REPORT OF THE PROCEEDINGS OF THE TRAINING WORKSHOP ON ENFORCEMENT OF ENVIRONMENTAL LAWS IN UGANDA FOR GRADE II MAGISTRATES.

HOTEL TRIANGLE ANNEX–JINJA
14TH-16TH MAY, 2006

THE JOHN D. AND CATHERINE T. MACARTHUR FOUNDATION

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If we did little, we would do much

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

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

ACRONYMS

ACODE	Advocates Coalition for Development and Environment
CFCs	Chloro Fluoro Carbons
CID	Criminal Investigative Directorate
CIEL	Centre for International Environmental Law
DFO	District Forestry Officer
DFS	District Forestry Services
DPP	Directorate of Public Prosecutions
EIA	Environment Impact Assessment
E-LAW	Environmental Law Alliance Worldwide
ELI	Environmental Law Institute
JSI	Judicial Studies Institute
LEAT	Lawyers Environment Action Team
NAPE	National Association of Professional Environmentalists
NEA	National Environment Act
NEAP	National Environment Action Plan
NEMA	National Environment Management Authority
NEMP	National Environment Management Plan
NFA	National Forestry Authority
NGO	Non Government Organisation
PIL	Public Interest Litigation
TEAN	The Environment Action Network
UNEP	United Nations Environment Program

URA	Uganda Revenue Authority
UWA	Uganda Wild life Authority
WRI	World Resources Institute

INTRODUCTION

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

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

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

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

Environmental law provides for three (3) major aspects of enforcement and compliance namely administrative, civil and criminal. As already noted above, a lot has been done administratively. A number of civil suits have been filed in courts of law for enforcement of environmental law and have been largely successful. But civil procedure is long, expensive and complicated. Criminal aspects of environmental law have been largely un explored yet it has the greatest potential of effectively dealing with a wide range of environmental violations especially at grassroots' level. It has been determined by NEMA, **Greenwatch** and other civil society organisations that the reason hindering enforcement of environmental law through criminal procedure is lack of capacity.

Grade II Magistrates Courts are the first courts of instance and are mandated to enforce a large number of laws that relate to environment including customary laws. They also enforce by-laws and ordinances. Criminal law is enforced by the police, the prosecutors and the judiciary. **Greenwatch** and NEMA have since 1999 been conducting training of judicial officers in environmental law, both civil and criminal from the magistrates courts to the Supreme Court. The training for Grade II Magistrates in environmental law is hoped to enhance their capacity in enforcing environmental rights and ensuring compliance to the environmental laws.

This training, **Greenwatch** in collaboration with Judicial Studies Institute, NEMA and Directorate of Public Service (DPP) is geared towards this goal. This is the third of this kind of the training for a period of three (3) years funded by **the John D. and Catherine T. MacArthur Foundation** and conducted by **Greenwatch** in collaboration with **NEMA.**

About Greenwatch

Greenwatch's mission is to increase public participation in the sustainable management and protection of the environment and to advocate for a legal and institutional frameworks that will enable them do so. Its objectives are:

- To promote public participation in the management, use and protection of the environment through the use of sustainable conservation methods.
- To formulate policies those promote rational management of natural resources and sound environmental practices.

Greenwatch has at times engaged in litigation as a means of encouraging public participation, access to information and access to justice in environmental issues. **Greenwatch** works closely with the National Environment Management Authority (NEMA), the lead agency in managing and regulating environmental issues in Uganda and it also networks with the different Ministries in the Uganda Government like Ministry of Land, Water and Natural Resources, that of Energy and Mineral Development as well as other line ministries. **Greenwatch** works with like minded civil society organizations at both the local and international level, these include, Advocates Coalition for Development and Environment (ACODE), Uganda Wildlife Society (UWS), Environmental Alert, National Association of Professional Environmentalists (NAPE), Lawyers Environment Action Team (LEAT) in Tanzania and the Institute of Law and Environmental Governance (ILEG) in Kenya among many others.

Greenwatch also works closely with international institutions and NGOs such as the Environmental Law Institute (ELI), World Resources Institute (WRI) and the Center for International Environmental Law (CIEL); all these institutions are based in Washington DC. The United Nations Environment Programme, has also worked with Greenwatch on a number of programmes.

The Environmental Law Institute (ELI) has in the past provided support in form of funding and materials for training lawyers and the judiciary on environmental law, policy and access to justice while the World Resources Institute (WRI) has provided assistance to Greenwatch in the monitoring and compliance of the Environmental Impact Assessment (EIA) legislation.

EXECUTIVE SUMMARY

This report contains the proceedings and technical papers presented at the Grade II Magistrates training workshop on Enforcement of Environmental laws held from 14th-16th May at Hotel Triangle, Jinja

The workshop was attended by thirty (30) judicial officers, lawyers and facilitated by various resource persons. The training was conducted and facilitated by **Greenwatch**, Judicial Studies Institute (JSI), National Environment Management Authority (NEMA), Directorate of Public Prosecutions (DPP) and National Forestry Authority (NFA).

The aim of the workshop was to enhance and strengthen the capacity of Grade II Magistrates in the enforcement of environmental laws.

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

The workshop was officially opened by His Lordship Justice David Wangutusi, the Executive Director of Judicial Studies Institute attended by the Executive Director **Greenwatch,** Mr. Kenneth Kakuru.

The three (3) day workshop was closed by Her Worship, Cissy Mudhasi, the Chief Magistrate Jinja.

During this period, the participants covered the following topics:

- the State of the Environment in Uganda which included an overview of the environment in Uganda, the major natural resources and what the state of the environment is;

- Overview of the Institutional and Legal framework governing environmental management in Uganda which included analyzing how the law has been used in environmental management, the need for review of the legal and institutional framework;

- Challenges in monitoring and enforcement of environmental laws which include lack of enough enforcement capacity and the need to transfer management and enforcement responsibility to local authorities and resource persons;

- Protecting our forests to include the law and policy;
- Criminal aspects of Environmental Law;
- History of environmental law; and
- Commencing Legal action.

The proceedings contain a simulation exercise in which participants engaged highlighting the practical steps of how to proceed with an enforcement process.

At the end of the workshop, from the presentations made by the resource persons, both the participants and facilitators were satisfied that the objective of the workshop had been met. They recommended the need for more training and for the duration of the workshops to be increased.

1.0 OPENING REMARKS

1.1.1 Remarks from Mr. Kenneth Kakuru
Director, Greenwatch

Mr. Kenneth Kakuru an advocate and a director of Greenwatch welcomed the participants to the workshop. He informed participants that Greenwatch coordinated the training in conjunction with the Judicial Studies Institute (JSI). He welcomed the participants to the three day workshop on environmental law and procedure in Uganda.

He narrated the history of Greenwatch, its objectives, its past and current activities which include enhancing public participation including enforcement of environmental laws. The main objective of the workshop was to enhance the capacity of judicial officers and the public to enforce environmental laws.

He noted that because of our past laws, it was difficult for these emerging issues to take root. Some people are benefiting from non compliance. Greenwatch works towards ensuring that environmental laws are complied with. This cannot be done without the support of the public especially law enforcement agencies. From 2000, Greenwatch and NEMA have conducted training which were mainly on awareness raising adding that focus this year is on enforcement of the established laws and ensuring that they are complied with.

The objective of the workshop is to introduce participants to environmental law, knowledge and information, and to interest them in the management and protection of the environment and natural resources using the law. He noted that most lawyers did not study environmental laws at university it because it has been introduced recently and is an optional subject. Since 1995, there has been substantive and subsidiary environmental legislation that have been enacted for instance the National Environment Act (NEA) and the Constitution of Uganda in 1995, the Water Act which was enacted in December 1997. Other Acts were later made like the Local Government Act, the Land Act and several others.

In spite of the existence of all the above legislation, the public does not know about it. This was attributed to lack of awareness of the new environmental legislation that the people tend to fall back to old laws. He informed participants that this programme also involved building capacity of police officers and state prosecutors in the enforcement of environmental laws.

He noted that since the majority of the people depend directly on environment for their livelihoods, many conflicts result from the use and control of natural resources and management of the environment.

These conflicts usually manifest in other crimes such as murder assault, arson etc. It is therefore important to deal with the crucial issue of environmental protection.

1.2 OFFICIAL OPENING CEREMONY

1.2.1 Remarks from His Lordship Hon. Mr. Justice David Wangutusi. *Executive Director, Judicial Studies Institute (JSI).*

His Lordship Hon Justice David Wangutusi officiated at the opening ceremony of the training workshop.

He welcomed participants to the workshop and said that the workshop intended to sensitise participants and inform them on environmental law and procedure in Uganda. He noted that they would be equipped with knowledge and skills which he hoped they would be able to apply in administering justice.

He reiterated the theme of the workshop; which was to enhance and strengthen the capacity of the judicial officers in enforcing environmental laws using the courts.

He emphasized that judicial training was of concern for all. It impacts on every one whoever or wherever he may be. Therefore the protection of environment is a concern of judicial officers and they have a stake in protecting the environment.

The participants were urged to spread the word to the people in their areas of jurisdiction because courts are teaching institutions. Penalties that are provided for in the NEA can be invoked to enforce the law. Magistrates were cautioned to take environmental offences brought before them as serious as any other matter. For people to be able to listen to the magistrates, the magistrates must make well reasoned judgments to show that they are aware and sensitized because people trust learned judgment.

The participants were urged to fully participate in the workshop with emphasis on the need to develop a reading culture to be appraised with new emerging issues.

He expressed his gratitude on behalf of **Judicial Studies Institute** (JSI) to **Greenwatch** and the **John D. and Catherine T. MacArthur Foundation** for funding the workshop and enabling the **Judicial Studies Institute** to build capacity of judicial officers through such training. Special thanks were extended to Ms. Irene Ssekyana and her team for coordinating and organising the workshop.

The workshop was then officially declared open at 9.45am. .

DAY TWO 15th May 2006.

2.0 PAPER PRESENTATIONS

2.1 Overview of Environmental problems in Uganda
By Mr. Ronald Kaggwa, Environmental Economist, NEMA.

The presenter, an environmental economist, defined the environment as the physical factors of the surroundings of human beings including both the natural and the built environment like water, atmosphere plants and other social factors. He noted that the environment should not be looked at as a natural phenomenon but also in terms of its physical attributes.

He observed that there was a high level of awareness than it was ten (10) years ago when NEMA had come into existence however, there was need to examine whether the environment had improved since and whether environmental degradation had reduced. He retaliated that the theme of the workshop was to enhance compliance with environmental law and stated that although the laws were in place and awareness levels had increased, environmental degradation was still continuing.

Uganda for long was regarded as "the pearl of Africa." This image lasted until 1970. However there is need to assess whether Uganda is still a beautiful country.

Uganda has a rich diversity of flora and fauna, a rich aquatic eco system, soils etc. but this beautiful natural resource base has been reduced in quality and quantity. The decrease in this has a wide socio-economic implication on this country. He noted that people have failed to take into a count the economic valve of the natural resources unless money is involved i.e. wetlands are being degraded due to rapid growth drainage for construction of churches regardless of their importance. The Nakivubo channel is being polluted with solid waste yet it contributes 1.7 million dollars to the natural economy. Wetlands also have a function in storing water and their degradation results into shortage of water, decline in grazing lands, high cost of water purification, power shortages which has far reaching implications.

The presenter also noted that Uganda is endowed with many rivers, lakes and streams which are being polluted by industries like breweries, soft drinks, flour farms constructed along the lakeshores and release chemicals and waste into the water. Other natural resources include wildlife and biodiversity which are found in forests and wetlands, fisheries, forests and land. However some plants and animals are becoming extinct like the white rhino. The loss of diversity is mainly due to over harvesting of resources, in particular trees and fish. The effect of this is the loss in tourism value and production loss of life supporting systems which is important for research, scarcity of fish because of the use of inappropriate fishing gears loss of tree cover and deforestation and shortage of wood fuel.

The land resource is important in Uganda as it supports over 80% of the population and

majority of people depend on the environment and natural recourse base or land for their livelihood. Transformation from a peasant economy to a modern state requires land however the productivity of the land in Uganda has decreased; soil productivity has declined due to erosion of the top soils. This has resulted into poor crop yields, food insecurity and lack of investment and environmental security. He stated that over 80% of the total degradation in Uganda is due to land degradation and many conflicts are derived from poor land use.

The need for sustainable development rather than short term survival which leads to environmental degradation was highlighted. Forests are an important sector in this country but are being encroached on for farming and for wood fuel for brick making and for poles for construction. Dust pollution was also noted as another emerging environmental disaster with emissions from cement industries, stone quarrying, husks from coffee factories, leading to out door and reparatory pollution which mostly affects women and children. There is also poor disposal of waste, in particular polyethylene (*kavera*) which destroys the quality of soil, and increases the cost of solid waste management. There is also poor environmental health resulting from unplanned towns which have poor sanitation; and excavation of soil which creates gulleys which become breeding ground for mosquitoes and other parasites.

However, in its ten years of existence, NEMA has made some improvements in the area of environmental management i.e. creation of sectoral policy like the Water policy, creation of institutional frame work policy and legislation, creation of a Institutional frame work for sustainable development, creation of a legal frame work (National Environmental Act), creation of environmental laws like the Water Act, Land Act. There are also many NGOs dealing with environment at both the local, regional and national levels with which NEMA has created awareness and partnerships. An attempt has also been made to main stream environmental concerns into sectoral plans and policies.

In conclusion, it was highlighted that the need to strike a balance between development and sustainable use of natural resources was the only way in which some of the challenges faced in enforcement and compliance including restoration of degraded eco systems, the need for universal environmental awareness e.t.c can be handled.

Discussions.

Uganda has a good environmental legal and institutional framework but the problem is none compliance.

NEMA was commended for the restoration of the Nakayiba wetlands in Masaka and Kinawataka wetland in Kampala. However participants were concerned that the environment is under funded according to the district budget.

Queries were raised regarding the issue of “people’s power” and how to enforce environmental laws yet people claim to have power to do what they want especially on

their own land. Participants also cited political interference as one of the biggest challenges and noted the supremacy of the law.

Laws can be amended but should be applied by judicial officers as they are, for instance the Penal code, civil. The laws were brought because of what was happening on the international scene and such conditionalities come with financial aid to enact the laws. Although government passes the laws, it may not properly enforce them. Thus the duty of government officers including judicial officers is to push the government to properly enforce the laws.

It was noted that the environment should not be compromised for cheap popularity like soliciting for votes. There is therefore need to sensitize communities and politicians on environmental protection.

Participants were of the view that there is a risk of putting a lot of emphasis on environmental protection while relegating development to second place. It was however noted that there should be a balance between the two; sustainable development should be emphasized where by development takes into account sustainable use of the natural resources.

It was noted that the legislators are the ones breaking the law and that as long as local people are poor, they will not protect or properly manage the environment. These people depend entirely on the environment for their livelihood and survival, hence the continued pressure exerted on natural resources. There is therefore need to emphasise poverty eradication as well as awareness creation in order to effectively manage the environment.

Participants were concerned about the increased importation and use of Chloro Fluoro Carbons (CFC) products that contain ozone layer depleting substances. They reiterated the need for the National Bureau of Standards to put stringent measures against the importation of such goods in the country.

Participants were informed that NEMA works hand in hand with the National Bureau of Standards and Uganda Revenue Authority (URA) customs to put in place a policy that will phase out second hand items.

2.2 Overview of the Legal and Institutional Framework for Environmental management in Uganda

By Ms. Christine Akello, Senior Legal Counsel, NEMA.

Ms. Christine Akello, Legal Counsel NEMA stated that the enactment of the National Environment Act (NEA) in 1995 was the starting point for the establishment of the legal and institutional framework for environmental management in Uganda. When the NEA was established, emphasis was put on protection and not conservation and sustainable use.

1994 had seen the National Environment Action Plan (NEAP) come into place which looked at the urgency of the problem that is the irreversibility of harm. To prevent the harm from occurring, the expected benefits had to be assessed to address these problems, and different aspects that make up the environment had to be interrelated. The NEMP which came into force in 1994 was aimed at enriching and maintaining the quality of life in terms of the life span and quality of life. This was seen as a necessary step to integrate the environment into other sectors. Other issues included in the NEAP include the issue of conservation, restoration and maintenance of the ecosystem to regenerate what is lost, optimum utilisation of the resource, and continued awareness raising.

The National Environment Management Policy (NEMP) highlighted the right to a clean and healthy environment, sustainable development, issues of security of land and resource tenure. This policy also considered the fact that there are legislations developed in other sectors which sought to integrate environmental considerations into these policies like the Water Policy. NEMA works with other lead agencies like National Forestry Authority, Ministry of Water, lands and Environment together with CSOs to implement its work. The Local Government Act decentralized aspects like the role of the District Environment Officers and District Environment Committees to interlink the environment with other fields at district level and ensure that issues of environmental management and conservation are put to the forefront.

