and vulnerable and the people of Uganda. The policy provides for the protection of Permanent Forests Estate (PRE) under government trusteeship and the development and sustainable management of natural forest on private land. In **Mehta V. Kamal Nath and Others** the Supreme Court of India emphasized the essence of the doctrine of public trust in the following terms;

"The Public trust doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The

doctrines enjoin upon government the duty to protect the resources subject to the trust for the enjoyment of the general public rather than to permit use of private or commercial purposes."

The policy provides a wider cross section of stakeholders' participation in the management of the forest estate. This includes local government, the private sector, local communities and farmers in the conservation and sustainable use of forest bio-diversity. It also provides for urban forestry, land and tree tenure, sector co-ordination and civil society participation forestry resources management all of which are crucial for the development of a strong forestry sector for sustainable development.

4.2 Environmental Legislative Framework in Uganda

This explores the various legislations that have been put in place to ensure that the policies discussed above are implemented for the attainment of sustainable development.

4.2.1 The 1995 Constitution of Uganda

The 1995 Constitution of Uganda is the Supreme law and provides for environmental protection and conservation. It sets out the norms, standards, rights and obligations at national level. The constitution also sets out National objectives and Directive Principles of state policy. **Principle XIII** of the National objectives and Directives principles provides that the state shall protect important natural resources including water wetlands, mineral, oil, fauna and flora on behalf of the people of Uganda. The state is also required to take all practical measures to promote a good water management system at all levels-**Principle XXI.**

The Constitution also provides for sustainable environmental management under **Principle XXVII** and **Article 39** of the Constitution provides that every Ugandan citizen has a right to a healthy and clean environment. The scope of this right entails the right to a clean air, water, conservation or resources, prevention of pollution and protection from diseases that result from sanitation and poor environmental conditions.

In the Philippine case of **Juan Antonnia Opossa and Others .V. Fulgancia Factorian**[49] the right to a clean and healthy environment was equated to the right to life. It was observed by the Supreme Court that; **"as a matter of fact these basic rights need not even be written under the constitution. For they are assumed to exist from the inception of human kind, if they are explicitly mentioned in the constitution, its because of the well founded years of the framers that unless the rights to a healthy and balanced ecology are mandated as state policy by the constitution itself."** This means that life and environment are inseparable, that is why of all planets life only exists on planet earth because the environment on earth is conducive to life.

Article 245(a) provides for the duty to protect and preserve the environment. Parliament shall by law, provide for measures intended to protect the environment from abuse, pollution and degradation and to manage the environment for sustainable development. **Article 17(1) (11)** of the constitution provides that it is the duty of every citizen of Uganda to create and protect a clean and healthy environment. The duty is participatory. However the enforcement of this duty is an illusion since every Ugandan is seeking to obtain basic livelihood.

The 1992 Rio Declaration also stresses that human beings are entitled to a healthy and productive life in harmony with nature.

In **Advocates Coalition for Development and Environment V. AG and NEMA**[50] the Judge stated that the right to a clean and healthy environment entails Ugandans to an environment adequate for their health and well being in this case, the applicants were challenging a change in land use of Butamira Forest Reserve on grounds that such use violates the right to a healthy and clean environment.

The constitution requires the government or local government to hold in trust for the people and protect natural lakes, rivers, wetlands, Forests reserves etc for the common good of all citizens- **Article 237(2) (b)** of the 1995 Constitution of Uganda.

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[49] Cited from a b Apollo Makubva at an international colloquium on the significance of human rights for the African continent.

[50] Miscellaneous cause No. 0100 of 2004 HC

4.2.2 The Land Act Cap 227

The Land Act under section 43 provides that a person who owns or occupies land shall manage and utilize the land in accordance with the Forest Act, the Mining Act, the National Environmental Act, the Water Act, The Uganda Wildlife Act and any other law. **Section 44** provides for public trust doctrine by providing that the local government shall hold in trust for the people and protect natural lakes, rivers, ground water, natural ponds, streams, wetlands, forests, parks and any other land reserved for ecological and touristic purposes for the common good of the citizens of Uganda and the government shall not lease out or otherwise alienate any natural resource referred to in this section. However, government or a local government may grant concession or licenses or permit in respect of a natural resource referred to above.

