ENCAMPMENT AND ITS EFFECTS TO THE SURROUNDING AND THE RIGHT TO A HEALTHY ENVIRONMENT IN KAPELEBYONG, AMURIA DISTRICT, UGANDA

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The Award of Masters
Degree in Law

By

Agolei Jimmy Dany Daniel
LLM/32957/102/DU

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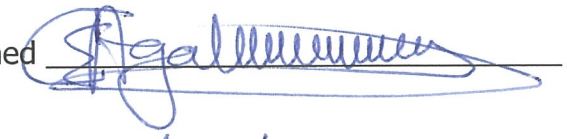
DECLARATION A

I, Agolei Jimmy Dany Daniel do hereby declare that to the best of my knowledge, this book is original and has not been submitted before for the award of a degree in the Faculty of Law, Kampala International University at any other time by anyone in the past.

AGOLEI JIMMY DANY DANIEL

Signed 

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I confirm that the work reported in this thesis was carried out by the candidate under my supervision.

GODFRED BASINGYE

Name and Signature of Supervisor

2/11/11

Date

APPROVAL SHEET

This thesis report entitled"**encampment and its effects to the surrounding and the right to a healthy environment in kapelebyong, amuria district, Uganda"** prepared and submitted by **Jimmy Dany Dan Agolei** in partial fulfillment of the requirements for the award of degree of Masters in laws has been examined and approved by the panel on oral examination with a grade of PASSED.

Name and Signature of Chairman

Name and Signature of Supervisor

Name and Signature of Panelist

Name and Signature of Panelist

Name and Signature of Panelist

Date of Comprehensive Examination: _____

Grade: _____

Name and Signature of Director, SPGSR

Name and Signature of DVC,

DEDICATION

This research book is most dedicated in honour of my dear mother Joyce Majjery Mary Adeke Agollei who has worked so hard to bring me up and to make me what I am today.

To my grandfather the Late Yosamu Agollei for his dear love to me.
To my children, my dear sister Esther Okiria, to Rose, my late brothers and sisters and Harriet. Finally to Mr. Galiwango who was always available to offer help.

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God Bless all of you.

ABSTRACT

The people of Kapelebyong have been victims of cattle rusting, which has culminated in the creation of the congested Camps in Kapelebyong. The camps have no basic facilities such as schools, health centres, toilets and clean drinking water. This has led to out breaks for diseases, high infant mortality and high levels of poverty due to loss of the cattle to raiders and destruction of the surrounding environment.

The researcher concludes that the people of Kapelebyong and the surrounding area do not enjoy aright to a healthy environment and recommends that the public be sensitized on environment, education and all the necessary facilities be put in place by government. The government must not close the camp but rather must get involved in the provision of security and basic facilities.

This study concludes that in order to achieve the full recognition of the right to a healthy environment in Kapelebyong, the following need to be done. In order to reverse the situation in Kapelebyong which increasingly appears to be desertifying?
Training of experts in environmental management is absolutely necessary.

Sensitization of the public is long overdue. Awareness of the environment, its pollutants, general damage, erosion and de-a forestation. The applicable laws should be promoted in order to spur evolutional change in behaviour, technological investment and institutional will to build the necessary infrastructure. In this connection, research, information gathering and sharing regarding Kapelebyong must be encouraged to create environmental awareness. This in turn calls for international and national cooperation in environmental protection.

In order to move towards the realization of this right for the people of Kapelebyong, it is important that the role of the individual and the public in general is enhanced. Education, public awareness and uplifting of standards of living are important ingredients in the realization of the right.

The government of Uganda, the international NGOs and the people of Kapelebyong have a lot to learn from their own experiences and that of international community in a bid to improve the environment and to prevent further degradation of the environment in Kapelebyong amidst insecurity.

ABBREVIATIONS

UDHR	-	Universal Declaration of Human Rights
NEAP	-	National Environment Action Plan
UNHCR	-	United Nations High Commission for Refugees
UNGA	-	United Nations General Assembly
OAS	-	Organization of American States
UHRC	-	Uganda Human Rights Commission
OECD	-	Organization for Economic Cooperation and Development
EIA	-	Environmental Impact Assessment
EEC	-	European Economic Community
ECE	-	Economic Commission for Europe
EEA	-	European Environmental Agency
IMPEEL	-	Implementation and Enforcement of Environmental Law
APELL	-	Awareness and Preparedness for Emergencies at the Local Level
WCED	-	World Commission on Environment and Development
BELA	-	Bangladesh Environmental Lawyers Association
FAP	-	Flood Action Plan
ILO	-	International Labour Organization
NEMA	-	National Environment Management Authority
UNEP	-	United Nations Environment Programme
Doc	-	Document
UN	-	United Nations
UNCHE	-	United Nations Conference on the Human Environment
LRA	-	Lord's Resistance Army
NGOs	-	Non Governmental Organizations
NY	-	New York
UEP	-	Uganda Environment Programme
PRDP	-	Peace, Recovery and Development Plan
NEA	-	National Environmental Act

UNPRAP	-	United Nations Peace Recovery and Plan
IPCC	-	Intergovernmental Panel on Climate Change
HIV	-	Human Immune Virus
AIDS	-	Acquired Immune Deficiency Syndrome
LC	-	Local Council
ICESCR	-	International Convent on Economic Social and Cultural Rights
UNESC	-	United Nations Economic and Social Councils
UNSG	-	United Nations Secretary General
IBHR	-	International Bill of Human Rights
PLO	-	Palestinian Liberation Organization
RSCU	-	Regional Soil Conservation Unit
NEPAC	-	National Environmental Protection Agency of China
CHR	-	Commission on Human Rights
CIA	-	Commodity Inspection Administration
ECHR	-	European Convention on Human Rights
ADRD	-	American Declaration of the Rights and Duties
CIL	-	Customary International Law
AUC	-	African Union Charter
SDHE	-	Stockholm Declaration on Human Environment
ITLOS	-	International Tribunal on the Law of the Sea
SPS	-	Sanitary Phyto Sanitary
EMF	-	Electro Magnetic Field
IPCC	-	Intergovernmental Panel on Climate Change

LIST OF INSTRUMENTS

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The 1945 United Nations Charter.

The 1948 United Nations Universal Declaration of Human Rights.

The 1948 Convention on The prevention and Punishment of the Crime of Genocide.

The 1950 European Convention on Human Rights, came in force in 1953.

The 1966 United Nations Covenant on Civil and Political Rights.

The 1966 United Nations Covenant on Economics, Social and Cultural Rights.

The 1968 Vienna Convention on the Law of the Sea.

The 1972 Stockholm Declaration on the Human Environment.

The 1972 London Dumping Convention.

The 1973 Morpal Convention for the prevention of Pollution from ships.

1974 Nordic Convention on the protection of the Environment.

The 1974 United Nations Charter of Economic Rights an Duties of States.

The 1978 American Convention on Human Rights.

The United Nations Environmental Programme (UNEP) Principles of Conduct in the Conservation and Harmonious Utilization of Natural Resources Shared by Two or More States.

The 1979 Conference on Environment and Human Rights.

The 1981 African Charter on Human and Peoples Rights.

The 1982 World Charter for Nature.

The 1985 Vienna Convention on the Protection of the Ozone Layer.

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The 1986 International Labour Organization (ILO) Asbestos Convention.

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The 1992 Rio Declaration on Environment and Development

The 1992 Framework Convention on Climate Change

The 1994 Draft Declaration of Principles on Human Rights and the Environment.

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The 1995 Constitution of the republic of Uganda.

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CHAPTER ONE

Problem and Its Scope

1.1 General Introduction

Amuria District was curved out of Katakwi District in January 2006. It lies in the North Eastern Region in the Teso Sub region. Kapelebyong is one of the two counties of Amuria District the other is Amuria County. Ever since *Asonya*, time immemorial there has existed low scale cattle raids between the Iteso and the Karimojong. The two ethnic groups are closely related and speak a similar language.

However, in 1961 raids intensified when the Karimojong developed skills to make traditional guns. This changed the dynamics of the raids. The Karimojong were then able to go deep in Kapelebyong and raid cattle.

The Karimojong raid cattle because of their ancient believe that all the cows in the world belong to them wherever they occur, are simply misplaced. In 1979, when Amin was driven off from power, the Karimojong took possession of fire arms which had been abandoned by the fleeing soldiers. In 1986, the Karimojong youth were recruited in to the Uganda army to fight the National Resistance Army, however when the fight got tough they fled with thousands of guns back to Karamoja. Other sources of arms proliferation in Karamoja include Sudan where conflict exists to date.

Once the Karimojong had modern fire arms, they raided Kapelebyong with greater intensity causing untold suffering and many deaths and in committing rape. The people were then forced into the camps. The situation was further worsened when the Lords Resistance Army over ran Teso in 2003. 75% of Amuria District was displaced. To date, there are about 3500 persons in the camp. The displaced persons have occupied schools and health centres as a result of many people camped in a small area. Problems of shelter, food, sanitary facilities, grazing area and cooking fuel are now prevalent.

These persons have therefore invaded the surrounding area, over grazed it and cut all the trees. This has had its own dynamics. Climate change has also taken toll on the environment.

The government has been slow in reacting to the situation; however, the non Governmental organizations have attempted to come to the population's rescue. The surrounding area to the camp has been polluted with herbicides. The camp threatens to create ecological disaster in the area.

The human right to a healthy, viable or decent environment howsoever may be termed, is still largely considered an emerging right. As a human right it owes its emergence to the recognition of international law rules protecting human rights against state interference, which is largely a post 1945 phenomenon.[1]

In the 1972 Stockholm Conference on Human Environment, it was recognized that both present and future generations have the right to a healthy environment which environment must be used responsibly.[2] In the case of Kapelebyong, which is a former internally people's displaced camp, environment has suffered as a result of the camp.

National Objective and Directive on Principles of State Policy of the *Constitution of Uganda 1995 No. XXI*[3] provides for clean and safe water. 'The state shall take all practical measures to promote a water management system at all levels'. From the above quotation, the right to a healthy environment is provided.

Article 39[4] of the Constitution of Uganda provides that:

> *'Every Ugandan has a right to a clean and healthy environment.' Furthermore Article 40(1)(a)*[5] *also provides that, 'Parliament shall enact laws to provide for the right of persons to work under satisfactory, safe and healthy conditions.*

The occupation, safety and Healthy Act. Also provides for healthy working conditions.[6]

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[1] D. J. Harris. Cases and Materials on International Law, 5th Edn. Sweet & Maxwell, London 2007, P. 470.
[2] Patricia W. Birnie & Alan E. Boyle, International Law and the Environment, Clarendon Press, Oxford, 1998 at p.190.
[3] Constitution of Uganda No. XXI, National Objectives and Directives on Principles of State Policy, of 1995
[4] Constitution of the Republic of Uganda 1995. Article 39.
[5] Ibid Article 40(1)(a).
[6] Occupation safety and health Act 2006 Section 26

Section 3 of the National Environment Act[7] provides for the right to clean and healthy environment. This right may be enforced under section 3(2) of the National Environment Act. [8]

1.2 Study Area

The geographical area will be Kapelebyong Camp in Kapelebyong County, Amuria District, Eastern Uganda and its immediate surroundings. The choice of Kapelebyong camp was based on the fact that this is the oldest camp in Teso region which was created as a result of Karimojong raids.

The conditions researched on were found in this area. This area also lies on the border line of Karamojong and Amuria district. Therefore, the conditions in this area are likely to continue to exist in future given the fact that the Karimojong raids are continuing to date.

1.3 The Right to Environment

It should be noted that the term healthy environment is not strictly defined. It is however used in the global effort to provide better standards of living. Concern has emerged from the observation of the un intended environmental impacts resulting from the execution of development projects such as those involving thermal or hydro-power generation, mining, industry, agriculture, encampment, de-afforestation human settlement and failure to observe public trust doctrine, precautionary principle, sustainable development, polluter pays among others.[9]

All these manifest themselves through one or more as environmental problems.[10] It has also been observed that Humanity is living in the days of the mounting ecological movement where human kind is becoming more aware of the existence of social

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[7] National Environment Act Section 3.
[8] Ibid Section 3(2).
[9] Alexandre Kiss and Dinah Shelton. International *Environmental Law*, 3rd edition, Moi University, Nairobi.
[10] P. S. Sangal, the right to Good Environment as a Fundamental Right, in Mushrraf S. (ed.), *Legal Aspects of Environmental Pollution and its Management*, CBS (publishers & Distributors) 1st edn; 1999 at p.89.

interests and is awakening to the realization that the world is a single indivisible whole.[11] There is a need to realize the danger to the environment in order to find ways of combating such dangers. The presence of a camp in Kapelebyong threatens to create ecological disaster. The surrounding areas to the camp have been polluted and laid bare. De-afforestation has been and is till rampant, overgrazing owing to large amounts of cattle concentrated in a small area has had its toll on the surrounding area.

The right to a healthy environment is closely related to the principle of inter generational equity, the public trust doctrine, the precautionary principle and other principles of environmental protection.

1.4 Background to the Study

Amuria District was curved out of Katakwi District in January 2006. It lies in the North Eastern region of Uganda. Amuria constitutes part of the Teso sub region. Since 1961, this area has suffered from intense Karamojong cattle raids. In 1969, the first internally displaced camps were established by the then government with about 2000 persons to date, there are about 3500 persons in this camp.[12] This is despite the government's declared policy that camps no longer exists, according to the National Policy for Internally Displaced Persons[13], camps are closed.

The situation worsened when in June 2003 the Lord's Resistance Army (LRA) entered this region through Amurai District. The LRA attacks caused displacement of over one hundred and fifty thousand people which constituted about 75% of the total population of Amuria District.[14] The District was thrown into a state of emergency. The facilities like health centres, schools and sanitary facilities became camps. Activities in

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[11] L. N. Mathur, Towards Organizing a Clean World', in Mushrraf S., (ed.), Legal Aspects of Environmental Pollution and Its Management. CBS (Publishers & Distributors) 1st Edn., 1992, 45.

[12] [Inter Agency Assessment Mission] Report on Karamojong induced camps Katakwi and Amuria, 15th June 2005. This is the HTML version of the file http://www.internaldispalcement.org/8025708F004CE09B/p.5 (http://documents) page 6 visited on the 28th January 2011.

[13] National Policy for Internally Displaced Persons, www.finance.go.ug.

[14] Supra note No. 11 P.6

those facilities ceased to function.[15] The people who were concentrated in one place, needed food, fire wood for cooking, building materials for shelters and indeed sanitary facilities. That led to the destruction of the environment surrounding the camp with far reaching consequences.[16] In order to analyse the quality of the right to a healthy environment of the people surrounding the camp, it is necessary to examine the origin of this right; by referring to international and municipal instruments which have set standards.

The first identification of the human right to a healthy environment appeared in the United Nations Declaration on the Human Environment.[17] [Stockholm 1972] Principle 1 states that: man has fundamental right to freedom, equality and adequate conditions of life, in an environment that permits a life of dignity and well being, and he bears a solemn responsibility to protect and improve the environment of present and future generations.

The environment is defined by the National Environment Act[18] to mean the physical factors of the surroundings of the human beings including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factors of aesthetics and includes both the natural and the built environment.

Before the National Environment Act and the 1995 Constitution, the right to a healthy environment was not expressly provided for by the law in Uganda, The 1962 and 1967 constitutions provided for the traditional human rights of the social economic nature with prescribed restrictions.[19] On the other hand, environmental management was principally carried out through the various ministries which were concerned with

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[15] The Post Conflict: *THE CASE OF NORTHERN UGANDA* Discussion paper 8th July 2004. Ministry of Finance, Planning and Economic Development, Available at www.finance.go.ug (visited on the 28 January 2011).
[16] Ibid.
[17] Stockholm, Declaration on the Human Environment (June 16, 1972) UN Doc. A/Conf. 48/14/Rev.1 (UN.Pub.73.11.A.14)(1973),III.LM.1416(1972).
[18] National Environment Act Cap 153 Laws of Uganda of 2000 Section 1(0).
[19] Province and structure of Environmental Law, prepared by Emmanuel Moutondo for the UNEP/UNDP Joint Programme on Environmental Law in Africa, an article presented at the Workshop on Environmental Litigation for Africa Lawyers 18 – 29 August 1997, Kampala, Uganda.

aspects of environmental protection such as forestry, wild life and soil conservation in a sectoral manner. Furthermore, common law remedies of negligence and nuisance the law of torts and criminal law formed the legal basis for the protection of aspects of the environment. In the area of torts, trespass to person and to property was and is still, pertinent to grant damages for illegal acts done to the person or to the property of the persons.

Today negligence is still a basis for action especially in industrial accidents. Nuisance was used in actions concerning smells and noise among others, Liability for nuisance under common law has been difficult to find. Statutory law was also used to cover specific sectors such as public health, forestry and water.[20]

In 1995, the Right to a healthy environment was expressly recognized. This was followed with the enactment of National Environment Act.

The right is further provided by article *12(1) ICESCR*[21] which provides that: the State Parties to the present Covenant recognize the right of every one to the enjoyment of the highest attainable standard of physical and mental health.

Article 6 of International Covenant on Civil and Political Rights 1966[22] provides that: "every human being has the inherent right to life. This right shall be protected by law." A healthy environment translates to a right to life, because unhealthy environment is a recipe to disease which may cause death.[23]

Article 6 of the European Convention on Human Rights[24] guarantees affair and public hearing before an international tribunal for the determination of rights and duties of states: - In determination of his civil rights and obligations or of any matter against him, everyone is entitled to a fair and public hearing within a reasonable time by an

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[20] Emmanuel Kasimbazi, TH Nature, Status and Trend of Environmental Law in Uganda: A SYMPOSIUM AND COLLOQUIUM FOR LECTURERS IN ENVIRONMENTAL LAW IN AFRICAN UNIVERSITIIS NOVEMBER 2004.

[21] International Covenant on Economic, Social and Cultural Rights G. Res 22000A (xx) 21 UNGAA or Sup (No. 16) at 49 UNDOC.A/6316(1966) 993 UNT.S.3.

[22] International Covenant on Civil and Political Rights adopted on 16 Dec 1966, entered into force 23 March (1976) UNTS171 (ICCPR).

[23] Maluwa Tiyanjana, Environment and Development: An overview of Basic Problems of Environmental Law and Policy, African Journal of International and Comparative Law, vol. 1 pt:4 December 1989.

[24] *European Convention for the Protection of Human Rights and Fundamental Freedoms*, Nov. 4, 1950, Article 8.

independent and impartial tribunal established by law. These rights include environmental rights.

Equally *Article 16(5)* of the African Charter on Human and peoples Rights, Banjul[25]; provides for the right of redress on any matter affecting health, privacy, family, home or correspondence.

The American Convention on Human Rights *Article 11(3)*[26] also has provisions for the enforcement of this right. Under our domestic jurisdiction a number of instruments provide for this right.

Under our domestic jurisdiction, the national objective and directive on principles of state policy of the Constitution of Uganda 1995[27] provides for clean and safe water: - "The state shall take all measures to promote a water management system at all levels." From the above quotations, the right to a healthy environment is provided by the requirement to provide clean water.

It is therefore clear that a crisis of grave concern is affecting the human environment in Kapelebyong. This has been caused by the activities of camp occupants and cattle raids. In turn the environment has been degraded, polluted, infected with disease due to lack of sanitary facilities soil erosion is also evident. The surrounding area is continuously being destroyed.

The people around the camp live in misery the land can no longer support effective agriculture, malnutrition and infant mortality is high. In the end, this has lead to a violation of a right to a healthy environment.

1.5 Statement of the Problem

Whereas the international and national Instruments provide for a right to a healthy environment and these instruments have set standards of what is expected of our government as a duty to all its citizens.

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[25] African Charter on Human and Peoples Rights, Banjul, June, 27, 1981 Article 16(5).
[26] American Convention on Human Rights Nov. 22, 1969 Article 11(3) entered into forcefully 18, 1978.
[27] Constitution of the Republic of Uganda 1995. National Objectives and Directives on principles of state policy objectives No. XXI.

The encampment of a large number of people in Amuria District raises issues as to their effect on the surrounding environment and therefore the standards of the people surrounding the camps cannot comply with the provisions of the right to a healthy environment.

Therefore what are the consequences today that are noticeable on the environment and how have such effects impacted on the right to a healthy environment of the people of Kapelebyong. What are the long lasting effects on the environment? What is government's duty to its citizens?

Government has a duty to cater for all its citizens to protect the camp occupants, and people in the surrounding area and to guarantee the right to a healthy environment. Government's policy and the legislation in place appear to be bent towards remedial approach than directly facing the problem of Environmental damage caused within the camp and the surrounding area. To date, there is no legislation directly protecting the encamped.

Government's policy is, camps no longer exists, yet clearly a huge population remains encamped in Kapelebyong due to continued cattle rustling by the Karimojong. Government has a duty to look after its citizens rather than evade them by purporting to close the camps

Government should provide basic needs in camps, most important is food, clean water, shelter and sanitary facilities which at the moment are almost non existent. Classes, schools and health centres have now been turned into shelters infant mortality is high in the camp and surrounding areas. Re-afforestation should be encouraged. Pollution should also be checked.

Yet no studies have been carried out regarding the long time effect of internal displacement on the environment and in turn how this has affected the right to a healthy environment of the people in Amuria.

It is clear that much as the land has been degraded, the population in Kapelebyong continues to depend on it for their livelihood. Already famine outbreaks are common.

A lot of literature also points towards this problem. If this situation is not averted there is likely to be massive loss of life and the environment will continue to suffer. This in turn will aggravate the already deteriorating situation in Kapelebyong.

1.6 Research Objectives

The main objective of the study is to critique the legal regime on the right to a healthy environment in Uganda and its effectiveness in protecting the people of Kapelebyong against the activities of present and future camps.

The specific objectives are:

a) To examine the effects of insecurity on the right to a healthy environment on the people of Kapelebyong.

b) To examine the effects of encampment on the surrounding environment and how they have affected the right to a healthy environment.

c) To draw conclusions and make recommendations basing on the findings of the study.

1.7 Research Questions

What are the effects of insecurity on the Right to a healthy environment?

What are the effects of encampment on the surrounding environment?

1.8 Hypothesis

Insecurity in Kapelebyong has had adverse effect on the right of the people in that area to a healthy environment

1.9 Scope of the Study

Geographical location

The area of study covered Kapelebyong County in Amuria district, Teso Sub-region, North Eastern Uganda. The area is bordered by the following districts in the East is labour, West Alebtong, north Napak and south Soroti district.

The area is sparsely inhabited by the Iteso with a total population of 200,000[28]. The main activity is mixed subsistence farming which includes cattle keeping and crop farming.

The area has a few roads, no bus service, except for the pick ups which transport passengers and their produce. The area is generally a dry plain.

The area is not on the national electricity grid. There is no base station of any telecommunication company. The nearest being at Amuria district headquarters.

Time

The study covered a time period between 1961 to 2011 September it was hoped that within this time several issues related to the causes of encampment and its effects on the to surrounding environment.

This is also the time frame within which the cattle rusting intensified; to date if remains a problem in Kapelebyong.

The study also stressed the history of cattle rustling in Karamoja to data the changing face of cattle rustling was investigated.

Subject scope

Kapelebyong was chosen as area of study because the conditions which were investigated could easily be found in this area.

The main reason of the study is to critique the legal regime on the right to a healthy environment in Uganda and its effectiveness in protecting the people of Kapelebyong against the activities of present and future camps.

The study also examined the effects of insecurity on the right to ca healthy environment in Kapelebyong.

The study investigated the effects of encampment on the surrounding environment and how they have affected the right to a healthy environment. The

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[28] National Bureau of statistics house hold income survey 2007

effects of the 1979 and 1986 wars of liberation leading to the acquisition of modern weapons by the Karimojong are investigated.

Finally the study draws conclusions and recommendations on the right to a healthy environment, causes and effects of encampment on the surrounding environment.

1.10 Proposed Chapterisation

The study is divided into four chapters. Chapter one presents the background to the study, which includes the history of insecurity in Kapelebyong, the problematique and objectives of the study. The chapter also has research questions, hypothesis, significance, and scope of the study.

Chapter two presents the literature review which is divided into related literature to the study, theories and concepts. This chapter reviews and analyses the available literature on the study.

Chapter three presents the methodology adopted during the research. It presents the research design, the research population, sample size, the qualitative sampling procedures, the convenience and purposive sampling and reasons for their adoption. The chapter also presents the data collection techniques adopted during the study; validity of reliability is also presented by this chapter. Direct observation, data analysis, ethical issues and ends with the limitations of the study.

Chapter four presents' findings and presentation, the chapter focuses on the history of insecurity in Kapelebyong leading to the encampment of a large population in the area. On the international comparative perspective of the right to a healthy environment, I grapple with the definition of the nature and emergence of the right both in the United Nations Human Rights Instruments and regional organizations in Africa and other parts of the world. The millennium goals, I ponder as to whether these instruments protect the right to a healthy environment in Kapelebyong. The chapter also considers the so called generational rights their significance and the evolution of the right to a healthy environment at the international and national level. The researcher kept on asking himself as to whether the phrase "The right to a healthy

environment" is indeed relevant and factual to the people of Kapelebyong in Amuria District, given the conditions obtaining at the moment. The significance of an international court of environment and an African court of Human rights is also considered, as is the promotion of the function or arbitration in the matters of the right to a healthy environment.

The question of government's compliance and enforcement of the right to a healthy environment as far as the people of Amuria are concerned is investigated by the researcher.

Part two of this chapter is focused on the protection of the right to a healthy environment in Uganda with emphasis in Kapeklebyong. A critique on sanitary conditions, clean water, food, pollution, infant and adult mortality is portrayed by the researcher.

Incidents of the protection of the environment within Uganda's system of Human rights as provided by the 1995 Constitution, National Environment Act and other laws are critiqued. It examines the institutional frame work such as the National Environment Management Authority and considers steps being taken to manage the environment and enforce compliance. This part of the chapter also examines the attempts made to realize this right by the encamped and those surrounding them. The effects of encampment on the surrounding environment will be highlighted. The researcher will also examine how courts in Uganda have reacted to the protection of this right. The relationship between the right to a healthy environment and the precautionary, public trust and polluter pays principle is also featured.

Finally chapter five presents conclusions, assessment and recommendations on the protection of the right to a healthy environment in Kapelebyong, Amuria, Uganda and the surrounding area. The researcher recommends steps that can be taken to reverse the trends in the deteriorating environment.

1.11 Significance of the Study

According to Inter Agency Assessment Report on Karimojong induced camps in Katakwi District, which used to be the mother district of Kapelebyong it states that the

people in Kapelebyong who are not yet in the camp live in constant fear and rarely sleep in their houses that they sleep outside. This is very serious a situation.

The same report shows that the health situation is appalling the health facilities are reported dysfunctional and lack drugs and staff. It therefore requires government's response.

HIV/AIDS is rampant, the victims face stigma and therefore require counseling the population in the area are ignorant of its modes of transmission. Malaria remains rampant accounting for the largest infant mortality.

Food is inadequate yet the camp occupants are unable to engage in agriculture due to insecurity.

Most livestock has been lost to the cattle rustlers this therefore requires governments intervention. There has also been a change in the climate which has led to poor yields.

The *ICESCR*, the *UDHR*, the *1995 Constitution* of the Republic of Uganda provide for the protection and upholding of a clean environment. The National Environment Act of 1995 and The Public Health Act all address the issue of the right to a healthy environment. Insecurity caused by cattle raids has prevailed here for a long time leading to the creation of the camps, so long as the raids continue, the camps will stay put. The question is, do the people surrounding the camp enjoy the right to a healthy environment.

The environment surrounding the camp has suffered from de-aforestation, pollution, erosion, disease and climate change leading to the worsening of the conditions of the encamped and the population surrounding the camp.

Uganda is therefore obliged under international law and its own municipal law, to ensure the enforcement of the right to a healthy environment.

The study will not only add and strengthen existing knowledge on the subject but will encourage government to put in place the facilities that will address these inadequacies. The study will also benefit the NGOs who are involved in humanitarian activities, by awakening them on the conditions in the camps. Camp administrators will also benefit

from the knowledge generated and so will the policy makers. Those in Academia will also benefit from the knowledge that will be added to the earlier research.

The study will also benefit the environment surrounding the camp, as this will spark off a new awareness of the dangers of destroying the environment, in turn this will save it from further destruction hence alleviating the suffering of the people surrounding the camp, and thus guaranteeing their right to a healthy environment.

CHAPTER TWO

Literature Review

2.1 Introduction

The right to a healthy environment is still considered an emerging right in that it has not yet become fully engrossed in international law, it is however provided under Uganda's Constitution. There has been some research done on the subject. Most of the literature available however has mainly concerned itself with ascertaining whether it is a generational right or a derived right or a fundamental right or a collective right[1].

Secondly not much has been done by scholars on the environment, the availability of options to prevent degradation of the environment, the provision of more finances or technology transfers to Uganda to help the camps would be timely.

Thirdly, no research has been done on the effect of encampment on the surrounding environment.

Fourthly, some literature has assumed high standards for a healthy environment without taking into account the level of development of a country such as Uganda.

2.2 Related Literature

The Karimojong have raided cattle from their neighbors since the 1940's because they believe that all the cows in this world belong to them. [2]

In 1979, Amin attacked parts of Northern Tanzania. This sparked up a war which later came to be called the 1979 Liberation War. Idi Amin Dada was driven away from power. The soldiers at Moroto Army barracks fled leaving behind large quantities of arms which the Karimojong got hold of and began to terrorize the neighboring districts.[3]

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[1] R. J. Dufuy (ed), The Right to health as a Human Right, Alphen Ann. Den Rijn, 1979; 340.

[2] Interagency Assessment Mission Report on Karimojong Induced Camps in Katakwi District, http://www.google.comdoc+health+conditions+ofcamps+in+test+and+Karamoja+attacks. Pg. 10.

[3] Dr. Aruoho, The Tragedy of Teso Conference Paper presented for the National Conference on peace in Karamoja and its neighbours. Makerere University Main Hall 18-22 July, 1994.