There are also technical committees created to guide the system of developing laws and regulations in those different aspects of the environment, i.e. Impact Assessment technical committee. The Constitution of the Republic of Uganda incorporated environmental considerations in recognizing the right to a clean and healthy environment- Article 39, and integrates issues on land tenure system and on natural resources which are to be held in trust by the Government or Local government (Article 237). She emphasized the role of courts in enforcing rights and freedoms which is enshrined in Article 50 of the Constitution. She noted that rights come with obligations to sustain the environment in a positive way. Every one has a duty to protect the environment.

Under the National Environment Act (NEA), there are different structures for environmental management and environmental principles such as Polluter Pays principle, use of performance bonds which give provisions for a refund if environmental harm does not occur, use of criminal law which uses fines, imprisonment terms, or community service and cancellation of a license and environmental inspectors to monitor where environmental harm is occurring.

Environmental planning is a useful tool in anticipating and prioritising different activities, environmental audit is used to audit the way our natural resources are being used and whether established environmental standards are being complied with. Environmental Impact Assessment (EIA) is used to get the likely impact of an activity on the environment. She urged participants to be more informed with the legal significance of some of the principles. Issuance of a license requires one to comply with conditions attached to it.

Other regulations stipulated in the NEA include, those governing use of river banks, lake shores, hilly and mountainous areas. Such mechanisms are put in place to ensure compliance. Others include control of smoking in public places, disposal of effluent, all these regulations have a health backing to it. Issuing an environmental restoration order is done by the Executive Director of NEMA and is done to restore the environment as much as possible to its original state. Court can also order the Executive Director of NEMA to issue a restoration order.

In conclusion, the presenter urged participants to sensitize communities on proper environmental management.

Discussion.

The NEA provides for incentives for good environmental behavior however not all incentives are within the law but are within the activities that relate to the environment hence everything that one does to protect the environment is of benefit to the community.

Participants suggested that costs and fees in public interest litigation should be waived, however it was noted that this may encourage petty and frivolous cases. Court fees are usually minimal and seeking a declaration is not costly.

Participants were informed of efforts to plant trees; the initiative is being enforced by the National Forestry Authority. It was observed that the problem is with the local leaders who fear to enforce this policy because they are politically elected and want votes. This makes enforcement difficult.

Queries were raised regarding the relationships between the NEA and National Forestry Authority. It was noted that NEMA has a forum for discussion to co-ordinate with the different sectors of forestry and wildlife. The essence is to create linkages and then offer support to the different environmental organisations in form of finance and data. NEMA therefore works through the various lead agencies to manage and protect the environmental.

2.3 Challenges in Monitoring and Enforcement of Environmental laws in Uganda. *By Mr. Waiswa Ayazika, EIA coordinator, NEMA.*

The presentation was started by defining compliance as the full implementation of environmental requirements its goal is to meet environmental requirements in standards, regulations, and permits. He defined enforcements as the set of actions taken to compel compliance.

Much as the law requires compliance, we also have a mandate to help people in the community comply through training and awareness raising. Instruments used to ensure compliance include baseline monitoring which is done before carrying out an EIA and

needs pre project information, mitigation monitoring which is done where an EIA has been carried out to see whether proposed mitigation measures are being adhered to and are working, and compliance monitoring to ensure specific conditions or standards are met.

NEMA enforces the law through various means like carrying out inspections. It finds out those who have complied and the violators. It negotiates with the people giving them a specific time limit within which they should comply, education programmes to bring people on board and make them comply with the law and bring about legal action.

The presenter stated that the enforcement is essential in order to protect the quality of the environment and public health and strengthen the continuity of environmental requirements. It is also essential to ensure fairness in use of environmental resources.
The components of a good enforcement programme were enumerated and include:

- creating requirements that are enforceable;
- knowing who is subject to these requirements;
- setting programme priorities monitoring compliance clarify roles and responsibilities and
- timely response to violation which may involve sanctions and closing down facilities which is often done as a last resort.

Enforcement mechanisms and implementation tools are divided into two i.e. the Precautionary Principle which takes into account environmental audit and planning, use of EIA for planned projects, use of environmental audit for on going projects to find out whether mitigation measures anticipated are in place or whether there are other issues that need to be dealt with. Public awareness and participation is used to bring the public on board and encouraged them to act as watchdogs to provide information where there is environmental degradation. The polluter pays principle on the other hand is used where the environment has been damaged and needs to be restored. It involves use of performance bonds, restoration orders, environment improvement notices, use of records from regular monitoring, criminal law and community service orders.

It is therefore important to monitor and find out why the people are not complying. This can be done through strategies for compliance and enforcement which include:

- developing laws and regulations that can be enforced;
- identifying the regulated community and ;
- publishing success stories and building public awareness and support i.e. through giving out certificates and recognition from NEMA.

The presenter also noted that the permitting system enables environmental requirements to be tailored to the circumstances of specific facilities.

He informed participants that currently NEMA has about 150 environmental inspectors at district and other levels. NEMA has also developed technical tools i.e. manuals and guidelines for agriculture, fisheries, mining, and urban planning to enable those who want to comply to have access to the specific materials

The presentation was concluded by highlighting some of the challenges that environmental monitors face in enforcement and compliance work which include the "anonymous holiday" and "awkward hour" dumping syndrome, issuance of land title in fragile areas by the central and Local Government and the linkage between poverty and natural resource use which is a very huge challenge to deal with.

Discussion

Participants emphasized the need to ban the manufacture and use of polyethylene bags (*kavera)* in the country because of its pollution and environmental degradation. NEMA officials informed participants that government has been advised to ban the manufacture and importation of polyethylene and use paper bags as an alternative to *kavera* but the advice has not been taken up. There is need to give incentives to people who manufacture paper bags while increasing the tax on polyethylene (*kavera*) manufacture; this will also require the public's change of perception and attitude. The ban would be limited to small *kavera* of about 80 microns which are the most detrimental to the environment and cannot be re- used or recycled. It was noted that there is need to encourage recycling of plastics and to do so may necessitate incentives which would encourage good behavior.

It was agreed that Uganda should follow the example of Rwanda and totally ban the use and manufacture of *kavera* in the country.

Participants were informed that environmental inspectors are well protected and their powers well defined under the law. NEMA inspectors often go to sites with police officers where enforcement is needed especially when there are threats from environmental degraders.

Participants were encouraged to act with courage and act as examples so that their actions are not compromised, based on corruption or on biases their actions should therefore be within the law.

The "lukewarm" response of some developed countries signing environment treaties was also discussed citing the example of the United States of America which is not a signatory to the Kyoto Protocol. It was noted that the North has been able to develop by utilising and exploiting resources from the South and else where because they have both the money and the technology to do so. Protecting our environment is for our own benefit for instance planting trees whether it is on the agenda of the developed countries. The environment and natural resources must be protected and at the same time there is need to promote sustainable industrialization. It is thus crucial to strike a balance between sustainable development and the environment.

As a developing country, it is in our best interest to enforce the environmental laws in place to avoid environmental degradation and disasters because unlike developing countries, we do not have the resources to cope with the repercussions of not protecting our environment. Emphasis was placed on the need for participants and the various actors

in the field of environment to work together and forge linkages in order to efficiently manage and protect the environment.

2.4 Protecting our forests: The Law and Policy

By Ms. Georgina Kugonza Musisi, Legal Counsel, National Forestry Authority (NFA)

Ms. Georgina Kugonza stated that her presentation would highlight the role of magistrates in protection of forests in the country. Her presentation was participatory.

The National Forestry Authority (NFA) is working with NEMA and other organisations on the carbon credit pilot programme which involves planting trees and conserving forest resources in the country, and is intended to benefit the public through generation of funds. Forests play a vital role in man's livelihood hence should be protected i.e. they act as a water filter, protect underground water from contamination, act as a habitat for different plants and animals.

The National Forestry Policy of 2001 identifies community participation as a way of poverty eradication and protection of forests. It also includes the protection of forest reserves. The new law was made because of the need to integrate constitutional changes and to improve on the institutions to manage forests. The foreseen benefits were tree planting, development of forests, it was a way of consolidating all the laws relating to forestry.

The National Forestry and Tree planting Act recognized forests within the wildlife areas and also recognizes other forest management authorities. Local forest reserves are managed by the District Forest Officers (DFOs) who are recruited by the District Forestry Service (DFS). The DFO also handle the technical aspect of advising the private forest owners on private land and ensure their activities are with in the National Forestry policy. They are also mandated to ensure that the public is sensitized and educated on forestry issues.

Community forests are not defined by law, but the Minister may designate the responsible body for it and set the area as a community forest. Private forests are on private land and privately planted or grown, and the DFOs provide the technical backstopping for them. The central Forest reserves are managed by the NFA which has a field operation division headed by a Director and coordinators. The NFA has a national obligation to advise government on sound practices and procedure for forests and forest reserves in Uganda, and provide services on technical basis to the government. She noted that local forest reserves are gazetted and established by law.

The role of authorized persons to manage the forests and forest reserves is stipulated under the National Forestry and Tree Planting Act. Such authorized persons include DFOs, Uganda Revenue Authority (URA), which checks to ensure taxes have been paid and police officers. The Minister may also appoint people to act as officers to manage the

forests or forest reserves. These authorized persons have powers to arrest and search without warrants provided they are suspicious of illegal activities being undertaken.

Forests within wildlife conservation areas are managed by Uganda Wildlife Authority (UWA) but if any technical advice is required, the NFA provides it. Forests are also managed by cultural leaders and the Minister is obliged to stipulate how they are managed. Forest resources can be accessed by applying for licenses to carry out different activities like saw milling. The licenses are given after an Environmental impact Assessment (EIA) is carried out, stipulating how the trees are going to be cut and how the logs are going to be carried from the point of felling.

Offences stipulated under the National Forestry and Tree Planting Act include tree burning, i.e. setting fires within the forest reserves. She emphasized that one needs a license to use a forestry reserve or a forest product. It was noted that magistrates are considered partners in enforcement of laws using courts. NEMA is working with organisations such as **Greenwatch** to train police officers on enforcement of laws during which issues such as charge sheets to use when dealing with environmental offences are discussed.

The presenter also highlighted some of the achievements in enforcement which include increased tree planting by private individuals, creation of linkages in the forestry sector with like minded NGO's like the Jane Goodall institute which caters for monkeys and chimpanzees in forests, planting of trees in areas like Matugo.

The challenges NFA has faced while enforcing laws were enumerated and include encroachment especially by those on land neighboring forests and forests reserves, lack of equitable distribution of seedlings, political interference and high cost of tree planting.

The presentation was concluded by emphasizing the need for increased sensitization of enforcement officers including magistrates and facilitation of District Forestry Officers (DFO) at district levels.

Discussion

It was observed that the right to land is not absolute. Private land owners should harvest trees in a manner that is sustainable and should seek guidance from the DFO in converting forest products.

The issue of forests that are managed under traditional leaders was highlighted noting that the lands were given back to cultural leaders and where forests are located, the minister is to provide guidance on how they are to be established or managed. The trees can be used for recreation purposes and for providing wood fuel.

Emphasis was placed on the need for documentation of licenses to show (as evidence) that the timber that is being transported is validly obtained from a particular reserve.

Participants were also informed that NFA is in the process of compiling documents depicting the various roles played by the authorized persons in management of forest reserves to include central forest reserves and why there is need to protect the forest. These will be distributed to all districts for dissemination to the public. NFA is also creating awareness through use of the media and through use of radio jingles.

2.5 Criminal Aspects of Environmental law.

By Mr. Vincent Wagona, Ag. Principal Senior State Attorney, Directorate of Public Prosecutions (DPP).

Mr. Vincent Wagona began his presentation by informing the participants that there are various ways of enforcing environmental laws. These include inspections, negotiations, compliance and civil litigation. He observed that his paper would focus on criminal procedure as in tool of enforcing environmental laws which should often be used as a last resort.

Laws have provisions but these provisions may not seem adequate in terms of the crimes committed i.e. laws under the NEA. He observed that failure to prepare an EIA may not have an adverse impact on the environment but it still amounts to an offence. One is therefore required to prepare a project brief and the third schedule of the NEA provides a list of projects for which a project brief is mandatory i.e. road construction, construction of dams, exploration for petroleum and electricity generation stations. If it was a requirement and it was not done or false information is provided, then this amounts to an offence.

There are other regulations and standards relating to proper environmental management which have been put in place by statutory instruments which state levels required for waste discharge, regarding noxious smells, and noise levels. Failure to comply with these laws also amounts to an offence. The NEA also provides for offences relating to pollution. To enforce the law, the NEA creates environmental inspectors to check

whether the law is being adhered to. He informed participants that NEMA is in the process of designating police officers as environmental inspectors to check whether the law is being complied with. Other offences include those relating to the protection of wetlands, lakeshores and river banks management.

There are some legal technicalities relating to the prosecution of environmental offences. Environmental law caters for anticipatory damage even when it has not yet happened. Environmental laws also impose strict liability and a person engaging in an activity should know the effect of his actions on other activities –*mens rea.* Environmental offences also impose vicarious liability i.e. the law is concerned with preventing or stopping the act leading to environmental degradation not punishment of the offender. However causation has to be proved before one is held liable.

Criminal prosecution should be brought in as a last resort. Although in practice NEMA gives notice to an offender, this is not a necessity before criminal prosecution. Jurisdiction is subject to sentencing powers. Effects of a conviction may vary, however the Constitution states that a Member of Parliament can be removed because of either misconduct or misbehavior. This is also a contravention in the leadership code. Defenses to environmental offences could be act of third party- *actus rens*, however some defenses only apply to certain crimes. Punishments are either a fine or imprisonment or both. The law allows for restoration orders, community service and license cancellation.

He concluded by urging magistrates not to impose technicalities while administering justice. Magistrates are very important partners in fighting environmental violations.

2.6 The History of Environmental Law

By Mr. Kenneth Kakuru, Director Greenwatch

The presenter began by explaining the inter-relationship between politics, economics and environmental law starting with ordinary political economy.

The earth as a planet is the only place where human beings can have life and can start and sustain life because everything is favourable. The environment on earth is conducive to life hence life exists on earth. The environment that we have is only here on earth and should not be taken for granted. He noted that there are some studies which seem to suggest that there could have been some form of life on other planets like Mars or Venus but was destroyed by poor environment. However, the Bible states that God put man in a garden on earth and charged him and the woman to rule over and control the environment. The environment we have today is conducive for the sustainability of life and for the activities of man.

Hence if man wants to stay on earth for long, there is need to preserve the environment and make the atmosphere conducive for his existence. Man in his efforts to attain civilization has destroyed the environment. In trying to achieve development, man harnessed nature, degraded it so that it suits and fits him rather than him adapting to

nature. Yet in order to develop, man needs to rely on nature. Man's actions were therefore geared towards changing the natural environment to make it unnatural. The capacity of man to control nature increases with time and technology. The most important component in all this is labour for instance man can make tools and use then to enhance labour and because of this ability, man is able to live a better life by building houses to live in etc. However, because of the selfishness of man, he has continued to destroy nature to make his life more comfortable but in the process has destroyed the very resources that support his existence.

With regard to commodities and price, human beings often pay for the component of labour in paying for goods; that is labour costs involved in the production of a particular good which is equivalent to costs incurred in bringing the product to the buyer. To reduce on such costs, one has to cut down on the labour required to collect the item for instance it is more economical to have piped water which is a result of industrilisation than go to the well to fetch water which requires time and the water sources may not be reliable. By replacing labour with mechanisation, the price of labour reduces but the quantity of goods increases**.** The more machines man makes, the greater his ability to harness nature and the more he destroys the environment. Because of this, there has always been conflict between development and the environment.

The presenter remarked that even the education that is passed on from generation to generation is about knowledge, how to acquire more knowledge on how to exploit nature and use it to suit mans needs. This has led to pollution through mans activities like industrilisation, road making etc, but in order to slow down resource depletion, there is need to balance nature i.e. to use resources sustainably and encourage sustainable development.

The Emergence of Environmental Law.

Environmental law emerged from land law and ownership of land is political. A brief background to land law and ownership was given, stating that it dated back to when William the Conqueror conquered England and all the land became kings land. At this time, the owner had the right to abuse his own land and when people disturbed him they were charged with nuisance which is an extension of trespass on property – land. Negligence results from someone's activity to cause injury or harm to another person or to property as a result of doing something or failing to provide a reasonable level of care.

The land laws and Law of Tort were the basis of the principles relating to the environment namely trespass and nuisance. Industrialization brought about other issues like by products and waste which if not disposed off properly result into pollution which is a nuisance. This therefore necessitated some form of legislation which came about during the era of industrialization after the Second World War.

The Stockholm Declaration of 1972 emphasizes the issue of sustainable development and underscores the need to balance development with conservation of natural resources.

Principles noted include the Polluter pays, the precautionary principle which is enhanced by the EIA, environmental standards and regulations which all necessitate looking at the project brief and mitigation measures.