4.3 The Concept of a Framework environmental Legislation

Framework environmental legislation has the guiding principle of ensuring sustainable development which will ensure the use of resources without depleting them for the benefit of both the present and future generations. The objectives of the framework legislation are two fold;

i) to provide a planning framework, set standards and coordinate for all environmental related issues in the country;
ii) to strengthen the sectoral laws. Sectoral laws are enacted in consultation with the lead agencies to ensure coordination and effectiveness. The framework law must be in harmony with society's need to achieve better material standards, reduce poverty and achieve sustainable development.

The framework legislation on environmental protection in Uganda is the National Environmental Act.

4.3.1 Sectoral Environmental Legislation in Uganda

a) The Water Act Cap 152

The objectives of the Act are;

i) To promote the rational management and use of the waters in Uganda through the progressive introduction and application of appropriate standards and techniques for

investigation, use, control, protection, management and administration of water resources.

ii) to advise the responsible minister as the case may require on any dispute between agencies involved in water management that ma be referred to it and

iii) to undertake any other functions conferred upon it under this Act or referred to it from time to time.

b) The Uganda Wildlife Act Cap 200

The Act provides for sustainable management of wildlife, its objectives is to consolidate the law relating to wildlife management and to establish a monitoring and supervisory body for that purpose. The Uganda wildlife Authority has been created as a body corporate; the Act gives the functions of the Authority which among others include the promotion of public participation in the management of wildlife.

Section 3 of the Act provides that the ownership of every wild animal and plant existing in its wild habitat in Uganda is vested in the government on behalf of and for the benefit of the people of Uganda. The Act lays down the procedure for declaration of wildlife conservation area. **Section 17** provides that the Minister may after consultation with the local government council in whose area a proposed wildlife conservation area falls and with approval of parliament signified by its resolution declare an area of land or water a wildlife conservation area. An Environment Impact Assessment must also be carried out before such declaration as required by law.

Section 29 provides for wildlife use rights granted to a person, community or organization to make some extra vice utilization of wildlife. They include hunting, farming, ranching, and trading in wildlife products, general extractions and educational and scientific purposes. Such persons have to make applications and attach certificate which states that the applicant has informed all the adjacent owners and occupiers of his application

Section 41 prohibits the use of fire, prohibition of hunting of the dependent young, hunting after darkness among others.

c) The National Forestry and Tree Planting Act. The purpose of this Act is

i) to create an integrated forest sector that will facilitate the achievement of sustainable increases in economy, social and environmental benefits from forest and trees by all people of Uganda.

ii) to ensure that forests and trees are conserved and managed in a manner that meets the needs of the present generation without compromising the rights of future generations by safeguarding forest biological diversity and the environmental benefits that accrue from forests and trees.

iii) to promote the improvement of livelihoods through strategies and actions that contribute to poverty eradication and

iv) to facilitate greater public awareness of the cultural, economic and social benefits of conserving and increasing sustainable forest cover.

The responsibility of the management of forests in Uganda is placed on the government and local governments; this is to be done for the common good of all citizens in Uganda.

4.4 Institutional Framework for Environmental Management in Uganda

4.4.1 The Role of Central Government

The central government has several roles to play in environmental management. The National objectives and Directive principles of state policy impose several obligations on the state and central government.

- Promote sustainable development and public awareness of the need to manage land air, water resources in a balanced and sustainable for the present and future generations.
- Take possible measures to prevent or minimize damage and destruction to land, air and water resources resulting from pollution or other causes.
- Promote the rational use of natural resources so as to safeguard and protect the diversity of Uganda.
- Protect important natural resources including land, water, wetlands, minerals, oil fauna and flora on behalf of people of Uganda.