Again in 1986, Tito Okello Luntwa recruited the Karimojong Youth to counter the NRA advance. The Karimojong simply fled with the arms back to Karamoja and the raids intensified along the Teso borders and other neighbouring districts.[4]

According to the Daily Monitor Newspaper[5] of 2nd May 2011, Karimojong warriors crossed into Kapelebyong, killed four people and went away with seventeen cows. The warriors were intercepted in Ongongoja village where a fire fight ensued with Anti Stock Track Unit [ASTU] that the attack led to people fleeing in three parishes to Kapelebyong county headquarters.

The report from the above newspaper shows that the Karamojong incursions are continuing in Kapelebyong. This report is relevant to our study because it shows that the camps remain relevant in spite of government policy that the camps are now closed, the (National policy for internally Displaced Persons 2009) declares the camps undesirable.

According to the New Vision Newspaper[6] of 4th April 2011, Father Oberu Justice presided over the burial of two boys who were killed by Karimojong raiders. The priest lambasted the government for failing to protect the local inhabitants of Obalanga Kapelebyong. According to the story this led to the closure of the schools in the locality. The above report is relevant to our study because it highlights the insecurity in Kapelebyong.

According to Etop Newspaper[7] it reports that between January 2011 to 3rd August 2011 at least 21 people have lost their livestock to the Karimojong in Amuria that the total number of livestock lost by 3rd of August 2011 was 82. The report above shows that insecurity remains problematic in Amuria District, hence the continued relevance of the IDP camps.

According to Etop Newspaper[8] of 14th July 2011 reports that a community development assistant was shot dead by the Karimojong and his two bulls stolen. The

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[4] Supra note 2 pg. 3.
[5] Obore, 'Karamojong warriors kill four' *Monitor Newspaper* (2nd May 2011), p.7.
[6] Ojore Godfrey, 'Two Boys Killed in Karamojong Raid', *New Vision Newspaper* (4th April 2011). p.6.
[7] Emmanuel Alomu, 'Cattle Lost to Raiders', *Etop Newspaper* (3rd August 2011), p.2.
[8] Atol Henry, '*Etop Newspaper* (14/7/2011), p.3.

above report is relevant to our study because it shows the scale of insecurity muted by the Karimojong on the people of Kapelebyong.

According to Ali Mazrui[9] he argues that culture provides theories, lenses of perception and cognition. Thus how people view the world is greatly conditioned by one or more cultural paradigm to which they have been exposed. Therefore using the above analogy the Karimojong's Ideology is rooted in cattle, the cattle it would seem provide lenses of perception and cognition to them this piece of work is relevant to our research because it links the Karimajongo thinking to cows.

According to A Dixon[10] he espouses the theory that cattle is of great significance to the economy of the cattle keeping regions and the country at large. He states that it is a marketable commodity in form of meat, milk, hides and skins. However, the depopulation of cattle as a result of rustling in the east and north east Uganda, has had a great socio-economic impact on the security of life and property of the people of the region. This work is relevant to our study because it shows the level of destruction the Karimojong have caused to the Iteso of Kapelebyong.

According to the report on the Development and Harmonization of laws relating to wildlife management December 2005.[11] It focuses on a legal and policy review and provides recommendation as a contribution to the overall wildlife management in East Africa, country reports of Kenya, Tanzania and Uganda on the status of legal enactments and their enforcement are provided. The report does not particularly focus on the public trust doctrine but provides policies and legislation relating to wildlife which is particularly relevant in Uganda's context and therefore the Uganda's country report will be the researcher's focus. The other East African countries will merely enlighten the researcher on the legislation in East Africa towards wildlife resources. There is also mention of the implementation of international and regional treaties, conventions and protocols relating to wildlife in Uganda. This might not be related to the public trust

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[9] Mazrui A Ali, Cultural Forces in the World Politics. Heinemann, Kenya Nairobi P.7.
[10] John A. Dixon et al (1989): The Economics of Dry Land Management. Earth Scans publications LTD, 3 End sleigh street, London WCIHODD.
[11] Environmental Law and Institutions in Africa Volume 6 (December 1999).

doctrine but the researcher of the current study wishes to look at international law on conservation because conservation is a global concern. Wild life is also a major foreign exchange earner for Uganda which, dollars are used to better the standard of life in Uganda.

According to Godber W. Tumushabe;[12] "Assault on the public trust' Natural Resources Ownership and Conflicts in East Africa July 1999." This paper applies in this research mostly because besides giving the Evolution of the doctrine the author applies it to East Africa. The paper also reveals the resource expropriation under colonial administration and how the legal instrument enacted to regulate the use of Natural resources at the time did not define the nature of the relationship between the colonial administration and the resource dependent communities. The colonial legacy and the case of trust lands in neigbouring Kenya, the emerging trends in law practice in Uganda. The present research will pick a lot of history of how the public trust doctrine has been struggling throughout Uganda's history from pre-colonial time up today. Public Trust Doctrine is important because all the natural resources are vested in the state.

According to Stephen[13] writing on the application of the public trust doctrine states that, legal cases challenge on wildlife ballot initiatives that ban the use of leg hold traps in Alaska in the US as a whole. Under the basic legal theory that government has a non-derogable duty to protect, manage and conserve renewable wildlife resources for all the people that cannot be surrendered to a determination of a popular vote. What is important to the present research is the application of the Doctrine in the protection of animal wildlife through the ban of leg-traps. Otherwise it's too narrow on application in Uganda where natural resources both flora and fauna, rivers, Lakes must be protected through the implementation of the Public Trust Doctrine for present and future generations for they are under threat of complete extinction and destruction.

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[12] Godber W. Tumushabe, Conflicts over Natural Resources July 1999, pg. 3.
[13] Stephen NALA Public Trust Doctrine; Legal Cases Challenge Wildlife Ballot Initiative, htm.info@spur.org, www.spur.org.

According to Michael Wilmer[14] in his article, The Public Trust Doctrine, whether it will be necessary to have the Public Trust Doctrine applied to San Francisco's water front as some of other cities in the US have done he further examines the evolution of the Public Trust Doctrine from the Roman times. This article gives the researcher knowledge on how the Public Trust Doctrine is presently being used in developed countries to preserve the natural resources that are dear to them. This article is relevant to our study because here too, the public trust doctrine is used to preserve natural resources such as forests and water bodies which are trusted in the state for the future generation.

According to John Ntambirweki[15], This is a report on Environmental Legislation in Uganda, the author provides for the researcher a historical overview on legislation, in the field of environment in Uganda from the 1960's. He also elaborates on the role of customary law in the conservation of the Environment through the integration of awareness into communities through accepted beliefs and practices. The report reviews slightly conventions that Uganda has ratified in the field of environment. Therefore this report is important to the researcher on the issue of environmental legislation in Uganda, only the historical situation of it is of essence to the present study because it was written in 1992 and this may not be of much importance to the implementation of the Public Trust Doctrine as law for it was for the first time included in our Constitution in 1995.

According to J. R. Kamugisha[16]: Management of Natural Resources and Environment in Uganda. The author gives the researcher an idea of the Environment and society, a detailed geography of Uganda through map work. The most important to the researcher here is the Evolution of policy from colonial era up to the 1970's and the Evolution of Legislation from 1900 in the field of Wildlife, Forestry and Land Resources Legislation and policy up to 2007 but from the researcher's point of view a historical

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[14] Michael Wilmer under the Auspices of the Natural Environment Action Plan of the Republic of Uganda, 1992 published by SIDA's Regional Soil Conservation Unit [RSCU] 1993.
[15] John Ntambirweki review of Existing Legislation in the Field of Environment and Framework for Environmental Legislation.
[16] J. R. Kamugisha: Management of Natural Resources and Environment in Uganda, 2007.

overview will merely give the study an idea of how legislation in environment has been since before colonial times. This research is relevant to our study because the paper was written after the Constitution was promulgated.

According to John Ntambirweki[17]: Law and Sustainable Industrial Development
The importance of the study to the preset research is the concept of sustainable development particularly in industrial development, the development that meets the needs of the present without compromising the ability of future generations to meet their own needs. The application of the Public Trust Doctrine in natural resource management will lead to sustainable development. Although there is no direct discussion of the issue of public trust in this article it is important to the study to keep in mind the safety of the natural resources for present and future generations. This study is relevant to this paper because in Kapelebyong, the community in the camp has been cutting trees without bothering about the future generation.

According to Strategic Resources Planning in Uganda Vol. VII: Land Tenure Systems and Environmental Law.[18] Of importance to the researcher is the Historical Development of Land Tenure Systems in Uganda pre-colonial and during the colonial period, post independent Reforms, the land Tenure Systems at the time of the publication of this article and its implications of Resource Conservation and the recommendations to land tenure systems through protection of swamps, wetlands, and trees. This article is relevant to our study because it shows the importance of resource conservation for the future generations.

According to the Compendium of Judicial Decisions in matters related to Environment Vol. 1[19]
The compendium has themes that are recurrent in environmental litigation of importance to the researcher's study are decisions in the issues of *locus standi* i.e. the ability for one to sue on behalf of the succeeding generations; the role and procedure

[17] John Ntambirweki; Senior Lecturer, faculty of Law, Makerere university.
[18] United Nations Environment Programme [UNEP].
[19] UNEP/UNDP/Dutch Joint Project on Environmental Law and Institutions in Africa, Vol. 1 December 1998.

for, environmental impact assessment, the choice of forum for filling a suit but most applicable to the study are decisions on the Public Trust Doctrine as a mechanism for environmental management in East Africa. Other decisions are on the precautionary principle; the polluter pays principle i.e the concept of liability for environmental damage, the concept of a human right to environment. These may not be directly connected with the issue of public trust but they will enhance the researcher's study for the sustainable management of Uganda's Natural Resources.

According to the Uganda Case study: The genesis of Environment Information Management in Uganda:[20] This report shows that the Government of Uganda recognized and institutionalized the concept of access to information well ahead of the Rio summit of 1992. Government developed an Environment Information Centre. The plan in Kampala in particular developed the information network to inform on the outbreaks of epidemics; that when there were floods in the Teso and Butaleja areas, the system delivered the information on the outbreaks of Cholera and dysentery in Amuria. The Red Cross responded by providing mobile toilets and drinking water.
The study is relevant to our research because it talks of cholera out breaks due to the pollution of water in Amuria. Our study is about the consequences of encampment in Amuria which include disease outbreaks.

According to Kaggwa Ronald:[21] Mainstreaming Environmental Concerns into the policies, plans and programmes of the Uganda Police force.
The paper talks of Mainstreaming Environmental issues in the police and it includes incorporating the environmental concerns in the planning process. It adds that the police must understand that environment means public safety. It includes enforcing environmental criminal law, detecting, investigating and prosecuting environmental crimes which include noise, pollution, water adulteration, unlawful tree felling, setting fire on grass etc; that, environmental offenders should be arrested like any other criminals. This paper is related to our study because it talks of enforcement of

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[20] *The- Uganda- Case- Study- Genesis- of- Environment- Information- Management- in- Uganda.* http://www.grinda.no/publications/the-Uganda-case-study/page-3577.aspx.
[21] Kaggwa Ronald Green Watch.or.ug/.../mainstreaming-environemtnal-cocnerns-into-the-police.pdf.

environmental criminal law, which enforcement is seriously lacking in Amuria, Kapelebyong

2.3 Theories

According to J. F. Garner[22] on his part discusses the common law governing prevention of air and water pollution in England and Wales and the limited right to the individual. Common Law is applicable in governing prevention of air and water pollution in England and Wales and the limited right to the individual. Common law is also applicable in Uganda by virtue of the Judicature Act 1996. It is relevant to our research because pollution is equally common in Uganda and indeed in Amuria camps where river water is constantly polluted by human waste. He espouses the limited rights of the individual in interfering with the environment. He advances the theory that, once the environment is interfered with serious health problems ensue. He gives the example of pollution in Liverpool, which has caused serious corrosion of the water pipes. His work is relevant to our situation because here too lead poisoning is rampant, because boreholes use leaded pipes which are common in Kapelebyong camp.

According to Brown Weiss[23] she advances the theory of intergenerational equity whose principle is to conserve options for the future use of resources, including their quality and that of the natural environment.[24] Her work is relevant to our research because in the camps, the surrounding environment is being destroyed by the camp occupants. However, this theory fails to address the question of how benefits and burdens should be shared within each generation and how we should value the environment for the purpose of determining whether the future generation will be worse off or not.[25]

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[22] J. F. Garner, 'Prevention of Air and Water Pollution in England and Wales and the Right of the Individual, in Jolanta Nowak, (ed), Environmental Law International and Comparative Aspects; A Symposium, The British Institute of International and Comparative law, London, 1979, p.151.
[23]Edith Brown Weiss, *In Fairness to Future Generation* Debbs Fery, N. Y. 1989.
[24] Ibid p. 191.
[25] Ibid p. 190 – 213.

According to Benjamin Richard[26] he looked at Wetlands Management in Uganda and emphasized the role of law in the Conservation of Wetlands Resources. His work is relevant to the paper because it links development to the right to a healthy environment for example he talks about water resources and compares usage of wetlands in Australia and Uganda and concludes that here the wetlands are used to grow cocoa yams yet swamps here are polluted with lead. Equally in Kapelebyong, all swamps are used for growing rice which rice is sprayed with herbicides and pesticides these are the very swamps where the campees draw their water for domestic use and may be polluted. This also in turn infects those who consume the cocoa yams. Hence I advocate for a stronger legislation. This work is relevant to our research because here too polluted wetlands are used for the growing of Cocoa, yams and Rice.

According to P. S. Sangal[27] he goes further and names diseases as one of the consequences of human kind's interference with the environment. He talks of the frequent outbreaks of cholera in Pujani state as a result of poor hygiene resulting from overcrowding and the failure of the local health workers to enforce the urban laws. This is the same problem we have in Kapelebyong camp. He discusses the importance of human related skin diseases basically due to weak law enforcement machinery and concludes that there is need for enforcement of the right to a clean environment enshrined in the Indian Constitution. Both Sangal and Mathur highlight the response of Indian Courts to the need to preserve a clean or healthy environment. This work is relevant to our study because the key issue which will have been envisaged includes hygiene in the camps including ascertaining whether the health facilities are adequate.

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[26] Benjamin J. Richardson; Environmental Management in Uganda, the Importance of Property Law and Local Government Wetlands Conservation: - Journal of African Law Autumn (1993) Vol. 37 No. 2 P. 109 – 143.

[27] P. S. Sangal, The Right to Good Environment as a Fundamental Right in Musharraff S. (ed), Legal Aspect of Environmental Pollution and its Management, CBS (publishers & Distributors) 1st Edn, 1992 at 89.

According to Amando S. Tolention[28] argues that for the indigenous people, the right to a healthy environment means the human right to a healthy environment or it could be regarded as the means to combat environmental deterioration as far as it threatens human life. Amando's work is relevant to our research because it touches on the right to healthy environment. In Uganda, a living can only be earned by healthy people. This equally applies to the people of Kapelebyong camp. Our research has one of its objectives as an investigation to determine the level of the existence of that right. Therefore Amando's work is helpful in determining the above objective. He is also a writer in a developing world of which Uganda is one.

According to John Ntambirweki[29] discusses the role of developing countries in the evolution of International Environmental Law, especially in the area of generational equity. In his consultancy report, he discussed the instruments of enforcement of Environmental Legislation in Zambia[30]. The principles are however applicable to this study so far no literature analyses the right to a healthy environment in Uganda. Most publications deal with aspects of the right to health only.

According to the United Nations Environment Programme – UNEP (2000)[31].There was unanimous agreement that the IDPs have been very destructive to the environment in so far as damage to the forests cover, pollution and social unrest are concerned. This brain storming is relevant to our study because it touches the very core of our study which is the effect of the encampment on the surrounding environment.

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[28] Amando S. Tolentio, Good Governance through Popular participation in Sustainable Development in Konrad, Denters Paul J. I. M., De Waart (eds) Sustainable Development and Good Governance, Martinus Publishers, Dordreclan 1995 at 424.

[29] John Ntambirweki, The Developing Countries in the evolution of an International Law Hasting international and Comparative Report UNEP 1994.

[30] John Ntambirweki, Enforcement of Environmental Legislation in Zambia, Assessment and Proposal to improve the current system, Consultancy Report UNEP 1994.

[31] United Nations Environment programme UNEP (2000) Report of the Brain storming on Environmental impact of refugee settlement and flaws in Africa, UN compound, Gigiri, Nairobi, Kenya, 14-15 September.

2.4 Concepts

According to L. N. Mathur[32] notes the interdependence of society and the need to protect the present and future generations from harmful consequences of human kind's technological and economic activity, which causes gradual cancer. Mathur's work is relevant to our study because he touches on the issue of water pollution by industrial waste or other agents. Our study is about a right to a healthy environment, which is now being threatened by human feaces which are deposited in the bushes and find their way into rivers thus transmitting diseases for example typhoid hence interfering with a right to a healthy environment.

According to Patricia W. Birnie[33] she presents a fairly realistic approach to the protection of the global environment, which she maintains depends on the interplay of environmental groups, which creates additional pressure for compliance by government with their international obligations. She insists that environmental issues must be viewed from international perspective because no single country has capacity to prevent pollution from a neighbouring state and concludes that the common wealth courts and in particular Singapore courts have responded to the challenge with award of punitive damages. Her work is relevant to our research in that first we are part of the International community and we are also capable of transmitting pollution via for example river Nile on which some industries are built on its banks for instance Nyanza Textile industry. This river flows through Lake Kyoga which has polluted tributaries flowing to it from Amuria District were the camps are allocated.

According to Tolba[34] he addresses the issue of transfer of technology and the financial mechanism designed to benefit developing countries. He rightly argues that in search for proper funding mechanism. There must be a free and above board partnership between developed and developing countries. He advocates for user fees as

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[32] L. N. Mathur, supra note 08.
[33] Patricia W. Birnie Allan E. Bolyle, *International Law and the Environment*. Clarendon Press, Oxford, 1992 at 470.
[34] M. Tolba, Transfer of Technology and the Financing of Global Environmental problems. The roles of user's fees, 'UNEP/Ozi Fin ½ January UEP, APPEALL: Awareness and Preparedness for Emergencies at Local Level: A process for responding to technical Accidents, UN, SER, NO. 88 111, D, 3 (1996).

one of the instruments that may be used for global fundraising. His work is relevant to the research because he addresses the issues of funding which is chronically problematic in Uganda, where the budget is 29% donor supported. His idea of user fees is therefore relevant to our study. Transfer of technology is particularly connected with the right to development, which would be particularly important in the camp of Kapelebyong in providing simple solutions for the provisions of clean water in the camps and hence linked to the right to a healthy environment.

According to Robert A. Wabinoha[35], he considers the elements of public participation as a precondition for sustainable development in Uganda. His work is important to our research because it brings in the element of legitimacy of any health programme due to public participation. Therefore, the enforcement of environmental law becomes easy. Kapelebyong is equally in the same situation.

According to Lynch Maureen[36] explains the environmental damage caused by the collection of cooking fuel by refugees she gives a detailed explanation of the damage caused by the refugees to the surrounding environment to the camps and concludes that this results in a serious environmental damage to the refugee camps if not checked. Her work is relevant to our study because it discusses the effect of collecting fire wood around the camps; our study is about the effects of encampment on the surrounding environment.

According to Jacobsen, Karen[37] Presents the effect of refugee patterns of settlement on the environment he talks of damage caused by the refugees to the environment and asserts that this often leads to friction between the refugees and local inhabitants. He points out the aspects of pollution caused by refugees.

This study is relevant to our research because it talks about refugee pollution. Our study is also about environmental damage surrounding the camp.

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[35] Robert Alex Wabinoha, Popular Participation; A Precondition for Sustainable Development Planning the Experience in Uganda in Konrad Ginther et al (eds) Supra Note 14 p. 230-242.
[36] Lynch Maureen "Reducing environmental damage caused by the collection of cooking fuel by Refugees" Refugee 21 (1): 18-27 http://www.forcedmigration.Org/whatisfm.htm.
[37] Jacobsen, Karen (1997) Refugee Environmental Impact "the effect of patterns of settlement" Journal of refugee studies 10 (1): 19-36.

According to Article on Impact of Refugees and internally displaced persons on Ecosystem integrity Report for the United Nations Environment Programme 2007.[38] The report states that there are approximately 9 million and nearly 2 million refugees in the great Lakes Region. This constitutes more than half of Africa's internally displaced population and the highest in the world. The report provides that "it is widely recognized that civil strife, the internal displacement of people and economic disruptions are the main reasons for environmental degradation there is evidence that where there is high-intensity conflict and large numbers of refugees and environmental pressures arise making the situation serious" The report further states that the destruction of the environment, along with the demolition of democratic values cease, hence significantly affecting the food security of the camps. This report is very relevant to our study because it shows the effect of camps to the surrounding environment and how their very activities in turn affect them.

The recognition of the right to a healthy environment: The concern for environmental protection in international human rights instruments.[39] The paper states that a point of contact between human rights protection and environmental protection can in our day be detected in the concern for environmental protection in International Human Rights instruments and, in the concern for human rights protection in the international environmental law instruments. That the former can be discerned in human rights instruments at both regional and global levels. This paper is related to our study because it links basic human rights to environmental law. The paper also defines a healthy environment as a human right. The central point of discussion in this paper is that a healthy environment is a human right.

According to Richard J Harvey, IADL[40], The Human Rights to a Healthy Environment (Beyond the Court room) He talks about the WTO's dispute settlement procedure from environmental point of view as an improvement on the GATT. The

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[38] www.unep.org/.....draft-summary-GLR-refugees -IDPs Ocosyst-SK-30 Oct 2007 pdf.
[39] Recognition of the right to a healthy environment http://archive.unu.edu/unupress/unupbook/uu25ee/uu25eeoqr.html also available at http://umu.edu
[40] Richard J. Harvey; The Human Right to a healthy Environment. www.iadllaw.org/.../richard%20Harvey%20THE%20HUMAN%20RIGHT%20TO%20A.

paper talks of WTO's extra territorial character which encompasses all member countries. The paper discusses environment from the World Trade Point of View. This paper is relevant to our study because this area of Kapelebyong grows cotton, ground nuts and rears cattle whose products are hides. These products end up being exported. Disease could be exported. Therefore, this study is relevant to our work. In so far as it links International trade to Environment in Kapelebyong.

Global Warming[41] The paper demonstrates the concept of global warming by showing that the evidence is plainly seen temperatures have risen by 0.74^0 leading to draughts and famine in Africa. The causes being de-aforestation, clearing land for farming and insecurity. The above paper is relevant to our study because it talks of destruction of forest cover which leads to draughts being frequent and in turn the prevalence of famine which famine is common in Kapelebyong.

[41] Global warming http://en.wikipedia.org/wiki/global-warming.

CHAPTER THREE
METHODOLOGY

3.1 Research Design

Mixed model research was conducted. This included both qualitative, quantitative methods and library research. The researcher visited Makerere University Library.

Uganda Christian University Library, Advocates Coalition for development and Environment (ACODE), National Environment Management Authority Library, Kampala International University and Internet.

3.2 Research Population

Odiya[1] defines a study population as the collection of all the individual units or respondents to whom the results of a survey are to be generalized. Frank, M. Kakinda Mbaga[2] states that the elements to be considered in a population sample are:

a) Elements – these are individuals or units about or from whom information is collected.

b) Parameter – is any characteristic of a population which is measurable or observable.

c) Statistics – is any characteristics of a sample.

The target population the researcher identified was the population of Kapelebyong. The study was conducted on a population of 30 people and those in the surrounding area were also studied and so were technical persons. The encamped and those in the surrounding were research subejcts[3] because they continue to live under deplorable conditions. 20 encamped and those in the surrounding area were sampled. 10 technical persons were also sampled as indicated by table 1, Appendix VI.

The technical persons were interviewed with the help of the interview guide. The technical persons included LC Chairmen, Social Workers, NGO Workers, Clinical officers,

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[1] James Nicholas Odiya, *Research Proposals and Reports,* 1st edition, Makerere University Printery, Kampala, 2009, pg. 154.
[2] Frank M. Kakinda Mbaga, *Introduction to Social Research,* 2000, Kampala pg. 8.
[3] Ibid pg. 8.

Agricultural Officers and Policemen. The technical persons were chosen because of their knowledge about the subject of the interview. Camp and those in the surrounding area were interview to determine whenever the Karimojong rustlers forced them into the camp and whether they have enough amenities.

3.3 Sample Size

According to Burns[4] he called it as any part of population, while Dooley restricts it to the portion of the population selected for study. A correlation research should have a minimum of 30 – 50 participants.[5]

Mbonga[6] asserts that the reason for sampling is because data is collected from samples and the research findings are generalized. The larger the sample selected the smaller are the sampling errors. However, sample size and sampling errors are not linearly related. After preparing the sampling frame, the researcher then decided the sample size, being the number of elements in the sample, the sample size was determined as 30 interviewees.

3.4 Sampling Techniques

The qualitative procedure was adopted on all the respondents. The interview guide was chosen because an interview guide allowed answers to be given straight away to the researcher. It also allowed close and greater flexible interaction between the researcher and the respondents allowing open ended answers from the respondents. This qualitative study will employ an interview guide seeking information on:

- The effects of insecurity on the right to a healthy environment.
- The effects of encampment on the right to a healthy environment on the people of Kapelebyong.

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[4] Supra note 1 Pg. 156.
[5] Ibid Supra Note 1 Pg. 157.
[6] Supra note 2 pg. 11.

- How best conclusions and recommendations can be drawn to improve the situation in order to attain the right to a healthy environment in Kapelebyong.

Convenience sampling

This is sometimes referred to as accidental sampling. The individual; element is selected because of ease of reaching him, her or it, being close at hand, or because of convenience to the researcher[7]. Sometimes because of availability of individuals at the time of sampling, its disadvantages are that it may not lead to the selection of participants who are typical of the population.

This method was adopted due to the conditions obtaining in camp and the surrounding area because the population is constantly on the move doing petty jobs in order to survive.

The population is pre-occupied with survival than sparing time to answer questions. Interview guide was first pre tested. Then I moved from one place to another in the camp and the surrounding area looking for respondents. In each place I had to get permission from the LCs who often were unavailable. I had to keep on begging and explaining my self to the population and was viewed with suspicion. I was able to interview 20 people in the camp and the surrounding.

Purposive Sampling

This is also known as judgmental sampling, the participants are sampled on the basis of their typically or because they are satisfactory to the research needs.[8] This was used to sample interviews of Health Workers, LCs, Agricultural Officers, NGOs working in the camp and surrounding area and police Officers.

The above persons were sampled on the basis of the knowledge that they have the information which was sought by the researcher. These being experts, they provided information on the state of security in the area and the right to a healthy environment.

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[7] Mbaga Kakinda supra note 2 p.11.
[8] Odiya, supra note 1 pg. 161.

I first pretested the instrument, then hit the road looking for these persons. I was informed that it was easy to get them early in the morning or in drinking joints during the afternoons on meeting each I had to seek individual permission, they proved to be very cooperative unlike the camp occupants. After the interviews I asked them to sign the interview guides. They were 10 in number.

3.5 Data Collection Techniques

Data for historical research was collected using qualitative techniques. Here too we are concerned with the historical aspect of cattle rustling and whether the inhabitants of Kapelebyong have a healthy environment. The researcher adopted the phenomenological research techniques which are employed in qualitative research. This kind of study requires more in depth enquiry into the daily life and activities of a group of people[9] interactive field work was also used for collecting data. The research engaged in informal and formal conversations with participants and observed how people were experiencing insecurity and a denial of a right to a healthy environment. Observation was deemed good for the collection of the information, and for studying behaviour[10] as it occurred in Kapelebyong.

The researcher also conducted Library research in Makerere, Uganda Christian University, Kampala International Universities, National Environment Management Library Advocates Coalition for Defence of Environment (ACODE) and Ministry of Health Resource Centre.

Validity of Reliability

Triangulation, method was used by the researcher to test reliability of the instruments by: checking the consistency of findings generated by instruments. [11] It also enhanced validity by: checking the problem of participants giving false answers and

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[9] Leedy, P. D. *Practical Research: Planning and Design,* 6th edition New Jersey: Merrill, Prentice Hall (197), pg. 10.
[10] Cohen, L. and Manion, L. *Research Methods in Education*, 4th edition, London, NY: Routledge (1994) pg. 47.
[11] Burns, R. B. *Introduction to Research Methods*, 3rd Edn South Melbourne; Longman pg. 57.

it improved the credibility of the data by checking on lies, omitted information and so on. [12]

Direct Observation

The researcher conducted direct observation in the camp and in the surrounding area of Kapelebyong County on the following: sanitary facilities, shelters, water points, effects of cattle raids on the people and on the surrounding environment and saw for himself the appauling conditions in Kapelebyong.

3.6 Data analysis

The processing of data started with the sorting and coding of data. According to Amin[13] coding is a process of assigning numbers symbols, or words to classify responses into a limited number of categories that are appropriate to the research problem, question or hypothesis. Each category was defined in terms of only one attribute. The researcher was aware that qualitative data required categorizing, relating and evaluation of data in order to arrive at specific conclusions. Presentation of data analysis was done according to Appendix V.

3.7 Ethical Issues

Permission to carry out the research was sought from the concerned persons
The research was done with utmost respect.
The information generated was treated with confidentiality.
The researcher acknowledged all sources of data.

3.8 Limitations

The population was politically sensitive and may not have given honest answers due to fear of persecution by government functionaries.

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[12] Ibid.
[13] Amin, M. E. *Social Science Research: Conceptions, Methodology and Analysis.* Kampala: Makerere University (2005) pg. 9.

Another limitation was language barrier. The questions were in English. The local population was not knowledgeable in English. In today's Uganda the public expected money in exchange for any information. The camp occupants constituted my research process as a means of making money. When I failed to give them money in some cases led to withholding information.

The population in camps was traumatized. This led in some cases to reserved answers since their main concerns were mainly security based issues and general survival.