The environment is for all mankind and many aspects of the environment affect everyone. The User pays principle discourages would be offenders to destroy the environment. The principle of Public Trust doctrine states that resources listed in article 237 of the Constitution of Uganda (1995) are held in trust for the people by the government and shall not be alienated or sold. Other principles noted include the principle of public participation, inter and intra generational equity and sustainable development. Whatever activities are carried out for the management of natural resources should be done with the full participation of the public. The right to a clean and healthy environment as provided for in article 39 of the Constitution comes with a duty to protect the environment and enforce that right using the precautionary principle and the principle of access to justice. The principle of sustainable development can not be achieved without access to justice.

The presentation was concluded by stating that we all have a duty to protect the environment for ourselves and for those not yet born.

DAY TWO

9.00am

2.7 Access to Environmental Justice.

By Hon. Mr. Justice Ruby Opio Aweri, Judge of the High Court.

In his paper read for him by Her Worship Caroline Kintu, His Lordship Justice Opio Aweri affirmed that his paper was based on how courts in Uganda have been responding to environmental issues and the level of development of environmental jurisprudence.

The concept of environmental justice is based on the fact that everyone should have the right to live in a clean and healthy environment with access to environmental resources for a healthy life. Environmental justice also implies environmental responsibilities on the current generation to ensure that a healthy environment exists for the future generations and that development does not create environmental problems in ways that are detrimental to people's health.

Man derives his livelihood from the environment and therefore can not be separated from it i.e. man gains food, security, water etc. because of the importance of the environment to man kind, the need to use law to protect the environment and sustainable development becomes crucial hence the role of the judiciary and legal practitioners.

The bench mark indicators of access to justice were cited and include the legal and administrative frame work for instance the 1995 Constitution of the Republic of Uganda which provides for the right to a clean and healthy environment (Article 39), the National Environment Act, the water Act and the Local Government Act

The presentation was concluded by highlighting some of the limitations of access to environmental justice which include cost of litigation, security for costs, public participation which was noted to be poor in environmental justice, poor government policy and corruption which was attributed to the enforcement agencies. He observed that majority of the citizens of Uganda are ignorant of their environmental rights. However access to justice is a constitutional right especially for the poor and it is about sustainable development which demands that one should use resources in a manner that will not deplete them or that will not affect others.

Discussion

The issue of market forces of demand and supply and protection of the environment was discussed further, where participants observed that the market forces should determine how some aspects of the environment should be managed. Responding to this, the discussant stated that because some natural resources like forests are found on private land and are privately owned, this is different from rivers and lakes which are not owned by individuals. Some aspects of the environment can be better left or managed if the market forces take control, this is with the exclusion of endangered species or water resources.

It was observed that the procedure to take when filing a suit is important. One can go to the magistrates' court using an ordinary plaint. Uganda now has a fully fledged Constitutional Court at the Court of Appeal. When looking for enforcement of a law, i.e in case of violation of the environment, the law is clear and so is the provision of the Constitution hence enforcement of laws is sought in the High Court not the Constitutional court. The Constitutional court is referred to when an issue requires interpretation or when it involves both interpretation and enforcement.

2.8 The Role of the Practicing Advocate in Public Interest Litigation (PIL)

By Mr. Philip Karugaba, The Environment Action Network (TEAN).

In his paper read for him by Mr. Kenneth Kakuru, Mr. Phillip Karugaba asserted that the role of judicial officers and that of advocates should always be complimentary as they are all officers of the courts. This is with regard to the nature of the subject of public interest litigation which affects both the judicial officer and the advocate and necessitates them to go beyond the traditional role they have often played in administering justice.

Public Interest Litigation (PIL) is the legal action brought to protect or enforce rights enjoyed by members of the public or large parts of it. Underlying the concept of Public Interest Litigation (PIL) is the notion of some person or persons unable to access the

court in their own capacity either on account of poverty, illiteracy, ignorance or incapacity of one sort or the other. The application of PIL has spread from political issues to social issues such as rights of the homeless to stay on streets, the right to carry on the trade of prostitution, and prisoner's rights, among others.

PIL presents a radical paradigm as it calls for new thinking in a context where there are high rates of illiteracy, poverty and ignorance in contrast to a paradigm that was based on each individual being aware of their rights and having the means to understand violation of those rights and the wisdom to seek redress through advocates of courts of law.
The advocate should therefore change from the traditional role of rendering legal advice and presenting the interest of clients in court to being pro- active carrying out research and enter into relationships with people from other disciplines.

The paper was concluded by emphasizing that a PIL advocate must be prepared to champion the cause of the public and persist despite any of the challenges the advocate may face in doing so. The need for the advocate and judicial officers to cooperate in the process of PIL was emphasized, adding that they owe this to humanity.

2.9 Commencing Legal Actions: Civil and Criminal.
By Mr. Kenneth Kakuru, Director, Greenwatch.

This presentation depicted how legal action commences starting with citing what the mischief/problem is, what one can do to solve the problem and who is supposed to address it.

In so doing, one is able to determine the course of action and who the defendant should be. Another way is for an aggrieved person to report a complaint. This may be with regard to issues of public interest or issues on a wider scope. Legal action can also be brought about when one finds out that there is a likelihood of harm that can occur when a particular activity is carried out. i.e. stopping the construction of a road in an eco sensitive area. Mischief relates to bringing legal action when harm has already occurred.

Violation of rights i.e. the right to clean water or the right to health may also be a cause of action to bring about legal action because they are all environmental rights. Violation of the law occurs when there may be no mischief caused. Violation of the Constitution may involve degazetting a game reserve or allowing people to settle in gazetted wetlands. With regard to this, criminal law can be used to prosecute any one who commits an act or by omission. However there is need to employ the precautionary principle whenever harm is done.

It was emphasised that the choice of parties should be stated clearly; an aggrieved individual can become party but in some instances they can be compromised. He urged participants to exercise their sense of justice when dealing with different environmental offences. The reasons for choosing a plaintiff vary from financial ability and the costs that may be involved. The defendant should also be specified as well as the aggrieved

person. If it is a general issue that is to be dealt with for instance if the issue is polythene bags then NEMA which is mandated to coordinate and manage the environment and the Attorney General can be sued. However if the defendant is a corporation, then suing the corporation may stop environmental violations because such bodies are very concerned about bad publicity.

Choice of courts depends on the remedy, procedure and mischief i.e. whether to go to the magistrates Court, High Court, or Constitutional Court. Procedure can be under Statutory Instrument 26, or Article 50 of the Constitution or by plaint. The most important part of any case is the pleadings which have to be drafted properly hence the need to be specific about the prayers that are sought from court and the specific orders that are needed. Pleadings can be brought under environmental law, Tort, Land law and contract law. This is important because all these have different procedures and standards of proof. One should therefore specify and know under which law and individual is proceeding, under which section of the law and what remedies are being sought.

The evidence used may involve affidavits or information from the internet. In an EIA, the burden of proof is on the developer to show that his project does not have adverse effects on the environment. The Burden of proof may also shift to the defendant to show that his project does not have adverse effects on the environment.

3.0 Live Simulation Exercise
The moot

A moot question was provided to participants who then divided into four (4) groups. The group discussions were then presented by a representative from each group who read out the findings of a particular group to the rest of the participants.

The discussion that followed the group presentations indicated that the participants had grasped the concepts and principles of environmental law and practical aspects of the same. The findings of each group to the exercise are annexed in annex 10. (Group presentations contained in annexture 10)

4.0 Recommendations and Way Forward.

It was resolved that:

- awareness creation should be emphasized for politicians on the need to protect the environment to reduce on political interference in environmental matters
- environmental education should be made a continuous process as new issues emerge all the time and should be included in curricula at primary, secondary and tertiary levels of learning.

- Policy makers should be sensitized to link environmental protection to poverty eradication.

- Facilitation and funding regarding environmental issues should be increased at lower levels, starting from the district to parish levels.

- Recycling and ban on the use of polyethylene be enforced.
- Environmental considerations be streamlined into the different projects during project designing

- More awareness raising be conducted in rural areas on environmental protection
- More capacity building training workshops be conducted as follow up for Magistrates in other aspects of environmental management

- Simpler procedural rules for environmental cases should be introduced
- Law enforcement agencies should be facilitated with literature, scientific data, computers to ease their work.

- On spot fines for environmental cases/offences should be introduced and stringent laws be applied to stop would be offenders from degrading the environment.

5.0 CLOSING REMARKS

Remarks by Mr. Kenneth Kakuru

In his remarks, Mr. Kenneth Kakuru thanked the participants for attending the workshop and for their active participation. He hoped the workshop had given them an insight on how much more we need to cover or read about the laws that are in existence and the other laws that can be applied to protect the environment. He hoped the workshop had stimulated their thinking and interest on the different issues regarding environmental law and its enforcement and encouraged them to read more in order to keep abreast with emerging laws and issues on environment. He thanked participants for their good time keeping and their participation and hoped that the experience would benefit them while executing their duties.

5.1 OFFICIAL CLOSING CEREMONY.

Her Worship. Cissy Mudhasi, The Chief Magistrate Jinja presided over the closing of the workshop. She thanked the participants for fully participating in the workshop on enforcement of environmental laws in Uganda.

The participants were cautioned to make full use of the knowledge they had acquired and in particular learn more from the new laws that have been made and passed. The

participants were also urged to put to use what they had learned back in their respective jurisdictions and ensure that justice is availed to the poor.

"Learning is a continuous process which should always be embraced," she remarked, and hoped this opportunity had exposed and availed the participants with the opportunity to share and learn from their different experiences and challenges that they face.

Their Worships were urged to adopt a reading culture so as to learn about emerging laws and how they can be enforced.

Greenwatch and the **Judicial Studies Institute** were commended for organising and conducting the training. Her Worship expressed her gratitude to NEMA for their participation in this training process. She further commended **the John D. and Catherine T. MacArthur Foundatio**n for availing funds which made it possible to hold the workshop.

The workshop was declared officially closed at 2:30pm on 16th May 2006.

6.0 WORKSHOP EVALUATION

At the end of the training, the participants were asked to fill out an evaluation form, on the way the training was organized, conducted, the nature of the presentations and facilitation and on the facilities provided. Of the 25 forms that were distributed, 20 were received back by the secretariat. Participants on the whole gave high marks, rating very good for the workshop.

Below is a detailed summary of how they responded.

6.1 Participants stated that the timing of the workshop was convenient for them.

(a) The venue was convenient and accessible to the participants who came for the workshop.

Participants stated that the venue was an adequate choice because of its quiet setting and which facilitated their learning. They appreciated the good service provided by the hotel and the view of the lake.

(b) Most of the participants rated the venue chosen for the workshop as good.

(c) Majority of the participants said they were well received upon arrival by the workshop organizers

6.2 Comments on the workshop program

(a) Topics

Participants noted that the topics chosen were very educative and comprehensive. The topics were good for introductory purposes to enforcement of environmental law and relevant since most of the participants lacked knowledge of some of the new laws and policies. They also commended the organisers for the good choice of the papers and the workshop programme and reiterated the relevance of the topics to judicial officers in administration of justice and enforcement of laws.

(b) Duration

Most participants observed that the duration of the workshop was too short and noted that the time allocated to each topic was inadequate. They opined that the workshop should have lasted at least four (4) days in order for them to be able to thoroughly appreciate the topics and to discuss them extensively because environmental law is still a new phenomenon and its aspects are wide and require more time to internalize concepts.

6.3 Ratings of the presentations by topic.

A) State of the environments in Uganda – Mr. Ronald Kaggwa.

Most of the participants rated the topic as very good. It was noted that the topic was well researched and well presented. The presenter was very clear and precise in his presentation and elaborated points clearly in order to gain participation from the magistrates. The presenter was articulate and gave many examples of the real situation on the ground quoting the monetary value of the natural resources and emphasizing why it's essential for the environment in Uganda to be protected.

B) Over view of the legal and institutional frame work for environmental management in Uganda- Ms. Christine Akello.

The presenter was very good and adequately handled the paper on the legal and institutional framework. Her presentation was detailed and very elaborate and exhaustive as it captured the attention of all the participants. Her presentation was fully participatory and this made it easy for all the participants to understand. The presenter was also very clear and well informed and adequately responded to the question on the different environmental laws in Uganda.

C) Monitoring and enforcement of environmental laws in Uganda – Mr. Waiswa Ayazaki.

Majority of the participants felt the presenter was articulate and presented a well researched discussion with practical examples. His presentation was comprehensive and provided an insight on issues like EIA regulations and enforcement of laws.
However, the presenter did not engage the participants in the discussion.

D) Criminal aspects of Environmental Law- Mr. Vincent Wagona.

The topic was rated good by the participants.
The presenter was well acquainted with the subject matter and very illustrative. The presenter made participants realize the need for strict enforcement of environmental laws using criminal law/procedure. However participants advised the presenter should be more audible and to include local cases from Uganda when citing examples.

E) Introduction to Environmental Law- Mr. Kenneth Kakuru.

The presentation was very good, elaborate and clear. The presenter was very lively and related economics, politics religion to the environment. His presentation was participatory, well researched with clear explanations of the questions posed to him. The presenter was eloquent and well understood by the participants.

G) Access to justice and procedure- Hon Justice Ruby Opio Aweri.

The presenter was not the author of the paper but she however read out a very detailed and good paper that was well articulated but there was no ample opportunity to share and respond to the views of the author since he was absent.

H) Protecting our forests; the law and policy- Ms. Georgina Kugonza Musisi.

The presenter was very good and adequately handled her topic. Her presentation was lively, very audible and she was noted to be very eloquent. The presenter involved the participants in the lively discussion, was demonstrative in her presentation which was seen to be excellent as it was practical both in depth and content. She adequately communicated to the participants the necessity of protecting the forest and they appreciated the hand outs that she provided during the discussions.

I) Practical exercise in initiating the investigation. - Mr. Kenneth Kakuru
The topic was very good and on the whole it was an excellent guide on what to do in a practical aspect. The presenter was well experienced in matters dealing with environmental issues and laws. His presentation was illustrative, practical and exposed the participants to new ideas. His presentation also provided a very good summary of the law in commencing legal action in theory and in practice.

6.4 Comments on whether participants' expectations were met.

On the whole, most of the participants observed that their expectations were met according to the workshop program. Participants said the presentations created a broader outlook and appreciation of environmental issues and were encouraged to join environmental activism. A cross section of environmental law was tackled and questions posed to presenters were responded to.

Participants appreciated the knowledge they gained from the workshop. Participants also commended the organizers for the venue chosen which offered good hospitality.

6.5 Suggestions to improve on future trainings.

The participants suggested that

- More time be allocated for workshops
- Include audio and practical aspects depicting environmental degradation to avoid boredom
- Follow up of participants should be made.
- Training workshops should be started with field trips
- Adequate time should be allocated for presentations

- Joint workshops with police officers, prosecutors, politicians and other stake holders should be held.
- Presenters should be present to adequately respond to questions on their papers
- Practical excises on how to change environmental degradation should be included on the program.

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

Most of the participants agreed to the need to hold another workshop because

- Environmental laws are very wide and can not be adequately covered in only three days.

- The time allocated to this workshop was not enough to comprehensively cover all topics relevant to environmental law and protection of natural resources hence the need for a follow up workshop.

- Environmental law is a new development which should be inculcated in curricula of schools, institutions etc.

- The environment is not static and faces different challenges which also need to be dealt with as they occur.

- This training workshop was only introductory, an eye opener hence it is necessary for another training workshop.

ANNEXTURE 1

THE STATE OF ENVIRONMENT IN UGANDA: AN OVERVIEW OF ENVIRONMENTAL PROBLEMS

By: Ronald Kaggwa, Environmental Economist, NEMA.

1.0 Introduction

Environment as defined by the Uganda National Environment Statute, 1995, means "the physical factors of the surroundings of the human beings including; and, water, atmosphere, climate, odor, taste, the biological factors of animals and plants and the social factors of aesthetics and includes both the natural and the built environment. The state of environment is a major worldwide concern because environmental assets provide three main types of services to the human society:

i) The natural resource base provides essential raw materials and inputs, which support human livelihood;
ii) Environment serves as a sink to absorb and recycle (often at little or not cost to society) the waste products of economic activity;
iii) Environment provides generalized services ranging from simple amenities to irreplaceable life support functions e.g. stabilization of global climate or filtering out harmful ultra-violate rays by stratospheric ozone layer.

In Uganda, the concept of environment protection is very much linked to the need to eliminate or reduce the risk of jeopardizing people's well being in the current and future generations.

Vital to the livelihood of millions of Ugandans are the country's diverse peoples and cultures, agricultural lands, lakes and rivers, fish and wildlife, pasture, woods and construction material. The importance of these resources for development in Uganda is demonstrated by the following:

i) Uganda is primarily an agrarian country with agriculture supporting over 80% of the population most of which is rural based. In addition, the agricultural sector, which is mainly based on the natural state of the environment, contributes highest to the GDP (about 43% of the GDP)

ii) Energy is critical for the well being of the Ugandan community. Ninety-six percent of energy used in Uganda is woody biomass-based gathered from forests, woodlots and agricultural fields.

iii) The fisheries resources are a major source of animal protein as well as income for the people of Uganda. The fisheries sector contributes about 2% of the GDP.

iv) Eighty percent of Uganda's estimated 24 million today live in the rural areas. Sixty percent of these rely on lakes, rivers, wells and wetlands to meet their water needs, so do 25% of the people living in urban areas of Uganda.