The substantive provisions of the constitution also impose further obligations on the state to respect fundamental rights including the right to a clean and healthy environment guaranteed under **Article 20** of the Constitution. Also to hold in trust for the people and protect natural lakes, rivers, wetlands, reserved for ecological and touristic purposes for the common good of all citizens and finally to regulate the use of land under **Article 242** of the constitution.

In **Attorney General V. Lohay Akona and Joseph Lohay**[51] was noted that firstly as trustee of public land, the president's power was limited in that he cannot deal with public land in a manner in which he wishes or which is detrimental to the beneficiaries of the public land. Secondly, he cannot be the beneficiary of public land.

4.4.2 The Role of Parliament

Article 245 of the Constitution requires parliament, by law to provide for measures intended to protect and preserve the environment from abuse, pollution and degradation, to manage the environment for sustainable development and to promote environmental awareness.

4.4.3 The Role of Courts

Article 50 of the constitution proves that any person, who claims that a fundamental or other rights or freedom guaranteed under this constitution has been violated or threatened, is entitled to apply to a competent Court for redress which may include compensation. Courts therefore have a vital role to play in the enforcement of environmental laws and rights.

In the **Environmental Action Network limited V. AG and NEMA**[52] Article 50 of the constitution was again interpreted where it was observed inter alia that the article does not require the applicant to have the same interest as the parties he seeks to represent or for whose benefit the action is brought.

Article 126(2)(e) of the constitution requires the Courts in adjudicating cases of both civil and criminal nature should subject to the law, do justice to all irrespective of their social or economic status, not to delay justice, to award adequate compensation to victims of wrongs and administer substantive justice without undue regard to technicalities.

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[51] Civil Appeal 31/1994.
[52] Misc. Appln No 39 of 2001.

4.4.4 The Role of Civil Society

Civil societies like Non Governmental organizations provide a pivotal role in mobilizing and sensitizing the masses about environmental issues. They supplement government programmes at the local level. They help ensure that the concerns of the underprivileged are incorporated in the national development process. They provide a convenient and effective way of administering community targeted incentives and facilitate mobilization for environmental education and awareness programmes.

Non governmental organizations play a significant role in environmental litigation by bringing actions on behalf of the marginalized that may not be in a position to access courts of land through public interest litigation. The role of NGOs in their respect is buttressed by a strong legal framework for institutions of such suits like Article 50 of the constitution Section 3 of the NEA.

4.4.5 The Role of the Public

Citizens are one of a nation's greatest resources for enforcing environmental laws and regulations. They know the country's land and natural attributes more intimately than a government ever will. The right to a clean and healthy environment comes with it an obligation on the public to maintain and enhance the environment and inform the environment or the local environment committee of the activities and phenomena that may affect the community significantly. Other roles of the pubic include;

- Collecting information for use in enforcement of environmental law.
- Participation in government regulatory or enforcement action to ensure that they are well informed and effective.
- Recourse to Court when the governments unwilling or enable to act.

4.5 Tools to enforcing environmental Law

4.5.1 Public Interest Litigation

Public Interest litigation is not defined in any statute, but it describes legal actions brought to protect or to enforce rights that are enjoyed by the members of the public or large parts of it. These are proceedings which are regarded as having a public element and which involve

remedies traditionally associated with matters of public concern. They occur where the violation of an environmental right or duty is made by private persons including corporations.

Such suits may be filed by any public- spirited individual or group of individuals or by a civil society organizations on behalf of a person's whose rights have been violated and it is not essential that the person filling the suit should have an interest in the matter of the suit.

Public interest litigation may be used in a strategic manner to advance the position of disadvantaged and vulnerable groups.