CHAPTER FOUR

4.0 PRESENTATION OF FINDINGS, INTERPRETATION AND DISCUSSION OF FINDINGS

4.1 Introduction

Cattle rustling has been a source of unrest and insecurity in Teso as a whole. In 1987, the Karimojong warriors overran the whole of Teso and caused untold suffering to the people.[1] The cattle were rustled, the population was left desperate, food crops were destroyed and many people were killed. The grass thatched huts were burnt and this led to a brief insurgency in the Teso Region which further aggravated the situation.[2] Notwithstanding the provisions of the Constitution of the Republic of Uganda under *Article 22*[3] which provides no person shall intentionally be deprived of life. Karimojong apparently believe that it is not legal for cows to belong to any other tribe in Uganda and this mainly concerns the short horned cattle which characterize stock holds in the Teso sub region. It is on such ideology that the whole of cattle rustling rests, and that seems to ran the rustling activity in the region.[4]

Cattle rustling started back in the 1960s among the Karimojong themselves, where during scarcity of water for their animals. The Karimojong would cross to the neighboring districts and water their cattle.[5]

According to Aruo in his book, the Karimojong culture, he gives an insight on the origin of cattle rustling, in Karamoja, as the struggle for water.

> *"At the end of the day due to intense struggle for water some animals strayed to other persons kraals where upon the owner of such a kraal was in most cases reluctant to hand back the strayed animals. In the event of such denial, the purported owner organized a raid to recover his strayed*

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[1] Interagency assessment Mission Report on Karamojong Induced Camps Katakwi District, 15th June 2005. http://www.internal-dispalcement.org/8025708F004CE90B/(http.documents)/4BC9AF84B 581 at pg.12.

[2] Oxfarm Karamojong Conflict Study: A Report Executive Summary 2005, pg.6.

[3] Constitution of the Republic of Uganda 1995.

[4] Kamuron Peter; Internal Borders and security in Karamoja and Neighbouring District. Conference Paper for the National Conference on Peace and sustainable Development for Karamoja and Neighbouring Districts. Makerere University main Hall 18 – 12 July, 2009, pg.4.

[5] Ibid.

cattle. In the process of the raid, he did not only recover his strayed animals, but also grabbed one or more of the aggressors. This became continuous practice which eventually spread beyond the Karimojong clan holds and over Karamoja boundaries to the neighbouring districts. The young learnt from the elders thus the evolution of the culture".[6]

Initially, rudimentary weapons like clubs and sticks were used in cattle raids, later with time, *Ikoyoi* (arrows and bows). However, after Idi Amin's overthrow and after the soldiers fled living behind large quantities of weapons in Moroto Army barracks the Karimojong seized the abandoned weapons.[7]

Similarly during the Tito Okello and Bazilio Okello's Military Junta, the Karimojong were recruited to fight the National Resistance Army, then in the bust at Kagera on being defeated, the warriors fled back home with the guns they had acquired. It was at that moment the Karimojong gained momentum to raid neighbouring areas and insecurity became unbearable.[8] History has it that the Iteso and Lango of Uganda are related to the Karimojong. However, the Karimojong and their neighbors are in persistent wrangles. From 1958 to 1961, two hundred and ninety seven raids were mounted by the Karimojong against the Iteso on allegations that their grazing areas had been given away to Iteso.[9]

In 1986, when the National Resistance Movement came into power, the army found resistance in the North which attracted more of their attention, in effect leaving no security personnel to police "the Karimojong borders and its neighbors. The warriors then terrorized their neighbors who were not armed. By 1987, the Kiyoga region had been thoroughly depopulated of livestock and the people inflicted with misery todate they have not recovered,[10] *Article 22 and 26*[11] of the Constitution of Uganda provides for protection of the right to life and right to property respectively. These were violated by the worriers.

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[6] Aruo Anthony. *The Karimojong Culture*, Pelican Publishers, Kampala (1967) p.12.
[7] Supra note 2 at p.4.
[8] Ibid.
[9] Supra note 4 P.4.
[10] Ibid.
[11] Constitution of the Republic of Uganda 1995 Article 22.

4.2 The Impact of Cattle rustling on the life of the People of Kapelebyong

The Karimojong are basically nomadic pastoralists. They also engage in very small subsistence agriculture. However, most of Karamoja save for areas bordering Bugishu, Acholi, Lango, Sebei and Teso are semi–arid.[12]

While the Iteso Practice a mixed economy of agriculture and animal husbandry. The main implement used by the Iteso is the Ox–plough. They too practice subsistence farming.[13]

Due to semi arid conditions in Karamoja; there are prolonged draughts which often cause water scarcity. The Karimojong are then forced to immigrate with their herds to neighboring districts in search of water and pasture. When the rains however return to Karamoja in the process of the warriors returning they steal cattle from the neighboring districts.[14]

The Karimojong mainly rustle cattle from their neighbours in quest to accumulate wealth. *Article 26* of the Constitution of Uganda provides for protection against deprivation of property. 'Every person has a right to own property either individually or in association with others'.[15] The Karimojong have violated this article with impunity. The theft of cattle has been boosted by the acquisition of firearms by the Karimojong. This has given them the ability to conduct their raids more regularly. The fire arms have also enabled them to extend their theatre of operation from the immediate neighborhood to the whole of Teso and even beyond.[16]

According to the *Etop News Papers* of August the 3rd 2011 twelve cows were recovered from cattle rustlers in Olilim and Aterai in Kapelebyong. After a 'gun fire exchange', the cattle were recovered by (ASTU). This caused more people to move

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[12] Bogooa Festus D. Peace and Environmental Challenge: Land Use and Conservation in Karamoja Region. Conference Paper for the National Conference on Peace and sustainable development for Karamoja and neighbouring Districts, Makerere University Main Hall 18 – 22 July 1994.

[13] Ibid.

[14] John A. Dixon et al (1989): The Economics of Dry Land Management. Earth scan Publications Ltd 3 Endsleigh Street London.

[15] constitution of the Republic of Uganda Article 26

[16] Supra note 1, at P.14.

back into the camp in Kapelebyong[17]. Clearly therefore the problem of cattle rustling remains very serious.

However, what is clear is that the population of this area has been significantly improvised poverty levels in Teso and particularly in Kapelebyong are deplorable. Since the area has been almost stripped off its cattle herds, the Ox plough which used to be the main tool of opening up the land is almost no more.[18] The population has had to adopt a hand hoe which used to be a tool for weeding, is now the primary farm implement. No wonder famine outbreaks are common in the Teso Region. This has led to the emergence of diseases like Kwashiorkor, Marasmus and stunted growth.[19]

The report also talks of deteriorating standards of education in the area because the parents can no longer take their children to good schools owing to poverty. *Article 3(2)* of the UN convention on Rights of the Child (1989)[20] provides

> *'States parties undertake to ensure the child such protection and care as is necessary for his or her well being'*

Article 6(1)[21] of International Covenant on Civil and Political Rights provides for a right to life as inherent. This right is further reinforced by *Article 3*[22] of the UDHR.

Under *Article 22* of the Constitution of the Republic of Uganda 1995, it provides that, 'no person shall be deprived of life intentionally except in execution of a sentence passed in a fair trial by a competent court and the sentence has been confirmed by the highest court'.[23] The above instruments show the importance of the right to life.

4.3 Impact of Commerce, Trade and Social Interaction on Karamoja

Originally the Karimojong pre occupation was to a mass huge numbers of cattle. However, when the commercial interests emerged and the Karimojong began to sell

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[17] Atangai *Ademun A. Kituk* (Cattle Recovered) *Etop News Paper* (Soroti 3rd August 2011) Pg. 5.
[18] Supra note 1 at p.18.
[19] Otage Stephen. Government to Restock Amuria, Monitor (17th November 2010), pg. 7.
[20] Un Convention on Rights of the Child (1989).
[21] International Covenant on Civil and Political Rights (1966).
[22] Universal Declaration of Human Rights, G. A. res. 217 A (iii), U.N. DOC A/810 at 71 (1948).
[23] Constitution of the Republic of Uganda 1995 Article 22.

their cattle to the outsiders.[24] This saw the expansion of cattle markets in the neighbouring district. In Katakwi, Ojorimongin has expanded in Amuria Kapelebyong and Acowa Markets have also expanded.[25]

Due to the emergence of these commercial interests, the Karimojong began to sell cattle and by products. From petty cattle thieves to full scale militarized cattle rustlers, the cattle rustling took a new dimension, with warriors carrying AK 47 assault rifles, the raids, extended right into the heartland of Eastern Uganda. Raids were recorded in Pallisa District.[26]

The cattle was now raided for commercial activity. There was a story in Monitor News paper to the effect that Hon. Kiyonga MP Pian was involved in cattle rustling;[27] all this contrary to section *266 of PCA*[28].

The local inhabitants at one time connived with the rustlers in this lucrative trade. The result was a mass displacement of several people who then took refuge in the IDP camps. The cattle rustling caused serious problems once the population was crowded in one area, disease broke out such as diarrhea, measles, and malnutrition leading to Kwashiorkor due to poor feeding[29].

The cattle rustlers have also raided, raped and destroyed food crops thus leading to famine. This is in contravention of *Article 39*[30] of the Constitution which guarantees a right to health, the right to health also means access to enough food. The people of Teso are nostalgic of cattle which are at the centre of their lives. Cattle are used for payment of bride price and are seen as an investment, the loss of cattle has therefore led to distortion of their social life.

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[24] Supra note 4, Pg.5.
[25] Ibid.
[26] Supra note 1 at p.14.
[27] Obore, MP accused of Cattle Rustling, *Monitor*, 5th July 2006, pg. 3.
[28] Penal Code Act Cap 120 Section 266.
[29] Supra note I pg. 15.
[30] Constitution of the Republic of Uganda 1995 Article 39.

INTERNATIONAL PERSPECTIVES OF THE RIGHT TO A HEALTHY ENVIRONMENT

4.4 The Emergence of International Human Rights

Several attempts have been made to define the concept of human rights by various authors. Jack Donnelly is of the view that human rights are literally, the rights one has simply because he is a human being[31]. The subject of human rights is, according to this definition, always on individual persons[32] for human rights have their source in human nature; being a person or human being, in the same way that legal rights have the law as their source.[33] Thus according to Donnelly, human rights doctrines rest on a rough equation of having human rights and being human without the enjoyment of (the objects of) human rights are almost certain to be alienated or estranged from one's moral nature.

Thus, human rights are regularly held to be in alienable, not in the sense that one cannot be denied the enjoyment of these rights but in the sense that losing these rights is morally impossible. One cannot lose these rights and live a life worthy of a human being.[34] According to this analysis, only individuals can have human rights. Collective peoples do not have human rights in Donnelly's words.

> *"If human rights are the rights that one has simply as a human being, then it would seem that only human beings have human rights; if one is not a human being, then by definition one cannot have a human right only individual persons are human beings. Therefore, it would seem that only individuals can have human rights".*

Capacity as members of protected social groups, they are not rights of groups in particular. They are not rights that the group can hold and exercise against the

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[31] Jack Donnelly *international Human Rights Dilemmas in world political university of Denver West view press, 1993 P.39* (eds). *Human rights in a Pluralist world. Individuals and Collectivities,* UNESCO, RSC, Mechler, 2006 at 39.
[32] Ibid.
[33] Ibid at p.41.
[34] Ibid at p.2.

individual.[35] Herman Burgers urges with Donnelly that human rights refer to the indispensable conditions for the existence worthy of a human being.[36]

According to Louis Henkin, the idea of rights is related to theories of 'the good society', individual rights as a political idea draws on natural law and natural rights.[37] In its modern manifestation that idea is traced to John Locke, to famous articulations in the American Declaration of Independence and in the French Declaration of the Rights of man and the citizen, and to the realization of the idea in the United States Constitution and its Bill of Rights and in the Constitutions and Laws of Modern States.[38]

The idea of human rights that has received currency and universal (if nominal) acceptance today owes much to these antecedents but is different in that it is not grounded in natural law, in social contract, or in any other political theory. International instruments, representatives of state parties declare and recognize human rights defined their content and ordain their consequences within political societies in the system of nation states.[39]

The human rights are self – evident, implied in other ideas that are commonly accepted. Human rights are universal. They belong to every human being in every human society to call them 'human'; implies that all human beings have them, equally and in good measure by virtue of their humanity[40] put another way, human rights must necessarily be universal, moral rights not only in the sense of being part of the actual morality of every community, but in the sense of being applicable to all human beings irrespective of who they are and what communities and associations they belong to. If a human being is to be treated not merely as a means but as a person having intrinsic value for him or herself, he or she must have rights. Not only do there have to be rights

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[35] Ibid.
[36] J. Herman Burgers. *The Function of Human Rights as Individuals and Collective Rights,* in Jan Berting, et al (eds), 1 at pp.72-74.
[37] Malcolm N. Shaw *International Law* 5th ed. Cambridge university press (2003) P.48
[38] Ibid at p.49.
[39] Ibid at p.49.
[40] Malcolm N. Shaw (2003) *International Law*, 5th Ed Cambridge University press (2003). p. 252.

if there are to be communities. There have to be rights which every human bring has, if the requirements of the universal minimum moral standards are to be met.[41]

Implied in ones' humanity human rights are inalienable. They cannot be transferred, forfeited, or waived. They cannot be lost by having been usurped, or by one's failure to exercise or assert them. Human rights are rights; they are not merely aspirations, or assertions of the good. To call them rights' implies that they have claims 'as of right', not by appeal to grace, charity brotherhood, or love; they need not be earned or deserved.[42]

The idea of rights implies entitlement on the part of the holder in some order under some applicable norm, the idea of human rights implies entitlement in a moral order under a moral law, to be translated into and formed as legal entitlement in the legal order of a political society. This confers on human rights legal empowerment[43] that states may grant to individuals direct rights or impose upon them direct duties by treaties in contrast with the theory that norms of international law require a previous act of transformation into the national law in order to create rights and duties for individuals (derivative rights) – was recognized by the permanent court of International Justice in its *Advisory Opinion Jurisdiction of the Courts of Danzing (1928).* The Court stated that it cannot be disputed that the very object of an International Agreement, according to the intention of the contracting parties, may be the adoption by the parties of some definite rules creating individuals rights and obligations and enforceable by national courts. Since that time, the granting of rights to individuals and the imposition of duties upon individuals through international instruments has become accepted and wide spread.[44]

The right–duty relationship is such that whereas society may ask all individuals to give up some of their rights for the rights of others and for the common good, there is

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[41] Ian Brownlie, *Principles of Public International Law*, 7th Oxford University press (2008) p.567.
[42] See *Chap 2 of the state of the Word's refugees Human Rights 'Defending Refugees Rights*, UNHCR (2007): and William, Clarence Field Strategy for The Protection of Human Rights IJRL, Vol.9 No.2 (2007).
[43] Ibid.
[44] *Advisory Opinion Concerning Jurisdiction of the Courts in Danzing*, P.C.I.J. Ser. B No. 15 at 17-18, advisory opinion of March 3, 1928.

a core of individuality that cannot be invaded or sacrificed. The development of international human rights law has therefore reflected the historical fruits of both the political imperative to recognize each person's rights and the legal duty on states and individuals to respect those rights.[45]

As human rights are claims upon society although they may derive from moral principles governing relations between persons, it is society that bears the obligation to satisfy those claims.[46]

The state must therefore develop institutions and procedures, plans and mobilize resources as necessary to meet some systems of remedies to which individuals may resort to obtain the benefits to which they are entitled or be compensated for their loss. Finally, human rights are fundamental in that; life, dignity, and other important human values depend on them. The rights can be substantive, intend to limit what government does, and they can be procedural limiting how government and the public act. Herman Burgers, on his part, is of the view that certain collective rights may be recognized as human rights. According to him, the indispensable conditions for an existence worthy of a human being may include interests belonging to collectivities. As a result, certain collective rights may be recognized as human rights.[47] According to Cees Flinterman, as long as these so called third generational rights do not compromise the implementation of other human rights, they should be seen as human rights.[48]

4.5 Traditional Human Rights and the Protection of the Environment

In the seventeenth and eighteenth centuries the direction of science and philosophy was towards exploitation of nature. Western philosophy itself looked at human kind as conquerors of nature.

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[45] Ibid at p.23.
[46] Ibid at p.27.
[47] Ibid. At pp. 72-74. For more information on *Advisory Opinion Concerning Jurisdiction of the Courts in Danzing* see P. C. I. J. rep. ser. B. No. 15 at 28-40.
[48] Cees Flinterman, 'Three Generations of Human rights' in Jan Berting, et al. (eds) , supra note 1 at pg.75.

It was believed at that time that in order to create wealth nature had to be defeated.[49] There was constant fight against diseases which necessitated the clearing of vegetation on which diseases vectors lived. Furthermore, there was a belief that natural resources were so vast and plentiful that they could never be exhausted; so there was no need to conserve them. The idea that nature was adversarial to human kind was not non sensical because at that time human history was lacking technology to harness and conserve it. Thus, for people to survive, they had to fight and make use of nature in the best way they could which was usually destructive to environment.[50]

Furthermore, the era of mercantilism favoured the view that in order to develop nature had to be conquered and tamed. This reasoning underlies the development of common law.[51] It was not until the twentieth century that the need for conservation and control of the effects of industrial revolution such as pollution, waste and poor conditions of work was realized. This led to the creation in 1919 of the *International Labour Organization* and eventually the *1968 UNESCO* Conference on man and the Biosphere (Paris) which was concerned about how human beings could continue to survive, in the biosphere. Mean while, International Human rights law developed according to the needs of the time.[52]

At the International level the first step to addressing the issue of human rights after the second world war crimes was taken in the Nuremberg War Crimes Trails (1945-1946) at which leading Nazis were prosecuted under the novel change of crimes against humanity.[53] The Nuremburg tribunals were the first international actions taken to punish individuals for international crimes. Later on, the United Nations became instrumental in developing and protecting human rights.

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[49] Jack Donnelly, *International Human Rights. Dilemmas in World Politics.* University of Denver, West View press 1997 at p.7.
[50] Ibid at p.9.
[51] Ibid at p.10.
[52] Alexandre Kiss and Dinah Shelton. International Environmental Law, 3rd Edn. Moi University 2003.
[53] Jack Donnelly, supra note 49 p.8.

4.6 The Origin of International right to environment and Its Relation to a Healthy Environment

It is sufficient to note here that the concepts of environment include air, land, fauna, flora, human habitation, water, energy resources, demographic issues, genetic resources and all that concerns the earth and the interrelation of the various actors who inhabit it, such as wildlife and human kind.[54] In the eighteenth century, the idea that thrived was that, nature was against mankind. This was not nonsensical because at that time in human history, there was lack of technology to harness and conserve it. Therefore, for people to survive they had to fight and make use of nature in the best way they could, which was usually destructive to the environment. Furthermore, the era of mercantilism favoured the view that in order to develop, nature had to be conquered and tamed for the use of mankind. This reasoning underlies the development of common law. It was not until the 20th century that the need for conservation and control of the effects of industrial revolution such as pollution, waste and poor conditions of work was realized.[55] This led to the creation in 1919 of the International Labour Organizations, the 1968 UNESCO conference on man and the Biosphere (PORTS) which was concerned about how human beings could continue to survive in the biosphere. The first recognition of the right to a healthy environment was not to be found in any of the international instruments until the 1972 Stockholm Declaration on Human Environment.[56]

The World Commission on Environment and Development in its report in 1987 'our common future' subsequently considered the concept of sustainable development[57]. This was further emphasized in the *1992 Rio Conference* which also expressed the need to care for the earth.[58]

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[54] Alexandre Kiss & Dinah Shelteon supra note 52 at p.22.
[55] Ibid at p.24.
[56] Adopted at Stockholm, Sweden on June 16, 1972, refer to the report of the UN. *Conference on the Human Environment from the U.N Conference in Stockholm.* Sweden, June 5-16, 1972, UN. DOCA/Conti...48/14,11 I.L.M. 1416 (1972).
[57] Ibid chapter 2.
[58] Adopted at Riode Janeiro, June 14, 1992.

The right to a healthy environment is closely related to the basic concept of human rights, namely, the dignity inherent to all the members of the human family. An environment degraded by pollution such as that in Kapelebyong is itself a death trap to the inhabitants surrounding it. This environment cannot be said to be satisfactory and fit for human habitation and therefore offensive to human rights. Therefore, the right to a healthy environment, it has been observed, complements the other rights guaranteed to each human being. It contributes to equality among citizens or at least to the reduction of inequalities in their material conditions by requiring a healthy and balanced environment and the environmentally sound management of natural resources and in turn they play a significant role in the realization of a healthy environment.[59]

Indeed these become conditions for implementing other fundamental rights guaranteed to everyone. This is inherent in the European Charter on Environment and Health adopted on 8th December 1989, which generally provides that 'every individual is entitled to an environment conducive to the highest attainable level of health and well being'.

This right to a healthy environment also adds a new dimension to human rights. A temporal one with the reference to future generations hence its relationship with the concept of inter generational equity and the public trust doctrine.[60] The whole idea is merely a reflection of concern for the welfare of future generations, but a link between human rights and environmental conservation. This implies the management of natural resources with the aim of not exhausting them which applies in particular to economic and social rights.[61]

The right also has certain characteristics that facilitate its protection at the International level:

a) Its universality (because the importance of the right is recognized at both the national and international level) and

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[59] Emmanuel Kasimbazi Hand book on *Environmental Law in Uganda*, 1st Edn, Environmental Law Institute 2004 p.51.

[60] Ibid at p.52.

[61] Alexander Kiss, 'Mahoney and Mahoney (eds), Human Rights in the Twenty – First Century. Martinus Nishoff Publishers, Dordretch 1993, 551 at P.553.

b) The precise nature in which the content of the right can be defined (that is to say, the right to information, participation, access as procedural measure of protection available to every individual).

The quality of the environment is certainly a component of the right.[62]

I therefore want to say that the status of the right to a healthy environment in international law has stirred much debate. Some authors have argued for an emerging right to the environment, others have underlined the vagueness of the concept of 'environment', even when modified by terms like 'decent', 'healthy', 'clean', 'good', 'safe'. Still others have questioned the concept of a 'right to environment' altogether.[63]

It has also been said that the right to a healthy environment is an independent right which thereby imposes obligations upon individual states and the world at large. Some quarters regard the rights as part of universally recognized rules which states are not allowed to contract out of *(Jus Cogens)* as per *Article 53 of the 1969 Vienna Convention on the Law of Treaties* and International Customary Law. This is based on the assumption that the right has been accepted by the World community.[64]

These terms can be interpreted and applied to concrete situations. Thus, it has been argued, the right to a healthy environment implies a right to use and conservation in the sense of protection and improvement of the environment instead of an entitlement to any nation of the ideal environment. As such, it can be viewed as a procedural right of due process before a competent organ, as it is the case with other individual human rights.[65]

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[62] The ICEF International Report,: The Need for an International court of the Environment, International Court of the Environment Foundation (ICEF) Giunt, also referred to as the International Report 1996 or the ICEF Report at pp. 32-35. A Report Prepared by Judge Amedeo Postiglione, Director of ICEF in order to mark the 50th Anniversary of the Foundation of the United Nations.

[63] Gudmundur Alfredsson, et; al, *Human Rights and the Environment'*, 60 Nordic J. International Law 19(1991), mild by Revisionist View (1992), Alexander Kiss, An Introductory Note on a Right to Environment; in Environmental Change and International Law 1999 by Edith Brown Weiss (ed). Environmental Change and International Law, New Challenges and Dimensions, United Nations University press Tokyo 1992

[64] Amando S. Tolentino, *Good.*

[65] Sanjeer Prakash, "The Right to the Environment. Emerging Implications In Theory and Praxis, *Netherlands Quarterly of Human Rights, Vol. 13 1995* No. 4 at p.428.

This is the view that the right to a healthy environment is a procedural right, with such rights as to information and to participation. It is true that the instruments providing for the right to a healthy environment are either none binding or do not create implementation mechanisms. However, the principles contained therein have been accepted as establishing customary international law. Although it may not be easily established, the proclamation of a right to a healthy environment in many instruments demonstrates a general acceptance of the links between human rights and environmental protection.[66]

UNGA Resolution 45/94 (1990) recognizes that all individuals are entitled to live in an environment adequate for their health and well being and calls on government to enhance efforts in this respect. The 1988 additional protocol to the American Convention on Human Rights also provides for environment in Article II as does the 1989 European Charter on Environment and health and the 1990 Draft Charter on Environmental Rights and Obligations. *Article 1 of the World Commission on Environment and Development (WCED),* legal principles and Article *24(2)(c) of the 1989 Convention on the Rights of the Child* also recognize the interconnection between rights and the environment.

4.7 The Legal Basis of the Right to a Healthy Environment

The right to a healthy environment has its origins in previously asserted human rights and customary international law, that is, customary and peremptory norms, conventional or treaty norms and constitutional norms which already recognize the individual's right to the environment in many states and which provide indirect evidence of a common practice. We shall proceed to examine some aspects of these in the following pages.

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[66] Dinah Shelton, *Human Rights, Environmental Rights and the Right to Environment*, 28 Stan, J. International Law. 1991, 81.

4.7.1 The international Customary Law Basis

Article 38 of the statute of the international court of Justice includes customary and peremptory international norm (these norms develop from the constant and uniform behavior of states, accompanied by conventions which enshrine the obligations that derive from the very same behavior) and the general principles of international law recognized by civilized nations as sources of international law.

An established rule of international law is that no state should permit its territory to be used in such a way as to cause significant environmental damage to the territory of another state or states. The rule was announced in the arbitral decision delivered on 11 March 1941 in the *Trail Smelter Case* between the United States and Canada. The arbitral tribunal affirmed that under the principles of international law, as well as of the law of the United States, no state has the right to use its territory in such a manner as to cause injury by fumes in or to the territory of another or its properties or persons therein, when the case is of serious consequence and injury is established by clear convincing evidence[67].

The international Court of Justice repeated the very same principle in the *Corfu Channel Case* when it affirmed the existence of every state's obligation not to knowingly allow its territory to be used contrary to the rights of other states[68] and found application of the principle in national judicial proceedings.

This principle also found expression in principle 21 of the Stockholm Declaration on the Human Environment, 1972. However, by contrast, the scope of the obligation under principle 21 extends to activities conducted anywhere outside the state's territory as long as that states has priority in exercising control over injurious conduct.

This development of the principle of state responsibility can also be seen in *Article 30* of the resolution of principles adopted by the General Assembly of the United Nations in 1974 better known as the 'Charter of Economic Rights and Duties of States.'

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[67] 35 AJIL (1941), 684, 716. This rule however, has reportedly been attacked as having slight utility as an expression of an international law obligation-Hoffman, B, State Responsibility in International Law and Tran boundary pollution Injuries Vol 25 1&CLO (1976), 509 AT p 511 citing A.P. Lester River.

[68] Pollution in International Law; Vol. 57 AJIL (1963) 828 at pp. 836-837 ICJ Reports, 1949, 1,22.

The article, which is included in chapter III of the resolution entitled 'Common Responsibility towards the International Community' provides that:

> *The protection, preservation and enhancement of the environment for the present and future generations is the responsibility of all states. All states shall endeavor to establish their own environmental and developmental policies in conformity with such responsibility. The environmental policies of all states should enhance and not adversely affect the present and future development potential of developing countries. All states have jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction. All states shall co-operate in evolving international norms and regulations in the field of the environment.*

In the *Nuclear Test Cases*[70] the international Court held that France was legally bound by publicly given undertakings, made on behalf of the French Government, to cease the conduct of atmospheric nuclear tests in the South Pacific. The criterion employed was the intention of the state making the declaration that it should be bound according to its terms and that the undertaking be given publicly. There was no requirement of a *quid proquo* or of any subsequent acceptance or response. The Court held that one of basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith.... Just as the very rule of *Pacta Sunt Servanda* in the law of treaties is based on good faith, so also is the binding character of international obligations assumed by unilateral declarations. Thus interested states may take confidence in unilateral declarations and place confidence in them, and are entitled to require that the obligation thus created be respected.

The *Lake Lanoux Arbitration*[71] on its part was concerned with sharing of international waters by states. Spain complained that France had violated a treaty by diverting a river in French territory before it entered Spain. The tribunal found no violation of the treaty because Spain could not show that the effect of the diversion had

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[70] *Australia V France; New Zealand v France* I.C.J Reports 1974 pp 253, 457.
[71] (1957) 24I.L.R101.

between the enjoyment of human rights and the quality of the environment. Since then, the conceptions of this issue have taken many forms.[75]

Principle 1 of the United Nations Declaration on the Human Environment (also called the Stockholm Declaration) states: Man has a fundamental right to freedom, a quality and adequate conditions of life, in an environment of equality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment of present and future generations.[76]

We shall observe here that the Stockholm Declaration is merely a declaration of a conference and since it lacks the formal requirements of treaty, is not binding upon signatory states. However, the norms it describes may be of a greater import. The general acceptability of those norms by the international community and especially their translation into national laws and subsequent treaties makes tenable the argument that the prescriptions of the Stockholm Declaration are customary rules of international law. One of the interpretations of the Stockholm Declaration is that a right to the environment has been added to human rights catalogue.[77]

In addition to the above, the 1988 protocol of San Salvador[78] to the American Convention on Human Rights, grants an individual the 'human right to live in a healthy environment' *(Article 11)*. But its right does not concern the aesthetic quality of the environment, only its healthiness. The right had been identified earlier in the report of the panel of Experts which had been convened by the Secretary-General of the United Nations Conference on the Human Environment in 1971. It states that 'from a broad standpoint it may be said that one of the ultimate goals of economic development is the creation of a healthy, pleasant, desirable environment.[79]

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[75] Richard Desgagne Integrating Environmental Values into the European Convention on Human Rights; *AJIL Vol 89 No 2April 1995 263.*

[76] The Stockholm Declaration is considered an authentic interpretation of the notion of human rights embodied in the UN Charter. As such, it provides the minimum standard of the moral duty of states.

[77] Richard Desgagne, sopra note 75.

[78] Additional protocol to the American Convention on Human Rights in the Area of Economic, social and Cultural Rights (the protocol of San Salvador) No 14 1988, Art 11.

[79] M Ozorio de Almeida, economic Development and the preservation; *In Development and Environment: Report and Working Paper of a Panel of Experts convened by the Secretary general of the U.N. Conference on the Human Environment (1971)* p 107 at 109.