The above few examples illustrate the important role environmental resources play in the development process in Uganda.

2.0 Key Underlying Concerns of Environmental Management in Uganda

Despite the above-demonstrated importance of environment in the development of the country, there are already signs of unsustainability of Uganda's development process. This evidenced by the wide array of environmental problems, which reflect loss of quality, stability, diversity and productivity of environmental resources. These environmental problems pose constraints to the people to earn income and have better standards of living. The underlying factors that have led to environmental degradation are:

i) Population growth

Following the last national population census, the population of Uganda is estimated at about 24.5 million having risen from about 2.5 million in 1911. This is an increase of about 1000%. This rate of population growth has led to sudden rise in demand of natural resources to meet the human basic needs.

ii) Lack of Public Participation of the local people in Environmental Management and Development Programs.

Until recently, most of the decisions and required actions for improved environment conditions and development were not targeted at the participation of the local community. This led to the alienation of people from these resources, loss of capacity and incentive for sound environmental management. Under these circumstances capacity in environment management deteriorated, benefits were not equitable shared and where opportunity arose, resources were misused/exploited by the local people (who were the supposed beneficiaries), leading to their degradation or depletion.

iii) Poverty

Poverty is both a cause and a result of environment degradation. Poverty stricken communities will harvest any available resources, including cultivating in marginal or fragile ecosystems. This accelerates environmental degradation, yet the victims of environment degradation are normally the poor families and individuals in both urban and rural areas. While the wealthier individuals may cause environmental degradation, they may not be victims of degradation because they can afford the costly alternatives.

iv) Lack of Environmental Awareness

For meaningful interaction between the community and the environment, the communities need a good understanding and appreciation of the environment. This can only be developed through formal and non-formal environment education programs so as to build upon their indigenous knowledge. In the past environment educational and public awareness programs were lacking and therefore the community was not adequately guided in prudent resources use and management.

v) The other underlying factors for environmental degradation are:

- Poor planning of urban and rural settlements
- Lack of management and technical capacity at local government levels
- Inadequate enforcement of regulations;
- Lack of access to appropriate /efficient technology
- Inadequate private sector participation

3.0 Main Environmental Problems in Uganda

The above factors among others, have resulted into severe stress on the environment and development, leading into the environmental problems including the following:

3.1 Soil and Land Degradation:

Soil erosion and land degradation are highly pronounced in the country particularly in the hilly areas of South Western, Eastern and North Eastern Uganda. This is caused by deforestation and inappropriate farming methods. This has led to loss of soil fertility and hence decline in agricultural productivity. In addition, soil erosion leads to pollution and siltation of water bodies. Overgrazing, bush burning and deforestation among others are the causes of this problem. It is estimated that soil erosion accounts for 80% of total cost of environmental degradation in Uganda. Conservative estimates indicate that, soil erosions causes a loss of 4-12% of the Gross National product (GNP) per annum.

3.2 Deforestation and Loss of Wood Cover:

This is widespread in the country. Forest and woodland cover has declined from 45% in 1800s to the current estimated 21%. This is as a result of agricultural encroachment and uncontrolled charcoal burning and vegetation clearance. This has resulted into accelerated soil erosion and shortage of wood fuel and other wood products. There is evidence to show that people's diets and shelter has deteriorated as a result of shortage of firewood and building poles respectively.

3.3 Water Contamination and Pollution:

This affects Lake Victoria and other lakes, rivers and wetlands, which provide water for domestic, livestock as well as industrial purposes. These water bodies are however uses as receptacles for untreated effluent and other waster particularly from industries and urban settlements.

The main polluting industries are located in the major towns of Kampala, Jinja, Mbale, Mbarara, Kasese and Lugazi. The key industries are breweries, soft drinks, textiles, sugar, leather tanning and mining.

In addition, in the rural areas, the rise in the use of agro-chemicals and the poor farming practices are responsible for the increasing release of these chemicals into the water

bodies. Further more in the rural areas, the faecal matter deposited on open ground gets washed into water bodies leading to contamination.

Water being an essential element in the life cycle as well the production cycle means that a wide segment of the population as well as the ecosystem is negatively impacted. These impacts are manifested by among others reduced fisheries production, poor human health and higher costs of production where good quality water is required.

3.4 Wetland Degradation

This is a growing problem due to rapid population growth and decline in productivity of upland soils. Wetlands vital for water storage and spawning of young fish are being drained for diary farming, crop cultivation and for industrial expansion, particularly in urban areas including Kampala City. The consequences of wetland degradation include loss of traditional grazing and watering grounds, shortage of water, loss of fish and other wetland products, increased incidents and scale of floods and water pollution resulting into higher costs of purification of water.

3.5 Bio-diversity Loss

Uganda is relatively well endowed with bio-diversity (the variety of life and living things.) Most of Uganda's bio-diversity is found in natural forests. But considerable amount is also found in open waters, wetlands, dry/moist savanna and agricultural systems. Uganda's bio-diversity ranges from the variety and variability of wild animals, plants, fish to insects (e.g. butterflies) and their habitats, to the domesticated plants and animals in the different farming systems. There however, has been degradation of bio-diversity as evidenced by extinction of the White Rhino in Uganda. In addition, the large herds of wild animals that used to roam Uganda are now restricted to protected areas, which have also shrank in size. Uganda's indigenous domestic animals and crops are also diminishing in number and distribution. The major causes of this bio-diversity loss are: habitat conversion, introduction of alien species, pollution of ecosystems, over harvesting and trade in live plants, animals and derived parts and climate change.

The implications of this bio-diversity loss are:

- loss in the tourism value and potential;

- loss of life support services;
- poor coping during hardy periods and
- loss of educational and research values.

3.6 Air and Noise Pollution

There is increasing indoor and outdoor air pollution by smoke from indoor combustion from use of firewood, charcoal and paraffin for cooking and lighting. Cigarette smoking is also a significant contributor to indoor pollution. However, outdoor pollution by emissions from industries (particularly cement and coffee factories and stone quarries) and motor vehicle traffic is the major problem and cause of air pollution. This pollution is blamed for the increase in incidents and spread of respiratory diseases particularly in the urban centers.

Noise pollution is an increasing menace particularly in urban areas as a result of motor vehicles traffic, discos and places of worship.

3.7 Poor Solid and Municipal Waste Disposal/ Management

Generally due to lack of well-planned and developed solid waste disposal facilities or land fills there is indiscriminate disposal of solid waste including hospital waste, municipal garbage and household waste in rural areas. Of critical concern is clinical waste, polyethylene waste material (carrier bags-buveera), municipal garbage and scrap metal.

The prevalence of the above environmental problems is already having negative impacts on the people variously affected. This is therefore compromising sustainable development, as the natural resource capital, which underpins development, is deteriorating in quantity, quality, stability and productivity.

4.0 Strategies for Environmentally Sustainable Development

The measures that have been taken and/ or ongoing to stem environmental resources depletion and degradation, in order to assure the people of Uganda of Sustainable Development are not a subject of this discussion. However, an integrated approach has

been adopted to tackle the environmental problems. It encompasses the following strategies among others:

i) Making specific provisions and requirement for rational and sustainable use of environment and natural resources in the Constitution.
ii) Completion of the National Environment Action Planning Process resulting to: National Environment Management Policy, 1994, National Environment Action Plan;
iii) Developing and enforcement of laws and regulations on environment management e.g. National Environment Statute, 1995 and its subsidiary laws;
iv) Institutional development at national and local level;
v) Integrated development and environment planning at national and local level;
vi) Training and public awareness on environment management;
vii) Support to community natural resources and environment management initiatives; and
viii) Cross-district, regional and international collaboration.

ANNEXTURE 2

OVERVIEW OF THE LEGAL AND INSTITUTIONAL FRAMEWORK GOVERNING ENVIRONMENTAL MANAGEMENT IN UGANDA

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1.0 INTRODUCTION

This paper discusses the legal and institutional framework for environmental management in Uganda. Issues of policy and the regulatory framework will feature in this discussion.

1.1 ENVIRONMENTAL POLICY

- **The National Environmental Action Plan (NEAP)**

In 1991 the Government started the NEAP process, a continuous in-country process based on local/popular participation aimed at providing a broad framework for integrating environmental considerations into the nation's socio-economic development strategy; The NEAP process favoured a prospective and inter-sectoral approach, noting the need to prevent pollution and also to have a co-coordinating mechanism to deal with environmental issues.

The NEAP process identifies major environmental issues and priorities through the process of review, analysis and consultation by using the following criteria:-

(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
(d) the degree of inter-relationship among issues.

Thus, the National Environmental Action Plan (NEAP) process provided strategies for addressing environmental concerns in the areas of policy, legislation, institutional reforms and new investments with the view of promoting sustainable development which maintains and enhances environmental quality and resource productivity to meet the needs of present and future generations.

To achieve this re-orientation, three key initial strategies were required. These included: (i) the revision and modernization of sectoral policies, legislation and regulations; (ii) the creation and establishment of an appropriate institutional and

legal framework; and (iii) the establishment of an effective monitoring and evaluation system to assess the impact of policies and actions on the environment, the population and the economy.

- **The National Environment Management Policy 1994**

The Action Plan was closely followed by the adoption of the National Environment Management Policy (NEMP) for Uganda in 1994 which sets out the overall policy goals, objectives and principles for environmental management. Under the National Environment Policy the overall policy goal is;

> "Sustainable social and economic development which maintains or enhances environmental quality and resource productivity on a long term basis that meets the needs of the present generations without compromising the ability of future generations to meet their own needs."

Specific Policy Objectives

Specifically, the policy seeks to meet the following objectives:

- ❖ Enhance health and quality of life of all Ugandans and promote long-term, sustainable economic development through sound environmental and natural resource management and use;
- ❖ Integrate environmental concerns in all development oriented policies, planning and activities at national, district and local levels, with participation of the people;
- ❖ Conserve, preserve and restore ecosystems and maintain ecological processes and life support systems, including conservation of national biological diversity;
- ❖ Optimise resource use and achieve a sustainable level of resource consumption;
- ❖ Raise public awareness to understand and appreciate linkages between environment and development; and
- ❖ Ensure individual and community participation in environmental improvement activities.

- **Key Environmental Principles**

Underlying these broad policy objectives are certain key principles which are intended to guide current and future policy development and implementation strategies:

(i) Every person has a constitutional right to live in a healthy environment and the obligation to keep the environment clean;

(ii) The development of Uganda's economy should be based on sustainable natural resources use and sound management;

(iii) Security of land and resource tenure is a fundamental requirement of sustainable natural resource management;

(iv) Long-term food security depends on sustainable natural resource and environmental management;

(v) The utilization of non-renewable resources should be optimized and where possible their life extended by recycling;

(vi) Environmentally friendly, socially acceptable and affordable technologies should be developed and disseminated for efficient use of natural resources;

(vii) Full environmental and social costs or benefits foregone as a result of environmental damage or degradation should be incorporated in public and private sector planning and minimised where possible;

(viii) Social and economic incentives and disincentives should complement regulatory measures to influence people's willingness to invest in sustainable environmental management;

(ix) Priority should be given to establishing a social and economic environment which provides appropriate incentives for sustainable natural resource use and environmental management;

(x) An integrated and multi-sectoral systems approach to resource planning and environmental management should be put in place;

(xi) Regular monitoring and accurate assessment of the environment should be carried out and the information widely publicised;

(xii) Conditions and opportunities for communities and individual resource managers to sustainably manage their own natural resources and the environment should be created and facilitated;

(xiii) Effective involvement of women and youth in natural resource policy formulation, planning, decision-making, management and programme implementation management is essential and should be encouraged;

(xiv) Increased awareness and understanding of environmental and natural resource issues by Government and the public should be promoted;

(xv) Social equity, particularly when allocating or alienating resource use and

property rights, should be promoted; and

(xvi) Sub-regional, regional and global environmental interdependence should be recognised.

- **Cross-sectoral Policy Objectives, Principles and Strategies**

These cover the following aspects:

- ❖ Strengthening land and resources tenure rights thereby improving land stewardship by rural and urban users.;
- ❖ Sustainable land use policy and planning;
- ❖ Environmental information generation and sharing to ensure dissemination of reliable information relating to environmental management issues such as biodiversity, soil conservation, fuel wood supply and demand, and pollution control;
- ❖ Conservation of biological diversity in relation to the pricing policy which should ensure that prices paid by resource users reflect the cost of resource replacement or rehabilitation;
- ❖ Water resources conservation and management to ensure provision of water of acceptable quality for all social and economic needs;
- ❖ Wetland conservation and management to ensure that they continue to provide socio-economic and ecological values and functions;
- ❖ Environmental economics and macro-economic policy planning to integrate into environmental planning, economic principles such as;
  - ✓ environmental accounting.
  - ✓ pricing mechanisms e.g. leases management contracts, user fees, concession agreements, etc.
  - ✓ financial and economic sustainability.
  - ✓ use of economic incentives and disincentives e.g. taxes, user fees, to change people's behaviour.

Policy makers and resource users are also required to understand the following principles:

- ❖ Environmental impact assessment and monitoring to ensure that adverse environmental impacts can be foreseen eliminated or mitigated.
- ❖ Control of pollution and management of domestic and industrial waste and

hazardous materials.

- ❖ Monitoring of the climate and atmosphere of the country in order to better guide land-use and economic development decisions, and better manage air pollution and greenhouse gas emissions.
- ❖ Management of population growth, health and human settlements in order to match people and resources in an economically productive, socially acceptable and environmentally sound manner.

- ❖ Gender integration at all levels of environmental and natural resource management.

- ❖ Environmental education, human resource development and research to ensure sustainable development and environmental protection.

- ❖ The significance of public awareness in environmental management.

Sectoral Policies

The National Environment Policy also allowed for the formulation of sectoral or lower levels of government policies concerning environment and natural resources management. Some of the policies that have been formulated in conformity with the National Environment Management Policy include: the Water Policy 1995, the National Wetlands Management Policy 1996, the Wildlife Policy 1996, the draft National Soils Policy, Fisheries Policy 2000, Forestry Policy 2001 and several District Environment Management Policies from 2000 onwards.

2.0 INSTITUTIONAL FRAMEWORK FOR ENVIRONMENTAL MANAGEMENT IN UGANDA

Before 1986, Uganda had no institution specifically responsible for environmental management. The environment was 'managed' at the sectoral level. In 1986, the Government created the Ministry of Environment Protection, charged with the responsibility of coordinating and enhancing natural resource management, harmonizing the interests of resource users, monitoring pollution levels, and advising the Government on policy and legislative reforms for ensuring sound environmental management. The Ministry was later absorbed into a Ministry of Water, Energy, Minerals and Environment Protection which in 1993 became the Ministry of Natural Resources. The responsibility for environmental management then shifted to the Department of Environment Protection (DEP), some sort of a downgrade from commanding a whole ministry. Consequently, the institutional framework did not give environmental management the authority and profile it deserved. Even when combined with the role of other sectoral institutions and civil society organizations the creation of DEP did not solve the ad hoc nature of environmental monitoring, coordination, supervision and management.

These institutional weaknesses were identified during the NEAP process. Subsequently, the National Environment Management Policy advocated for a new institutional structure, the National Environment Management Authority (NEMA), the structure was provided for in the National Environment Act. NEMA is the principal agency in Uganda for the management of the environment with the express mandate to coordinate, monitor and supervise all activities in the field of the environment. NEMA is one of the highly placed institutions in the country which is expected to influence other institutions and the general public. Its concerns about the environment are voiced at high levels of decision-making and policy formulation and it has the necessary political approval.

An Inter-Ministerial Policy Committee (IPC), composed of 11 cabinet ministers, is the supreme organ of NEMA. It is chaired by the Prime Minister. The IPC provides policy guidelines, formulates and coordinates environmental issues in the country for NEMA, and liaises with the cabinet on issues affecting the environment generally. Furthermore, the IPC identifies and removes obstacles to implementation of environmental policies and programmes.

Another important institutional organ of NEMA is its board of Directors, which oversees the implementation and successful operation of policy and the function of NEMA. The Executive Director and Board Chairman are ex-officio members of the IPC.

The National Environment Act (NEA) establishes the Board, which is appointed by the Minister responsible for Environment with approval of the policy committee. The members of the board are appointed by virtue of their knowledge and experience in environment management. The principal role of the board is to oversee the operation, policy and to review the performance of the secretariat as well as to establish procedures for the management of staff.

The Board is given the mandate to appoint technical committees including those on:

a) Soil Conservation;
b) Licensing of Pollution;
c) Bio-diversity Conservation;
d) Environmental Impact Assessment.