The Ugandan legal framework has created avenues for public interest litigation. Article 90(2) of the constitution specifically gives a basis for public interest litigation by provide that, "any person or organization may bring an action against the violation of another persons or groups human rights."

By using the expression" any person" instead of "an aggrieved person" it allows any individual organization to protect the rights of another although that person has not suffered the injury complained of.

Article 50 has been interpreted in a number of public interest cases for instance the case of **British American Tobacco (BAT) .V. The Environmental Action Network (TEAN)**[53] where TEAN filed an application under **Article 50(2)** seeking orders of the court that the responded as a manufacturer of cigarettes is under legal duty to fully and adequately warn the consumers of its products of the full extent of the risk associated therewith. Although the order was denied, on whether **Article 50(20)** authorizes filing of actions on grounds of public interest by private persons, **Ntabgoba J. held that "Persons""Organizations" or "groups of persons"** can be read to include public interest litigants that is to say that the constitution does not recognize the existence of the needy and oppressed person and therefore it can not allow actions of public interest groups to be brought on their behalf is to demean the constitution.

Under the National Environment Act, Section 71 provides that the Court may in proceedings brought by any person issue a restoration order against a person who has harmed the environment. Any person can be interpreted to mean even those who have not suffered harm as a

[53] HCCS No 27 of 2003.

result of the activities complained of including public interest litigants. The Act also specifically provides under **Section 71(2)** that it shall not be necessary for the plaintiff to show that he /she has a right of interest, in the property, land, environment alleged to have been harmed or in the environment or land contiguous to such environment or land. The section therefore as was observed by Okumu Wengi J. in **National Association of Professional Environmentalists V. AES Nile Power (ltd)**[54] is an element of class actions and public interest litigation and abolishes the restrictive stand to sue and locus standi doctrines by stating that the plaintiff need tot show a right in the case.

In **Green watch and Advocates Coalition for Development and Environment .V. Golf Course Holdings Ltd.**[55] the applicant NGO concerned with environmental protection sought a temporary injunction to restrain the respondent from constructing a hotel on a wetland. **Akiiki Kiiza** government although declined to issue the injunction recognized the fact that the interest of the applicants was stated to be of public nature and that Section 71 gives them a right to sue.

The Role of Public Interest Litigation

Public interest litigation has proved to be efficient in the quest for effective environmental stewardship. It allows the public to move from mere lamentation to strategic, decisive and enforceable action that will enable the deprived section of society to realize their rights. This view was held in an Indian case of **Bandhua Muktimorcha .V. Union of India**[56] where Bhagwati J. noted that public interest litigation is not in the nature of adversary litigation but it is a challenge and an open opportunity to the government and its officers to make environmental rights meaningful to the deprived and vulnerable sections of the community and assure tern social and economic justice which is the signature tune of the constitution.

Second, it is a basis for assisting those who cannot access Courts of law to protect their rights for instance the poor, illiterate and children. **Rwagankingira J. in Mtikila .V. AG** fortified the position where he noted that **"The Relevance of Public Interest Litigation cannot be over emphasized having regard to our Socio economic conditions, those developments promise more hope too our people than any, strategy currently in place. Illiteracy is still rampant**

[54] Misc. cause No. 60 of 1999.
[55] MA 390 of 2001
[56] 1984 Supreme Court of India.

therefore a greater population is unaware of their rights, let alone how the same can be realized.

The judge also noted that by reason of limited resources, majority of the people cannot afford to engage lawyers where they are aware of the infringement of their rights. Therefore public interest litigation applies with equal force to Uganda.

Third, public interest litigation is based on considerations of practicality. Most of the public interest cases involve injury to a substantial number of parsons in the community and it is hard to carry all of them to Court, for instance in **Oposa V. Factorian** the suit was said to be filed on behalf of the petitioners and on behalf of others, so numerous that it was impracticable to bring tern all before Court. Court accepted that the case was a class suit as the subject of the mater of the complaint was of common and general interest not just to several but to all citizens of Philippines. Since the parties were so numerous, it was impracticable to bring all of them to Court therefore the applicants were representatives of those who were not in Court.