Glavovic is of the view that the right may either be regarded as an individual right, like the rights of freedom of speech and association, or as a public right (...). If it is accepted that this right, whatever its jurisprudential nature, is the legal entitlement of such an individual, then it should be entrenched as such and not left as a principle within which policy is to be formulated (....)[80]

The European Union's 1992 Draft Charter on a Human Right to a Clean Environment states in principle 1: 'Everyone has the right to an environment adequate for his general health and well-being.' This may also be interpreted as favouring an individual rights' approach to the right to a healthy environment, while at the same time accommodating the interests of both present and future generations (principle 2). As an individual human right, the right to a healthy environment has been asserted, is a constitutive element of the concept of the right to development as observed in the Global Consultation on the Right to Development as a Human Right (1990).[81]

The 1982 World Charter for Nature and the 1981 African Charter on Human and Peoples' Rights also provide the legal basis for the right to a healthy environment. The rights approach to environmental problems is intended to supplement rather than substitute the intents of international conventions and other instruments of international law on the environment: This approach achieves these goals by ensuring a certain minimum core of entitlements and protection necessary for the provision of most human, and especially economic and social rights.[82] The rights approach implies not only the right to conserve the natural environment and to prevent damage and harm to it, but also to empower through appropriate and participatory methods new conceptions of human welfare - at the local national and international levels that includes the interests of future generations[83]

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[80] Glavovic, P. D., 'Human Rights and Environmental Law: The Case for a Conservation Bill of Rights', 21 CILSA 52 (1988), 73.
[81] Amandos. Tolentro, Good Governance through popular participation in sustainable development in Konrad, Denters.
[82] Prakash Sanjeer. The right to environment. Emerging implications in theory and paraxis, Netherlands quantely of Auman Right volume 13 1995 No. 4,428.
[83] Ibid, at p. 423.

The individual right becomes a 'competence' in the sense of French Law, that is, it concurrently becomes a right and a duty to exercise the right. The practical means of exercising this right 'competence' will require the citizens be informed of the state of the environment in general and in particular of projects or events which threaten their environment. They must also be able to participate in the decision-making process and dispose of means of redress for non-observance of due process as well as, if necessary, for obtaining compensation for any damage their environment may have suffered.[84] Of the principal elements in this triad, including information, participation, and means of redress, the central one is participation in the decision-making process. It should encourage the public to be well informed about the content of the right and what constitutes its infringement in order to be able to bring actions on their own behalf and in the public interest. This has however raises the question of *locus standi* in environmental issues.

I note that the Indian Supreme Court considers the right to a healthy environment as a fundamental right falling under *Article 21* of the constitution (Protection of Life and Personal Liberty).[85] The World Commission on Environment and Development also favoured a fundamental right for all human beings to an environment adequate of health and well-being. However, it also pointed to the absence of treaty provisions and concluded that this right was not yet well established.[86] The WCED Expert Group on Environment Law postulates, in Article 1 'General Principles Concerning Natural Resources and Environmental Interference' the following right: All human beings have the fundamental right to an environment adequate for their health and well-being.[87] Hence the state is under a legal duty to protect the environment.[88]

The human rights approach is to be seen as complementary to the wider protection of the biosphere, reflecting the impossibility of separating the interests of

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[84] Alexander Kiss in Mahoney, supra note 61 at p. 557.
[85] Tom Allen Common Wealth Constitutions and Implied Social and Economic Rights *African Journal of International and Comparative Law, Dec 1994 Vol. 6 pt.4* at 566
[86] R.D Munro and J.G Lammers, *Environmental Protection and Sustainable Development: Legal Principles and Recommendations* (1987), London, 1986, 39.
[87] Ibid, pp 38-42.
[88] Ibid.

humankind from those of the environment as a whole[89] or from the claims of future generations, quite apart from the intrinsic merit of a health environment as the foundation of human survival.[90] It has been argued that this approach can only work to the extent that it de-emphasizes the uniqueness of humankind's right to environment and conforms more closely to characterization of this relationship as a fiduciary one not devoted solely to the attainment of immediate human needs.[91]

According to Roots, the provision of a right to environment is, in a fundamental way, a human-to-nature matter.[92] This argument seems to favour a formulation of a collective rather than an individual right to a health environment.[93] Glavovic is of the view that it may be an individual or a public right. According to him, since environmental degradation affects the public generally, and not just the individuals directly concerned, its nature is clearly more that of a collective right of the public.[94] So vindication of the right should be permitted without the need to establish a direct private interest, as opposed to an interest founded in the public right of environment.[95]

The formulation of Article 24 of the African Charter on Human and Peoples' Rights[96] has been viewed as favouring a collective rights approach. 'All peoples shall have the right to a general satisfactory environment favourable to their development'.

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[89] See also principle 22 of the Draft Declaration of Principle on Human Rights and the Environment, 16 May 1997 Geneva: The Draft Declaration was made by an international group of experts on human rights and environmental protection. The Geneva group assembled at the invitation of the Sierra Club Legal Defence Fund et al. on behalf of Madame Fatma Zohra Ksentini, Special Rapporteur on Human Rights and the Environmental for the United Nations Sub-Commission on prevention of its duties to collect and dessiminate information concerning the environment, to conduct prior assessment and control, make licensing regulation or prohibit certain activities, and encourage, for instance, public participation, ensure effective administrative and judicial bodies.

[90] E.F Roots, Population "carrying capacity" and Environmental processes' in Mahoney and Mahoney (eds.) supra note 53 at p. 544.

[91] Dinah Shelton, supra note 55.

[92] Patricia W. Bernie and Alan E. Boyle. *International Law and the Environment*. Clarendon press, Oxford 1992 at p. 194.

[93] E. F. Roots Population Carr4ying Capacity and Environmental Processes, in Mahoney, E, Kathleen and Mahoney Paul (eds). Human Rights in the Twenty – First Century. Martinus Nijhoff Publishers, Dordrecht, 1993, 544.

[94] Tiyanjana Maluwa, 'Environment and Development in Africa: An Overview of Basic Problems of Environmental Law and Policy', Africa Journal of International & Comparative Law, Vol. 1 pt. $ Dec 1989 650 at 663

[95] P. D. Glavovic, supra note 72 at pp. 73 - 74.

[96] June 27 1981.

On this view it is independent of other rights, addresses the fundamental question of environmental quality and is comparable to rights such as self determination or economic and social rights, whose implementation by states is subject to political supervision by various UN organs, and not by judicial bodies. The right was echoed and adopted in the 1989 Hague Declaration on the Environment which provided that people have a 'right to live in dignity in a viable global environment'.[97] The Hague Declaration seems to endorse a collective right to a 'viable environment.'

Nevertheless, there are increasingly common views regarding the right to a healthy environment as a collective right. But it is also realized that the collective aspect of the need for environmental protection makes it difficult to assert a claim under say, the European Convention regarding interference with enjoyment of the environment. Protection of the environment through litigation under the European Convention is limited by the individualistic bias of this system of protection[98] as far as the question of *locus standi* is concerned. That bias results both from an individualistic approach to interpreting the protected rights and form the requirements regarding standing to submit an application to the European Commission.

Furthermore, it is very difficult to assert a collective right through a procedure that is primarily designed to protect individual rights. In the case of *M v Austria*[99] for instance, the individual was denied any right in an agricultural community's common pasture and forests lands.

For indigenous peoples however, it has been asserted that the right to a healthy environment means the human right to a living or it could be regarded as the means to combat environmental deterioration as far as it threatens human life.[100]

Suffice it here to say that, as regards customary international law, the usual criteria for emergence of custom is established in the *Continental Shelf Cases*, viz that there is a general practice of states which has been consistent and uniform over a

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[97] Lynn Berat , supra note 165 at pg. 333.
[98] Gunther Handi supra note 158.
[99] App. No. 9465/81, 39 Eur. Communication H. R. Dec & Rep. 85 (1984). See Richard Desgagne, supra note 67 at p. 283.
[100] Amando S. Tolentino, supra note 81.

period of time (the practice element); that the practice is accepted by states as being one undertaken pursuant to a legal obligation (the *sive necessitates* element, that is legal opinion considered necessary). In the *Continental Shelf Cases* the court was of the view that in the view of technological advancement and the need for international co-operation, it was no longer necessary to prove that indeed a long time has passed. What was important was to prove that there has been practiced which is generally accepted and which satisfies the criteria of law.[101]

In relation to a treaty, customary law survives along side a treaty and may be invoked at any time by non members to a treaty. Even among parties, it continues in operation and may be invoked if one party ceases to be bound by the obligations of the treaty either by withdrawal, termination or any other matter. This reasoning underlies the construction of Article 38 of the Statute of the International Court of Justice under which the Court may apply treaty provisions, international custom, general principles of law recognized by civilized nations and subsidiary means as a source of international law. This analysis is applicable even outside the functioning of international court. And I would like to think, also to the protection of human rights which should not be pegged only to treaties and conventions.

The right to the environment lends itself to an *erga omnes* interpretation as well. Everyone is a beneficiary of the right and yet again everyone has the duty to protect the environment. Thus, the right cannot be confined by legislation or international instruments. It binds third parties too. In other words, it is a right within and without any formal instrument.

The notion that individuals, and by extension also corporations, bear responsibility towards the environment is not new. The 1972 Stockholm Declaration on the Human Environment referred in principle 1 to man's 'solemn responsibility' to protect and improve it. Subsequent formulations have preferred to emphasize the individual character of this obligation. Thus, the World Charter for Nature talks about the duty of 'each person' to act in accordance with its terms. The Economic Commission

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[101] The North Sea Continental Shelf Cases, 1969 ICJ Rep. P. 4.

for Europe, Charter of Environmental Rights and Obligations states that 'everyone has the responsibility to protect and conserve the environment for the benefit of present and future generations.[102]

4.7.2 Conventional International Law

To date, it is only the 1981 African Charter on Human and Peoples Rights that can be said to crystallize the perceptions in international law concerning the right to environment. Article 24 of the Charter provides that 'all peoples shall have the right to a general satisfactory environment favourable to their development.' The Charter thus becomes the first human rights treaty to prescribe a universal right to environment in such a manner. It also recognizes that everyone has a corresponding duty to protect the right.[103]

4.7.3 Relation to the Right to Life

The right to Environment has found basis in the right to life. In the case of *Tellis v Bombay Municipal Council*[104] where the petitioners argued for their right to life after being evicted by the Bombay Municipal Corporation from the pavements and slums where they had set up their dwelling, the court placed a broad interpretation on the right to life. Tom Allen finds in this a basis for a right to a healthy and safe environment. In the case of *Shriram Gas*,[105] decided in a series of land mark opinions in 1987 and 1988, a gas leak at a chlorine producing plant in Delhi was the course of the problem. In requiring the plant to continue operations under a tightly controlled safety programme, this case established several important precedents. First, the Supreme Court established that 'the right to life contained in article 21 of the Constitution of India encompassed the right to live in an environment free of pollution.' This explicitly and significantly broadened the Constitutional protection of Environmental rights.

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[102] Principle 24.
[103] Refer to the Section of this study international customary law.
[104] The (1987) LRC (Const) 351 (Ind Sc), the Petitioners argued for a right to livelihood after the eviction forced them to leave the city for rural areas where they had no realistic prospects of finding work.
[105] (1986) 2 SCC 176; (1986) 2 SCC 325.

Furthermore, in *Joseph D. Kessey & ors V Dar es Salaam City Council*,[106] several residents of the Tabata area of Dar es Salaam sought the assistance of the High Court to prohibit the City Council from continuing to dump and burn solid waste in Tabaka, a designated residential area under the City master Plan. The City Council, on its part sought leave of the court to continue dumping and burning the solid waste in the said area. In dismissing the City Council's application, the High Court gave an expansive interpretation of the Constitutional right to life as including the right to an environment which is free from pollution that would endanger life.

The right to life was also extended to cover the environment in the Pakistani case of General Secretary; *West Pakistan Salt Miners Labour Union (CBA) Kherwa Jhelum v The Director, Industries and Mineral Development, Punjab, Lahore.*[107] In that case, the petitioners sought enforcement of the right of residents to have clean and unpolluted water. Their apprehension was that in case the miners were allowed to continue their activities, which are extended in the water catchment area, the water courses, reservoir and the pipelines would get contaminated. Article 9 of the Constitution of Pakistan, 1973 was cited: no person shall be deprived of life or liberty save in accordance with law.' The right to life was extended to cover water and the court found that contamination of water is a denial of this right. The court prohibited further mining in the areas as a result. The court stated that it will not hesitate to stop the functioning of a factory which creates pollution and environmental degradation.

In *Sheila V Wapda*,[108] the Supreme Court also expanded and enlarged the scope of the right to life. The court held that life does not mean animal life or vegetative existence. It stated that the word 'life' is significant as it covers all facets and aspects of human existence. The court went on to observe that life includes such amenities and facilities which a person born in a free society is entitled to enjoy in dignity and with honour.

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[06] Civil Case No. 299 of 1988 HC (Dar) (Unreported).
[07] 1994 SCRM 2061 Vol. XXVII.
[08] (PLD) 1994 SC 693.

In *Surya Prasad Dhungel Chairman of the Board of Directors of the leader's Inc V Godavari Marble Ind. Pvt Ltd & ors*[109] the writ petitioner had stated that the Godavari Marble Inds Pvt Ltd. Was causing environmental pollution to the area and had threatened the life of the people and as such had demanded that the right to life of the people of that area be safe guarded by issuing necessary writs. The court noted that as it is one of the policies of the state as envisaged in the Constitution under the Directive Principles and Policies of the state that the state shall give priority to the Protection of the environment and also to the prevention of further damage due to physical development activities, the writ petitioner had the locus standi in this case.

The connection between the right to a healthy environment and the right to life is also found in the Indian case of *Rural Entitlement Litigation Kendra v The State of Uttar Pradesh and others*.[110] This involved a public interest petition to stop fifty two mines on the Himalayan foothills near the town of Dehradum damaging the villages and fields of peasants downhill and downstream. It was argued that this affected the lives, livelihoods and subsistence of the peasants, Article 51 A of the Indian Constitution on the fundamental duty of all citizens to protect the environment was referred to by the court.

In *Dr. Mohindinne Farooque v Bangladesh & ors*, Writ Petition No. 300/1995 the petitioner, a Secretary general of the Bangladesh Environmental lawyers Association (BELA), petitioned that the activities of (Flood Action Plan) FAP, FAP – 20, and the FPCO would adversely affect more than one million human lives and natural resources and the natural habitat of humankind and other flora and fauna and that they aroused wide attention for allegedly being an anti-environment and anti – people project. Bimalendu Bikash Roy Choudhury J. stated that 'although we do not have any provisions like article 48 – A of the Indian Constitution for the protection and improvement of the environment, Article 31 and 32 of our Constitution (1972) protects the right to life as a fundamental right. It encompasses within its ambit, the protection and preservation of the environment ecological balance free from pollution of air and water, sanitation

[109] 1995 SCRM 2063 vol. XXVII
[110] Writ Petition No. 8209 of 1983, AIR 1985, SC 52.

without which life can hardly be enjoyed. Any act or omission contrary thereto will be violative of the said right to life.

In the case of a petition submitted on behalf of the *Yanomani Indians in Brazil*, the petitioners alleged that the Brazilian Government had breached the American Declaration of the rights and Duties of man by constructing a highway through the territory where the Indians live, authorizing the exploitation of the territory's resources, permitting massive penetration of the territory by outsiders allegedly carrying various contagious diseases and not providing the essential medical care to the persons affected. The Commission found that the Brazilian Government had violated, inter alia, the Indian's right to life, liberty and personal security, without, however, specifically linking the different facts to the corresponding infringed right.[111]

The Commission declared: By reason of the failure of the government of Brazil to take timely and effective measures on behalf of the Yanomani Indians, a situation has been produced that has resulted in the violation, injury to them, of the following rights recognized in the American Declaration of the rights and Duties of Man the right to life, liberty, personal security (Article 10; and the right to residence and movement (Article VIII); and the right to the preservation of health and to well being (Article X).

Also, in the case of *Powell and Rayner*[112] concerning aircrafts noise pollution; the court ruled that there had been interference in the applicant's private sphere '.... the quality of the applicant's private life and the scope of enjoying the amenities of his home had been adversely affected by the noise generated by aircraft using Heathrow airport.' The same reasoning was applied in the earlier case of *S V France*[113] where a nuclear power station was built on the opposite bank of a river to the applicant's home less than 300 metres away.

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[111] Case 7615 (Brazil), Inter-American C.H.R., 1984-1985. Annual Report 24, OEA / Ser. L/V/II.66, Doc. 10, rev.1 (1985), reprinted in 1985 Inter-Am-Y.B. on H.R. 264, 279.
[112] Powell of Rayner V UK, 172 Eur, Crt H. R. (Ser. A), para 41 (1990).
[113] App. No. 13728/88 (may 17, 1990), at p.237.

4.7.4 Relation to the Right to health

The right to environment has also been connected to the right to health. Perhaps that is why it is sometimes referred to as the right to a 'healthy' or 'healthful' environment. The right to health requires the state to achieve the 'maximum attainable standards of human health, as well as to create the conditions where enjoyment of such a right becomes possible. The entitlement to health is that of 'sufficient' and not 'perfect' health. The linkage of the right to environment with the right to health helps make it relatively much easier to define and identify gross and persistent violations of the environmental norms necessary for purposes of the right to health.[114] It obliges states to take urgent measures to deal with threats to health.

The first conference on the environment and Human Rights (Strasbourg, 1979) realized that humankind needed to protect itself against its own threats to the environment, particularly when those threats had negative repercussions on the conditions of existence – life itself, physical and mental health, and the well being of present and future generations.[115] The right to a healthy environment safeguards human life itself under two aspects. The first is physical existence and the health of human beings. The second is the dignity of that existence, as in the quality of life which makes it worth living. The right to a healthy environment this encompasses and enlarges the right to health and the right to an adequate or sufficient standard of living[116] in connection to the right to a healthy environment a few cases will be useful to examine.

In the South American case of *Santiago Y. Otros v Municipalidat'de Santiago Y. Otros, Recurso de Protection*[117] or the *Lo Errazuriz Case*, the issue of garbage dumping was addressed. The Santiago's Court of Appeals had ordered an unsanitary garbage dump to clean up or close down in 120 days. The Strategy used by the plaintiff's attorney was to invoke Protection Action established in the Chilean Constitution and to

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[114] Prakash Sanjeer, supra note 82 at pp. 419 – 420.
[115] See A. A. Cancado Trindade, '*Environmental Protection and the Absence of Restrictions on Human Rights*', in Mahoney & Mahoney (eds), supra note 61, 561 at 575.
[116] Ibid at p. 578.
[117] Santiago Corte Suprema 1987 Rol. 10. 561.

ask the court to assure an urgent enforcement not only for the Constitutional right to live in an environment free from contamination,[118] but also of all statutes and regulations violated by the company's activities. In the *Lo Errazuriz case*, the garbage dump situated inside Santiago was operated by 14 municipalities. The dump was surrounded by people who had settled before its installation and therefore, it created serious health problems as a result of its poor operation. An order for the dump to close in 120 days if it was not cleaned up was obtained from the Santiago Court of Appeals. However, the sanitary authorities appealed to the Supreme Court and obtained an order permitting the dumping to continue subject to compliance with newly dictated norms of operations.[119]

In *Pedro Flores Y. Otros V Corporation del Cobre, Codolco, Division Salvador or the Chanaral case*[120] a mining company deposited its copper tailing wastes directly onto the beaches of Chanaral, destroying any trace of maritime life in the area and threatening the population's health. The Court of Appeal granted the plaintiff's petition to enjoin Codelco activities damaging the marine environment of Chanaral. It gave the company a one year period, beginning from the date of the decision, to put a definitive end to dumping its mineral tailings into the Pacific Ocean.[121]

In the *Chinese case of Nanjin Korean Chemical Waste*,[122] a total of 6440 barrels, 1288 tons of chemical waste under the name of other fuel oil, were discovered in Nanjin port by the Xinshengyu Customs Administration, Nanjin, in September 29, 1993. The inspection report of the commodity Inspection Administration found unidentified mixtures of muddy materials with strong acid or alkali, high corrosiveness, high pressure and a strong and offensive smell. The rest of the barrels contained waste water. The wastes were imported to China from Korea and were only taken back after the Foreign Minister and the National Environmental protection Agency of China notified

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[118] Constitution of the Republic of Chile (1980), Article 19.
[119] See also *Innovative Environmental Litigation in Chile*: The Case of Chanaral', by Rafael Asenjo. The George Town International Environmental Law Review [1989] Vol. 2:99 at 101.
[120] Recurso de Protection, Copiaco Cortede Apelaciones 23.06.1998 Rol.2.052 also in Asenjo's Article.
[121] Ibid.
[122] Xie Zhenghua (ed.), *Synopsis of Enforcement and Typical Environmental cases of China*, China Environmental Science Press, Beinjing, 1994, pp.314-318.

the Korean Government and reported the case to the Secretariat of the 1989 Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal.[123]

4.7.5 Relation to the Right to Food

Besides the right to life and to health, the right to environment has also been related to the right to food interpreted in Article 28 of the Universal Declaration as a right to conditions necessary for the basic needs of the person. Prakash Sanjeer argues that 'adequate' implies the availability of food appropriate for nutritional needs and cultural factors, moreover, of a kind that is safe and free of toxic and contaminating factors.[124] This is one of the basis for the argument to control the use of chemicals in food production as one of the obligations of the duty holders of the right to a healthy environment.

4.7.6 Relation to the Right to Safe and Healthy Working Conditions

International Labour Organizations (ILO) has been active in this area. To the human environment concern arises from the use of chemicals in industrial activities. These have caused a number of health hazards, prompting the ILO to adopt, for instance, the 1986 Asbestos Convention and Recommendation 172 concerning safety in the use of asbestos. The recommendation defines exposure to asbestos' as meaning exposure at work to airborne respiratory asbestos fibres or asbestos dust, whether originating from asbestos or from minerals, materials or products containing asbestos.[125] The recommendation provides for protective and preventive measures,[126] surveillance of the working environment and workers' health[127] and provision of information and education of all persons concerned with respect to the prevention and

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[123] Adopted at Basel on March 22, 1989.
[124] Prakash Sanjeer, supra note 82 at p.421.
[125] Recommendation 172 was adopted on 24/6/1986 by the International Labour Organization.
[126] Ibid at Part III.
[127] Ibid at Part IV.

control of, and protection against, health hazards due to occupational exposure to asbestos.[128]

The ILO Recommendation 177 concerning safety in the use of chemicals at work complements the 1985 recommendation 171 concerning occupational health services which provide that the role of occupational health services should be essentially preventive. Meanwhile, the Chemicals Convention, 1990[129] applies to all branches of economic activity in which chemicals are used.[130] When in an exporting state all or some uses of hazardous chemicals are prohibited for reasons of safety and health at work, this fact and the reasons for it should be communicated by the exporting member state to any importing country.[131]

Although the recommendations of the ILO are not capable of creating binding obligations for states they are intended as guidance to action at the national level. They carry some obligations, however, in the sense that national authorities must examine the action to be taken and must report to the organization on the matter of their application.

4.7.7 Relation to the Right to Security of the Persons

Tom Allen's view is that the right to a healthy (or what he term's 'a satisfactory') environment is derived from the security of the person. The Canadian case of *Operation Dismantle Inc v the Queen*[132] is cited to bear this out. In that case, the Canadian government agreed to allow the United States to test a cruise missile over its territory. The plaintiff's, a group of organizations and Union claimed that the testing would increase the threat of nuclear war and thereby infringe their right to security of the person, protected by section 7 of the Canadian Charter of Rights and Freedoms. The Federal Court of Appeal Struck out the claim. Pratte J. stated that the constitutional

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[128] Ibid at section 40.
[129] Convention 170 adopted on 25.6.1990 – Convention Concerning Safety in the Use of Chemicals at Work, 1990.
[130] Ibid, Article 1.1.
[131] Ibid Article 19.
[132] (1985) 18 DLR (4th) 481 (SCC).

right to security of the person is only protected against arbitrary arrest or detention. The Supreme Court of Canada agreed that the claim should be struck out, but rejected the argument that, 'security of the person' was limited to freedom from arbitrary arrest or detention.[133]

In relation to environmental rights, obiter dicta from the lower courts show that they accept that a serious risk of environmental harm can threaten the security of the person.[134] These cases indicate that an activities court may use the right to security of person to protect the social and economic rights to health and a safe environment.[135] Especially where the population fails to get food, due to environmental degradation as a result of insecurity as is the case in Kapelebyong.

4.7.8 The Right to Information

Article 41 of the Constitution provides for a right to information.[136] A right to information may consist of a duty of the state to provide the information without the need for a formal request. Such a policy has been put forward with regard to hazardous installations.[137] At the global level, UNEP has promoted information for the public with the Awareness and Preparedness for Emergencies at the Local Level (APELL) programme, whose objectives include providing information on the hazards involved in industrial operations and he measures taken to reduce them.[138] The Council of the European Union has also adopted a directive requiring states to ensure that persons liable to be affected are informed in an appropriate manner of the safety measures and correct way to behave in the event of a major accident.[139] The preamble of a decision

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[133] Wilson J. This specific point was not discussed by the majority, but they did not reject its validity.
[134] See, For Instance, *Coalition of Citizens for a Charter Challenge v Metropolitan Authority* (193) 108 DLR (4^{th}) 145 (NSCA).
[135] Tom Allen, African Journal of International and Comparative Law, Dec, 1994. Vol. 6 p.555.
[136] Article 41 of the Constitution of the republic of Uganda 1995.
[137] See Generally Henri Smets, The Right to Information and the Risks Created by Hazardous Installations are the national And International levels, in Francesco Francioni and Tullio-Scovazzi (eds.), *International Responsibility for Environmental Harm*, Dordretch, 1991, p.449.
[138] UNEP – APELL: Awareness and Preparedness for Emergencies at the Local Level: A Process for Responding to Technological Accidents, UN Ser. No. 88 111.D. 3 (1988).
[139] Council Directive 82/501 of 24 June 1982 on the Major Accident Hazards of Certain Industrial Activities, Art. 9. 1982 O. J. (L2 30) 1, amended in 1987, 1990, and 1991.

recommendation of the Council of the OECD explicitly recognizes that 'the potentially affected public has a right to be informed about the hazards to human health on the environment, including property, which arises from accidents occurring at hazardous installations.[140] The member states of the EC for instance, decided to form a European Union Network for the Implementation and Enforcement of Environmental Law – the IMPEEL Network. IMPEL allows opportunity for dialogue and exchange of information for the development of a better enforcement structures. The European Union has also established the European Environment Agency (EEA) to encourage exchange of information on monitoring techniques, helping influence policy makers, development of best practices, reporting on control of trans-boundary effects and technical aspects of permitting among others.[141] The duty to provide information for public participation has also been recognized in impact assessment procedures such as those regarding proposed activities likely to cause trans-boundary environmental harm.[142]

The right to information may also feature as a right of access to information held by public authorities. This is recognized in the Council of the European Union Directive on the Freedom of Access to Information on the Environment.[143] The grounds to deny access are limited, but if it is denied, administrative or judicial review must be obtainable. The guarantee of access to information and just administrative action are significant to environmental law because the implementation of environmental law is firmly in the hands of administrative officials and it is important that it is possible for the public to ensure that these powers are properly exercised.

The right to information imposes a duty on governments to collect, disseminate and provide access to relevant information, including notice of significant environmental

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[140] Decision Recommendation of the OECD Council Concerning Provision of Information to the Public and Public Participation in Decision Making Processes related to the prevention of, and Response to, Accidents involving Hazardous Substances, OECD Doc. C (88) 85 (Final) (1988), reprinted in 28 ILM 278 (1989).

[141] Member States, however, still have a veto in some environmental areas. see David H. Slater and James, Alun W., Establishing International Cooperation and Regional Networks,' in the Fourth International Conference, supra note 105 at pp. 78 and 79.

[142] The Convention on Environmental Impact Assessment in a Trans-boundary Context of the United Nations Economic Commission for Europe, February 25, 1991 UN Doc. E/ECE/1250 (1991).

[143] Council Directive 90/313, 1990 O. J. (L 158) 56 See Generally Dietrich Gorny. 'The European Environmental Agency and the Freedom of Environmental Information Directive: Potential Cornerstone of EC Environmental Law', 14B.C International & Comp. L. Rev. 279 (1991).

hazards. In Baluchistan, In *Re, Human Rights*[144] case, a news item was published in a daily newspaper, 'Dawn' of July 3, 1992, in which concerns was expressed that certain individuals were buying plots in coastal areas of Baluchistan and converting them into dumping grounds for hazardous waste materials. The Supreme Court, taking note of this, issued an order to the Chief Secretary of the Province, requiring that full information be brought to court on the matter, as a result of which the court issued certain directives to the authority. The right to information is also important for the interests and the rights of states vis-à-vis other states, and facilitates the subsequent transmittal to citizens of other states relevant information concerning trans-boundary environmental issues.

Access to information is the cornerstone of effective public participation at all levels of decision making. To protect the human right to a healthy environment not only the citizen but any other person should know the nature of the right to information concerning discharges and emissions such as the discharge monitoring reports required in the United States or the Toxins release information required in countries with a pollutant register system.

In recent years, many amended constitutions and national environmental laws grant the citizen the right of access to information, but fail to provide implementation and enforcement mechanisms. Access to information concerning permit conditions and regulatory standards are necessary to verify whether a violation has taken place. It is fairly well accepted that the public has the right to access information concerning regulatory standards; but is less well accepted that the public has the right to access information concerning decisions affecting a regulated entity such as permits and licenses.

4.7.9 The Right to Participation

[144] No. 31-K/92 (Q). see also 'The Province and Structure of Environmental Law', prepared by Emmanuel Mountondo for the UNEP/UNDP Joint Programme on Environmental Law in Africa, supra note 108.