The NEMA Secretariat

- This include the following:
- The Office of the Executive Director
- Policy, Planning & Information Department
- Environmental Monitoring & Compliance Department.
- District Support Co-ordination & Public Education Department.
- Finance & Administration Department.

Since NEMA is not an implementing institution, it must perform its duties through cooperation with other institutions. NEMA is horizontally linked to the lead agencies in the environment sector. NEMA is also vertically linked to the local government structure, the private sector, and civil society.

Under the various sectoral policies and legislation there are lead agencies, which are coordinated by NEMA for purposes of addressing environmental issues. The Lead Agencies have the responsibility to develop internal capacity and contribute to sustainable environmental management, collect data and disseminate information, and promote environmental education and public awareness in their respective sectors. They also ensure enforcement, implementation, compliance, and monitoring of laws, policies and activities within their jurisdictions. The lead agencies are also expected to supervise, within their legal and administrative setup, the conduct of environmental assessments, set environmental standards and carry out inspections related to the environment.

NEMA links vertically with local governments. The Local Governments Act Cap.243, derived from the decentralization policy provides for the devolution of governance from the centre to the districts and lower levels. The District Council (DC) is the highest level of governance at sub-national level. One of its roles is to ensure the integration of environmental issues in the development planning process. The DC has direct linkage with the District Support Coordination Section in NEMA, which provides guidelines for the establishment of district environment committees in consultation with the district councils. Environment Committees are established at sub-county, parish and village levels, although the lowest level of government is the sub-county.

District environment committees are expected to ensure that environmental concerns are integrated in the district plans and projects, formulate bye-laws, promote dissemination of environmental information, and prepare the district state of the environment reports annually.

The NEA also creates the office of the District Environment Officer who acts as a liaison officer between NEMA and the District. This kind of institutional framework ensures that environmental resources are controlled and managed by communities for their own benefit on a sustainable basis.

3.0 THE LEGAL FRAMEWORK FOR ENVIRONMENTAL MANAGEMENT

3.1 THE CONSTITUTION OF UGANDA 1995

The Constitution is the supreme law and it provides for environmental protection and conservation. The 1995 Constitution provides in the National Objectives and Directive Principles of State Policy, that the state shall promote sustainable development and public awareness of the need to manage land, air, and water

resources in a balanced and sustainable manner for the present and future generations.

It further provides that the natural resources of Uganda are to be managed in such a way as to meet the development and environment needs of present and future generations of Ugandans. In particular, the state is required to take all possible measures to prevent or minimize damage and destruction to land, air, and water resources due to pollution or other causes.

The provisions of the Constitution protect property rights and other individual rights. Furthermore, the state is to promote and implement energy policies that will ensure that the people's basic needs and those of the environment are met. Above all, Article 39 of the Constitution entitles every Ugandan to a clean and healthy environment.

It is significant that this Article falls in Chapter 4 of the Constitution, on Protection and Promotion of Fundamental and other Human Rights and Freedoms. The fact that the right is all - encompassing, covering every Ugandan, and the fact that it is not limited in any way, favours a fundamental rights interpretation of the right. This means, therefore, that it is not only an individual right but possesses the qualities of a collective right. Article 20 (1) provides that 'fundamental rights and freedoms of the individual are inherent and not granted by the state'. As a fundamental right, it is inalienable and belongs to an individual by virtue of his /her being human.

- **Rights and Capacities**

Paragraph (2) of section 3 of the National Environment Act provides that:- Every person has a duty to maintain and enhance the environment, including the duty to inform NEMA or the local environment committees of all activities and phenomena that may affect the environment significantly.

For every right's holder, there is a duty 'to maintain and enhance the environment'. By enforcing their right the individual is actually performing their obligation to protect the environment.

Under Article 17 of the 1995 Constitution, every citizen has the duty to create and protect a clean and healthy environment.[1] The duty is participatory in nature - not to perform any act which may endanger the environment and also the duty to report to the relevant authorities.

The scope of Article 50 of the Constitution is wider than that of section 3(3) and (4) of the National Environment Act. Article 50 (1) provides than any person who claims that a fundamental or other right or freedom guaranteed under the

[1] Clause (1) (j).

Constitution has been infringed or threatened, is entitled to apply to a competent court for redress, which may include compensation. This Article empowers any person to enforce the right to a decent environment. In addition to individuals, groups and third party organisations who may have an interest in the matter as members of the public, have *locus standi* to institute a suit. The only requirement is that the right as guaranteed in the Constitution has been infringed or threatened. This argument is in line with clause (2) of the same Article which provides that any person or organisation may bring an action against the violation of another person's or group's human rights.

The rights and duties to the environment should thus hinge upon the capacity of any person, notwithstanding the general rules relating to *locus standi*, to bring an action to stop potential or actual environmental damage.[2] Since environmental wrongs are most of the time general wrongs (wrongs sui generis) where it is difficult to prove personal injury to a personal right (*in personam*), it follows that the capacity of the public to enforce good environmental husbandry is limited.

That is why the liberal rules on *locus standi* have been applied to environmental issues. The complainant need not show that the defendant's act or omission has caused any personal loss or injury (Ss.3 (4) and 71 of the National Environment Act.)

The issue of concern about broadening the ability to bring an action (locus standi) is that it increases the number of possible litigants. This situation, however, has not arisen possibly due to the legal costs which may be involved.

- **The Doctrine of Public Trust**

[2] The traditional view of *locus standi* is that no one can bring an action in the courts of law unless that person's right has been infringed. In the common law of negligence, for instance, it must be shown that the defendant owed a certain duty to the plaintiff and was in breach of that duty (Donoghue v Stevenson [1932] A.C. 563). In statutory law generally, it must be shown that the plaintiff has a cause of action against the defendant.(Auto Grage v Motokov [1971] E.A. 514 ; Ali Mustafa v Sango Bus Co. [1975] H.C.B. 93). Thus, if the plaintiff has not suffered a wrong at the hands of the defendant he or she can not sue. In other words, an individual has no *locus standi* in a common law court unless he or she can prove that he or she has sustained injury to his/ her rights as a person or against his / her property. There is, however, a trend to liberalise rules of standing throughout the world in-spite of the traditional view of *locus standi*. Uganda has also started taking a stand on this matter.

Under Article 237 of the Constitution, the state, including local governments, is required to create and develop parks, reserves and recreation areas and ensure conservation of natural resources and to promote the rational use of natural resources so as to safeguard and protect the bio-diversity of Uganda. The Doctrine of Public Trust is enshrined in the Constitution under Art. 237(2)(b). In accordance with this principle, the management of environmentally fragile resources such as natural lakes, rivers, wetlands, national parks, game reserves and forest reserves is vested in the state.

The Constitution also imposes a duty on the state to protect important natural resources; including land, water, minerals, oil, fauna and flora on behalf of the people of Uganda. Parliament has ably done this through the enactment of the National Environment Act, the Water Act, the Land Act, the Wildlife Act and the Local Government Act.

3.2 THE NATIONAL ENVIRONMENT ACT, CAP 153

This Act establishes the National Environment Management Authority (NEMA) as the overall body, charged with the management of environmental issues. In brief, the Authority in consultation with the lead agencies is empowered to issue guidelines and prescribe measures and standards for the management and conservation of natural resources and the environment.

The Act outlines principles of environmental management, which principles are a reflection of what is in the NEMP.

3.2.1 Management Measures under the Act

The Act empowers the Authority in collaboration with Lead agencies to issue guidelines and measures relating to:

(a) management of lakes and rivers;
(b) management of lakeshores and riverbanks;
(c) management of wetlands;
(d) management of hilltops, hill-sides and mountainous areas;
(e) conservation of biological resources;
(f) management of forests;
(g) planting of wood lots;
(h) protection of the ozone layer;
(i) waste management;
(j) management of toxic and hazardous chemicals;
(k) management of range lands;
(l) land use planning; and
(m) protection of natural heritage sites.

There are two major principles followed by the Authority when applying the various management tools that are contained in the Act. These principles are:

a) The Precautionary/Preventive Principle;
b) The Polluter Pays Principle.

- **The Precautionary Principle**

The Precautionary/Preventive Principle is implemented through the following tools:

Environmental Planning

Environmental planning as defined in section 1 of the National Environment Act means both long-terms and short-term 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.[3] The plan shall cover all matters affecting 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.[4] It shall also take 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 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.

Environmental Monitoring and Impact Assessment

Environmental Monitoring is defined in section 1 of the 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 two systems of monitoring are specified as:-

a) Self monitoring whereby the developers themselves are encouraged to monitor the impact of their activities and;
b) Enforcement monitoring done by government agencies such as NEMA through environmental inspectors.[5]

Environmental Audit

Environmental audit is defined in section 1 of the Environment Act as 'the systemic, documented periodic and objective evaluation of how well

[3] Section 17(1) of the National Environment Act.

[4] id., section 18 (2)(a).

[5] section 23 (2) of the National Environment Act.

environmental organisation, 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.
NEMA carries out continuous audits[6] with the help of inspectors, to ensure that industries comply with the requirements of the 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 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.

Environment Standard Setting and Licensing

Licensing and standard setting is one of the most widely used tools of enforcement of environmental law. The environment Act provides for establishment of environment standards in part VI of the Act.

There are activities which require specific permits. These include the import, manufacture, and disposal of hazardous chemicals, wastes and substances. In order to control the environmental effects of these substances the law requires their classification and labeling.

In order to confront polluters, standards and regulations are being put in place, include the following:

- The Environmental Impact Assessment Regulations No. 13 of 1998;
- The National Environment (Standards for Discharge of Effluent into Water or on Land) Regulations No. 5 of 1999;
- The National Environment (Waste Management) Regulations No. 52 of 1999;
- The National Environment (Hilly and Mountainous Areas Management) Regulations No. 2 of 2000.;
- The National Environment (Wetlands, Riverbanks and Lakeshore Management) Regulations No. 3 of 2000;
- The National Environment (Minimum Standards for Management of Soil Quality) Regulations No. 59 of 2001;
- The National Environment (Management of Ozone Depleting Substances and Products) Regulations No. 63 of 2001;
- The National Environment (Control of Smoking in Public Places) Regulations No. 12 of 2004;
- The National Environment (Access to Genetic Resources and Benefit Sharing) Regulations, No. 30 of 2005.

[6] Section 22 of the National Environment Act.

Standards 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.

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

Public Awareness and Participation

The need for popular awareness is a key requirement for enforcement of legislation. NEMA is given the mandate to carry out education and awareness campaigns to ensure that the public participates in environmental decision making and enforcement.

Environmental Easements

Under the Act, a person may apply to court for an easement to protect the environment. In view of the constitutional provision relating to rights to a clean and healthy environment and the capacity of any person to enforce that right notwithstanding that their specific rights have not been affected, this easement differs from the common law easement. It may be enforced by any body who finds it necessary to protect a segment of the environment although he may not own property in the proximity to the property subject to the easement.

The Use of Economic and Social Incentives

The Act clearly provides that management measures should be carried out in conjunction with the application of social and economic incentives including taxation measures.

- **The Polluter Pays Principle**

Meeting the cost of conservation implies using various methods of raising finances and in particular, ensuring that polluters bear the cost of polluting the environment.

There are a number of existing methods under the National Environment Act and the regulations made under it. These include:

Performance Bonds

It is known that there are some industrial plants, which produce highly dangerous or toxic substances and therefore have significant adverse impacts on the environment. It is also known that some facilities may not be prepared to operate and comply with the environmental laws and requirements. Such plants may be required to

deposit bonds as security for good environmental practice. Such deposits are refundable after such a duration when the operator has observed good environmental practice to the satisfaction of NEMA, failure to observe good environmental practice leads to confiscation of the bond

Environment Restoration Orders

Where the person's activities affect the environment, the Authority or a court may issue a restoration order requiring the person to cease the activities or to restore the environment as soon as possible to its original state. The order may be given pursuant to an action brought by an individual or upon the initiative of the Authority.

Record Keeping and Inspections

Persons whose activities are likely to have a significant impact on the environment are required to keep records of the amount of wastes and by products generated by their activities and as to how far they are complying with the provision of the Act. These records are required to be transmitted annually to the Authority.

Inspections are carried out by gazetted inspectors who have very wide powers under the Act. They are empowered to take samples, seize any plant equipment or substance and close any facility. They can also issue Improvement Notices, which are legal notices notifying a person of an infraction and giving a time frame in which to make corrective measures or face further enforcement action

The Use of Criminal Law

Criminal law remains a veritable instrument for the control of behaviour because of the natural tendency of people to fear the infection of pain, isolation or economic loss. Therefore, the Act provides for serious penalties for infraction of its provisions. These include fines, imprisonment and forfeiture of property to the state. It is, however, recognised that criminal law cannot be the mainstay for the enforcement of law but is a necessary supplementary measure to the approaches outlined above.

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 organisations operating in the area where the harm occurred.

The Community Service Act,[7] therefore, needs to be applied to environmental wrongs as well, not only minor offences in the realm of criminal law. This is because the effect of environmental wrongs goes beyond the confines of the area in which the wrong is committed. In fact, it may have transboundary effects, and the wrong is best remedied by voluntary action of the offender and the society. In fact, NEMA has designed a community service programme which is intended to be applied in all districts.

Underlying these approaches is the polluter pays principle. The polluter should repair the damage they have caused either by making actual reparation or paying the necessary monetary compensation to society.

3.3 OTHER ENVIRONMENTAL LAWS

THE WATER ACT, CAP 152

The Water Act is one piece of Uganda's environmental legislation with key provisions to enhance sustainable development. It provides for the use, protection and management of water use and supply. Important aspects in the Act include the following: -

(a) **Rights in water**. All rights to investigate, control, protect and manage water are vested in the government of Uganda, which is accordingly better placed to ensure that water resources are used sustainably.

(b) **Planning for water use**. The Act establishes the water policy committee, an inter-sectoral body whose function, among others, is to co-ordinate the preparation, revision and keeping to date the comprehensive action plan for the investigation, control, protection, management and administration of water for the nation. Such planning may specify types of activities, development of works, which may not be done without the prior approval of the policy committee.

(c) **Control on the use of water resources**. The Act provides for the use of permits to use and supply water. A person who has to construct or operate any works or engage in the business of constructing boreholes needs construction and drilling permits respectively as provided in the Water Resources Regulations,1998. In addition, in order for a person to discharge waste into a water body the person has to acquire a waste discharge permit under the Water Waste Discharge Regulations of 1998 and the National Environment Standards for discharge of Effluent Regulations of 1999.

[7] The Community Service Act, No 5 of 2000. And the Community Service Regulations No. 55 of 2001, 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 R. 12 of the Regulations.

The permit system ensures that use of water is environmentally friendly and promotes sustainable development. These controls also ensure that water is not treated as a free good but as a good with a value to be paid for. This economic valuation of water is an important incentive for its conservation.

(d) **Water Easements**. An easement is the right of a person over the land of another. Under the Water Act and Water Resourses Regulations, an easement may enable a holder of a water abstraction permit to bring water to or drain water from their land over land owned or occupied by another person. In the same way, an easement may enable a holder of a waste discharge permit to drain waste from his land over the land owned or occupied by another person. The works for which an easement is granted have to be maintained and repaired so as to comply with development, which is sustainable.

(e) **Control over water works and water use**. An authorised person may enter land for the purposes of inspecting works for the use of water. He may take samples and make tests to find out whether water is being wasted, misused or polluted or whether the terms of any permit are being met. Non-compliance is an offence.

All these aspects of the Water Act have the object of sustainable use of water resources. Waste, misuse and pollution resulting in unsustainable use of water are prohibited.

THE LAND ACT Cap. 227

The Land Act provides for the tenure, ownership and management of land. Subject to Article 237 of the Constitution, all land in Uganda is vested in the citizens of Uganda and is owned in accordance with customary, freehold, mailo and leasehold land tenure systems.

Under section 43 of the Land Act, all owners and occupiers of land are to manage it in accordance with the Forest Act, the Mining Act, the National Environment Act, the Water Act, the Uganda Wildlife Act, the Town and Country Planning Act and any other law.

Like the Constitution, the Land Act enshrines the Public Trust Doctrine and provides that the government or local government holds in trust and protects for the common good of all citizens of Uganda certain environmentally sensitive areas such as natural lakes and rivers, ground water, natural ponds and streams, wetlands, forest reserves, national parks and any other land reserved for ecological and touristic purposes. Accordingly under the Land Act, Government has no powers to lease or otherwise alienate any natural resource mentioned above but may only grant concessions or licenses or permits in respect of that natural resource.

THE INVESTMENT CODE ACT CAP. 92

This law empowers the Uganda Investment Authority (UIA) to, among other things, attract and co-ordinate all local and foreign investments in the country to enhance economic development. Section 19(1)(d) makes it an implied term and condition of every holder of an investment license to take necessary steps to ensure that the operation of their business enterprise does not cause any injury to the ecology or the environment. This is in line with the principle of sustainable development.