4.5.2 Environmental Impact Assessment

This is a systematic examination conducted to determine whether or not the proposed project will have adverse effect on the environment. It is an essential management tool in ensuring environmentally sound development planning in society. It is a process for examining, analyzing and assessing proposed activities in order to maximize the potential for environmentally sound and sustainable development.

The process was designed to;

i) Ensure that the appropriate government authorities have fully identified and considered the environmental effects of proposed activities as well as alternatives to avoid or mitigate the effects.
ii) affected citizens have an opportunity to understand the proposed project or policy and to express their views to design makers in advances.

Section 19 of the National Environment Act requires a developer of a project prescribed in the third schedule to the Act to submit a project brief to the lead agency in the prescribed form and give the prescribed information.

Where the lead agency in consultation with NEMA is satisfied that an environmental impact review or an environmental impact evaluation conducted does not disclose possible significant impact on the environment, it may approve the environmental aspects of the project otherwise it will require that an environmental impact study be conducted.

4.5.2 Environmental Monitoring

Environment monitoring is a continuous determination of actual and potential effects of any activity or phenomena on the environment whether short term or long term. The general objective of monitoring is to establish the status of the environment and to evaluate the impacts of various activities on the environment in general and natural resources in particular.

The specific objectives are;

i) To understand the present levels of degradation by various agents so as to judge whether the abatement policies, projects and programmes are succeeding,
ii) To identify environmental risks and impacts not previously known so that they can be brought under control,
iii) To follow the movement of harmful agents through the environment into living creatures and man himself,
iv) To identify activities that are beneficial to the environment and ensure sustainable use of natural resources,

NEMA is required in consultation with a lead agency to monitor all environmental phenomena with a view to making an assessment of any possible changes in the environmental and their possible impacts and the operation of any industry, project or activity with a view to determining its immediate and long-term effects of the environment.

4.5.3 Environmental Reporting

Section 6 of the NEA requires **NEMA** to prepare and disseminate a state of the environment report once in every two years. **Section 14(2) of the National Environmental Act** requires the District Environment Committee to prepare a district state of the environment report every year and under **Section 16** the Local Environment Committees are also required to report any events

or activities which have or are likely to have significant impacts on the environment to the District Environment Officer, or to the appropriate executive committee, local council or such other person as the district council may direct.

4.5.4 Environmental Judicial Remedies

Article 50(1) of the Constitution provides that any person who claims that his rights including environmental rights have been violated can apply to a competent court for redress. The redress that can be applied for include the following;

a) Judicial Review

This is a remedy that may be used to quash a decision, certiorari, stop unlawful action (prohibition), require the performance of a public duty mandamus, declare the legal position of the litigants, declarations, give monetary compensation and maintain the status quo, a stay.

Judicial review is a remedy available to an individual who seeks redress for a private grievance arising from the acts or omissions of a public body exercising public powers. It is a private remedy. As a public remedy, statutes typically provide that persons who are aggrieved with the decisions of a public body may apply for a review to the Courts. Before proceeding, the person must show that he is the aggrieved person.

An "aggrieved person" was defined in a leading English Authority **AG (Gambia) .V. Njie**[57] where Lord Denning said;

"The words, person aggrieved are of wide import and should not be subjected to a restricted interpretation. They do not include, of Course a mere busy body who is interfering in things that do not concern him, but, they do include a person who has a genuine grievance because an order has been made which prejudicially affects his interests."

As a public remedy, a member of the public may also resort to judicial review to challenge the decision and action of public bodies.

b) Injunctions

[57] (1961)2 ALL ER 540.

The purpose of the injunction if issued is to restrain the respondent from continuing with an act that has caused harm that is subject to iitigation. It is granted on a balance of convenience such that the Court will weigh the inconvenience it will cause to the applicant if the injunction is no granted, and the inconvenience it will cause to the respondent if the injunction is granted.