Active state intervention is particularly essential in the implementation of a right to a healthy environment[145] as is the need for scientific information as an enabling factor to popular participation. This enables the public to know what has polluted their environment, to what extent and whether anything can be done to remedy the degradation thereby caused, scientific information is simultaneously a shield as well as a spear. On the one hand, it can be wielded to prevent violation of the right to the environment while on the other, it can be used to attack the polluters and make them pay for their pollution and to stop further pollution. It therefore follows that popular participation is essential. People should have the right to participation both individually and in groups, in decision making procedures. In this regard, the ECE Charter is particularly significant as the first international instrument to provide for individual access to a comprehensive range of administrative and judicial proceedings and remedies for the prevention and reinstatement of environmental damage, and participation in decision making processes. It invites states to reflect these rights in their national legislation. Some constitutions and national legal systems already do so.

Prompted by the Bhopal Chemical plant disaster, the Indian Supreme Court for instance, has made particular use of new environmental provisions of the Indian Constitution (already referred to above) in facilitating public interest litigation against state governments. The Supreme Court has adopted the right to life approach in cases concerning pollution and environmental harm. It has also imposed a rule of absolute liability for hazardous industrial activities which goes beyond the old common law rule derived from the English case of *Rylands v Fletcher*.[146] Scientific information is an enabling factor to popular participation.

4.7.10 Access to Clear Environmental Standards

A citizen must know the environmental standards against which the potential violators can be compared. It is easier to identify and prove a violation if one has knowledge of specific emission levels, deadlines for companies or other definite

[145] Susan Tanner, The Right to Environment.' Introduction in Mahoney, supra note 61 a p. 518-519.
[146] See. P. S. Sangal, supra note 102 at p.91.

substantive requirements contained in statutes, regulations or permits. Such substantive requirements are particularly effective when used together with industry self monitoring obligations, reporting schedules or other information access mechanisms.

4.7.11 Public Complaint Process

Articles 50[147] of the Constitution give effect to the principle of public complaints. This is one of the most common mechanisms for public input in environmental enforcement. The process usually allows any person to file a complaint with the State regarding activities that are causing environmental harm or ecological imbalance. The state or municipal government is then required to look into the matter and provide a response within a relatively short period of time. Some countries have an independent complaint committee or designated staff members at the national or local levels. In Uganda, the National Environment Management Authority (NEMA) and to a lesser extent, the Uganda Human Rights Commission (UHRC) undertakes this role. The latter refers environmental issues to NEMA.

In respect to private international law, the OECD Recommendations puts forward the principle of equal access mentioned above. This principle aims at providing real or potential victims of trans-boundary pollution in foreign countries the same rights in judicial and administrative proceedings available to victims of pollution in the source country. These rights are to be accorded not only to individuals affected by trans-frontier pollution but also to foreign non governmental organizations and public authorities in so far as comparable entities posses such rights under the domestic law of the state concerned.

4.8 THE PROTECTION OF THE RIGHT TO A HEALTHY ENVIRONMENT IN UGANDA

Access of foreigners in proceedings related to environment is comprehensively provided in the 1974 Nordic Convention for the Protection of the Environment.

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[147] Constitution of the Republic of Uganda 1992, Article 50.

Individuals are afforded full procedural rights before the courts or administrative authorities of any of the parties to the same extent and on the same terms as a legal entity of the state in which the activities are being carried out.[148] Trans-boundary nuisances must be equated with those within the state where the activity is located.[149] Supervisory authorities of other states parties also enjoy equal access on comparable terms to institute proceedings or be heard in matters relating to the permissibility of environmentally harmful activities. To enable them to perform this public interest role, notification must be given when proposed activities may cause significant nuisance in another contracting state.[150] However, the Nordic Convention has not been fully taken advantage of by non – governmental organizations, agencies and individuals to rectify damage to the environment. The reasons for this include ignorance of the Convention and the restrictive nature of standing to sue before Scandinavian Courts.[151] The potential of the Convention I great, it can be advantageously used to protect the human right to a healthy environment as the procedures are well established.

This part of chapter four looks at the Key Legislations in place that enhance and/or can be revised, improved to enhance the right to a healthy environment within the domestic context. We shall also consider the protection of the right as well as enforcement mechanisms in Uganda. The legislation in Uganda is applicable in Kapelebyong and therefore the people in this part of Uganda derive their protection from Uganda's laws and policies.

The environment is defined by the National Environment Act[152] to mean the physical factors of the surroundings of the human beings including land, water, atmosphere, climate, sound, odour, taste, the biological factors of animals and plants and the social factors of aesthetics and includes both the natural and the built environment. Before the National Environment Act and the 1995 Constitution, the right to a healthy environment was not expressly provided for by the law in Uganda. The

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[148] Article 3.
[149] Article 2.
[150] Prakash Sanjeer, supra note 82 at p.198.
[151] J. G. Lammers, et al., Trans-boundary Air Pollution, (Dordrecht, 1986) at 153.
[152] National Environment Act Cap 153 Laws of Uganda Section 3.

1962 and 1967 Constitutions provided for the Traditional Human rights of the social, political, cultural and economic nature with prescribed restrictions usually in the public interest or security.[153]

On the other hand, environmental management was principally carried out through the various ministries which were concerned with aspects of environmental protection such as forestry, wildlife and soil conservation in a sectoral manner. Furthermore, it must also be noted that common law remedies of negligence and nuisance, the law of Torts and Criminal Law, formed the legal basis for the protection of aspects of the environment.[154] In the area of torts, trespass to person and to property was and is still pertinent to grant damages for illegal acts done to the persons or to the property of the person.

It is also important to note that negligence is still a basis for action especially in Industrial accidents and also provides a residual law in areas not covered by the legislation.

Nuisance was also used in actions concerning smells, and noise among other nuisances. Liability for nuisance under common law has been difficult to find.[155] Statutory law was also used to cover specific sectors such as public health, forestry and water.

4.9 Nature of Environmental Law in Uganda

The Constitutional provisions:

The Constitution of Uganda provides among its national objectives, that utilization of natural resources shall be managed in such away as to meet the development and environmental needs of the present and future generations of Uganda, particularly taking all measures to prevent or minimize damage and destruction

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[153] Emmanuel Kazimbazi, Environmental Law in Uganda. A Symposium and Colloquium for Lecturers in Environmental Law in African Universities, Makerere University Faculty of Law, November, 2004.
[154] Ibid.
[155] Benjamin J. Richardson, Environmental Management in Uganda, the Importance of Property Law and Local Government in Wetlands Conservation: *Journal of African Law Autunmn (1993) Vol. 37 No. 2* pp. 109-143.

to land, air, water resources resulting from pollution or any other kind of natural resources degradation.[156]

Article 39 also guarantees a right to a clean and healthy environment. The Constitution also lays down several principle obligations for the management of the environment in Uganda. The first obligation is for government to protect important natural resources such as land, water, wetlands, minerals, soul fauna and flora on behalf of the people of Uganda.[157]

Secondly, it requires all practical measures to be taken to provide good water management systems at all levels.[158]

Thirdly, it requires government to promote sustainable development and public awareness of the need to promote land, air and water resources in a balanced and sustainable manner for the present and future generations.[159]

Fourthly, it is required to take all possible measures to prevent or minimize damage and destruction to land, air and water resources resulting from pollution or other causes.[160]

Fifthly, to promote and implement energy, policies that will ensure that people's basic needs and those of environmental preservation are met.[161] Lastly, it requires both the central government and local government to create and develop parks, reserves and recreation areas and ensure the conservation of natural resources and promote the rational use of natural resources so as to safeguard and protect the biodiversity of Uganda.[162]

However according to the data generated in the survey of the 20 people sampled, all responded that all their fuel needs were met by the immediate

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[156] Article 39. See also Kazimbazi E. (1998). The Environment as a Human Right: Lessons from Uganda (Proceedings of the tenth annual conference, the African Society of International and Comparative Law) p. 152(ii) National Objectives XXVII Constitution of the Republic of Uganda.
[157] Ibid, Principle VIII.
[158] Supra note Principle XXI.
[159] Supra note Principle XXVII (i).
[160] Ibid.
[161] Ibid, Principle XXII (iii).
[162] Ibid, Principle XXII (iv).

environment[163] and therefore, the reason for the deterioration of the environment. Again of 10 Technocrats polled all answered in the affirmative that the government policies were not enhancing environmental protection. Therefore Principle XXII (iii) it would appear government has not complied with it in Kapelebyong.

Of 30 respondents polled when asked whether their source of water was clean. They all answered in the negative and added that feaces where often deposited near river Ocori Imongin, the source of their water. Again of the 10 technocrats polled, when asked whether they had adequate toilet coverage answered in the negative. The government, it is clear is not complying with the provisions of principle XXII (iii).

4.10 Protection of the Environment under common Law

Courts have for along time considered aspects of environmental degradation through nuisance and negligence claims among other common law remedies. These remedies will be the subject of our scrutiny.

Common law was first applied in Uganda by the 1902 order in Council[164]. Today, the legal basis for applying common law in Uganda is the judicature Act.137.[165] The Act rests in the High Court Jurisdiction to apply (a) written law and (b) subject to any written law and in so far as the written law does not extend or apply in conformity with the common law and the doctrine of equity.[166] Common Law has thus continued to apply in Uganda together with written law.

In negligence actions the following ingredients have to be proved, (a) that there is a duty of care owed to the plaintiff (b) that the duty of care has been breached and (c) that injury has been occasioned as a result of the breach.[167] Liability under the common law arises in respect of an activity which the court adjudges unreasonable, taking into account the respective rights of all the parties involved. The plaintiff must usually prove that he is possessed of some interest in the land affected and the

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[163] See Table 1 of Appendix I.
[164] Order in Council 11th August 1902 and amended 1911.
[165] Judicature Act Cap 13 Laws of Uganda 2000.
[166] Ibid Section 14(2).
[167] *Donoghue vs Stevenson* [1932] AC 562.

defendant who will be the wrong doer or if he or she has continued it, the occupier of the land from which the damage has flowed.

In *Fletcher vs Rylands,* the court ruled that:

The person who for his own purposes brings on his land and collects and keeps there anything likely to do mischief if it escapes must keep it at his peril.

Therefore Lord Goff in the House of Lords decision in *Cambridge Water Company vs Eastern Countries Leather plc*[168] was that it could be argued that the rule in *Rylands vs Fletcher* should be treated as a developing principle of strict liability for damage caused by ultra hazardous operation on the basis of which persons conducting such operations may properly be held liable for the extraordinary risk to others in such operations. He however, pointed out that there are obstacles in the way of the development of the rules in *Rylands vs Fletcher.*

In Cambridge the court found, as a matter of law, that the storage of perchloroethene (PCE) used by the applicant in the process of degreasing pelts at its tanning works could not be considered as a natural use of land. It also held that the seepage of the solvent into the ground beneath the tanning works and its being conveyed in percolating water in the direction of the respondents bore hole 1.3 miles away still did not give rise to any liability. Therefore knowledge or foresee ability of the particular type of harm caused is a prerequitise of the recovery of damages under the principle in *Rylands vs Fletcher.*

In fact, Lord Goff, in *Cambridge* was of the opinion that such rule as in *Rylands vs Fletcher* should not be developed to provide for liability in respect of environmental pollution.

In *Read vs Lyons & Co. Ltd*[169], the House of Lords ruled that there can be no liability under the rule in *Rylands vs Fletcher* except in circumstances where the injury has been caused by an escape from land under the control of the defendant. This decision has had the effect of stunting the development of a general theory of strict liability for ultra – hazardous activities.

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[168] *Cambridge Water Company vs Eastern Countries Leather plc* (1994) 2 WLR 53.
[169] Rylands vs Fletcher (1860) LR EXCH 263.

Furthermore, under common law, before the plaintiff can succeed, he or she must show that actual damage has been suffered and that it followed from the defendants' offending activity. Unfortunately the limitation period then accrues from the moment the damage actually occurs rather than from when it is discovered by the plaintiff.[170] If the site owner can prove that no contaminants had escaped from his site for more than six years, then the limitation period would have passed and no action would lie. If the plaintiff succeeds in establishing the cause of action, two remedies are available: a claim for damages or an injunction order.

The difficulties encountered by the law of negligence for the purposes of liability for environmental; damage have been the frequency with which the courts have refused to find the existence of a duty of care, the inapplicability of the traditional notions of neighbourhood and proxity to environment – related problems, the issue of causation, the irrecoverability of certain types of losses and degradation.

Negligence actions will always require the plaintiff to possess an interest in land before the claim can be brought at all. Interest groups who might have the financial resources to fund proceedings are thereby often excluded.[171] Also what the plaintiff is able to recover is limited in any event and the courts will not grant an injunction an otherwise appropriate remedy in these kind of cases – where an award of damages is considered sufficient[172]. A plaintiff will often be delivered in any event by the threat of liability for both his/her and of course the defendants costs in the event of failure of his or her claim.

In addition, identifying the defendant in the first place, may represent peculiar difficulties for the plantiff.[173]

The common law of private nuisance is still useful in dealing with noise, odour and other types of environmental pollution and degradation. The case of *Walter vs Selfe*[174]

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[170] Section 2, Limitation Act Cap 80, Laws of Uganda 2000.
[171] K. Bentil – Environmental Suits before the courts – prospects for Pressure Groups: (1981) Journal of Planning and Environmental Law.
[172] Pride of Derby vs British Celanese (1953) Ch. 149.
[173] Ibid.
[174] Walter vs Selfe (1851) 4 Deg & sm 315.

established the principle that the plaintiff's abnormal sensitivity to a particular type of harm cannot turn ordinary annoyance that arises from the reasonable use of land into actionable nuisance. In that case there was a complaint by the plaintiff house – owner about obnoxious smells emanating from the defendant's brick works it was found to be sufficient if established, to justify an action in nuisance, as Knight – Bruce, V. C., said while giving his judgment. He states that the plaintiff was entitled for the ordinary purposes of breath and life to an unpolluted and untainted atmosphere.

In *Crump vs Lambert*[175] it was accepted that noise alone, or smoke alone or offensive vapour alone may constitute a nuisance, even if they cannot be shown to be prejudicial to health. According to table one all the 30 respondents were concerned about the high concentration of smoke in the camp.

This cannot be referred to as a healthy environment, high amounts of smoke may lead to respiratory problems.[176] Although a remedy to the malaise, exists however use of appropriate technology would suffice.

In *St. Helens Smelting Co vs Tipping*[177] in that case, the high court adopted the reasoning in Bamford that the reasonableness of the defendants conduct viewed in isolation from the injury he was causing to his neighbour was a defence. The defendant had erected, used and continued to use certain smelting works upon land near the plaintiff's dwelling house and lands. They caused large quantities of noxious gases, this rendered the cattle in the area unhealthy and the adjustant land was rendered unusable; held that anything that decomposes, or affects nerves amounts to a nuisance.

In the Tanzanian case of *Festo Balegele & 794 ors vs Dar es salaam City Council the city council* argued that in dumping sold waste at Kunduchi it was reconditioning the area and not polluting it. Justice Rubama stated in no uncertain terms that it is a statutory duty of the city council .... to stop nuisance and not to create it. An order of

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[175] Crump vs Lambert [1867] L.R., 3 Eq.409.
[176] Union Carbide Corp vs Union of India (Bhopal Case) (AIR 1992 SC 248).
[177] St. Helens smelting Co vs Tipping [1865] XI HLC 642, at paras, 651-2.

Mandamus was granted to direct the respondent to discharge its functions properly in accordance with the law.

The limitations of common law are well known. First, there must be a plaintiff willing to sue who can prove that he or she is suffering the necessary physical harm or inconvenience, and secondly, the plaintiff must have the necessary financial resources to pursue his or her case.[178]

4.11 Criminal Law

Criminal Law in respect to environment offences has not been well defined in traditional legislation. The Uganda Penal Code Act[179] provides instances when a person can be found guilty of negatively affecting the environment. *Section 176* punishes the foulding of public springs or reservoirs rendering them unfit for ordinary use.

According to the results of the sample of 20 people pulled seventeen were of the view that the water was not safe. The health worker also stated that the water was polluted.

According to the agricultural officer, the water was polluted by pesticides administered in the nearby gardens. The offenders should be prosecuted under *Section 176* and sentenced to a punishment of a misdemeanor.

Section 177[180] considers it criminal to voluntarily vitiate the atmosphere so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighborhood or passing along a public way commits an offence and on convention the sentence is a misdemeanor.

Section 178[181] provides: any person who for the purposes' of trade or otherwise, makes loud noise offensive or unwholesome smells in such places and circumstances as to annoy any considerable number of persons in the exercise of their common rights, commits an offence and is liable to be punished, as for a common nuisance.

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[178] Festo Balegele & 794 ors vs Dar es Salaam- msc.civ.cas. No. 90 of 1991 HC (DSM) unreported.
[179] Penal Code Act Cap. 120, Laws of Uganda 2000 sect 160.
[180] Ibid.
[181] Ibid.

Section 203 obliges anyone who has in his (or her) charge or under his (or her) control anything likely to cause danger to life, safety, or health of any person to perform his (or her) duty and *sections 220 and 221*[182] punish acts intended to cause grievous harm by explosive substances or other dangerous or noxious thing.

What is important to note is that: these offences were aimed at protecting the person and not the environment as such. This is perhaps the reason why there is hardly any record of environment cases decided before the 1995 Constitution. That notwithstanding, criminal sanctions can still be validly used as instruments for deterring environment abuse but only as a last resort because criminal law is retrospective in nature. Nevertheless, current environmental legislation provides for penal offences as one of the measures to protect environment especially under the National Environment Act.

4.12 Land Law

According to the Constitution of the republic of Uganda, the Land Tenure system in Uganda is customary, freehold, mailo and lease hold[183] property rights such as easements and restrictive covenants have largely affected the use of land. The law of property gives the land user or owner exclusive ownership of everything on the land, and therefore, the right for them to deal with these resources as they please, unless restricted by national law, the registration of titles act.[184] For instance, gives the lease holders exclusive possession of the premises only subject to the lessor's rights such as the right of re-entry in case a breach of one of the covenants.[185]

An estate in freehold or mailo appears to give its owner unrestricted powers of land in what ever way they want. The only balance to be drawn is that the rights of the occupier should not interfere with the rights of their neighbours or of a lawful or bonafide occupant, such unrestricted powers of use subject land to abuse.

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[182] Ibid.
[183] Article 237 of the 1995 Constitution of the Republic of Uganda and Section 3 of the Land Act. Cap 227, Laws of Uganda 2000.
[184] Registration of Titles Act Cap 230 Laws of Uganda 2000.
[185] Section 43 of the Land Act Cap 227 as amended by the land (amendments) Act No. 1 of 2004.

It is therefore interesting to note that, the Land Act, realized this danger, the Land Act[186] provides that a person who owns or occupies land shall manage and utilize it in accordance with the Forest Act, the Mining Act, the National Environment Act. The Water Act the Uganda Wildlife Act[187], and any other law. These environmental legislations protect against degradation of environment. The common law doctrine of waste could be of particular interest in relation to land use in Uganda, in technical terms, waste consists of any act which alters the nature of the land, whether for the better or for the worse.[188]

Ameliorating waste, for instance, is one category of waste that improves the land, such as converting dilapidated store buildings into dwelling house, in respect to such waste; it seems that unless substantial damages be proved, the tenant will not be interfered with by injunction.[189]

By contrast, permissive waste is a matter of negligence and omission only. It consists of the failure to do that which ought to be done, such as repairs and maintenance of demised property.[190]

A tenant for life or years is not liable under common law for permissive waste unless an obligation to repair is imposed upon them by the terms of the limitation under which they hold[191] voluntary waste, on its part, is actual or co missive, as by pulling down houses, or altering their structure so as to spoil or destroy. A tenant for life is liable for voluntary waste unless their interest was granted to them by an instrument exempting them from liability for voluntary waste.

The fourth category of waste, equitable waste, consist in acts of gross damage, wanton destruction, usually the cutting down of ornamental timber by a tenant without

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[186] Forests Act Cap 146, The Mining Act Cap 148, the National Environment Act Cap 153, The Water Act Cap 152, the Uganda Wildlife Act Cap 200 of Laws of Uganda, 2000.
[187] Forests Act Cap 146, The Mining Act Cap 148, the National Environment Act Cap 153, The Water Act Cap 152, the Uganda Wildlife Act Cap 200 of Laws of Uganda, 2000.
[188] T.R.E, Megarry, A Manual of the Law of Real Property, 2nd edition 1995 Stevens 7 Sons Ltd, London at pg.70.
[189] Bundell (ed) William Wood fall on Land Lord and Tenant 25th Edn. 1954, Sweet and Maxwell, London at pg. 797.
[190] R. E. Megarry supra note 39 at p.20.
[191] R. E. Megarry, Citing Re: Cart Wright (1889) 41 Ch. D532.

impeachment of waste, or stripping a house of all its ornaments. However, it is not enough that a tenant's interest has been given to him without impeachment of waste, they must show that it is intended that they should be allowed to commit equitable as well as voluntary waste. Short of that, the tenant for life is liable for waste.[192]

The categorization of waste in relation to land use is useful in identifying waste minimization strategies that conserve land resources. As in negligence, an action at common law in nuisance for damage caused by waste may be a very limited avenue of recourse for the plaintiff.

4.13 The Law of Contract

Once a contract is legal and conforms to the requirement of the Contract Act[193] no environmental considerations are raised. A contractor is only required to perform their duties in accordance with the terms and conditions of the contract. If the contract is not undertaken according to specifications, the wronged party is entitled to remedies such as damages, specific performance or discharge.[194]

In general terms common law has proved inadequate to control environment degradation. Common law addresses a wrong already done. Environmental law requires even the prevention of likely environmental damage. It also requires immediate action for the sake of the environment. The common law requirement of *locus standi* is therefore illustrated to address environmental wrongs.

The common law is not very helpful to stop environmental pollution or the depletion of natural resources. The relaxation of the rule of *locus standi* could also be viewed in this regard. The inadequacies of the common law, however, have led to the formulation of various legislative measures to address environmental issues.

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[192] R. E. Megarry Ibid at P.71.
[193] Contract Act Cap 73 Laws of Uganda 2000 Section 3.
[194] Robert Lowe Commercial Law, 4th edition Sweet & Maxwell Limited, London 1979, pg. 103.

4.14 The Protection by Environmental Legislation

This section considers the sectoral traditional approach to legislations and then the emerging comprehensive or framework legislations that mirror the concern that the biosphere is one indivisible whole.

As the need arose, sectoral and institutional environmental statutes were enacted. This followed the traditional approach in common law in the manner of ministries, departments and the other sectors of public life. There was no comprehensive and systematic understanding of the interactions within the environment and their compatibility. The result was that numerous legislations came up with conflicting laws and standards.

The *National Environment Action Plan (NEAP)*[195] process later highlighted the inter-dependence of all sectors of the environment and favoured comprehensive legislations. Aspects of the environment which had been protected under sectoral laws which need to be reviewed to strengthen, harmonize and effectively control environmental hazards that impact on the right to environment. These laws include the *Public Health Act*[196] which until recently, principally dealt with the control of chemicals used for the promotion of public health. However, the act does not impose any standards for the use of chemicals[197] "drugs shall be used as directed." There is a need to strengthen environmental aspects of this act by providing for diseases prevention strategies.

The Food and Drugs Act[198] provides for the composition and labeling of food and drugs and food unfit for human consumption. It also provides for the protection of milk and cream substitutes and requires that cases of food poisoning be notified to the relevant authorities and controlled. The act is aimed at preventing adulteration of food and drugs.

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[195] National Environment Action Plan 2007.
[196] Public Health Act Cap 278, Laws of Uganda 2000.
[197] Ibid Section 67.
[198] Food and Drugs Act Cap 278, Laws of Uganda 2000.

The plant protection act empowers the chief plant protection officer to recommend and permit the use of certain chemicals for the control of plant pests and to keep a record of the agents used. This is aimed at preventing the introduction and spread of disease destructive to plants. The act however makes no express provision for the control of chemicals used.

The *Control of Agricultural Chemicals Act*[199] is presently the only significant law governing the use of agricultural chemicals in Uganda. The Act provides for control of manufacture, package storage, display, distribution, possession or transportation of any agricultural chemicals except in accordance with regulations made under the Act[200]. This act is very important because the main source of poisoning is from agricultural chemicals. According to the results as per table 1, the majority of persons when asked about the state of drinking water said the water was polluted. The agricultural officer also agreed that the water was polluted. This legislation must be rigorously enforced in order to ameliorate the degree of pollution.

The *Regulations*[201] provide for registration of agricultural chemicals, fumigators and commercial applicators and premises, protection of workers and operators engaged in manufacturing formulating, packaging, usage or storage of agricultural chemicals, *Regulation 35* in particular provides that agricultural chemicals should be used in a manner to safeguard the environment. Registration and classification of dangerous processes and substances are kept under control. The controlling authority is also kept aware of substances that are in the country in order to effectively monitor them.

The factories Act provides for the health and safety of persons at work particularly in factories. Under *Section 66*, the labour commissioner is responsible for the administration of the act, assisted by inspectors appointed under *Section 67* of the Act. The act should provide for measures to protect the general environment from industrial pollution.[202]

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[199] Control of agricultural Chemicals Act Cap 29 Laws of Uganda 2000.
[200] Ibid section 2.
[201] Agricultural Chemicals (Registration and Control) Regulations No. 85 of 1993.
[202] Factories Act Cap 220 Laws of Uganda 2000.

The *Water Act*[203] makes provisions for water rights, water use and water easements. It also provides for waste discharge permits to protect the environment or prevent, control or oblate pollutions[204] licensing ensures that only environmentally friendly activities are permitted. The town and country planning acts[205] prohibits the use of land for the purposes likely to evolve danger or injury to health.[206] The revision of this law has been going on and I hope that once complete it will take into account environmental concerns, especially environmental impact assessments for planning of urban activities, pollution management, waste management and environmental standards.

The *National Drug Policy Authority Act*[207]; this act regulates the importation, production, distribution, marketing, exportation and use of pharmaceuticals in the public as well as in the private sector.[208]

This is why all the drugs imported into Uganda are required to be labeled known and prescribed by their international non proprietary names (generic names) except where no such name has been allocated and no satisfactory non proprietary alternative exists in order to regulate the supply and use of drugs, the National Drug Policy and Authority Act provides for restricted drugs, prohibition of the supply of impure drugs. The maintenance of the quality of the drugs imported into our country Uganda, control of transport, import and export drugs and the like.

The *Investment Code Act*[209] governs investment in the country, it also provides for agreements for the transfer of foreign technology[210]. In *Section 18(2)(d),* the act makes it an implied term and condition of every holder of an investment licence to take necessary steps to ensure that the operation of its business enterprise does not cause injury to the ecology or the environment. Thus, the act could provide a useful tool for

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[203] Water Act Cap 198 Laws of Uganda.
[204] Ibid, Section 29.
[205] Town and Country Planning Act Cap 246, Laws of Uganda 2000.
[206] Section 18(4)(h) of the Act.
[207] The National Drug Policy and Authority Act Cap 206, Laws of Uganda 2000.
[208] Ibid Section 2(2) and Section 59.
[209] Investment Code Act Cap 92 Laws of Uganda 2000.
[210] Ibid, Section 29.

screening investment activities likely to injure the environment. This will avoid a situation where an industry will be required to close down due to its polluting activities, after it has incurred operation costs. The grant of an investment license should, therefore consider not just the introduction of advances, in technology or upgrading of indigenous technology but also safe and environmentally friendly technology.[211]

The key features of these acts are the protection of human health, control of chemical use in plants, animal protection, and prevention of water, oil and air pollution. The above acts, though providing for the protection of aspects of environment, however, they do not directly address environmental concerns. It was not until 1995 that the right to a healthy environment was included in our status books.

4.15 Description of the Right to a Healthy Environment

Until the *Uganda National Environment Action Plan (NEAP)*[212], process, various environmental concerns existed almost independently from an institutional point of view, that is, as being regulated under the existing sectors of government. The protection of the environment needed a comprehensive approach that accommodates changing perspectives, standards and concerns depending on scientific development. This introduced the concept of frame work legislations ready to change. In 1990, the government established the NEAP, a continues participation aimed at providing abroad framework for integrating environmental considerations into the nation's, socio – economic development strategy, the NEAP process identifies major environmental issues and priorities through the process of review, analysis and consultation by using the following criteria.[213]

a) The urgency of the problem,

b) The potential of irreversibility of the environmental losses if no action is taken.

c) The expected benefits from addressing the issues considered, and

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[211] Ibid, Section 12(d).
[212] Uganda National Environment Action Plan 1999.
[213] National Environment Action Plan for Uganda 1995 pp.49.

d) The degree of inter relationship among issues.

The first mention of the right to environment is found in the NEAP, one of whose key environmental principles and obligations is to keep the environment clean.[214]

The NEAP was the first to recognize the generality of the right as inherent in every person. It also realized the right – duty nature of the right.

4.16 Management and Enforcement of the Right in Uganda

Environmental management includes the administration of human activities as they affect and relate to entire range of living and non-living factors that influence life on earth and their interactions. The key actors in environmental management include but are not limited to the state, local authorities, organizations and individuals[215].

In Uganda, strengthening the legal and institutional framework for promoting environmental management began with the promulgation of the 1995 Constitution. *Article 245(a), (b), (c) of the Constitution* empowered parliament to provide for measures intended to:

a) Protect and preserve the environment from abuse, pollution and degradation.

b) Manager the environment for sustainable development and

c) Promote environmental awareness.

The National Environment Management Authority (NEMA) was established under *Section 6(1) of the National Environment Act*[216] to:

a) To co-ordinate the implementation of Government policy and the decision of the policy Committee on the Environment.

b) To ensure the integration of environmental concerns in overall planning through co-ordination with relevant ministries, departments and agencies of Government.

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[214] Ibid.

[215] Hon. Justice Alfred Karokora, Recent Developments in Uganda Relating to Strengthening the Legal and Institutional Framework for Promoting Environmental Management.' Judicial Symposium on Environmental Law Organized for Judges from 14 to 15 May 2001 at http://www.google.com.search?g=cache.Aqck0eG75zcC:www.unep.org/dpdl/symposium/documents/country-papers/UGANDA.doc+legal+standing+to+sue+in+environemtnal+matter&hl=en&ie=UTF-8 (visited April 20, 2011). The Author Hon. Justice Alfred Karokora is a judge of the Supreme Court of Uganda.