THE UGANDA WILDLIFE ACT, CAP. 200

The Act was enacted in 1996 to provide for sustainable management of wildlife, to consolidate the law relating to wildlife management, establish a coordinating, monitoring and supervisory body for that purpose. It fundamentally changed the way wildlife is managed.

The protection of wildlife under the Act is seen from two perspectives conservation within conservation areas and conservation outside those areas.

The Act preserves community property rights. Local communities and individuals that have property rights in land within the protected areas will be permitted to carry on activities compatible with conservation of wildlife resources. It should also be noted here that the Act recognises and guarantees the historic rights of individuals and communities which were recognised in previous laws such as the National Parks Act, the Forests Act, and the Game (Preservation and Control Act).

The relevant functions of UWA for the purposes of wildlife protected areas and wildlife management areas are among others to preserve selected examples of biotic communities in Uganda and their physical environment, and preserve populations of rare, endemic and endangered species of wild plants and animals and to generate economic benefits from wildlife conservation for the people of Uganda.

The Act also contains provisions that provide facilities for studying the phenomena in the wildlife conservation areas for the advancement of science and its understanding. It enables wildlife to have full protection in wildlife sanctuaries notwithstanding the continued use of the land in the area by the people and the communities ordinarily residing there.

The Act restricts entry into wildlife protected areas without authority. Any person who enters contrary to the provisions of the Act commits an offence. This is one way of controlling access to species in protected areas. In addition section 15 of this Act requires a developer desiring to undertake a project which may have significant effect on any wildlife species or community to carry out an EIA in

accordance with the National Environment Act. Section 16 of the same Act obliges the Uganda Wildlife Authority in consultation with NEMA to carry out audits and monitor such projects that may have an impact on wildlife.

An important feature of the Act is the concept of wildlife use rights, which are tradable rights to hunt, farm, ranch, trade in or use wildlife for educational purposes. These wildlife use rights are transferable and in some cases, a transfer permit is needed especially for class A and class E. This kind of transfer is known as permitted transfer.

Wildlife use rights are not enjoyed in perpetuity and are not absolute. If there is non-compliance by a right holder with the terms of grant or any other sufficient reason, to which the grant of wildlife use rights was made or that it is expedient that a grant of a wildlife use right be revoked, it may be revoked subject to the conditions of the Act. However, such a holder of a wildlife use right may be entitled to compensation.

Outside protected areas, the Act provides measures for regulating and licensing professional trappers and hunters, and penalties for their non-compliance. It prohibits the taking of protected species so as to maintain their abundance.

By opening up the wildlife sector to popular participation, it is hoped that this new law will promote the conservation ethic and eradicate the view that wildlife is a property of nobody, which is available for taking and misuse.

THE MINING ACT 2003

This Act vests the ownership and control of all minerals in Uganda in the Government and provides for the acquisition of mineral rights and other related rights. The Act requires every holder of an exploration license or a mining lease to carry out an EIA of their proposed operations in accordance with the provisions of the Environment Act. A holder of such permit is also required to carry out an annual environmental audit and to keep records describing how far the operations conform to the approved environmental impact assessment. The Act also provides for environmental protection standards, environmental restoration plans and environmental performance bonds in accordance with the Environment Act (Ss. 108 – 112).

THE NATIONAL FORESTRY AND TREE PLANTING ACT, 2003

This is an Act for the conservation, sustainable management and development of forests for the benefit of the people of Uganda and for the promotion of tree planting, among others. An EIA is required to be undertaken by a person intending to undertake a project or activity, which may, or is likely to have a significant impact on a forest.

THE LOCAL GOVERNMENT ACT Cap. 243

This is an important law for the enforcement of environment law given the policy of decentralization pursued by the government and the policy of environmental management at the lowest levels. The Local Government Act provides for the system of local governments, which is based on the district. Under the District there are lower local governments and administrative units. This system provides for elected councils.

The District Council is the highest political authority in the District. It has both legislative and executive powers to be exercised in accordance with the Constitution and Local Governments Act.

The Second schedule to the Act prescribes the functions of the Government that the District Council is responsible for. The following are the functions relevant to environmental management:

(a) land surveying,
(b) land administration,
(c) physical planning,
(d) forests and wetlands.
(e) Environment and Sanitation
(f) protection of streams, lake shores, wetlands and forests.

Under the district there are lower local government councils, which consists of: -

A Sub-county Council
A City Division Council
A Municipal Council
A Municipal Division and

Town Council

These Councils have legislative powers. The District Councils have power to enact District Laws (Ordinances) while urban, sub-county division or village councils may, in relation to their specified powers and functions, make bye-laws not inconsistent with national statutes or the constitution. Through this method, it is hoped that the district and other lower local councils will effectively control and manage their natural resources and environment.

A few other environmental laws are listed in the schedule attached hereto.

INTERNATIONAL TREATIES

Uganda has international obligations in the field of the environment which are imposed by operation of customary international law, treaties and general principles

of law accepted by all nations. International standards have been used as pace-setters when setting national environmental standards.

Uganda's legal framework for environmental management takes into account the problems associated with transboundary resources such as shared lakes and rivers, aquatic biodiversity and the issues of migratory species of wild animals. Uganda is also signatory to a number of treaties that protect her sovereign territory from the illegal dumping of wastes or toxic substances as well as the illegal trade in genetic material, wild life and trophies.

CONCLUSIONS

A recurrent theme in the laws discussed above is that of public participation in the sustainable management of the resources. This, however, still needs to be strengthened through vigorous public awareness programs. The importance of enacting Ordinances and bye-laws at the lower government levels cannot be over emphasised.

Another important issue that is reflected in the current environmental laws is expansion of the application of the Polluter Pays Principle to ensure compliance.

Environmental protection calls for a multi-sectoral approach. Public participation is a necessity for the sustainable use and conservation of natural resources.

I hope this paper has helped enhance your understanding of the environment and the role you, as an individual and as a member of the public, should play in environmental management.

SCHEDULE OF OTHE ENVIRONMENTAL LAWS

1. The Plant Protection Act. Cap 31
2. Inland Water Transport (Control) Act Cap 356
3. National Agricultural Research Organisation Act Cap. 205
4. Agricultural Seeds and Plants Act Cap. 28
5. Atomic Energy Act Cap. 143
6. East African Community Act, 2001
7. The Prohibition of Burning of Grass Act Cap. 33
8. The Petroleum Act Cap. 149
9. The Petroleum (Exploration and Production) Act Cap. 150
10. The Animal Diseases Act, Cap 38
11. The Cattle Grazing Act. Cap. 42
12. The National Water and Sewerage Corporation Act, Cap. 317
13. The Fish Act Cap. 197
14. The Trout Protection Act Cap 199
15. The Town and Country Planning Act Cap. 246
16. The Public Health Act Cap. 281

17. The Penal Code Act Cap. 120
18. The Control of Agricultural Chemicals Act Cap. 29
19. The Rivers Act Cap 357
20. The Roads Act Cap. 358
21. Uganda National Bureau of Standards Act Cap. 237
22. Uganda National Council for Science and Technology Act Cap. 209
23. Vessels (Registration) Act Cap 362

ANNEXTURE 3

THE CHALLENGES IN MONITORING AND ENFORCEMENT OF ENVIRONMENTAL LAWS IN UGANDA

By:Waiswa Ayazika, Environmental Impact Assessment (EIA)coordinator, NEMA.

1. INTRODUCTION

Uganda has high natural resource potential on which more than 90% of the country's population depends directly for their livelihood. Likewise, the country's development process and opportunities mainly depend on the natural resource base. With a GDP growth rate of about 6% and a population growth rate of 62.7% (World Bank – World Development Indicators Database April 2002), natural resource exploitation will continue to form the basis for livelihoods of the majority in the foreseeable future. However, the resources are facing tremendous pressures from the rapidly expanding population, economic activities and in some cases outright abuse by users.

Uganda has continued to experience environmental degradation manifested by different forms of problems some of which are directly linked to the health and well being of wetlands and water resources. The major forms of land degradation with direct bearing on the state of the wetland and water resources include encroachment into wetland areas, land and vegetation degradation with associated loss of biodiversity, land and water pollution, and poor land management, among others.

The Government of Uganda accord high priority in the protection of natural resources. This is reflected in the Constitution, the Land Act, the Local Government Act, the Water Act and the National Environment Acts and the Regulations there under.

The National Environment Management Authority (NEMA) was established under the National Environment Statute, 1995, now an Act, as the principal agency responsible for monitoring, supervising and coordinating all activities in the field of environmental management in Uganda. In order to improve the capacity of Government in ensuring sustainable use of natural resources, Government through NEMA put in place a number of Environmental Regulations. The Implementation of the Regulations including monitoring an enforcement, is the responsibility of the District Authorities and relevant Lead Agencies while NEMA's role is to provide oversight on enforcement of the Regulations. It should also be emphasized that local communities and resource users have a key role to play in the protection and sustainable use of natural resources.

2. PRINCIPALS OF ENVIRONEMNTAL ENFORCEMENT

The Government of Uganda has taken stringent actions to protect public health from environmental pollution & protect the quality of the natural environment. Among the interventions has been the development of management strategies to prevent or control

pollution. Most of these strategies also involve legal requirements that must be met by individuals and facilities.

These requirements are an essential foundation for environmental and public health protection but they are only the first step. The second step is compliance – getting the groups that are regulated to fully implement the regulations. Compliance doesn't happen automatically – achieving it usually involves efforts to encourage & compel behaviour change that is enforcement.

One of the primary goals of environmental enforcement program is to change human behaviour so that environmental requirements are complied with. Achieving this goal involves motivating the regulated community to comply, removing barriers that prevent compliance, and overcoming existing factors that encourage non-compliance

Two broad approaches are used to change human behaviour:

- Promoting compliance thru education & incentives
- Identifying and taking action to bring violators into compliance

What is Compliance?

Compliance is the full implementation of environmental requirements. It occurs when requirements and desired changes are achieved e.g. processes or raw materials are changed so that for example hazardous waste is disposed of at approved sites

What is Enforcement?

Is a set of actions that governments or others take to achieve compliance within the regulated community and to correct and halt situations that endanger the environment or public health.

Enforcement by NEMA usually includes:

(i) Inspections to determine compliance status of regulated community and to detect violations

(ii) Negotiations with individuals or facility managers who are out of compliance to develop mutually agreed schedules and approaches for achieving compliance – *compliance agreement*

(iii) Legal action where necessary to compel compliance and impose some consequence for violating the law or posing a threat to human health or environmental quality

(iv) Enforcement may also include compliance promotion e.g. via

- *Educational programmes*
- *Technical assistance and subsidies*

3. IMPORTANCE OF COMPLIANCE & ENFORCEMENT

(i) To protect environmental quality & public health - this only becomes a reality only if environmental requirements get results

(ii) To build & strengthen the credibility of environmental requirements (including laws and institutions) – to get results, environmental requirements and the govt agencies that implement them must be taken seriously. Enforcement is therefore essential to build credibility meaning society perceives its environmental requirements 7 the institutions that implement them as strong & effective

(iii) To ensure fairness – without enforcement, facilities that violate environmental requirements will benefit compared to facilities that voluntarily choose to comply

(iv) To reduce costs & liability – an overall healthier environment created by compliance reduces public health and medical costs as well as long term cost to society of cleaning up the environment

4. COMPONENTS OF A GOOD ENFORCEMENT PROGRAMME

(a) Creating requirements that are enforceable
(b) Knowing who is subject to the requirements and setting programme priorities
(c) Promoting compliance in the regulated community
(d) Monitoring compliance
(e) Responding to violations
(f) Clarifying roles and responsibilities
(g) Evaluating the success of the program and holding program personnel accountable for success

5. STRATEGIES FOR COMPLIANCE/ENFORCEMENT

(i) Developing Laws and Regulations that can be enforced
- Interpreting broad environmental laws with specific regulations
- EIA Regulations; Wetlands, Riverbanks and Lakeshores Mgt; Hilly and Mountainous areas Mgt; etc
- Providing feed back to legislatures to revise laws that are unenforceable

(ii) Identifying the Regulated Community
- Clearly understand who is required to meet what requirements
- Set priorities based on degree of environmental consequences
- Likely require inventory & information management system to keep track

(iii) Promoting Compliance
- Disseminating information about environmental requirements
- Providing cleaner production information, education and technical assistance to regulated community
- Building public awareness and support
- Publicising success stories
- Providing economic incentives & facilitating access to financial resources

(iv) Permitting & Licensing Facilities

- A permitting system enables environmental requirements to be tailored to the circumstances of specific facilities
- Requires the development of permit application procedures, processing of applications, issuing in coordination with other lead agencies

(v) Monitoring Compliance

- Inspections by NEMA & LA's/Gazetted inspectors
- Self monitoring, record-keeping and reporting to NEMA/Lead Agency
- Community monitoring and citizen complaints
- Sampling of environmental conditions (air, water, soil) in vicinity of facility

(v) Timely Responding to Violations

- Every compliance & enforcement programme must develop a hierarchy of enforcement responses consistent with its social-economic & cultural situation
- May involve taking administrative, civil, criminal actions meant to achieve:
  - Return violators to compliance
  - Impose sanction
  - Remove the economic benefit of non-compliance
  - Correct environmental damages
  - Correct internal facility management problems
- Various types of enforcement responses: issuing administrative & legal notices; closing down facility or particular operation; revoking a permit; seeking compensation; fining; prison

(vi) Gazettement and equipping of Environmental inspectors

- Section 80 of the NES 1995
- 178 Inspectors currently Gazetted for two years
- Some Inspectors are now equipped with portable equipments that are able to detect changes in environment

(vii) Using the existing structures in the enforcement and technical assistance

- Local Governments
- Government Departments (DWD, WID, etc)
- Police

viii) Development of Technical tools for the implementation of the laws and regulations

- Manuals
- Guidelines

6. ENFORCEMENT MECHANISM AND IMPLEMENTATION TOOLS

Category A - The Precautionary Principle Implementation Tools

- Environmental Planning
- Environmental Monitoring and Impact Assessment
- Environmental Audit
- Environment Standard Setting and Licensing
- Public Awareness and Participation
- Environmental Easements
- The Use of Economic and Social Incentives

(i) Environmental Planning

NEMA is enjoined to prepare a National Environment Action Plan to be reviewed after every five years or less (S. 17(1)). The plan shall cover all matters affecting the environment in Uganda (S.18 (2) (a)). Environmental planning ensures that development activities are harmonized with the need to protect the environment in accordance with established standards.

(ii) Environmental Monitoring and Impact Assessment

Under the Environmental Impact Assessment Guidelines 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 (S. 23(2))

(iii) Environmental Audit

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. NEMA carries out continuous audits (S. 22) with the help of inspectors, to ensure that industries comply with the requirements of the 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 then.

(iv) Environment Standard Setting and Licensing

Some activities require specific permits. In order to control the environmental effects of these substances the law requires their classification and labeling. Standard setting ensures that licences and permits are issued as a measure to control activities that may have deleterious or beneficial effects on the environment. This requires that the licensing authorities should be environmentally conscious to avoid emphasizing the revenue collection aspect at the expense of environmental concerns.

(v) Environment Standards and Regulations

- The Environmental Impact Assessment Regulations No. 13 of 1998.
- The National Environment (Standards for Discharge of Effluent into Water or on Land) Regulations No. 5 of 1999.

- The National Environment (Waste Management) Regulations No. 52 of 1999.
- The National Environment (Hilly and Mountainous Areas Management) Regulations No. 2 of 2000.
- The National Environment (Wetlands, Riverbanks and Lakeshore Management) Regulations No. 3 of 2000.
- The National Environment (Minimum Standards for Management of Soil Quality) Regulations No. 59 of 2001.
- The National Environment (Management of Ozone Depleting Substances and Products) Regulations No. 63 of 2001.
- The National Environment (Control of Smoking in Public Places) Regulations No. 12 of 2004.
- The National Environment (Access to Genetic Resources and Benefit Sharing) Regulations No. 30 of 2005.

(vii) Public Awareness and Participation

The need for popular awareness is a key requirement for enforcement of legislation. NEMA is given the mandate to carry out education and awareness campaigns to ensure that the public participates in environmental decision making and enforcement.

(viii) The Use of Easements and Incentives

An environmental easement may be enforced by any body who finds it necessary to protect a segment of the environment although he may not own property in the proximity to the property subject to the easement. The Act clearly provides that management measures should be carried out in conjunction with the application of social and economic incentives including taxation measures.

Category B - The Polluter Pays Principle Implementation Tools

- Performance Bonds
- Environment Restoration Orders
- Record Keeping and Inspections
- The Use of Criminal Law
- Community Service Orders

(a) Performance Bonds

Industrial plants that produce highly dangerous or toxic substances & therefore have significant adverse impacts on the environment may be required to deposit bonds as security for good environmental practice.

(b) Environmental Improvement Notice

Improvement Notices may be issued by environmental inspectors under section 80(1)(i) of Cap. 153 to require a person to cease activities deleterious to the environment.