The grant of the injunction is discretionary but the judge has to exercise his discretion judiciously. In **Green Watch and Advocates Coalition for Development and Environment V. Golf Course Holdings Ltd**[58] the applicants were seeking an interlocutory injunction to restrain the respondents from constructing a hotel in a wetland. The judge declined to issue an interlocutory injunction on grounds which can be considered unreasonable, that an injunction could not be issued against a land owner who holds a certificate of title; otherwise this would amount to violating the provisions of the registration of Titles Act relating to indefeasibilibity of title.

c) Environmental Restoration orders

Court is given powers under **Section 71** of the NEA to issue restoration orders. Such orders may require the person to restore the environment as near as it may be to the state in which it was before the taking of action which is subject to the order, compensation could also be recommended to the person who has directly suffered the harm.

In **Indian Council for Enviro-legal Action V. Union of India**[59] the respondents operated chemical factories without the requisite licenses and had not installed equipment for treatment of highly toxic effluent which they discharged. The discharges polluted water and the soil and Court held that the respondents were bound to take all necessary measures to remove the sludge and other pollutants lying in the affected area and also to defray the cost of the remedial measures required to restore the soils and underground water sources.

d) Damages

The purpose of damages is to put the victim as far as possible in the position he would have been if no damage had occurred. Damages can be general where the exact loss cannot be quantified or

[58] MA No.390 of 2001
[59] (1995)3SCC 77.

specific, where the actual loss can be ascertained. They can also be exemplary to act as a deterrent to the would be criminals.

4.6 Review

In conclusion therefore this chapter has exhaustively looked into the legislative framework, the institutional mechanisms and how to enforce the environmental rights. A lot needs to be done and the next chapter will give the observations and the necessary recommendations.

CHAPTER FIVE

GENERAL CONCLUSIONS AND RECOMMENDATIONS

5.1 General Conclusions

Given the large uncertainties in the science of climate change and the fundamental incentive problems of sovereign states, it is clear that a perfect climate policy is hard to achieve in practice. The Kyoto Protocol is thus necessarily only one out of many possible imperfect architectures to address the risks posed by global climate change. The Protocol is based on a control mechanism that allows progressive adjustment and movement towards evolving goals. A system of periodically negotiating five-year periods supports a flexible approach that allows policy-makers to adjust their decisions according to better information obtained on the climate change problem.

The Protocol constitutes the first international environmental agreement that builds on market based instruments to determine cost-efficient responses to the undisputed need for GHG abatement. After tough bargaining, Kyoto came up with a burden-sharing scheme for the first commitment period that all major Parties (with exception of the US) have accepted as a fair compromise, hereby reflecting historic responsibilities for the GHG externality as well as ability to pay.

On the other hand, it must be clearly stated that the Kyoto Protocol - as it stands now – has not achieved a decisive breakthrough in international climate policy. In particular, U.S. repudiation has made the Kyoto ineffective in environmental terms during the first commitment period.

Nevertheless, even without any effective emission reductions in the first commitment period, the ratification of Kyoto is crucial for the further policy process of climate protection and adaptation. It has established a broad-based international mechanism that provides a valuable starting point for efficient climate policies in the future. Given the shared belief that substantial global emission reduction is required in the long run, the major challenge remains as to how we can push institutional and legal settings that promote comprehensive international cooperation. In the first place, this requires incentives for developing countries to participate. This has been the center of controversy in the post-Kyoto climate negotiations, and actually explains the failure to

reach an agreement at Copenhagen. The two sides – developed and developing countries have taken entirely opposite directions, with developed countries demanding for more participation of the developing countries and developing countries demanding for more support from developed countries. In the second place, a credible system of direct or indirect sanctions must be developed that can deter free-riding. Applied research should be dedicated to the question of which sanction mechanisms are likely to provide concrete improvements in practice.