[216] National Environmental Act Cap 153 Laws of Uganda 2000.

c) To liaise with the private sector, inter-governmental organizations, non-governmental agencies and government agencies of other states on issues relating to the environment.

d) To propose environmental policies and strategies to the policy Committee on the Environment.

e) To initiate legislative proposals, standards and guidelines on the environment.

f) To review and approve environment impact assessments and environmental impact statements.

g) To promote public awareness through formal, non-formal and informal education about environmental issues.

h) To undertake such studies and submit such reports and recommendations with respect to the environment as the Government or the Policy Committee may consider necessary.

i) To ensure observance of proper safeguards in the planning and execution of all development projects, including those already in existence that have or are likely to have significant impact on the environment.

j) To undertake research, and disseminate information about the environment.

k) To prepare and disseminate a state of the environment report once in every two years.

l) To mobilize, expedite and monitor resources for environmental management.

m) To perform such other functions as the Government may assign to the Authority.

Article 237(2) (b) of the constitution and *Section 44 (1)* of the *Land Act*[217] provide that the Government or the local government shall hold in trust for the people and protect natural lakes, rivers, ground water, natural ponds, natural streams, wetlands, forest reserves, national parks and other land reserved for ecological and tourist purpose for the common good of the citizens of Uganda. This is the public trust doctrine.

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[217] Land Act Cap 227 Laws of Uganda 2000.

Section 3 (3) of the National Environment Act empowers the National Environment Management Authority (NEMA), also referred to as the Authority or local environment committee to bring an action against any person whose activities or omissions have or are likely to have a significant impact on the environment. This is in furtherance of the right and enforcement of the duty to maintain and enhance the environment. *Section 3 (4) and 71 of the National Environment Act* grant new standing by dispensing with the onus to show that the defendants act or omission has caused or is likely to cause any personal loss or injury. This is grounded in *Article 50 (2) of the Constitution* that empowers individuals, groups and third parties to bring actions to protect the environment.

4.17 The Tools of Enforcement of the Right

Enforcement relates to actions taken by government or other persons to achieve compliance with environmental requirements. The tools of environment audit monitoring, environmental measures and evaluation are essential not only to inform the private sector but also to ensure that the state makes decision based on informed judgments. Access to information and public participation in enforcement is equally crucial as indicated below.

4.17.1 Access to Environmental Information

The 1995 NEAP identified the following problems with respect to environmental information; Inadequate institutional mechanisms for the dissemination of information between the data source and potential users and Environmental information in Uganda has limitations with regard to availability, quality coherence, standardization and accessibility which in turn impairs the country's ability to make informed decisions concerning its environment and development.

The NEAP recognized that for the environment to be managed sustainably and to continuously anticipate new and emerging environmental information be made available. The main objective for environmental information management was stated as

the collection, analysis, storage, and dissemination on a continuous basis, of reliable information relating to environmental management issues including biodiversity, soil conservation, fuel wood supply and demand, and pollution control.

In 1995, the National Environment Act was enacted and provided in its *Section 85(1)* that every person shall have the right of access to any information relating to the implementation of this Act submitted to Authority or to a lead agency, Under the section, requests for information may also be granted by application. Access to information may also be granted upon payment of a prescribed fee. Proprietary information is excluded from the categories of information to be granted under this section.

The 1995 Constitution in Article 41 provides:

1. Every person has a right of access to information in the possession of the state or any other organ or agency of the state except where the release of the information is likely to prejudice the security or sovereignty of the state or interfere with the right to the privacy of any other person.
2. Parliament shall make laws prescribing the classes of information referred to in clause (1) of this Article and the procedure for obtaining access to that information.

Section 85 of the National Environment Act and Article 41 of the Constitution together thus make three broad exceptions to the general right of access to information. The provisions exclude information that may prejudice the security or sovereignty of the state, or interferes with the privacy of other persons, or proprietary information.

In the case of the *Attorney General Major General David Tinyefuza*[219] the chief justice Wako Wambuzi (as he then was) noted as follows: The Constitution has determined that a citizen shall have a right of access to information in state hands. It has determined the exceptions in a manner that is inconsistent with the application of

[219] *Attorney general v Major General David Tinyefunza Constitutional* Appeal No. 1 of 1997 (unreported).

Section 121 of the Evidence Act[220]. It is no longer for the head of department to decide as he thinks. That unfettered discretion has been overturned by *Article 41 of the Constitution.* And now it is for the sate must produce evidence upon which the court can act.

In the same case, Hon. Justice Oder, J.S.C gave a very strong opinion as to the relevance of *Section 121 of the Evidence Act* in light of *Article 41 of the Constitution*. He states: The right of access to information is new in the Constitutional history of Uganda. The *Evidence Act* is an old vintage statute of 1909. For this and other reasons, I think that *Article 41 of the Constitution* overrides *Section 121 of the Evidence Act*. There is a long catena or chain of decisions in which warnings have been given by courts, of the menace which supposed privilege implies, to the individual liberty and private rights and to the potency of its abuse. It is this menace, which, in my view, Article 41 sets out to limit. The right of access to information must include the right to use such information in a court of law in support of a citizen's case.

The reasoning of Hon. Justice Oder, J. S. C. was cited approvingly in the case of *Paul Kawanga Ssemwogerere & Zachary Olum v the Attorney General*[221] in which a declaration was sought to nullify the Referendum and Other Provisions Act on the ground that it was passed without quorum. However, soon after the said judgment, parliament enacted a law, the *Referendum and Other Provisions Act*, 1999, whose effect was to reverse the decision of the Supreme Court. This law was challenged in the Constitutional Court on the ground, among others, that it contravenes *Article 41* of the Constitution. On appeal to the Supreme Court,[222] Hon. Justice Kanyeihamba J. held that under *Article 41(1)* of the Constitution, information in possession of the state is freely available to a citizen except where its release would be 'prejudicial to the security or sovereignty of the state or interfere with the right of privacy of any person' .... Where the state refuses to release such information, the citizen entitled to receive it may take

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[220] Evidence Act Cap 6 Laws of Uganda 2000.
[221] *Paul Kawanga Ssemwogerere & Zachary Olum v the Attorney General* Constitutional Petition No. 3 of 1999.
[222] Ibid.

the necessary legal steps to compel its release. And in *Greenwatch (U) Ltd v Attorney General & Anor.*[223] Hon. Justice Egonda Ntende held that a corporate body could qualify as a citizen under Article 41 of the Constitution to have access to information in the possession of the state or its organs and agencies.

Access to information is certainly a corner stone for public participation. The access to information Act, 2005[224] provides for the right of access to information pursuant to article 41 of the Constitution. It sets the limits of the allowable exceptions. For instance, a request for access may be rejected by an information officer of a public body if commercial or confidential information is involved; if such access is reasonably likely to endanger life or physical safety of a person, or prejudice or impair the security of property if the disclosure would deprive a person of a right to a fair trail or prejudice legal proceedings; or if the disclosure would prejudice the defence, security or sovereignty of Uganda or International relations.[225]

Save for those restrictions on access, the Act clarifies procedures of and provides for redress in case of denial of access to information. This act is a useful tool for NEMA should it put in place procedures for accessing environmental information and prescribe fees payable in respect thereto.[226] These provisions are useful to the people of Kapelebyong for the purpose of finding out what step government is taking to stop cattle rustling and environmental degradation.

4.17.2 Duty of Public to Participate

The National Environment Action Plan for Uganda (NEAP)[227] recognized that public participation is necessary to enlist the support of the people and to influence changes in behavior and attitudes and act as an incentive to the sustainable use of

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[223] *Greenwatch (u) Ltd v Attorney General & Anor*, H. C. M. C. 139 of 2001.
[224] Access to Information Act No. 6 of 2005.
[225] Sections 27, 28, 29 and 30 of the Access to Information Act.
[226] Godber W. Tumushabe, Arthur Bainomugisha et al, Sustainable Development. Beyond Rio Principle 10. Consolidating Environmental Democracy in Uganda through Access to Justice, Information and Participation, ACODE Policy Research Series, No. 5. 2002 pp.9, 1, 11 and 34.
[227] The National Environment Action Plan for Uganda 1990. P. 67.

natural resources. It also recognized that public participation can be achieved through the following strategies.[228]

a) Develop guidelines on public participation in environment / natural resources management to be applied by resources managers in their development programmes and projects.

b) Strengthen extension programmes in natural resources management enlisting the assistance of local non governmental organizations whenever possible.

c) Design programmes that involve and benefit the most disadvantaged groups, particularly women, children and the disabled.

d) Decentralise environment management to enhance public participation.

e) Bridge the information gap between the central government and the local communities / resources uses by developing a two – way mechanism for information collection and dissemination.

The public has, for instance brought some actions against violations of the environment. In a case involving *Greenwatch v M/S Sterling* (settled out of Court), M/S sterling involved in constructing the Kampala – Jinja High way, had blown so much fumes out of stone – blasting and had polluted the whole, area (of Mbalala), causing a lot of damage to plants and lives of people. In another air pollution complaint *Greenwatch v Hima Cement (1994) Ltd.,*[229] the Hima Cement Factory operating in Western Uganda was found to be emitting over 80 tons of cement dust into the atmosphere from its factory. The dust as causing harm and damage to people, animals, crops and the general environment. There was public outcry about the factory's polluting activities. The plaintiff took an action as a public litigant to stop the cement factory from polluting the environment, and sought a pollution and environmental

[228] Ibid.
[229] Greenwatch v Hima Cement (1994) Ltd., a 1998 case unreported.

restoration order. NEMA ordered the cement factory to improve their technology and stop polluting the vicinity.[230]

In the case of *The Environmental Action Network Ltd v The Attorney general and the National Environment Management Authority*[231] the learned judge observed that there is limited public awareness of the fundamental rights or freedoms provided for in the Constitution, let alone legal rights and how the same can be enforced. He concluded that given such circumstances the court, as guardian and trustee of the Constitution and what it stands for, is under obligation to grant standing to a public spirited individual who seeks the court's intervention against legislation or actions that prevent the enjoyment of the fundamental rights and freedoms.

Public participation operates by empowering people with the right to a healthy environment as has been done under *Section 3 of the National Environment Act* and *Article 39 and 50 of the Constitution*. As the public is directly to benefit or be harmed from activities involving the environment, public participation must be enhanced. The provisions of the right to a healthy environment and the capacity to sue in respect thereto dispenses with the local rules of *locus standi*. This encourages public participation.

The public can act either individually or collectively to enforce the right under *Section 71 of the National Environment Act* read together with *Article 50 of the Constitution*. This, therefore, requires the strengthening of non governmental organizations to participate in environmental management as agents for the enforcement of the right, the *Non Governmental Organizations Registration Act*[232] requires the registration of all NGOs under the National Board of Non Governmental Organizations.[233] The Board could, therefore provide a useful function in screening

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[230] An Interview in February 2011 with Mr. Justin Ecaat, Environmental Impact Assessment Officer, NEMA. Also See M. H. Jackson, et al., The Environment Health Reference Book. Butterworths, London 1989 at Chapter 8, pp.8/4, 8/37, 8/38 on vehicular pollution.

[231] The Environmental Action Network Ltd v The Attorney General and the National Environment Management Authority High Court Miscellaneous Application No. 39 of 2001.

[232] Non Governmental Organizations Registration Act Cap 113, Laws of Uganda 2000.

[233] Memorandum of Understanding between Kenya, Tanzania and Uganda for cooperation on Environmental Management, signed in Nairobi on October 22, 1998.

NGOs and ensuring that their activities enhance and not harm the environment. In particular, environmental protection NGOs could be assisted in their activities by the Government or/together with the National Environment Fund. This also calls for the creation and strengthening of inspection functions under the existing and proposed national legislations on human rights and the environment. The role of DENIVA, the umbrella organization for NGOs in Uganda should be strengthened in this regard, as should that of Local Environment and District Environment Committees established under the National Environment Act.

Grass-root committees should also be empowered in environmental management by encouraging on the spot observation of activities deleterious to the environment. Information gathering and reporting by the public is crucial in enforcement. The person who has gathered useful information can directly approached the violator in an attempt to induce voluntary compliance or she/he may publicise the violation in the press or community meetings to create pressure on pollutes to comply. Alternatively or in addition, such a person or persons may report the violations to the responsible agency such as NEMA under section 3(2) of the National Environment Act. Taking out legal proceedings is another remedy available to the public under Article 50 of the Constitution.

In East Africa, the most instructive regional legal instrument that provides a basis for public participation in environmental decision making is the *Memorandum of Understanding between Kenya, Tanzania and Uganda for Cooperation on Environmental management.*[234] The Memorandum of Understanding sets out to elaborate provisions on environmental procedural rights. The partner states commit themselves to promote public awareness programmes and access to information as well as measures aimed at enhancing public participation in environmental management.[235] The East African countries have moved a step further to operationalise the provisions of the

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[234] Article 16(2)(a).

[235] See Godber W. Tumushabe, Toward Environmental Accountability: The case for a freedom of access to Information Legislation in Uganda', a paper presented at a workshop on the Freedom and Access to Environmental Information for East African Countries held at Arusha on the May 6 – 7, 1999.

Memorandum of Understanding.[236] The East African Community draft Protocol for Environment and natural Resources Management has a provision on Public participation, access to justice and information. The draft Protocol was reviewed by the Working Group and the Sectoral Committee on Environment and Natural Resources of the East African Community EAC). It was consequently reviewed by the Council of Ministers at the 10th Ordinary Meeting of the EAC Council of Ministers held in Arusha, Tanzania from 4th to 8th of August 2009. The Council of Ministers has referred it to Sectoral Council on Legal and Judicial Affairs of the EAC for consideration and clearance before the final approval which will render the protocol binding to the EAC countries.

4.14.3 Environmental Planning in Uganda

Environmental planning as defined in *Section 1 of the National Environment Act* means both long terms and short terms planning that takes into account environmental issues. NEMA is enjoined to prepare a National Environment Action Plan to be reviewed after every five years or less.[237] The plan covers all matters affective the environment in Uganda and shall contain guidelines for the management and protection of the environment and natural resources as well as the strategies for preventing, controlling, or mitigating any deleterious effects.[238] It also takes into account district plans established under *Section 18 of the Act*. Environmental Planning ensures that development activities are harmonized with the need to protect the right to healthy environment. It also ensures that environmentally – unfriendly activities will not be permitted and that those permitted shall be strictly controlled in accordance with established standards.[239] In Kapelebyong, this should include, a halt to massive tree cutting and over grazing. They would be encouraged to plant trees.

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[236] Section 18(1) of the National Environment Act Cap 153.
[237] Ibid section 18(2)(a).
[238] On Environmental Planning on the Local levels, see section on Institutional Development and Strengthening in this chapter.
[239] Guidelines of Environmental Impact Assessment in Uganda, July 1997.

4.17.4 Environmental Monitoring

Environmental Monitoring is defined in *Section 1 of the National Environment Act* as the continuous determination of actual and potential effects of any activity or phenomenon on the environment whether short term or long term. Under the Environmental Impact Assessment Guidelines[240] two systems of monitoring are specified as:- Self monitoring whereby the developers themselves are encouraged to monitor the impact of their activities and; Enforcement monitoring done by government agencies such as NEMA through environmental inspectors.[241]

Enforcement monitoring being more rigorous is intended as a last resort when self monitoring has failed. Developers are, therefore advised that it is not in their best interest to await the action by NEMA. As a result, the first audits in Uganda have been done by industries such as Coca-Cola makers of soft drinks. To encourage this move, NEMA now participates in identification of investor of the year. Many developers are keen to obtain an environmental award in this respect. Thus, in the few years that NEMA has existed, it has progressed remarkably. This should also include daily appraisal of environment in Kapelebyong, and taking actions that tend to reverse the downward trend in Kapelebyong's environment.

4.17.5 Environment Audit

Environmental audit is defined in *Section 1 of the National Environment Act* as 'the systematic, documented periodic and objective evaluation of how well environmental organization, management and equipment are performing in conserving the environment and its resources. Audits occur after the project has commenced and may lead to prosecution of offenders. Audits may also lead to the redesign of a project or the remodeling of its operations in order to avert possible disaster or other environmental damage that may go beyond regulatory compliance.[242]

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[240] Guidelines of Environmental Impact Assessment in Uganda, July 1997.
[241] Section 23(2) of the National Environment Act Cap 153.
[242] See John Ntambirweki. 'Enforcement of Environmental Litigation in Zambia, Assessment and Proposals to improve the current system', Consultancy Report. Environmental Law & Institutions Programme

NEMA carries out continuous audits[243] with the help of inspectors, to ensure that industries comply with the requirements of the National Environment Act. The problem, however, is that many industries were set up before the Act was enacted and environmental standards were not a key feature by then. The result is that industry has had to adapt to the new policy under the Act and has to be willing to shoulder the cost of clean up operations and also to adopt appropriate technology. This has been a difficult task for the small factories in Uganda which have had to meet corrective measures established by NEMA. In Kapelebyong however, no such audits have been done, this should be encouraged in rural areas too.

Such an industry is the Hima Cement Factory. In a complaint concerning that factory, a lot of dust was being generated from the process of cement production. The local community complained and the local councils even threatened to close the factory themselves. As the production was a 24 hour process, dust was literary flying within the factory and all over the surrounding area. NEMA required the factory owners to install a machine to reduce the dust in the production process. An electro- static precipitator was consequently installed to pick off the dust by electric means. The result was that there were no more complaints about substantial dust pollution for a long time, although complaints are re-emerging in 2010. The factory owners have benefited in that they can now capture the cement which was escaping as dust, thus realizing more production per unit material. On the other hand, it is cost effective in terms of environmental management as wrongs can be identified and corrected in time. There is now a need to review the whole situation in Kapelebyong. This should include government activities and those of local people have they been / conscious of the environment. The researcher recommends immediate deployment of NEMA inspector in Kapelebyong.

Activity Centre (ELI/PAC) of the UNEP, Nairobi, May 1994.OECD Environmental Monographs No. 8' Improving the Enforcement of Environmental Policies, Nairobi January 1987.

[243] Section 22 of the National Environment Act Cap. 153.

4.17.6 Environmental Standards Setting and Licensing

Licensing and standard settings is one of the most widely used tools of enforcement of environmental law. The National Environment Act provides for establishment of environment standards in part VI of the Act. In order to confront polluters, standards and regulations are being put in place. The existing ones include the following:

- The Environmental Impact Assessment Regulations[244]
- The National Environment (Standards for Discharge of effluent into Water or on Land) Regulations[245]
- The National Environment (Waste Management) Regulations[246]
- The National Environment (Hilly and Mountainous Area Management) Regulations[247]
- The National Environment (Wetlands, River Banks, and Lake Shore management) Regulations[248]
- The National Environment (Minimum Standards for Management of Soil Quality) Regulations[249]
- The National Environment (Management of Ozone, Depleting Substances and Products) Regulations[250]
- The National Environment (Access to Genetic Resources and Benefit Sharing) Regulations 2005.[251]
- The National Environment (Audit) Regulations 2006[252]

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[244] The Environment Impact Assessment Regulations No. 13 of 1998.
[245] The National Environment (Standards for Discharge of effluent into Water or on Land) Regulations No. 5 of 1999.
[246] The National Environment (Waste Management) Regulations No. 52 of 1999.
[247] The National Environment (Hilly and Mountainous Area Management) Regulations No. 2 of 2000.
[248] The National Environment (Wetlands, River Banks, and Lake Shore management) Regulations No. 3 of 2000.
[249] The National Environment (Minimum Standards for Management of Soil Quality) Regulations No. 59 of 2001.
[250] The National Environment (Management of Ozone, Depleting Substances and Products) Regulations No. 63 of 2001.
[251] The National Environment (Access to Genetic Resources and Benefit Sharing) Regulations No. 30 of 2005.
[252] The National Environment (Audit) Regulations No. 12 of 2006.

Standard setting ensures that licenses and permits are issued as a measure for the control of activities that may have deleterious or beneficial effects on the environment. Use of licenses and permits is prospective in that they emphasize the control of activities before they commence. The National Environment Act has set standards to be followed. These standards should apply across the board. Kapelebyong appears to have been left out by these standards that is why according to the results of the 10 technical persons interviewed said they were not enforcing the right to a healthy environment.

This requires that the licensing authorities should be environmentally conscious to avoid emphasizing the revenue collection aspect at the expense of environmental concerns.

4.17.7 Environmental Restoration Orders

Restoration is more of a curative than preventive approach to environmental management. It should be applied vis-avis other methods of enforcement to ensure strict compliance with a restoration order. This could well apply in instances of re-afforestation to restore the earth's natural cover as in the use of restoration orders to regenerate and restore wetlands, river banks and lakeshores in accordance with *Sections 67, 68, 69, 70 and 71 of the National Environment Act*[253] and the National Environment (Wetlands, River Banks and Lake Shore Management) Regulations.[254]

Under the National Environment Act one of the strategies for the achievements of quality environment is the use of environmental restoration orders. The restoration order stops the damage from occurring, or where damage has occurred. The order will demand that the person who has occasioned it discontinues the damage, restores the damaged area to the position it was before the damage occurred or pays for or makes good the damage caused. In 1996, for instance, NEMA required the owners of Nakasero Soap Factory in Mbuya, Kampala, to correct the issue of smoke and noxious fumes

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[253] The National Environment Act Cap 153.
[254] The National Environment (Wetlands, River Banks, and Lake Shore management) Regulations No. 3 of 2000.

generations and waste water discharge.[255] In another instance, in January 1997, NEMA served a restoration order in Kampala City Council (KCC), to stop illegal dumping of waste in places like Lweza and Kalerwe on Gayaza Road and to ensure that no damage by leakage into the soil is caused.

In more recent times, NEMA has served restoration orders to address diverse encroachment issues. For example, Mr. Sudir Rupaleria, the Managing Director of Rosebud Limited Flower Farm was served with a restoration order ref: *NEMA/ERO/WAK/01/05/2003 in May 2003* requiring him to stop any further degradation of part of Lake Victoria and the wetlands flanking it which were destroyed during the expansion of the farm; to restore to as near as possible the lake and the wetland he had degraded to the original state they were in before the degrading activity, among other orders. Rosebud Flower Farm was depositing soil/murrum in the wetlands in the lake to create more land for the cultivation of flowers and was illegally extracting waste and discharging waste water into the lake.[256] NEMA gave the Farm two months to undertake the restoration.

Restoration order have also been served on encroachers of Nakivubo wetland requiring them to stop degrading the said wetland by dumping murrum thereon, it also required them to remove their structures from the wetland and restore the wetland to the position it was before the degrading activities.[257] Encroachers of Nakaiba wetland in Masaka and wetlands in Mbarara and Kabale were also served with restoration orders.[258]

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[255] An interview in February with Mr. Justin Ecaat, then Environmental Impact Assessment Officer, NEMA 23rd August, 2011.

[256] Restoration Order Ref: /EMA/ERO/WAK/01/05/2003 of May 2003 issued to Sudhir Ruparalia.

[257] One of the persons to whom a restoration order was served in July 2004 by Ref: /NEMA/ERO/KLA/02/07/2004 was Godfrey Nyakana. He did no comply and instead proceeded to construct a storeyed building upto roofing level. NEMA consequently demolished the said building and prosecuted Nyakana under Section 101 of the National Environment Act for disobeying a restoration order. See Uganda v Godfrey Nyakana Criminal case No. 16 of 2005 at the Chief Magistrates Court, Nakawa.

[258] In Kabale for instance a restoration order ref: /NEMA/ERO/KAB/01/01/2005 was served on Fr. Fred Nkwasibwe to refill the drainage channel he had constructed, completely demolish the illegal structure he had built,, remove all debris arising there from and restore the wetland.

The environmental restoration order does not only operate where damage has occurred. It is also aimed at preventing possible harm to the environment. It may also require awarding compensation to the persons whose environment or livelihood has been harmed by the pollution. It could also levy a charge on the polluter representing a reasonable estimate of the cost of any action taken by an authorized person or organization to restore the environment to the state in which it was before the degrading activity.[259]

NEMA is also empowered to serve an environmental restoration order requiring that the person likely to cause harm to the environment should take such action in such time being not less than 21 days from the date of the service of the order to remedy the harm to the environment as may be specified in the order.[260] The order may be reconsidered after a written request from the person upon whom it was served.[261] Where the person to whom the order was served does not take action as required in the order the Authority may take necessary action in respect of the activity complained.[262] An Environmental restoration order may also be issued by court in any proceedings brought by any person against a person who has harmed, is harming or is reasonably likely to harm the environment. The plaintiff need not have a right of interest in the property, in the environment or the land alleged to have been harmed or likely to be harmed or in the environment or land contiguous to such environment or land.[263]

The law was invoked in the case of *Askia Mughammad v The Attorney General & Aquatics Ltd.*[264] brought under section 71 of the National Environment Act, where the plaintiff, a private citizen brought an action for an environmental restoration order, ,

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[259] Section 67 of the National Environment Act Cap 153.
[260] Ibid Section 68.
[261] A written request for the reconsideration of a restoration order has been made by J. W. Ochola the registered proprietor of Plot 11 Plantation Road,, Bugolobi and Richard Mungati the registered proprietor of Plot 5 Plantation Road Bugolobi, among a few others. Both Ochola and Mungati were granted a hearing on 8th February 2005 and allowed time within which to comply with the restoration orders served on them.
[262] Ibid Section 70.
[263] Ibid Section 71.
[264] *Askia Muhammad v The Attorney General & Aquatics Ltd* HCCS No. 792/96.

restraining the defendants, jointly and severally, from conducting herbicides trials on Lake Victoria. Restoration orders should also be a common feature in Kapelebyong, public be ordered to plant trees and allow grass to grow. The environment officer located at Amuria District headquarters be ordered to relocate at Kapelebyong to supervise the restoration of the environment. He should also take interest in sanitation and checking of pollution. Quick growing trees should be planted and the public be availed with grass seeds as a matter of urgency.

4.17.8 Environmental Impact Assessment (EIA)

As observed in this chapter, training and education is crucial to improve the practical application and implementation of EIA. This goes hand in hand with cooperation in the field of EIA among countries and also among departments in a country to develop and intensify EIA mechanisms.

In Uganda, the 1998 EIA Regulations[265] have been issued under section 107 of the National Environment Act.[266] The regulations apply to all new projects that are likely or will have a significant impact on the environment.[267] They also apply to any major repairs, extensions or routine maintenance of such existing projects.

One therefore wonders why EIA is not carried out before the expansion of the camp in Kapelebyong. The law must take into account such demands.

All licensing authorities operating under any law in force in Uganda, are required to demand for the production of a certificate of approval of EIA issued by NEMA before implementation of any proposed project under the third schedule to the National Environment Act. Moreover, the persons that undertake the Environmental Impact Study (EIS) must be approved by NEMA.[268] Developers who obtain certificates of

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[265] The 1998 EIA Regulations Statutory Instrument No. 13 of 1998 published in Gazette supplement No. 8 on May 1998.
[266] The National Environment Act Cap 153.
[267] Under the rule 34 of the National Environment (Wetlands, River Banks and Lake Shore Management) Regulations No. 3 of 2000, for instance a developer desiring to conduct a project which may have a significant impact on a wetland, river banks or lake shore shall be required to carry out an environmental impact assessment in accordance with sections 19, 20 and 21 of the National Environment Act.
[268] The 1998 EIA Regulations, r.11 and Part 2.3 of the Guidelines for Environmental Impact Assessments in Uganda, NEMA July 1997 at p.8 – the project may be approved after the approval of the EIS by NEMA.

approval are required to ensure compliance with conditions set out in the certificates and to avoid substantive undesirable effects not contemplated in the approval. If the developers ignore this requirement the Executive Director of NEMA may revoke the certificate of approval.[269] The developer is the expected to stop further development pending the rectification of the error to restore the environment.[270]

Some developers are learning the hard way that it is safer to do an EIA before making any development. There is general realization that if an investment is found to be environmentally unfriendly, NEMA may either require a lot of restoration to be done or it may close down the venture completely thus, the investor would be the loser.

The problem faced by NEMA, in this regard is that the EIA officers are over-stretched because all industries provide EIA statements to be reviewed and approved. Besides, any new policy is resisted. Developers have for long played the game of ignorance of the requirement of EIA. Nevertheless, presently, many financial institutions like the World Bank and the East African Development Bank (EADB) require that before loans can be obtained, an EIA should first be undertaken.[271] The move by these financial institutions has greatly assisted NEMA in ensuring the carrying out of an EIA for any proposed economic venture that is likely to adversely affect the environment. Government agencies are also assisting NEMA in the implementation of the EIA requirement by participating in the review process.

Although previously most of these agencies did not know that EIA needed to be done before a grant of licence to a developer, NEMA has brought that requirement into sharp focus under the 1998 EIA regulations. The result is that before a licence is granted respective government agencies require an EIA study to be undertaken under the set principles of NEMA. They also demand the production of a certificate of approval of EIA issued by NEMA.

The public is also becoming increasingly aware about the need for an EIA. This has been realized through public fora like workshop[s organized by NEMA in conjunction

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[269] Regulations 28(1)d(2) of the EIA Regulations and Part 6.4 of the Guidelines for EIA in Uganda at p.34.
[270] Ibid Paragraph 3, or r.28.[240]
[271] Supra note 211

with the Uganda Manufacturers Association (UMA) and the Uganda Investment Authority (UIA). Although some people continue to avoid the problem (like putting developments on wetlands), the public has largely recognized the need and value of EIA as beneficial not only to the investor but also to the public at large, by preventing environmental degradation.[272] Interestingly, now the public insures from NEMA about the environmental impacts of some business investments in their area. For instance, on December 12, 1997 residents of Old Kira Road wrote to Kampala City Council (KCC) protesting the proposed building of a shell petrol station in their area.[273] The complaint was forwarded to the EIA officer of NEMA. This is a sign that the public is becoming increasingly participatory in environmental monitoring.

The courts are equally responding to the requirements of EIA. In *National Association of Professional Environmentalists (NAPE) v AES Nile Power Ltd*[274] for instance, the application was brought under section 71 of the National Environment Act seeking inter alia, a temporary injunction to stop the respondents concluding a power project agreement with the government of Uganda until the National Environment Management Agency, NEMA, has approved an EIA study on the project. The court declared that approval of the EIAs by NEMA is required under 19 of the National Environment Act.