(c) Environmental Restoration Orders

Restoration Orders are issued under section 67 of Cap. 153 requiring a person to restore the environment, or to prevent a person from harming the environment. They may award compensation for harm done to the environment or/and levy a charge for restoration undertaken. Restoration Orders are issued by NEMA or a court giving the person a minimum of 21 days to restore what he has destroyed.

Under Section 70(i) of the National Environment Act Cap 153, "where a person on whom an Environmental Restoration Order has been served fails, neglects or refuses to take action required by the Order, the Authority (NEMA) may with all the necessary workers and other officers, enter or authorize any other person to enter any land under the control of the person on whom that order has been served and take all the necessary action in respect of the activity to which that order relates and otherwise to enforce that order as may deem fit."

(d) Record Keeping and Inspections

Persons whose activities are likely to have a significant impact on the environment are required to keep records of the amount of wastes and by products generated by their activities and as to how far they are complying with the provision of the Act. Inspections are carried out by gazetted inspectors who have very wide powers under the Act e.g. to take samples, seize any plant equipment or substance and close any facility or issue improvement notices.

(e) The Use of Criminal Law & Community Service Orders

Criminal law remains a veritable instrument for the control of behaviour because of the natural tendency of people to fear the infection of pain, isolation or economic loss. Therefore, the Act provides for serious penalties for infraction of its provisions. 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.

7. CHALLENGES IN MONITORING AND ENFORCEMENT

(i) First, there is the problem arising from failures at different institutional linkages for environmental management. Whereas for example wetlands are held in trust by Central Government or local Government for the common good of the people of Uganda, recent examples of wetland abuse have included cases where Local Authorities have been the very violators of these constitutional and legal provisions. Where this has happened, local authorities have indicated that they converted wetlands for the sake of providing their communities with economic growth opportunities and for fighting poverty. It is therefore a dilemma that the very institutions entrusted with the protection of wetlands have in some cases not assisted the crusade for their conservation.

(ii) Issuance of Land Title in wetland areas by the Central and Local Governments

Where as it is a constitutional and legal requirement that areas such are wetlands, riverbanks, lakeshores are held in trust by Government and Local Government for the common good of all the citizens of Uganda, there are incidences where the very institutions that are charged with this responsibility are the very ones who alienate these wetlands and even issued land titles.

(iii). There is the problem of enforcement of the legal requirements for protection of the environment and public health. Whereas it is now largely accepted that environment is important worth protecting, and whereas enforcement of environment regulations, is expected to be done through a hierarchy of enforcement levels from national (NEMA), Districts down to community levels, the enforcement capacity available at all these levels appears not to be able to match the widespread nature of the problem of environment degradation. In addition, while the responsibility for environment management has been vested under the local authorities, cases of local authority intervention on environmental management are still few, implying that even where local authority intervention would have been enough to stop abuses, such cases still continue to be referred to NEMA. It should be stressed that this state of affairs for a dispersed resource such as wetlands requires an enforcement and intervention mechanisms that is closer as possible to the community level if tangible results are to achieved.

(iii). The "anonymous", "holiday" and "awkward hour" dumping syndrome and noise pollution

Without an effective grassroots enforcement mechanism, it has been extremely difficult to control indiscriminate dumping of materials in wetlands along the roads and other remote areas by anonymous individuals such as truck drivers who probably view wetlands as "good" open space to dump in rather than drive long distances to designated dumping sites. Time and again, people living in and around wetland areas where marrum and waste dumping has taken place have indicated that the dumping is done by unknown truck drivers at awkward hours.

In addition to the above, there has also been a problem of wetland filling during holidays and awkward hours when those dumping probably have full knowledge that enforcement staff are not on duty. It remains an uphill task to prosecute these cases, and the affected wetlands can hardly recover their original state even if the culprits are required to restore them.

(iv). How to transfer management and enforcement responsibility to local authorities and to resource users level.

With the expansion of Central Government enforcement machinery not likely to happen in the foreseeable near future, it is plausible to believe that increased local

authority and local community role on matters of wetland management, planning and enforcement, including stopping wetland abuse through community policing could be a more sustainable way to stem further degradation. However, there still remains a fundamental weakness in the sense that local authorities have not translated the authority vested under them for natural resources management into meaningful action as far as wetland resources are concerned. The approach adopted by the Wetlands Inspection Division for community wetland management planning is worthy support in this regard. However, lessons learnt from this approach are yet to be popularized to other communities.

(v). Need to harmonize urban planning and land–use in general with modern wetland conservation goals.

Until now, NEMA continues to receive development proposal on wetland areas that have been demarcated as plots by planning authorities. This apparently continues to send wrong signals to other wetland users who seem to perceive a sense of no action being taken in especially urban areas where wetland encroachment continues. In Kampala District, most of the wetlands which served as flood relief areas were allocated for industrial and residential developments and this trend has not been halted completely yet. Worth mentioning is the difficulty of enforcing planning requirements in peri-urban flood prone areas where the urban poor communities have massively and indiscriminately encroached into the wetlands, such as is the case in Bwaise and Bukoto areas.

(vi). Poverty and wetland resources use relationship

Over the recent years, there appears to be increasing cases of activities being implemented in wetlands in the name of fighting against poverty. While some of these activities are out-rightly not compatible with wetland conservation nor wise use goals, their promoters have vigorously defended them as intended to assist in the fight against poverty. Activities such as brick making in wetlands which are done for economic gains have tended to give no regard at all to conservation nor restoration of the affected wetlands. It is probable that this attitude stems from the old perception that wetlands in their natural state are wasted land.

ANNEXTURE 4

PROTECTING OUR FORESTS: LAW AND POLICY, ACHIEVEMENTS AND CHALLENGES IN THE ENFORCEMENT PROCESS.

By Georgina Kugonza Musisi, Legal Counsel, National Forestry Authority (NFA)

TERM FOREST DEFINED.

A forest is defined as any vegetation that is mostly composed of trees of any size. This includes statutory forests e.g. forest reserves, private forests, community forests, forests in wild life conservation areas, natural or plantation forests etc. it also includes any forest produce e.g honey, firewood, mushrooms, living organism.

A forest ecosystem refers to those things that live within a forest {see also section 3 of the national forestry and tree planting act, No.8/2003}
Also note: minerals are not considered to be forest produce even when found within a forest.

WHY PROTECT FORESTS?

- Provide employment in planting, harvesting, conversion and wood processing
- Provide charcoal and firewood
- Provide fodder for cattle
- Act as protective shield to bare hills so as to avoid soil conservation.
- Act as wind breakers especially in hilly places
- Home to earth's bio-diversity both unknown and know.
- Provide major ingredients that are used to make medicines to treat several ailments.
- Protection of underground streams.
- Provide construction materials like clay, sand, timber.
- Provide food
- Offer filtration services to run off into big water bodies especially forests along shorelines.
- Play a vital role in climate patterns by acting as sinks for carbon and hence protect the ozone layer for destruction.

CONSTITUTIONAL JUSTIFICATION FOR PROTECTION OF FOREST RESERVES.

- Right to clean and healthy environment

Central government and local government recognized as public trustees for forest reserves, the detail of the latter's role to be contained in a law made be parliament.
{articles 50,237(2) of the constitution of the republic of Uganda, 1995 and section 5 of the national forestry and tree planning act, 2003}

HIGHLIGHTS OF THE NATIONAL FORESTRY PLOICY, 2001.

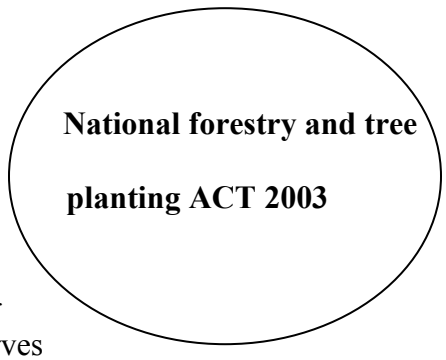
It has 11 statements namely:

- Protection and sustainable management of the forest reserves
- Development and sustainable management of natural forest on private land
- Promotion of development of commercial plantations on a profitable and productive basis.
- Establish a well regulated and competitive forest product producing industry.
- Enhance development of collaborative partnerships in management of forests
- Promote agro forestry
- Conservation of bio-diversity in the forests
- Rehabilitate and establish and maintain watershed protection forests.
- Promote urban forestry e.g woodlots and planting trees on road reserves.
- Establish proper training, education curricular and research to support a sustainable forest sector.
- Supply of quality tree seed and improved planting stock.

WHY MAKE A NEW FORESTRY LAW?

- Integration of new constitutional changes relating to the management of forest resources in forest reserves.
- Improvement of institutional capacity to manage forests
- Regulation of access to forest resources.
- Improvement in the quality and supply of forest and non-forest products.
- Enhance private sector involvement in forestry
- Enhance community participation in management of forest resources e.g community partnerships.
- Alleviation of poverty
- To counter alarming rate of loss of forest cover
- The **National Forestry and Tree Planning Act, 2003** enacted on 8th August 2003 and repealed the old forests act, saving all subsidiary legislation made there under provided its contents did not contradict the provisions of the new law.

INTENDED BENEFITS OF THE NEW LAW



Promote tree planting

Conservation of forest

Sustainable use of forest resources

Determine procedures for declaration of forest reserves

Promote agro forestry

Establish Forest Management institutions

Development of forests

consolidation of laws relating to forests

Enhance productive capacity of forests. And trade in forest produce.

FOREST MANAGEMENT INSTITUTIONS UNDER THE NEW LAW SECTIONS 4, 17, 21, 22, 25, 48, 52-54

- National forestry authority manages central forest reserves
- District forestry officer manages local forest reserves in respective districts
- Uganda wild life authority manages forests within wildlife conservation areas
- Private persons manage forests on privately owned land or own plantation forests
- Community forests to be managed by institution determined by minister responsible for forestry
- Cultural leaders to manage forests within their kingdoms in a manner determined by the minister responsible for forestry.

ACCESS TO FOREST RESOURCES

The Law requires that a forest management institution issue a license to any one who wishes to enter into, cut or take or remove any forest produce on a fair, open and competitive basis

A License is a formal agreement issued by the licensor {forest management institution} to the licensee (person who wants to access the forest resources) containing terms and conditions governing the use of the forest. It also requires payment of license fees usually on an annual basis

Content of license agreement/contract are: description of parties to license, grant of license clause, term of license, authorized use of land, license fee and terms of payment, description of area under license, approved project and certificate of approval by NEMA, termination of license, dispute resolution, technical conditions, right to inspect area under license at prescribed terms, renewal, amendment/modification of license provisions, law applicable, notification clause, signatories, etc.

A Forest management plan is the key to what activities can be done with in a particular forest; it is revised every five years. In case of forest reserve or community forest, the community needs to be consulted. It is approved by the minister responsible for forestry or b y a person delegated by him or her.

ROLE OF AUTHORIZED PERSONS UNDER THE NATIONAL FORESTRY AND TREE PLANTING ACT.

Authorized persons under new forestry law include: forestry officers, police officers, wild life protection officers, honorary forest officers, and any other public officer so

designated by the minister responsible for forestry whether by office or by name. Their roles include:

- Enforcement of the national forestry and tree planting ting act.
- Powers to: arrest without warrant any person suspected to be committing or to have committed an offence; to search and person's baggage, package, vehicle, parcel, building under control of suspect; seize forest produce, livestock, tools, boats , conveyance, machinery or other implements provided they reasonably suspect they are liable to be forfeited; to see any item which has been seized and detained if it is subject to speedy and natural decay, or will entail avoidable expenses to the government.
- They also have the duty to ensure that due process of the law is followed by facilitating investigations and prosecution of suspected offenders
- Also refer to sections 88 and 51 of the act

OFFENCES UNDERT THE NATIONAL FORESTRY AND TREE PLANTING ACT

Other than the authorized persons, every forest management institution or any person can bring an action against a person whose actions or omissions have had or likely to have a significant impact on a forest or for the protection of the forest.

Under sections 45, 46, 50 of the national environmental act 153 forests. Conservation of energy, planting of woodlots, protection of the ozone layer is prioritized.

Under the constitution of the republic of Uganda 1995 and the land act cap 227, the right to own land is not absolute but is subject to laws like that regulating forests, water, environment, etc

Offences under the national forestry and tree planting act include: setting fires within a forest reserve, obstruction of an authorized person, breach of a license, giving false information while applying for a license, failure to sustainably manage and control a forest in line with its management plan, altering or defacing a forest boundary mark, disobeying an authorized person, forging hammers, entry into a forest reserve without a license, grazing, residing or conducting any activity with in a forest reserve without a license, failure to conduct an environmental impact assessment, neglecting to plant trees.

ACHIEVEMENTS IN THE ENFORCEMENT OF THE LAW.

- Some forest management institutions are up and running like the national forestry authority, district forest officers.
- Regulated forest produce market-clearance and movement of produce like timber
- Increase in revenue from forestry sector.
- Tree planting by private individuals, schools, institutions, companies, NGOs on the increase

- Competitive manner in issuance of licenses especially in central forest reserves.
- Emergence of "Green investors" and "Green customers" e.g emphasis on dealing with license saw millers, buying timber and other wood products form people who are promoting sustainable use of forest resources.
- Poverty alleviation through increased incomes from activities like the sale of carbon credits, employment opportunities in the harvesting of timber and the wood processing industry.
- Community participation in the management of forest resources especially in the central forest reserves.
- Development of forest management plans
- Alternative tree seed sources identified by NFA
- Forest cover being restored by forest management institutions like the NFA
- Technical assistance being offered to interested parties by NFA
- Linkages with enforcements partners being made
- Offenders are being prosecuted in courts of law
- Illegally obtained certificates of title within the forest reserves being challenged.

CHALLENGES IN ENFORCEMENT OF THE NEW FORESTRY LAW.

- Encroachment on forest reserves
- Conflicting government polices like investment policy vis-à-vis forestry policy and law
- Corruption has been reported at certain levels
- Issuance of certificates of title over areas known to be part of forest reserves by government e.g. by district land boards, Uganda land commission
- Insufficient or lack of technical knowledge on how to handle tree seedlings and seeds
- Poor distribution network for tree seed center, currently only one distribution source at Namanve county wide save some range offices of the NFA
- Political interference
- Ignorance of the law and sound forestry practices
- Not all forest management institutions are up and running.
- Absence of regulations under the new forestry law to provide for sound forestry practices- these are still in draft form and are pending finalization
- Costs of tree planting way too high for many people.
- Tree fund not yet operational.
- Poor institutional linkages.

ANNEXTURE 5

THE CRIMINAL ASPECTS OF ENVIRONMENTAL LAW

By:Vincent Wagona, Ag. Senior Principal State Attorney, Directorate of Public Prosecutions.

INTRODUCTION

Criminalizing certain acts or omissions is one of the methods for attaining environmental protection. Other methods include inspections, negotiations, compliance promotions and civil litigation.

This paper highlights the criminal aspects of environmental law, including the legal technicalities relevant to the prosecution of environmental cases.

Generally, an environmental crime is any deliberate act or omission leading to degradation of the environment and resulting into harmful effects on humans, flora, fauna and natural resources. Environmental crimes however include all violations of environmental laws attracting criminal sanctions.

Traditional criminal law did not seriously provide for environmental protection. Consequently, aggrieved citizens relied mainly on civil remedies under the common law of nuisance and trespass to abate environmentally offensive conduct.

However, there are a few provisions in our Penal Code Act relating to environmental protection in the sense of protecting the right to a clean and healthy environment.

Parts XVII provides for nuisances and offences against health and convenience

Part XXI provides for offences endangering life or health.

- S.160 - Common nuisance
- S.171 - Negligent act likely to spread infection of disease
- S.172 – Adulteration of food or drink
- S.173 – Sale of noxious food or drink
- S.174 – Adulteration of drugs
- S.175 – Sale of adulterated drugs
- S.176 – Fouling water
- S.177 – Fouling air

- Offensive trades
- See also S.230 – Dealing in poisonous substances in negligent manner.

The effectiveness of the above provisions on environment and/or public health protection is rather limited by number of factors, including:-

- While the National Environment Act (NEA) and regulations made under it are more effective in creating specific environmental offences, the offences under the Penal code are generalized and their interpretation may be difficult and controversial;

- While the offences both under the Penal Code and the NEA are misdemeanours, the NEA includes the option or addition of a substantial fine and is therefore likely to be more deterrent.

The NEA therefore provides a more comprehensive and effective legal frame work for environmental protection measures within the criminal justice system.

OFFENCES AND THE LAW APPLICABLE

Environmental offences are created mainly under the National Environment Act Cap. 153 and also under subsidiary legislation made under the said Act, namely:-

1. The National Environment (Wetlands, River Banks and Lake Shores Management) Regulations – S.I 3 of 2000.
2. The Environment Impact Assessment Regulations S.I 13 of 1998.
3. The National Environment (Standards for Discharge of Effluent into water or on land) Regulations S.I 5 of 1999.
4. The National Environment (Hilly and Mountainous Areas Management) Regulations of 2000 Supplementary 1 – 2000.
5. The National Environment (Waster Management) Regulations of 1999.
6. The National Environment (Minimum Standards for Management of Soil Quality) Regulations S I 59 of 2001.