Uganda as a developing country has implemented few projects that specifically address climate change adaptation. The reason for this is largely limited funding for such projects. It has largely implemented CDM projects and these have attracted substantial funding. The reason for this divergence in funding could be explained by the fact that CDM projects attract carbon credits to the developing countries that fund these projects, which is not the case with adaptation projects. Nevertheless, Uganda's participation in

CDM has significant impacts on climate change adaptation. The CDM projects, such as power generation projects and forestation projects, although primarily targeting mitigation, increase resilience and reduce vulnerability of the communities to the extreme impacts of climate change. The sustainability of these projects, however, requires comprehensive policy and legal frameworks at the national level. Uganda has developed a number of laws but these laws do not directly address climate change issues. Further, there is limited knowledge among the people which hinders their effective participation in the implementation of these projects.

5.2 Recommendations

On the basis of the challenges identified in the international legal framework for climate change adaptation in developing countries and in the implementation of adaptation at the national level, the following recommendations are made to address the challenges.

There is no common oversight, accounting or enforcement framework for adaptation finance. Without a global framework that provides accountability for adaptation finance, developing countries cannot know what assistance to expect. Such a framework is needed to ensure a balance between adaptation and mitigation finance, _additionality' of funds, reliable and transparent oversight, acceptable channelling of funds and proper enforcement. It will also

delineate public funds from carbon market funds, adaptation funding from other types of funding, and grants from loans.

The Adaptation Fund Board, a body with majority representation from developing countries, should create and manage a global accounting framework for adaptation finance. It should assess whether donor nations are taking a balanced approach in fast-start and other pledges, as required by the Copenhagen Accord. The UNFCCC should prepare parties to agree on a global accounting framework in Cancun, and set a deadline for contributors to define a unified baseline for Copenhagen adaptation pledges. Existing fast-start pledges should be recalculated from this baseline, and new commitments should have to use it.

The international community should agree on a comprehensive list of adaptation activities. The Adaptation Fund Board, already tasked with handling international deliberations on adaptation, could propose and edit project categories.

For the longer term, only new sources of climate finance — not raised in the same ways as existing foreign assistance — should be counted as _new and additional.' For fast-start finance, pledges can be seen as _additional' if they are above a projection of business as usual development and climate funding through bilateral and multilateral channels.

Contributors should financially support a UNFCCC approved independent registry and provide detailed data on climate-related projects in a timely fashion. This registry should track funds all the way from contributors to expenditures, and should allow recipient governments and civil society to add information about the progress and effectiveness of all adaptation projects.

It is inevitable that the developing world is gradually becoming involved. The developing countries account for a large and growing share of emissions. Thus, in the long run, climate protection cannot be successful without substantial participation of the developing countries. Assignment of emission entitlements to lock developing countries into the abatement coalition will inevitably involve controversial equity debates. To relax these debates, the short-term objective of broadening participation should not be so much to redistribute costs from the industrialized to the developing world as to lower the overall abatement bill.

The actual provisions for sanctioning violators must be improved. One proposal is that violating sellers transfer revenues to some fund, while violating buyers pay a mark-up to the fund. The fund then can be used to compensate other signatories.

The developed countries must invest further in the capacity of developing countries to participate in the climate process. This goes beyond the provision of training and other human resource assistance to enable countries to engage with confidence in the negotiations themselves. It will also include help in linking the international process with domestic policy; and the application of technologies, processes, and development alternatives that can deliver benefits both for local sustainable development and for the climate. A key area will be the development of affordable clean energy and transport options. Some of this support might be geared particularly towards the capacity to take on, and derive maximum benefit from, emissions targets.

There is need for financial facilitation in the areas of enforcing the policy and legal frame work, capacity building at the national and local levels, preparing and updating a national communication. To achieve this, climate change has to be given priority by government and donor funding in the area of climate change should be increased.

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