In *Greenwatch & anor v Golf Course Holdings Ltd*[275] it was held that the application for a temporary injunction could not be granted because the main suit had no likelihood of success and that the applicants would not suffer irreparable harm. This is because both Kampala City Council and NEMA, the controlling and regulatory bodies respectively, had given the respondents a go ahead to construct the hotel and an impact assessment had been carried out in accordance with the provisions of the National Environment Act, hence taking care of the public interests the applicants were claiming to protect. It was further held that even if damage was caused, this could be

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[272] Ibid
[273] Supra note 123.
[274] *National Association of the Professional Environmentalists* (NAPE) v *AES Nile Power Ltd* High Court Miscellaneous Cause 268 of 1999. Ruling delivered in April 23, 1999.
[275] Greenwatch & anor v Golf Course Holdings Ltd H.C.M. Appl. No. 390 of 2001 arising from HCCS No.

put right under the provisions of section 67 of the National Environment Act, which provides for restoration, which would be at the respondents expense. While Impact assessment appears to be largely an activity carried out for large projects only. I wish to submit that the impact assessment must also be encouraged before a camp is established in order top avoid situations like those in Kapelebyong which affect the environment. These should include areas of water, sanitation and wood fuel sustainability.

And in *Advocates Coalition for Development and Environment v Attorney General*[276] the Attorney General was sued for allegedly granting Kakira Sugar Works Ltd a permit/license to change land use in Butamira Forest Reserve in violation of the public trust doctrine and without carrying out a proper environmental impact assessment. It was held that the alleged granting of a permit/licence to Kakira Sugar Works Ltd was illegal for contravening the public trust doctrine and also because no environmental impact assessment was carried out as required under the National Environment Act.

4. 17.9 Community Service Orders

As an alternative to imprisonment and fines, persons committing environmental wrongs may be required to perform duties in the community as a reparation to the community for the wrong done. As far as the duty to maintain and enhance the environment is concerned, such a person could be required to remedy the environmental wrong he or she has committed. If they are not able to do so financially or otherwise, then they could be incorporated in the programmes of NEMA and lead agencies, or of local environment committees and non governmental organizations operating in the area where the harm occurred.

The *Community Service Act,*[277] therefore, needs to be applied to environmental wrongs as well, not only minor offences in the realm of criminal law. This is because the

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[276] Advocates Coalition for Development and Environment v Attorney General; Miscellaneous Application No. 100 of 2004

[277] The Community Service Act Cap 115 and the Community Service Regulations No. 55 of 2001, rule 5 specifying the nature and scope of work of a non custodial nature that an offender may do in the community. See in particular sections 3, 4 and 5 of the Act and rule 5 of the Regulations.

effect of environmental wrongs goes beyond the confines of the area in which the wrong is committed. Infact, it may have transboundary effects, and the wrong is best remedied by voluntary action of the offender and the society. The provisions of section 106 (4) of the National Environment Act which mandates court to order community service in addition to a fine paid for contravention of the provisions of the act will benefit from the Community Service Act as well, NEMA in collaboration with the judiciary and other stakeholders needs to design community service programmes for environmental wrongs, to be applied in all district. This would be very appropriate for Kapelebyong where the community is poor. Defaulters could be ordered to plant trees along the roads and in public institutions.

4.18 Strengthening the Criminal Law Regarding Environmental Penal Offences

Criminal offences have been enacted as additional provisions to specific acts dealing with environmental matters. Although the Penal Code Act[278] criminalize certain environmental related violations, specific environmental penal offences are essentially created by environmental acts like the National Environment Act and regulations made there under, the Water Act, and the Uganda Wildlife Act.[279] These describe the offences and their ingredients.

The criminal provisions of the environmental laws apply the precautionary principle to cater for anticipatory injury or damage, hence punishing even failure to comply with the law although such non compliance does not result in direct or immediate injury to person or property. This is different from "attempt" under the Penal Code Act which requires proof of criminal intent or negligence *mens rea*. In addition, the prohibitions in the National Environmental Act are absolute, dispensing with the need to prove intent, hence the burden of proof is easier since environmental offences

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[278] Penal Code Act Cap 120.
[279] National Environment Act Cap 153 and Regulations made thereunder, the Water Act Cap. 152 and the Uganda Wildlife Act Cap 201 Laws of Uganda 2000.

are a form of strict liability and vicarious liability offences.[280] However, like in all other criminal offences, causation must be established. Evidence must be adduced to prove the commission of the offence and, therefore there is need for reports of environmental inspectors, laboratory reports, photographs and maps to be collected as vital exhibits.

The problem faced in enforcement of environmental penal offences are diverse. There is lack or inadequacy of equipment and experience for the prosecution bodies in relation to highly developed industrial polluters, for instance. This is a particular concern due to the expansion of the industrial sector in this country. Most of the activities of the industries go un inspected and there widespread abuse of the environment occurs.

Furthermore, in spite of the fact that every person has the obligation to maintain and enhance the environment, members of the public and the relevant administrative agencies are reluctant to report cases of pollution, besides, there is still limited capacity to prosecute environmental cases in Uganda, despite the existence of the environment desks in the Police and the Director of Public Prosecution's (DPP) office. Liability is also dependent upon a complex set of regulatory provisions and the possession of permits or licenses, among others. These may provide a defense to industrialist or other polluters unless it can be proved that the license or permit is inoperative or is improperly used. If the pollution is 'authorized' so to speak, or does not contravene administrative duties, then it cannot be prosecuted.

It may also be noted that all offences must be statutory and there is no room for customary or judge made law. In an anti smoking cause, the *Environmental Action Network Ltd v Attorney General NEMA*[281] the principal Judge as he then was, Ntabgoiba J., ruled that smoking is not a crime either under the Penal Code Act or under any law or statute and courts have no jurisdiction to create crimes or criminalize any acts. Nor do courts possess any power to order prosecution, which is a power strictly reserved for the Director of Public Prosecution. This was echoed in

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[280] Supra note 153.
[281] *Environmental Action Network Ltd v Attorney General*; High Court Misc. Appl. No. 39 of 2001.

British American Tobacco (u) Ltd v The Environmental Action Network Ltd[282] decided by the same judge.

These causes were distinguished from the case of *K. Ramakrishnan & ors. V State of Kerala & ors*[283] *in which it was held that s*moking in a public place vitiates the atmosphere so as to make it noxious to the health of persons who happen to be there. Therefore, smoking in a public place is an offence punishable under *Section 278 of the Penal Code* (High Court of Kerala at Ernakulam). The difference between this case and the two Ugandan cases above,[284] is that whereas the judge acknowledged the fact that cigarette smoke is injurious to the health of both the smokers and more so to the non smokers in the vicinity of the smoker,, there was no law in Uganda to criminalize smoking in a public place, and as such, it was wrong for the applicant to ask court to declare such smoking unlawful. This position was rectified by the promulgation of the National Environment (Control of Smoking in Public Places) Regulations 2004[285] which were made as a result of the judge's order that NEMA puts those regulations in place.

Even where criminal liability exists in respect of other actions or omissions, the construction of a statutory provision must not widen criminal liability beyond the wording of the provision or lead to an analogy to the detriment of the defendant, no matter how blameworthy the considered behavior may seem to be.[286] A person might escape criminal liability because he or she has a permit and, therefore he or she did not act with criminal intent, although of course, *mens rea* is not a necessary ingredient to prove an environmental crime. The question becomes more difficult if the manufacturer

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[282] *British American Tobacco (U) Ltd v The Environmental Action Network Ltd.* High Court Misc. Appli. 444 of 2001

[283] *K. Ramakrishnan & ors v State of Kerala & ors*, High Court of Keralal at Emakulam O. P. No. 24160 of 1998-A available at http://www.geocities.com/sahasram2000/cigarette-1.html (visited on 30th June 2011).

[284] In *Joseph Eryau v The Environmental Action Network High Court* Civil Appl. No. 470 of 2001, the principal Judge, Ntabgoba J. found that the question is not whether cigarettes smoke is noxious. Smoking certainly kills. What is to be considered is what public places smoking should be banned from. A banned exclusion of every public place from cigarette smoking would be inappropriate and unacceptable to smokers like the applicant.

[285] National Environment (Control of Smoking in Public Places) Regulations No. 12 of 2004.

[286] Dr. H. U. Paeffgen. Overlapping Tensions Between Criminal and Administrative Law.

knew of the substantive faults. According to the validity theory, the licences, knowledge of the defectiveness makes no difference as long as he or she posses a valid permit.[287] However, under *Section 64 of the National Environment Act*, the Technical Committee on the licensing of pollution may in writing, cancel any pollution licence under the following conditions.

a) If the holder of the licence contravenes any provision of this act or of any statutory instruments made under it,

b) If the holder fails to comply with any condition specified in the licence;

c) If the committee considers it in the interest of the environment or in the public interest so to do.

It is hoped that such a provision should guard against the withholding of information concerning pollution, especially as an environment impact study is required to be conducted before the grant of the licence or permit.[288] Public servants who grant a permit or licence knowing that the applicant is not a fit and proper person to receive the same, should be held liable for violating the prescribed regulations,. Furthermore, it could be suggested that officials of environmental agencies such as the Directorate of Water Development, the Uganda Wildlife Authority, THE National Water and Sewerage Corporation and NEMA, who fail to intervene against pollution, could be held liable for neglect of duty. The difficulty emerges in dealing with decisions made by hierarchically structural bodies. It is difficult to identify the person who had knowledge of all criminally relevant circumstances and to prove it. There remains the possibility of charging the persons involved with negligence.

Furthermore, punishing omission is only possible where the commission corresponds to a failure of duty to act. However, one has to take into account the general rule that grants a wider scope of discretion to the authorities whether or not to take action.

The weaknesses of the criminal system relating to environmental issues notwithstanding it can be said that criminal law can assist in the enforcement of the

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[287] Ibid at p.253.
[288] Section 60 of the National Environment Act Cap 153.

duty to protect the environment. The National Environment Act has provided for the establishment of standards for air quality, water quality, discharge of effluent into water, control of noxious smells, control of noise and vibration pollution, sub-sonic vibrations, soil quality, minimization of radiation and other standards.[289] Pollution is prohibited if it is contrary to established standards.

Pollution licences can, however, be issued for activities which pollute above established standards.[290] On the assumption that criminal law is an instrument intended to be used as a last resort, it can only have a convincing preventive effect when applied to behaviour detrimental to society and thus should be restricted in that way. Related to licencing is the need for registration and classification of dangerous processes and substances with a controlling authority. These will enable the state to control substances that may have a deleterious effect on the environment.[291]

4.19 The Question of Locus Standi in Environmental Issues

After establishing the breach of the right to clean and healthy environment, the pertinent question to entertain is 'who can bring an action in court involving the environment? Like *Sections 3(4) and 71(2) of the National Environment Act, Article 50 of the Constitution* does away with the traditional view of *locus standi* and grants new in roads for environmental issues.

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[289] Sections 24-32 respectively, for radiation minimization see the ionizing radiation protection (Standards) Regulation s./No. 43 of 1996 made under section 18 of the Atomic Energy Act Cap 143.

[290] Ibid, section 58 and part IX on licencing of the ionizing Radiation protection (Standards) Regulation, supra note 159

[291] Also see Vincent Wagona, 'The criminal Aspects of Environment Law', a paper presented ion the Judicial Symposium on Environment Law & Procedure, held from the 11-14 May, 2003 at Entebbe, Uganda. The article is also in the Handbook on Environmental law in Uganda by Greenwatch, NEMA and Environmental Law Institute Washington, Vol.1 1st Edition 2004. The said paper is part of a series of workshop papers used in training symposia for judges and magistrates in Uganda. Mr. Wagona discuses the legal technicalities and principles irrelevant to the prosecution of environmental crime cases and notes that now environmental crimes are prosecuted by the Director of Public Prosecutions.

Article 50 of the constitution provides as follows:

1. Any person who claims that a fundamental or other right or freedom guaranteed under this constitution has been infringed or threatened, is entitled to apply to a competent court for redress which may include compensation.
2. Any person or organization may bring an action against the violation of another person's or group's human rights.

This Article opens up a new avenues for enforcing the right to access justice by liberalizing the rules on *locus standi*. However, Ugandan courts have not been quite liberal in their interpretations of the legal provisions on the enforcement of the right to the environment, but the progressive trend is towards working out the enforcement modalities.

In *Byabazaire Grace Thadeus v Mukwano Industries*[291], the main suit was brought under section 3 of the National Environment Act against alleged emissions of noxious gases into the air by the defendant. This application was brought to dismiss the suit on the ground that there was no cause of action against the defendant. Justice Tinyonondi held that section 3 of the National Environment Act expressly vests a right to a healthy environment in every person, including the plaintiff, that a healthy environment is described in relation to Part VI of the Act which describes standards in respect of 'air quality', 'water quality', standards of discharge of effluent, into water,' standards for the control of noxious smells, and many other standards. The judge said that part of the Act goes a step further in stating that NEMA is the only body entrusted with the duty of establishing these standards. The judge held that:

In my considered view, it is only after the standards have been established that one can gauge the totality of the right to a healthy environment (....). It is at this point that violation of the right can be described or pointed out without any difficulty both by the victim of the violation and the arbiter in any dispute (...). Finally, it is at this point

[291] Ibid Byabazaire.

that the victim can invoke *Section 58 of the Statute.*[292] It is in this vein that I now hold that no right has yet been defined by NEMA under part VI of the statute.

On that premises the judge held that the plaintiff had failed to establish the first essential element of a cause of action namely, a defined right (enjoyed by the plaintiff); that the plaint also failed on the second and third essential elements viz that the right has been violated and that the defendant is liable[293]

Citing Sub Sections *(1), (2) and (3) of section 3 of the National Environment Act*, the judge found and held that NEMA is the only person vested with the power and duty to sue for violations committed under the Act, and further that the only recourse available to every person whose right under the act is violated is to inform NEMA or the local environment committee of such violation. As such, the plaintiff had no *locus standi* to sue for any violation under this Act.

In view of the right /duty implication associated with a healthy environment, this decision needs to be critiqued. Whereas actions under *Section 3 of the National Environment Act* can only be brought by NEMA or a local environment committee, standing is granted not by the traditional common law position stated in the judgment but under *Article 50 of the Constitution or section 71(2) of the National Environment Act*, the Plaintiff's counsel needed to have brought this action under these provisions.

In *British American Tobacco Ltd v The Environmental Action Network Ltd*[294] the Principal Judge Ntabgoba J. found that *Article 50(2) of the Constitution* applies to public interest litigation, and that since actions in representative suits under *Order 1 Rule 8 of the Civil Procedure Rules*[295] cannot be brought by public interest groups, then there is lacuna which can be filled by recourse to *Article 273 of the Constitution*[296] and also that

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[292] Section 57 of the National Environment Act Cap 153.
[293] *Auto Garage v Motokov* (No. 3) (1971) EA was followed. It is the authority for the legal proposition that the provision that a plaint not disclosing a cause of action shall be rejected is mandatory.
[294] Ibid.
[295] Civil Procedure Rules Statutory Instruments No. 65-1.
[296] Article 273 (1).

representative actions are not restricted to actions brought by persons or groups who have similar interest in the actions.[297]

In the *Environmental Action Network Ltd v The Attorney General & NEMA*[298] the Principal Judge Justice Ntabgoba held that the application brought under article 50 of the Constitution was governed by fundamental rights and freedoms hence no need for notice of intention to sue, that being public interest litigation.

Section 71 of the National Environment Act establishes a broad right of citizens to seek redress in the pursuit of environmental protection. It provides in *sub section (2)* as follows:

2) For the avoidance of doubt, it shall not be necessary for a plaintiff under this section to show that he has a right of or interest in, the property, in the environment or land contiguous to such environment or land.

This subsection does a way with the traditional view of locus stand requiring a demonstration of sufficient interest to bring an action in court, that is, by proving the three ingredients proving the existence of a cause of action.

The nature of the right to a healthy environment is such that any person can enforce it in a competent court. The emphasis is on protecting the environment and not as to whether the plaintiff is entitled by right or law to sue for infringement of that right. The enforcement of the right is, therefore, by recourse to a competent court from whose decision a right of appeal to an appropriate court stands[299].

In *National Association of Professional environmentalists v AES Nile Power Ltd*[300] Okumu Wengi. J. held that *Section 71 of the National Environment Act* appears to be a enactment of class actions and public interest litigation in environmental law issues. This is because it abolishes the restrictive standing to sue and locus standi doctrine by stating that a plaintiff need not show a right or interest in the action[301]. This is certainly

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[297] Reference was made to the case of *James Rwanyarare & anor v NEMA* HCM Appl. No. 39 of 2001.
[298] The Environmental Action Network Ltd v The Attorney General Constitutional Petition No. 11 of 1997.
[299] Article 50(3) of the Constitution.
[300] *National Association Action Network Ltd v The Attorney General* 7 NEMA HCM Appli. No. 39 of 2001.
[301] Hon. Justice Alfred Kakokora, Recent Developments in Uganda Relating to strengthening the Legal and Institutional Framework for Promoting Environmental Management,' Judicial Symposium on

a break through for Uganda courts and the public as it makes the enforcement of the right to environment through courts a reality. This works well with environmental regulation undertaken by NEMA under part 5 of the National Environment Act. This is important for the people of Kapelebyong because they can bring actions under public interest litigation to redress the bad environmental conditions found in the camp and the surrounding.

The evolving judicial trend in Uganda is certainly encouraging. It is hoped that with the continued environmental awareness and education, the rules of locus standi will no longer pose any obstacle to the protection of the environment.

4.20 Uganda Courts and Environment

The judiciary is the branch of government that has a responsibility to interpret the law it therefore plays a role in the enforcement of environmental law.

In Uganda like other common law jurisdictions, court is seized with jurisdiction only after a formal pleading is filed. The problem here is that public spirited persons can not easily bring actions for environmental right unless they can plead in the manner required by court procedure i.e. by notice of motion, by plaint or other applicable procedure. Uganda's court process should be open to more liberal approaches as practiced in India, for instance. In the India case of *Sudip Mazundar v State of Madya Pradesh*[302] the court gave an order on the basis of a letter addressed to the Chief Justice by a journalist. The court also laid down a time frame within which the order was to be complied with. In another Indian case of *M. C. Mehta v Kamal Nath and anor*[303] the court acted on a news item which appeared in a newspaper.

Another approach would be for courts to draft claims on behalf of litigants. The aim really is to make justice accessible to the public.

Environmental Law Organized for Judges from 14 to 15 May 2001. At http://ww,google.com/search?g=cache:AgcK0eG75zcC:www.unep.org/dpdl/symposium/Documents/Country-papers/UGANDA.doc+legal+standing+to+sue+in+environmental+matters&hl=en&ie=UTF-8 (visited 10th April 2011).

[302] Sudip Mazudar v state of Madya Pradesh (1994) SUPP 2 Supreme Court Cases 327.

[303] M. C. Mehta v Kamal Nath & anor[1996] SUPP 10 S.C.R.

Furthermore, although the jurisdiction to hear matters with regards to the enforcement of environmental laws lies with the Magistrates Court and High Court, the question that arises is how the jurisdiction of courts can be affected by the nature of the penalties imposed by National Environment Act, namely imprisonment from 3 months to 36 months or to a fine ranging from 300,000/= to 3,000,000/=. The question of monetary jurisdiction need not rise. It would be prudent at this history of environmental law in Uganda to have a specialized environmental court or divisions of courts to deal with environmental matters instead of over-loading the traditional courts where the issue of jurisdiction is often raised.

In environmental litigation, the burden of proof although still lying on the plaintiff, is cussioned by *Section 3 (4) and 71 (2) of the National Environment Act* and *Article 50 of the Constitution* which do not require the plaintiff to show that the defendant's act or omission has caused damage or is likely to cause any personal loss or injury, it therefore, follows that while the plaintiff has to bring an action to show that the defendant's act (s) or omission (s) are environmentally unfriendly, the defendant has the duty to rebut the complaint satisfactory.

4.20.1 The remedies Available to court include

a) The issuance of an environmental restoration order against any person, who has harmed, is harming or is reasonably likely to harm the environment[304]

b) Forfeiture of the substance, equipment and appliance used in the commission of the offence.[305]

c) Order the cost of disposal of the substance, equipment and appliance to be borne by the accused.[306]

d) The cancellation of any licence, permit or other authorization given under the act.[307]

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[304] The National Environmental Act Cap 153, section 71 and 105©.
[305] Ibid Section 105 (1).
[306] Ibid Section 105 (2).
[307] Ibid Section 105 (3).

e) In addition to any fine, the accused does community work that promotes the protection of the environment.[308]

f) Imprisonment or a fine ranging from 3 months to 36 months, shs. 300,000/= to shs. 3,000,000/=.[309]

The other principles and governing environmental management that should be considered by the court include the Polluter Pays Principle (PPP) and the precautionary principle. But suffice it here to state that the polluter pays principle enjoins a potential polluter to bear the financial costs of preventing pollution and those who cause pollution to pay for remedying the consequences of that pollution. An example of this is pollution licensing.[310] The precautionary principle, on its part, mandates the use of planning tools such as environment impact assessment to determine and assess the impact of development projects and other activities before they are undertaken to ensure that potential damage can be evaluated and prevented or substantially minimized. This has already been explained. The principle of intergenerational equity provides for the equitable access to environmental resources for the present generation as well as for the future generations. This gives persons the right to sue on behalf of their generations and generations yet to come.

4.21 The National Environment Management Authority (NEMA)

NEMA is established under *Section 4 of the National Environment Act*[311] as a body corporate, a semi-autonomous body located under the general supervision of the Ministry of Water, Lands and Environment. NEMA (also referred to as then Authority) is the principle agency in Uganda responsible for the management of the environment. Its principle goal is to create and establish an efficient institution mechanism for environmental protection so as to promote and ensure sound environmental planning and the integration of environmental concerns into the national socio - economic

[308] Ibid Section 105 (4).
[309] Ibid Section 99.
[310] Ibid Section 58(2).
[311] Ibid Section 4.

development planning process. It's empowered to co-ordinate, monitor and supervise all activities in the field of the environment.

4.21.1 Local Government

In carrying out its functions at the district level, NEMA links with local governments under the Local Government Act.[312] Here below are some of the functions carried out in the district by the respective bodies set up by the National Environment Act.

4.21.2 District Environment Committee (DECs)

DECs are provided for under *Section 14 of the National Environment Act*[313] to be established by guidelines made by the Authority in consultation with the Local Councils. At the district level district environment committees are the equivalent of the PCE. The district environment committee shall develop a District Environment Action plan to be revised every 5years, prepare a District state of the District Environment Report once in every two years, in addition to other functions under the Act. It is particularly important that the DECs should promote dissemination information about the environment through education and outreach programmes. The National Environment Act also provides for guidelines for the appointment of a District Environment Officer[314] to advise the District Environment Committee on all matters relating to the environment and to liaise with the Authority, among his/her other functions.

4.21.3 The Function of inspection

The function of inspection and enforcement is undertaken at all levels In order to achieve or maintain satisfactory environmental quality in the surroundings. Under National Environment (Wetlands, river Banks and Lakes Shore Management)

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[312] The Local Government Act Cap 243.
[313] Section 14 of the National Environment Act Cap.
[314] Section 15 of the National Environment Act Cap 153.

Regulations[315], *Rule 36*, for instance, empowers an inspector who has reason able cause to believe that any person is violating the regulations to issue against such person an improvement notice in accordance with *Section 80 of the Act* take any other measures provided for under section 80, without prejudice to any criminal proceeding that may issue. Through active regulation, the environmental authorities get an overview of the pollution and potential polluting activities in sub-counties districts and at the national level. This is particularly important in Kapelebyong where a large number of people are crowded together. Pollution and de-afforestration can be checked by regular inspection at sub-county and village level.

Regular inspection is done by an inspector appointed by NEMA[316]. When the officer concerned with EIA carries assessments of environmental impacts of various economic ventures, the inspector reports are also gazetted from various ministries and other lead agencies concerned with diverse environmental concerns such as water and health. The inspector writes reports on what they have observed in the industries and recommends actions to be taken against perpetrators of pollution. The inspector is empowered to close up an industry if its operations are deleterious to the environment. NEMA, however, has not taken many such extreme measures as yet as the public is not adequately sensitized about environmental standards. Nevertheless, the inspector warns the polluters and requires that the wrong should be remedied.

There are instances also where NEMA has been more decisive as in the case where it closed down a tannery in Mbarara after it was discovered that toxic chemical were released into the air and water, thereby endangering the right to environment.[317]

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[315] The National Environment (Wetlands, River Banks and lakes shore Management) Regulation No 3 of 2000. The Regulations are made under section 107 of the National Environment Act.

[316] Inspectors are appointed yearly or as otherwise decided by the Executive Director under section 79 of the National Environment Act Cap, 153 by means of a National environment (Designation of environmental inspectors) notice.

[317] An interview in February, 2011 with Mr. Justin Ecaat, then environment impact Assessment Officer, NEMA Inspection are conducted in a wide spectrum of economic activities including operations of cement pole treatment sewerage discharge, construction sites and mining. The inspector reports of inspections carried out are available NEMA.

4.22 Challenges in environmental Management and Enforcement

Before leaving this issue it is important to note the challenges faced by NEMA in executing its functions under the National Environment Act. These include the following:

There is limited public awareness of environmental problems in the country. In addition, the majority of the inspectors do not know the right people to address. Taking the instance of the Mbarara tannery industry that emitted noxious smells that affected its neighbourhood, the residents there of only complained about the smell[318]. When the problem reached serious levels, the residents of the area threatened to demonstrate against the factory. NEMA ordered the closure of the factory until a waster water treatment facility was put in place and the workers were provided with protective gear. The general hygiene of the factory was also required to be improved upon. The owners of the factory were required to live up to the waste discharge standards under National environmental Act which prohibit discharge of waste beyond a certain concentration.[319]

Furthermore the public is generally unaware that they can influence the decision government may take in the area of environment. This can be achieved through the process of public hearing whereby the public is given an opportunity to express their views concerning a proposed industrial activity. NEMA organized one such public hearing seminar in July 1997 on how to eradicate the water hyacinth with chemicals; there was an immediate response. There were three options to deal with the hyacinth, (1) the use of chemicals (2) the physical or mechanical approach using manual labour and machines and (3) the biological option using biological means such as weevils. The public were more concerned about the chemical option. Public hearing has also been conducted in respect of the hydro-electric power project at Bujagali, in August 1999 and at Karuma in November 1999 and the palm oil project in Kalangala in 2001. In the case of rosebud flower farm a stakeholder review meeting was conducted instead in 2004, as

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[318] Ibid.
[319] Ibid.

the issues involved were localized to the affected area and its surroundings and the procedure for such a meeting is not as elaborate as that required for public hearings.[320]

The environmental impact assessment (EIA) that was carried out was based on scientific information which was found insufficient to explain the impact of chemical use on the Nile water. NEMA was keen to obtain the public response by holding various meetings in which the public was invited to air their view as regards the control mechanicalisms for the water hyacinth, the public was called upon to attend the seminar and the outcome was that, their view largely influenced the final decision of government not to spray the wed with chemicals.[321] The problem, however, has been that most of these views are expressed by almost the same kind of people who are a ware of their rights and are vigilant enough to pursue them. A large proportion of the public are unformed and some of those who are informed do not take environmental concerns very seriously or are too busy eking out a living on whatever they can find although the effects can be adverse to the environment.

The level of public participation necessary to encourage individuals bring actions themselves is still lacking in Uganda. Furthermore, resources are a big constraint NEMA simply does not have sufficient resources. The environment being a new area of concern in Uganda, a lot of resources are needed to create and enhance awareness.

Today, the information, education and communication officer of NEMA is able to conduct a weekly programme called 'Environmental Matters on the national radio station, Radio Uganda. It is both a documentary and a live talk show programme. The Office also conduct awareness programmes for other reasons with a wide coverage and serving the different regions of Uganda. These are live discussions on topics specific to the region concerned. Dramas in selected local language are also run on radio for duration of five or so minutes as are songs on environment. In addition, newspaper supplements or write-ups on specific environmental issues are made when the need arise.

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[320] See the Environmental Impact Assessment Public Hearings Guidelines, 199.
[321] Mary Karugaba Government abandon spraying New Vision Newspapers (2nd May 2004), pg. 4.

However, the outreach of the media is still inadequate and so NEMA can not effectively reach out as it may wish. Combined with the illiteracy and poverty of most Ugandans, information cannot be readily understood or afforded. In addition, the generally poor people lack alternative ways of satisfying their needs, as in situation where limited water sources are polluted but are nevertheless used. In such a case, information, though available, cannot be put to practical use. This is the case in Kapelebyong where the population is pre-occupied with daily bread, i.e. from hand to mouth.[322]

Another concern is that of implantation of environmental management requirements. The issue of wetland and forest conservation, for instance, remains a big challenge. Although *Section 36 and 37 of the National Environment Act and the National Environment (Wetlands, Riverbanks and lakeshores Management) Regulations* are geared towards conservation of Wetlands, riverbanks and lakeshores, many wetlands have been turned into farmland or areas of settlement and water reserves that purify are being depleted. The rivers and lakes are being silted and the trees are also being felled at a rate that deprives the country of its natural carbon-sinks in undermining their interests in these natural resources. The goals of environment conservation are, therefore, almost lost.[323]

As regards its relation to other government agencies, NEMA has in the past been regarded as an autonomous organ crated to overtake the functioning of other sectors. This gave rise to inter-sectoral conflict as NEMA was thought very powerful.[324] In some cases, however, NEMA is expected by the different players in the environment to do so much on its own. This is practically impossible. All the lead agencies are required to co-operate fully to map out strategies for achieving sustainable use of our natural resources without destroying the environment. The focus should be on different sectors complementing and not fighting one another in this area of environmental protection. In the protection of the right to environment, for instance, NEMA has had the full co-

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[322] Ibid.
[323] Ibid.
[324] Supra note 230

operation of the *Uganda Human Rights Commission (UHRC)*[325] which requests NEMA to undertake environmental audit and inspection in matters arising from complaints filed in the UHRC.

The challenges faced by lead agencies relate to a number of factors. Due to budgetary constraints and the new Medium Term Expenditure Framework (MTEF) policies under the *Poverty Eradication Action Plan (PEAP),*[326] counterpart funding for environmental protection activities from lead agencies remains inadequate and irregular. This means that NEMA bears most of the burden. Current funding to NEMA does not enable NEMA to cover more than 21 lead agencies effectively, yet there is need for inclusion of more lead agencies in capacity building and enhancement. Secondly, mainstreaming, environment in the budgets, policies and plans of lead agencies and ensuring that there is a budget line for environmental issues in the MTEF remains a challenge. Furthermore, due to high turnover of employees, officers trained sometimes leave with the knowledge acquired having not passed onto other members of staff. This affects institutional capacity building. Monitoring and implementation to ensure that skills and tools developed in the lead agencies are applied and enforced; and actually result in a reversal of environmental degradation is still inadequate.

In conclusion, in spite of the above said challenges and hindrances, NEMA has achieved a level of compliance with environmental laws that can only be built upon.

4.23 The Uganda Human Rights Commission

Articles 51 of the 1995 Constitution established the Uganda Human Rights Commission (UHRC) to protect human rights enshrined in the Constitution. The Constituent Assembly, taking into account the report of the Commission of Inquiry into Violation of Human Rights (1962-1986), and the recommendation of the Uganda Constitutional Commission, embodied the Human Rights Commission in the

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[325] Interview with the legal officer, Uganda Human Rights Commission, August 2010.
[326] Poverty Eradication Action Plan (PEAP) 2004/5-2007/8 prepared by the Ministry of Finance, Planning and Economic Development, December 2004.

Constitution. The UHRC, therefore, is one of the principal institutions for upholding, protecting and promoting human rights.

As the right to decent environment is one such right, the Commission liaises with NEMA and other environmental agencies in the definition of the scope of the Commission's jurisdiction as regards the right. Under *Article 52(1) of the Constitution and Section 7 of the Uganda Human Rights Commission Act,* the Commission is empowered to investigate at its own initiative or on complaint made by any person or group of persons, violation of any human right.[327] The UHRC is also required to establish a continuing programme of research, education and information to enhance respect of human rights. It should also formulate, implement and oversee programmes intended to inculcate in the citizens of Uganda awareness of their civic responsibilities and an application of their rights and obligations as free people.

The UHRC is only barred from investigating matters pending before a court or judicial tribunal, or matters involving the relations or dealings between the government of Uganda and the government of any foreign state or international organization, or matters relating to the prerogative of mercy.

The UHRC has recently handled a few complaints relating to the environment. In a complaint involving *Retrenched Uganda Railways Corporation Employees v Uganda railways Corporation (URC),*[328] former employees of URC complained to the UHRC that URC had terminated their services arbitrarily and without pay and that water provision to their living quarters was cut off thereby rendering their environment hazardous to human health. The UHRC wrote to URC about the complaint and URC stated in reply that arrangements were being made to settle the water bills of the affected areas and that national Water and Sewerage Corporation had agreed to re-connect it.

In the case of *Kamira F. & 34 Ors v M/S Roadmaster Cycles (U) Ltd*[329] the complainants alleged among others, that the respondent subjected his workers to long

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[327] Ibid, para (1) (a) of section 7.
[328] Retrenched Uganda Railways Corporation Employees v Uganda Railways Corporation (URC), UHRC case No. 217/97.
[329] *Kamira F. & 34 Ors v M/S Roadmaster Cycles (U) Ltd.* Complaint UHRC No. 31/98, 13 Jan. 1998.

working hours without payment of overtime and under hazardous conditions. The Commission was of the view that the workers were entitled to a clean and healthy environment and recommended that the case was worth investigating. With regard to the working environment, an environment audit was required to be carried out by a competent body like NEMA.

In another case of *Rehema Ssempereza v. Kagoda Farmers Ltd*[330] the complainant alleged that the respondent had built an animal feeds factory adjacent to her home. As a result of the pollution arising out of its waste, her home and the surrounding environment became uninhabitable. The Commission was of the opinion that the complaint's right to clean and healthy environment had been infringed. It directed that NEMA should be asked to carry out an environment audit before any action could be taken.

Due to the specialized nature of the activities of NEMA, UHRC requests the latter to carry out environment audits before any decision is carried out. This has greatly enhanced the relationship between the two organs in the performance of their joint duty to protect the right to a decent environment. The Commission, however, faces some constraints in carrying out its activities. In the area of enforcement UHRC, therefore, Liaises with NEMA by providing a forum through which complaints concerning abuse of the right can be channeled.

The UHRC is constrained in investigating complaints by inadequate equipment and personnel, even as UHRC activities have been decentralized to regional offices to ease the problem of accessibility to the public.

Another constraint is the reluctance of the public in general to embrace and encourage the work of the Commission. This is perhaps due to a lack of awareness of the role of the Commission to handle human rights complaints expeditiously. The public needs to be sensitized about their own role in human rights protection. Furthermore, the UHRC is a new establishment and, therefore, has had no structure to copy from. As

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[330] *Rehema Ssempereza v. Kagoda Farmers Ltd.* Complaint UHRC No. 37/98. 19 Jan 1998.

a new creation, it has had to take off cautiously, to formulate appropriate policy and to handle grievances the best way possible.

Despite these constraints, the UHRC is progressing. It liaises with NEMA in the area of environment and human rights protection.

4.24 The Office of the Inspectorate of Government

The office of the Inspector General of Government (IGG) was established under section 2 of the Inspector General of Government Act.[331] This has been largely suspended by the 1995 Constitution that established the Inspectorate of Government under *Article 223* thereof. Among the duties of the Inspector general of Government (IGG), was the protection and promotion of human rights and the rule of law in Uganda.[332] For the performance of his/her functions under the Act, the IGG has the power to authorize in writing, any officer under his/her charge to conduct an inquiry or investigation into an allegation of violation of human rights, abuse of office occasioning injustice and neglect of duty, and any other aspect that the IGG is empowered to investigate into.[333] The IGG's office held the mandate to protect and promote the protection of human rights until October, 1995.

On the 8th October, 1995 a new Constitution was promulgated and under Article 225 thereto, the Inspectorate of Government (as termed under the new Constitution (no longer performs the function of protecting and promoting human rights. In other words, with effect from October 8, 1995 the mandate to protect human rights was removed from the IGG and vested in the Uganda Human Rights Commission (UHRC) under *Article 52 of the 1995 Constitution*. It is in that regard that the functions of the Office of the IGG have been superceded by the 1995 Constitution. Nevertheless, the Inspectorate of Government and the UHRC have forged a working relationship whereby

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[331] Inspector General of Government Act Cap. 167 Laws of Uganda 2000.
[332] Ibid section 7.
[333] See Prof. Patrick McAuslan, The Role of Courts and other Judicial-type Bodies in Environmental management, JEL, No.3, No.2 of 1991, 1995 at 207.

if the Inspectorate of Government receives complaints of human rights abuse they are channeled to the UHRC which in turn directs the matter of corruption to the IGG.

As regards this study, the office of the IGG could be particularly important where government officials are suspected of wrongfully issuing environmental permits or licences or of allowing pollution to take place either by commission or omission. Neglect of duty could be cited as one ground for the involvement of the IGG. This is one way in which government agencies are checked in their role in the environment. Checks and measures provided for under the National Environment Act and other statutes that address environmental concerns, need to be vigilantly enforced by the respective bodies. However, adequate trained human power and proper equipment and technology are required.

In conclusion, it should be noted that the role of the state agencies for environmental regulation should be more catalytic than command-oriented. They should encourage, stimulate and even cooperate with industry and the public to change them to more environmentally friendly and natural resource saving production methods. But this in itself requires that the decentralized framework should be strengthened to carry out the task of environmental regulation. The district and local inspectors, for instance, need continuous training in the technical and administrative aspect of environment regulation. They should also be educated about the need for more dialogue oriented tools which are needed in connection with negotiations with industry and cooperation with several participants about suitable solutions. Environmental quality enforcers need to learn from the experience of their colleagues in other parts of the country. Thus, there is need for inspection networks whereby a common data-base is established and information about experts and relevant experiences and progress could be reported.

Furthermore, the role of the courts in judicial review of the actions and decisions of public authorities exercising powers which may often concern the environment needs to be strengthened. To achieve greater awareness in the judiciary and the legal profession, the lawyers and the judiciary also have a role to develop an environmental jurisdiction of awareness. This is now being pursued right from law school. The Ministry of Education and Sports has already integrated environmental education into primary

As portrayed in the study, there is more environmental awareness in Uganda today though not good enough. However the people of Kapelebyong remain alien to the right to a healthy environment. Needless to say those environmental concerns are beginning to take centre stage. During the study it was also realized that the segementary and sectoral approach to addressing predominant and emerging needs is not suited to environmental concerns.

Therefore, the frame work and compatibility approach is gaining concern. Inter sectoral co-operation is a must.

Uganda, being a part of some of the international conventions protecting the environment such as the 1992 biologically diversity convention and climate change convention, is bound to operate according to international standards of environmental protection by incorporating in the 1995 Constitution, the National Environment Act, the Public Health Act, Pharmacy Act, the Venereal Diseases Act and the Penal Code Act. Provisions have this right Uganda government must comply.

The cardinal right of every person to a healthy environment is very important Uganda is undertaking to operate within the confines of the international instruments, creating this right. The challenge is not only updating and restricting legislation concerning the environment, but also in ensuring compliance and enforcement. Constitutional recognition of a fundamental right confers upon the right the highest legal standing which exists in a country, since constitutional acts express and consecrate the most important social value of the state concerned. It will, therefore, be possible to measure environmental protection against other national interests, economic, military or otherwise, so that when there is a conflict it can be placed at the same level and even treated as having priority.

This is the situation envisaged under the 1972 Stockholm Declaration on the Human Environment, in the 1981 report of the World Commission on Environment and Development our Common Future, in the 1981 African Charter on Human and Peoples Rights, the UDHR, the ICESCR, ILO, SDHE among several other international instruments on environment.

Protection by Municipal Instruments

The Constitutional recognition of the right to protect the environment in Uganda provides guidance for administrative and judicial authorities vested with the responsibility of resolving concrete problems. A constitutional principle may thus furnish a basis for permitting agencies entrusted with implementation of the law to find legal solutions for concrete cases where knowledge is always developing and existing laws may become outmoded.

Furthermore, as every constitution has an educative value constitutionalised fundamental rights and freedoms have undoubtedly contributed to securing for them general acceptance and observance. Environmental values have not joined human rights and indeed the right to a healthy environment is a human right and every year there is a better understanding that these two categories of rights are not parallel, but converging and have merged as such. Therefore in view of the fore going, the following recommendations are made based on what has been observed in the study.

5.2 RECOMMENDATIONS

Combating Cattle Rustling

As evidenced from the study, (see table 1 Appendix VI) when the people sampled were asked if they felt secure they said no.

As a result of cattle rustling, the people of Kapelebyong have been thrown into a state of terror. In order to correct the situation the first thing that should be done is to stop cattle rustling insecurity has caused the population to move into camps and as a result the encamped have been exposed to untold suffering which has exposed them to inhygienic conditions, as noted in my findings, deprivation of basic human rights the principle cone being the right to a healthy environment.

As a result of the situation in the camp it has had a spill over effect in the neighbor hood it is therefore recommended that more security forces should be deployed along the border between Karamojong and Kapelebyong to completely stop Karimojong infiltration this will reduce the need for encampment.

As evidenced from the study that the Karimojonj carry fire arms, it is therefore recommended that there is urgent need to continue the disarmament of the Karimojong and the recovery of all kinds of ammunition. The Fire Arms Act[1] prohibits any one to possess any fire arms without a licence.

To date, the Karimojong wonder with fire arms and raid neighbouring districts with impunity. It is therefore important that the disarmament be made a permanent feature in Karamoja. It is further recommended that the neighbouring ethnic groups to Karamoja. In Kenya (Turukana and the Didinga) of Sudan should also be disarmed by their respective governments. This should be done through the cooperation of Uganda's government and the neighbouring countries. If this is successfully done, then when the Karimojong are disarmed the excuse, that they carry fire arms in order to protect themselves from the neighbouring hostile tribes such as the Pokot, the Turukana and Didinga will cease. This will also cut of the flow of fire arms from southern Sudan.[2]

The commercialization of cattle rustling should be discouraged by arresting and prosecuting the criminals. It was reported in the news that Kyoga an MP from Karamoja was involved in the practice.

It is further recommended that there is need to change the Karimojong mind set not to think that all the cattle in this world belong to them. This is the major reason they rustle the cattle in the neighboring districts. This can be done by exposing more and more Karimojong to a modern economy and encouraging them to move away from nomadic and warrior like life, to organized farming.[3] In this connection, a change urgent is necessary. High yielding pasture seeds, quick maturing cereals and food crops should be provided to the worriers in order to improve agriculture in the region.

Development Strategies and education

It was very clear from the study (see pages 57 and 58) that the Karimojong are forced to move into neighbouring districts in search of water and pasture for their

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[1] Fire Arms Act Cap. 299 Section 12.
[2] New Vision, Wednesday March 11, 2007, pg. 8.
[3] New Vision, Saturday March 7, 2007, at pg. 8.

cattle. The Karimojong usually raid cattle when the rain season returns to Karamojong, as they move back with their cattle this was the information given by the LC III Chairmen of Angopet and Odetail sub-counties in Kapelebyong. It is therefore recommended that the provision of water to the Karamojong is very urgent some work has been done by the ministry of Karamoja affairs. According to the Monitor newspaper of 5th December 2009, it was reported that artificial lakes have been constructed in Kangole, Lorengdwat, Iriiri, Kotidi and Nakiloro credit must be given to the first lady Mrs. Janet Museveni the minister of Karamoja affairs. Of course the created lakes are stills extremely inadequate but have alleviated the situation.

Under the Karamoja development Agency act No 5 of 1989.[4] It provides in that: The duties of the agency shall include the following: Supervise the general transformation of Karamoja region, The above section makes a provision that is instructive that the people of Karamoja must be helped to acquire the necessary skills that will enable them to participate in the development of their area in connection to the above the researcher advocates for the strict enforcement of the statute and further recommends that more tertiary schools be built in Karamoja to impact the desired skills.

I further recommend that an agency responsible for the development of water resources in Karamoja be put in place. This agency should also avail water to all locations in Karamoja and encourage irrigation as a priority in order to achieve general transformation.

Education right from primary to university must be compulsory for the Karimojong. Government should set up a special fund for Karamoja's education needs. If more Karimojong are exposed to education they will transform to modern they will transform to modern society and abandon cattle rustling.

Village Livestock Protection Policy

[4] Karamoja Development Agency Act Cap 5, Laws of Uganda (1989) sect 3.

Where a village owns a few cattle these cattle tend to be vulnerable because they are not protected with same commitment as those, many in number. I therefore recommend that let the cows be put in groups and the local councils take the responsibility of organizing vigilante groups to patrol the villages under the Local councils act one of their duties is to ensure security of their villages, because they are also mandated to maintain law and order in their villages. This being an issue of law and order, it therefore falls within the description of their duties. It is therefore recommended that the *LC Act* together with *Local Government Act* be amended to provide for village standby police.

Dialogue and Interaction

In civilized societies the best way of solving disputes is through dialogue. This is a peaceful method of coming to agreement through discussion. I therefore recommend that there should be frequent dialogue between the Iteso and the Karamojong. In connection to this recommendation a dialogue agency be put in place by government. This will help in the identification of bad elements within the two communities. I also propose inter marriage between the Karimojong and the Iteso. This will open greater interaction between the two groups.

The Constitution of the Republic of Uganda provides that;

> Men and women of the age of eighteen years and above, have the right to marry and found a family and are entitled to equal rights in marriage, during marriage and at its dissolution.[5]

The Constitution does not provide for ethnic group marriages infact it encourages equality of all persons *Article 21(1)*[6] provides for equality of persons in all spheres of political, economic, social and cultural life and every other respect. Karamojong will also benefit from some skills of Iteso which include farming and good neighborliness with others.

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[5] Constitution of the Republic of Uganda 1995, Article 31(1).
[6] Ibid Article 31(1).

Cattle Identification and Enforcement

From the study, it is clear that cattle rustling is a very big problem, it is therefore recommended that the cattle in neighbouring districts should be branded and must be distinctively identifiable either by colour or mark. There should be village inspectors to enforce this recommendation. These village inspectors should be government employees and must work with police and other security agencies. These cattle inspectors must be answerable to the Inspector General of Government whenever the inspector is on duty, he should be accompanied by a villager whenever on duty to reduce corruption. There should be very severe sentences imposed whenever stray cattle are found in a different community.

Sensitization of the Community

Based on the study, it was found that the public was not aware of their rights I therefore recommend that the public be sensitized on their rights, they ought know that it's their right to live in the secure environment and that the constitution guarantees their right to a healthy environment which must be guaranteed by the state.

Water and Sanitation

It is recommended that the use of leaded pipes be discouraged instead steel pipes be used in the bore holes. This also calls for drilling of more bore holes in the camp and the surrounding areas. The spring wells be protected. This will relieve the pressure imposed on the water bodies in the surrounding area to the camp, as evidenced in the study.

The government and the international community should protect Ocori Mongin river which flows through Kapelebyong camp and then goes through the surrounding area to the camp. The camp occupants have polluted the river by defecating on its banks due to lack of latrines, the river is also a source of water for both the humans and the animals. It is recommended that the international community and government provide more latrines to reduce occurrences of water borne diseases.

Research, Information and Public Participation

The precondition for all modern environmental management is public awareness of environment issues through school and use of media to induce public participation. Sensitization of the public is long over. A massive awareness campaign should be mounted by the ministry of water lands and environment. This should be done through NEMA and other lead agencies.

Policy makers equally need to be sensitized as should licensing officers, physical planners, officers of health and local councils, Uganda Revenue Authority and any other anti smuggling authority must be all be alert to avoid illegal import of hazardous substances such as chemicals which may find their way in Kapelebyong especially during spraying of crops. The public should be made aware of all applicable laws and international instruments guaranteeing the right to a healthy environment. The politicians should particularly be made aware of the environmental issues, environment studies should be implanted in the school curriculum right from nursery to university. This should be compulsory.

Information – information about the nature of the right to a healthy environment is greatly lacking in this country and indeed in Kapelebyong. The public tends to take environment for granted. Since both the *Constitution and Environment Act* provide for the right to a healthy environment and for information sharing, it is recommended that internet services be availed as a matter of urgency to all schools be adequately equipped to provide much needed information on the present and future plans on environment in Kapelebyong and indeed the whole country. Radio, Television talk shows should be encouraged in all the stations on a daily basis. TV sets should be availed in villages. LCs and all the concerned be made aware that a right to a healthy environment is a human right.

Research – not only is there little research going on concerning environmental protection, but not much is being done about addressing environmental violations,. Infact in some instances government is guilty of these excess. Recently president Museveni proposed giving away part of Mabira Forest to Metha for sugar cane growing. Already Butagira Forests has been given away. The researcher found that a large chunk

for tree cover is being destroyed in the Kapelebyong with acquaintance of the forests staff.

Effects of over grazing should be researched specifically in connection to Kapelebyong. There should be research on the long term effects on health. Specifically with reference to ecological effects, environmental process research, environmental specialized monitoring research, risk assessment research. Therefore based on the study I recommend that a national environment research centre be established in the country. This will go along way in protecting the right to a healthy environment.

International Cooperation – not only should Uganda adopt the necessary international instruments protecting the environment but it should be open to a new developments. This calls for international cooperation as scientific information is always yet well developed and well funded, this makes it hard for us to follow the world trends.

A Local Environmental Fund

Almost all the organizations operating as NGOs or civil societies in Uganda rely on foreign donations in order to finance their activities. The problem with this is that funds are not always forthcoming and the donors usually attach strings to such aid. This is not good for the protection of the environment which is a continuous process. In this regard I recommend that a permanent fund needs to be established to provide for environmental needs, although voluntary compliance is to be encouraged.

The National Environmental Fund is established under *Section 88(1)*[8] *of the National Environment Act*. The sources of the fund are disbursements from the government, all the fees charged under this act, any fees prescribed for any service offered by the authority, any fines collected as a breach of this Act, and gifts, donations and other voluntary contributions to the fund made from any sources.

Unfortunately, most funds for the fund come from foreign donors. This fund come with strings attached and therefore, erode the independence of the authority.

[8] National Environment Act Cap 153 Section 88(1).

Under section 89[9] of the Act, the Board of NEMA has the responsibility to administer the fund. It is recommended that the National Environment Fund should be supplemented by Compensations paid by polluters. Pooling of finances and resources not only at the national but at districts, sub county, down to the village levels. Every body must be concerned about a healthy environment. This will encourage every body to be concerned about de-afforestration, over grazing, irresponsible disposal of human waste and use of agro chemicals that pollute Ocori Imongin River and the area surrounding the camp.

It is further recommended that the government's *NAADS programme* could be extended to provide an initial fund to the districts counties, and sub counties for environmental purposes. This fund should trickle down to the villages. This could be used by the local environment committees to evolve a permanent and a revolving fund from which funds could be drawn to alleviate or stop environmental degradation within the jurisdiction of the committee. The fund could also be used to finance other social needs like health core; sanitary facilitation, provision of housing for the poor and the old.

In particular, funds could be lent by the committee to local organizations and individuals to develop appropriate technology for example biogas installation in village homes and continuously educate the residents on environmental quality maintenance.

There is evidence to suggest that NEMA has started small scale funding of environmental projects in some districts. The local councils are also required to budget for environmental protection at local level but in reality hardly any funds are allocated. It is therefore recommended that the LCs allocate a big budget to environmental protection especially the provision of seedlings for oranges, guavas and mangoes. These being fruit trees would be attractive to the villagers in Kapelebyong.

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[9] Ibid Section 89.

Judicial and Administrative Actions

The use of established judicial and administrative bodies to protect the environment should be encouraged. This means that the political will to enforce should exists at all levels of government to provide resources to the regulatory bodies or to facilitate them to generate their own resources without political interference. In relation to economic incentives, government intervention is necessary to ensure compliance. Nevertheless, districts, regional and sub country courts or semi judicial; bodies may be established to alleviate the bureaucracy in ordinary courts where there is a great deal of loss of time and money and environmental pollution cases may not be heard in time thus the loss of exhibits e.g in air pollution. So can the same happen in cases of deafforestation. It is therefore recommended that the LC judicial powers act be amended to give the LC courts power to try environmental cases. This will go along way to supplement the efforts of NEMA. However, it is recommended that these courts should be fully equipped and knowledgeable to deal with the problems of environmental quality maintenance and enhancement.

In connection to the above it is recommended that rigorous trainings on environmental law for LC courts be conducted. These courts should be pro people – oriented in that much of the aura and procedures of traditional courts should be absent. The local environment funds, it is hoped, should be able to provide for the courts fees and costs involved in an action by any of the local residents. Furthermore, the personnel require a certain specialized expertise to handle environmental degradation.

The centre could also carrying out research for curbing environmental pollution and thus, provide the much needed information on environmental degradation. Efforts should be made by the centre to establish the standards / quality of environment to which the people of Kapelebyong and other people are entitled to. However it is important to remember that international standards be maintained, especially current developments in the international arena discussed in the previous chapter.

We expect that the research centre will contain the equipment required and essential to carry out international research. The panel of experts working in this centre may be drawn by regional and districts courts according to the need and nature of the case.

Indeed, the centre could also be of use to NEMA and other government agencies concerned with the improvement of the quality of the environment.

The rules of evidence and procedures should be designed to meet the Peculiar problems of ecological disturbance and degradation of the environment. The plaintiff should find no problem in filing a suit to assert not only her right but the public right to a healthy environment. This is why, for instance, the environment act does not require the plaintiff to show that the defendant's act or omission has caused or is likely to cause any personnel loss or injury.[10]

The compensation aspect of the laws should be promoted so that pollution can be wiped out. It is due to the fact that no punishment is emitted to the camp occupants, that is why they pollute the environment with impunity.

Although the various laws create offences, the objective of the laws is to punish, the laws do not have a reformatory and educative attribute, the laws must be seen to change society and not only threaten. But act as an incentive to environmental preservation for example it is recommended that, those who plant trees should be rewarded with more tree seedlings. This should be a provision of the law. Those who pollute the environment should be ordered to restore it to its original state. Thereafter their activities should be subjected to continuous audit and supervision.

Encourage Voluntary Compliance and Enforcement

It is very important to encourage voluntary compliance with environmental regulations and to encourage public participation if the protection of the right to a healthy environment this should become part of the fabric of society. Public participation requires that the public must be aware of the right to environment and its enforcement mechanisms. The enforcement mechanisms for the right should be well pronounced and also be implemented.

Therefore, it is recommended that for proper enforcement, suitable mandatory standards of the right to a healthy environment and timely access to effective remedies

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[10] Section 3(4) of National Environment Act Cap 153 of 1995.

is crucial. Public authorities must, therefore, encourage citizens to take part in the performance of environmental tasks and must organize such participation consequently; the state will be more of a guardian than the commander of enforcement action. But to achieve this, the state should re-organize on the basis of democracy and consultation for better communication between the administrators and the general public.

They should also define the scope of the procedural rights. Enforcement and compliance mechanisms need to be squarely addressed at national level by encouraging regular inspection and enforcement of administrative decisions. The public in particular, should, therefore, be trained to monitor environmental degrading activities by other persons. Laws should be strictly adhered to, although voluntary compliance should be encouraged. In addition, non governmental organizations districts, sub county and village environmental groups should be encouraged to provide a check on the corrupt public leaders and private violators. Furthermore, judicial supervision of the environment can be done not only by the public, but by the journalists and the public. This means that the state should encourage responsible monitoring of environmental activities by the press and the electronic media.

National guidelines on human rights and the environment needs to be formulated to implant the right to a healthy environment into the legal fabric of all the legislation. For this is the foundation of life. The National Environment Act and other Environmental Laws should define the nature of the right, the quality of the environment required with specific reference to the right to a healthy environment.
The procedural aspects of the right and the inspection and implementation mechanisms, NEMA should then implement these guidelines. Since a healthy environment is a human right. It is recommended that the Human Rights Commission should get involved in environmental matters and not refer them to NEMA.

Whereas the practical enforcement aspects like inspection could be carried out by NEMA, the Human Rights Commission or such other body as suggested above could enforce the human right to a healthy environment. This will reduce the task of traditional courts. Furthermore, NEMA must ensure that international and National

undertakings and legislations are complied within the realization of the right to a healthy environment.

There should be standards of environmental quality to be protected under procedural rights. The procedures must not make it difficult to cause litigation to take place procedural rights mostly rely for effectiveness on the national environmental legal regimes. Here perhaps lies the weakness for a procedural rights argument.

It relies on the commitment of a state to carry out its duty to protect the environment. Where institutional framework is weak, the public may be denied the full enjoyment of their right to a healthy environment. Therefore the lead agency should make environmental management plans to harmonize development with the need to protect the environment. This calls for enforcement of environment impact assessments before the commencement of any economic activity, e.g. the current road construction going on in Kapelebyong.

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APPENDIX I

Research Instrument (Number One)

The interview guide to be used as research instrument in data collection (technical staff)

This study is intended to provide data on encampment its effects to the surrounding and the right to healthy environment in Kapelebyong Amuria District. You responses will be treated with confidentiality and if used will not be attributed to you.

The results of the study will help policy makers in alleviating the problems of the encamped. I therefore, kindly request for your assistance by giving me your responses in order for me to complete my research report for the Award of Master of Laws.

Part 1: Personal profile.

Age.....

Sex.....

Religion.....

Marital status.....

Nationality.....

Highest Education Qualification.....

Part 2: The Academic Questions.

Officials to:

i. Health workers
ii. Agriculture officers
iii. Police officers
iv. Environmental officer

v. Local council chairman
vi. Non Government Organizations
vii. Sub county chief
viii. Camp administer
ix. Veterinary

1. What is your name

   .....

2. What is your occupation

   .....

3. What is your designation

   .....

4. What are your duties

   .....

   .....

   .....

5. Has government adequately responded to the plight of the camp occupants and those surrounding the camp in Kapelebyong.

   .....

6. Do you think the government's policies are well thought out? Do you have any alternative policy?

   .....

7. What are the main problems in the compound the surrounding area

   .....

8. What are the affects of encampment on the surrounding

   .....

9. How has the destruction of the vegetation affected the area

   .....

10. Do you think there is enough security

    .....

APPENDIX II

RESEARCH INSTRUMENT (Number Two)

The interview guide to be used as research instrument in data collection (encamped and surrounding area population)

This study is intended to provide data on encampment its effects to the surrounding and the right to healthy environment in Kapelebyong Amuria District. You responses will be treated with confidentiality and if used will not be attributed to you.

The results of the study will help policy makers in alleviating the problems of the encamped. I therefore, kindly request for your assistance by giving me your responses in order for me to complete my research report for the Award of Master of Laws.

Part 1: Personal profile.

Age.....

Sex.....

Religion.....

Marital status.....

Nationality.....

Highest Education Qualification.....

Part 2: The Academic Questions.

Officials to:

i. Camp occupants

ii. Persons in the surrounding area.

1. What is your name

.....

2. What is your age

.....

3. Sex

.....

4. What is your occupation

.....

5. How do you link earn a living

.....

6. How may children do you have

.....

7. Do you have adequate food

.....

8. What type of shelter do you live in

.....

9. Where do you get building materials from

.....

10. Do you have toilets

.....

11. What is the source of your water

.....

12. Why did you come to this camp

.....

13. Where do you graze your cows

.....

14. Is there enough grass

.....

APPENDIX III

TABLE PRESENTING THE DATA – TABLE 1

Respondents randomly sampled	Number of target respondents	Actual number of respondents interviewed	Percentage
Forest officer	2	2	100%
Members of the general public (encamped)	20	10	50%
NGOs	1	1	100%
Environment officers	1	1	100%
Agricultural officers	2	1	50%
Healthy workers	2	1	50%
Veterinary doctors	1	1	100%
Police officers	1	1	100%
Persons in surrounding areas	20	10	50%

The table above (figure 1) shows the results of the interview carried out using a random sample at Kapelebyong.