Environmental related offences are also created in Acts such as the Water Act (Cap. 103) and the Fish Act (Cap. 197)

There are various offences and penalties relating to:-

- Environment Impact assessment (SS. 19, 20 and 96)

- Environmental Standards relating to air, water, discharge of effluent, noxious smells, noise, vibrations and soil (Parts VI and VII and S.98)
- Hazardous waster, materials, chemicals and radioactive substances (SS.52, 53, 54, 55, 56 and 99)

- Pollution (Part VIII, SS.61 and 100)

- Environment restoration orders (SS. 67, 72 and 101)
- Environmental Inspectors (SS. 79, 80 and 95)

- Record keeping (SS 77 – 78 and 97)

- Wetlands, lake shores and river banks (The National Environment (Wetlands, River Banks and Lakeshores Management) Regulations, 2000). See also the main Act.

Environment Impact Assessment

The Act defines what an Environmental Impact Assessment is.

The law requires every developer of a project of the type described in the Third Schedule to the Act to submit a project brief and if it is determined that the project may, is likely to or will affect the environment, the developer is required to undertake an EIA to determine the impacts of the proposed project on the environment. The burden is on the developer to conduct and submit an EIA report to NEMA.

After conduction an EIA, the developer is under a legal duty to ensure that the requirements of the EIA are complied with. This requirement arises both under the Act and the EIA regulations, 1998.

Failure to submit a project brief or to prepare an EIA when required to do so, or fraudulently making a false statement in the EIA is an offence punishable with imprisonment of up to 18 months or a fine of not less than shs. 180,000/= or both.

Having a project without an EIA is in itself an offence.

Environmental standards

Activities and operations impacting on the environment must be within prescribed minimum standards, criteria and measurements relating to:-

- The discharge of effluent and waste waters;

- Soil quality, the ozone layer and solid waste;

- Air, noxious smells, pollution, noise and vibrations.

Waste management
What amounts to 'waste' is defined in the Act. Wastes have to be classified and prescribed as such. This has been done under the National Environment (Waste Management) Regulations, 52, 1999.

Every person is under a duty to manage wastes generated by his or her activities in such a manner that does not cause ill health to any person or damage the environment.
No person is allowed to dispose of toxic and hazardous wastes into the environment unless he or she follows the law and the guidelines.

It is an offence to import any waste which is toxic, extremely hazardous, corrosive, carcinogenic, flammable, explosive or radioactive.

It is an offence to discharge hazardous chemicals, substances or oil into water contrary to established guidelines. The offender may be ordered to pay the cost of removal (of oils) and restoration of the environment damaged and compensation

These offences are punishable by imprisonment for not less than 36 months or a fine of not less than 360,000/= and not more than 36,000,000/= or both.

Pollution

"Pollution" is defined in the Act.

It is an offence to pollute or lead any other person to pollute the environment contrary to the set standards or guidelines or in excess of conditions set by a license. The offences attract imprisonment for not less than 18 months or a fine of not less than 180,000/= and not more than 18,000,000/= or both.

Environmental restoration orders

NEMA has powers to issue environment restoration orders requiring a person who has damaged or is about to damage the environment, to restore it, not to do the act which may result in damage or to compensate for damage already done. See SS. 67 and 70. The same orders can be issued by court under S.71. There is a right of appeal to court against a restoration order issued by NEMA.

Nothing in the law stops NEMA from issuing a restoration order where criminal proceedings have been instituted and are still pending against the offender.

Failure to comply with a restoration order is an offence attracting a penalty of 12 months imprisonment or a fine of not less than 120,000/= and not more than 12,000,000/= or both.

Environmental Inspectors
The Act creates the institution of environmental inspectors (S.79) with powers to enter on any land, premises or vehicle and inspect to determine whether the provisions of the Act are being complied with. The inspector has many other powers under S.80.

Hindering or obstructing an environmental inspector, or failing to comply with a lawful order such as an improvement order issued by an Environment Inspector is an offence

attracting a term of imprisonment of not less than 12 months or a fine of not less than 120,000/= and not more than 12,000,000/=.

Record keeping

Those who engage in activities likely to have a significant impact on the environment are required to keep records of the amount of wastes, by- products, effects generated and how far they are complying with the provisions of the Act.

Failure to comply with the above and the fraudulent alteration of records are offences punishable with up to 12 months imprisonment or a fine not less than 120,000/= and not exceeding 12,000,000/= or both.

Wetlands, lake shores and river banks

The law (S.37 of the regulations) prohibits any reclamation or drainage, depositing of any substance, damaging or destruction of any wetland without a permit from NEMA. River banks and lake shores are also protected.

A person convicted is liable to imprisonment of not less than three months or a fine not exceeding 3m/=.

In addition, the person may be required to carry out community work that promotes the conservation of wetlands

Permits and licences

Certain activities having environmental impacts are prohibited except if permitted and regulated by permit or license. This is a very effective means of ensuring compliance with the law as the license can be revoked or stringent conditions included.

The very act of carrying out the activity without the permit or license is an offence regardless of whether or not any environmental damage has been done.

LEGAL TECHNICALITIES AND PRINCIPLES RELEVANT TO THE PROSECUTION OF ENVIRONMENTAL CASES

- **Environmental law caters for anticipatory injury or damage.** Even where a violation of the law may not necessarily result in any direct or immediate injury to person or property, failure to comply with the law is an offence. In such cases, the law seeks to guard against the danger or probability of injury or damage and thereby minimize it.

- **Environmental laws punish violations of the law provisions as such.** Unlike the traditional criminal offences under the Penal Code Act which prohibit specific acts and impose penalties for those acts, environmental statutes tend to provide for criminal penalties for violation of ***any*** of the provisions of the statute. That is

why S. 102 of the Act creates a general penalty for breaching any provision for which no penalty is specifically provided.

- **Environmental offences tend to impose strict and vicarious liability.** Although the burden of proof lies with the prosecution, there is no need to prove *means rea* (Criminal intention). Also, the employer or proprietor of a facility can be held liable for acts of the employees. The strict liability nature can be seen from the wording of the provisions in the statute. Also, environmental statutes are regarded as 'public welfare' statutes (creating public welfare offences). The law is aimed at protecting human health and the environment. The offender (as a reasonable person) is deemed to know that his or her conduct is subject to stringent public regulation and may seriously threaten the community's health or safety. In a real court prosecution, however, the question of strict and vicarious liability is likely to be controversial since the statutes themselves do not expressly provide for vicarious and strict liability.

- **Like for other criminal offences, causation must be established.** That is, that the prohibited event was caused by the accused's acts or omissions.

- **No requirement for notice of violation before instituting criminal proceedings.** There are always attempts to handle environmental violations amicably. In this regard, in practice, the offender may be notified that they are violating the law. The notice however is not a legal requirement and is therefore not a legal pre-requisite for instituting criminal proceedings. Criminal proceedings can be commenced even without a prior notice of violation.

- **No requirement for prior civil proceedings**. There is no requirement to institute civil proceedings before commencing criminal proceedings.

- **Investigations.** Environmental inspectors play a key role to gather scientific evidence and make reports. They also serve as expert witnesses. Police need to involve them very early in investigations.

- **Trials.** These are characterized by specific evidence to prove ingredients and presentation of scientific evidence. The exhibits include – reports of the Environment Inspectors – laboratory reports – photographs – maps. Police Photographers are already being used to take photographs.

- **Jurisdiction and Bail.** The offences are triable and bailable by a Magistrate Grade I or Chief Magistrate.

- **Punishments.** Most offences are punishable with a fine, imprisonment or both. However, under S.105 of the Act, the court may in addition to any other orders, order:-

1. That the substance, equipment and appliance used in the commission of the offence be forfeited to the state;

2. That any license, permit or other authorization given under the statute and to which the offence relates be cancelled;

3. That the accused do community work which promotes the protection of the environment;

4. Issuance of an environmental restoration order against the accused.

As prosecutors, we should ask courts for deterrent sentences and high fines because of the high costs caused by degradation. For example, the degradation of a forest or wetland which has existed for many decades is not only a great loss to society, but very difficult and costly to replace.

Examples of punishments from other jurisdictions:

- In U.S versus FREZZO BROTHERS INC. – 602 F.2d 1123 (3rd Cir.1979), the two defendant corporation operators were convicted of illegally discharging pollutants (without a permit) and sentenced each to 30 days imprisonment and a fine of $ 50,000.

- In U.S versus WEITZENHOFF. – 1 f.3D 1523 (9TH Cir. 1993), A manager and an assistant of a sewerage plant were convicted of illegally polluting the ocean by failing to treat waste water prior to discharging. They were sentenced to 21 months imprisonment.

- In U.S versus HOPKINS. – 53 G.3rd 533 (2d Cir. 1995) a case of discharging excessive amounts of toxic materials into a river, the defendant signed a consent order with the regulatory authority and agreed to pay a fine of $30,000 for past discharge violations.

- **Effect of conviction.** Environmental offences are not committed by **'criminals'** in the normal sense of the word. These are people like factory managers and proprietors, mayors of local authorities, etc. Conviction for an environmental offence does not create a criminal record as such.

CONCLUSION

As we continue sharing experiences and through a coordinated and concerted effort by all concerned, we shall surely see a positive contribution to environment protection by our criminal justice system.

ANNEXTURE 6

THE HISTORY OF ENVIRONMENTAL LAW

By Kenneth Kakuru, Director Greenwatch

1.1 THE HISTORY OF ENVIRONMENTAL LAW

Environmental law seeks to protect human health, manage natural resources and sustain the biosphere. This is frequently done through laws that set standards for environmental planning, wildlife, mineral resources, land use and activities that can affect the air, water and soil.

1.2 Religious, cultural and historical roots

Religious traditions entail an evolving body of norms that govern most aspects of life. The Shari'ah- the body of Islamic law- mentions the environment, commanding the respect for the environment. When combined with the Islamic emphasis on cleanliness (and thus constraining pollution), the Shari'ah can be a powerful source of norms for environmental protection. African customary or traditional, tribal law frequently governs important natural resources such as water, grazing, timber and minerals, particularly pigments. Additionally, some tribes seek to protect the quality of their drinking water by prohibiting livestock from the vicinity of wells and other sources of portable water.

1.3 The Green revolution

The Green Revolution came as a result of unchecked industrialization. Industries developed new chemical compounds, Organic compounds used as pesticides and herbicides, bio-accumulated in fish and birds, threatening various species with extinction, inn addition to causing cancer and birth defects in humans.

1.4 The end of colonialism

The end of colonialism is perhaps the most important predicate condition, as this has allowed Africans to decide whether and how to utilize their natural resources, as well as to set their own priorities for public health and development.

1.5 The English Law of Tort

The environmental law is in fact a modification of tort law and principles. In Uganda, other than the question of locus standi, the polluter pays principle, the doctrine of public trust as incorporated in the constitution and the 1998 land act. All the other principles are of environmental law and basically tort law.
In 14th Century England remedies for wrongs were dependent upon writs. Osborn's Concise Law Dictionary describes a writ as a document in the Queen's (King's) name

under the seal of the crown commanding the person to whom it is addressed to do or forebear from doing an act. Where there was no writ there was no right.

1.6 Trespass

The term is usually used in reinforce to forcible or unauthorized entry on land. The underlying principle here is protection of private property. The Feudal order was based on ownership of land by a few individual landlords and protection of their exclusive right to land was of fundamental importance.

The industrial revolution made land less important and promoted the ownership of commodities and other forms of means of production such as machinery etc, Ownership of chattels became as important as ownership of land, as land had become a commodity on the market like any other. There remained however and still remains a great legal requirement to protect private ownership of property in whatever nature or form.

We shall argue in this paper that it has since been realized that damage to ones property in the end results in damage to the property of others and that the total damage caused by each person to his own property eventually adds up to gross damage to the property of all resulting into degradation of mans natural habitat, that effects his quality of life for which development and private ownership of property was meant to enhance. The need to address this led to the emergency of the modern environmental law.

1.7 Nuisance

The tort of nuisance extended to cover any actions committed by any one on the land adjoining that of the plaintiff it does not matter that the land where the nuisance is created does not belong or is not occupied or in possession of the said defendant.

There was certainly a need to balance the conflicting interests of two property owners with adjoining lands. Whereas each enjoys a right unless actual damage is thereby caused, the earlier position was that even if such damage was caused, the plaintiff could not recover if the damage was due to natural growth of the trees for example. This in the case of *Reed vs Smith (1914) 19 B.C.R. 139 at 140*.20 It was successfully argued for the defendant that "he did not grow the trees, he did not root them and he did not blow them down. It all happened in the cause of nature. But the law has since moved from this position to cover liability in nuisance from the escape of things from the defendant's land to that of the plaintiff even if they were naturally on the plaintiffs land.

But what amounts to injury has been extended to cover not only physical injury to property but also injury to the value of the property. Noise from adjoining property may reduce the rental value of a residential house for example. But still this kind of injury ought to be proved. In case of physical damage actual not potential damage must be proved. However no action will lie for nuisance in respect of damage which ever, though substantial, is due to the fact that the plaintiff is absolutely sensitive or uses his land for exceptionally sensitive purposes.

It is no defence that the plaintiff came to the nuisance and hence consented to the injury. A person is not expected to refrain from buying land or occupying premises because a nuisance exists there. It is no defence that the nuisance although injurious to the individual is beneficial to the public at large. The fact that Mukwano Soap Factory in Kampala produces soap for the benefit of the public, employs many people and pays government taxes is no defence to an individual's suit against it in nuisance, due to fumes emitted from the said factory.

Nor is it a defence that the place from which the nuisance emanates is the best location the defendant can get on the best suitable for the purpose or that no other place is available for which less mischief would result. If no place can be found where the action causes no nuisance then it can only be carried out with the permission or agreement of adjourning proprietors or under the sanction on an Act of Parliament23 Lack of negligence is no defence to an action in nuisance.

1.8 Negligence

The rule of negligence is very simple that man must take reasonable care in his pursuit for personal well being so as not to injure others in the process. If one is to blast rocks for weeks to build a road to acquire money, he must not injure others in the process. If one is to cut trees in a forest he must not put others at risk by his activity. If one is selling food to others who have no time to prepare their own food he must ensure that the food is safe. ***The rule in Rylands Vs Fletcher*** ***1868 LR 3 HL 330*** was stated by Blackburn .J. in Exchequer Chamber as follows;-

"We think that the rule of law is that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does not do so is prime facie answerable to all damages which is the natural consequence of its escape".

1.9 None natural user of land

Rylands Fletcher established the rule that as a pre-requisite to liability the defendant must have brought on the land something that was not naturally there. This was originally an expression of the fact that the defendant has artificially introduced onto the land a new and dangerous substance. This rule in my view seems to have come as a result of the need to protect property owners from their neighbours' dangerous industrial ventures. It was also a recognition that the increased industrial development by necessity requires that land be used for purposes it was never naturally intended to be used for. That more and more natural environment was being replaced with unnatural environment and there was need to protect those using their lands naturally from those putting theirs to new use.

2.0 The emergence of Environmental Law in Uganda

The law of tort has its own limitations. It is based on personal injury or injury to property. However for protection of the environment, this question of *locus* became a very big hindrance. The law including the constitution of most countries had to be changed to

address this problem and other related ones. A lot of precedents on this issue and the common law position were reviewed by ***Lugakingira* J (**in the now famous case of**)** *Mtikila Vs Attorney* ***General- civil case [No 5 of 1993]1 High Court of Tanzania p.5.***

2.1 The right to a clean and healthy environment

In 1991 the government of Uganda launched the National Environment Action Plan (NEAP). It intended to provide a frame work for integrating environmental considerations broadly defined to include natural and man made environments into the country's overall economic and social development. In 1994 the government endorsed the National Environment Management Policy (NEMP).

2.2 THE EVOLUTION OF ENVIRONMENTAL LAW AND POLICY

The NEMP 1994, The policy set out the objectives and key principles of environmental management and provided a broad framework for harmonization of sector and cross sect oral policy objective. It was on this policy that a comprehensive legal and institutional frame work was designed. The policy through legislation has created new capacity building needs in environmental planning, information generation and dissemination and the use of environmental tools in managing the environment.

2.3 The Constitution of the Republic of Uganda

In October 1995 a new Constitution came into force in Uganda, the 1995 Constitution.
The Constitution sets out in its National Objectives and Directive principles of state policy, among others, the promotion of sustainable development and public awareness of the need to manage our environment.
Chapter 4 of the Constitution sets out a detailed Bill of rights, particularly, the right to a healthy and clean environment as a human right Under Article 39 enjoyable and enforceable as any other form of human rights.
The Constitution recognized the importance of the environment and health as inseparable from all forms of human rights.

2.4 Enforcement of environmental rights

Article 50 of the Constitution provides for the enforcement of the rights provided under Chapter IV and for the first time in history of Uganda and unlike in many other jurisdictions, the Constitution provides a right of standing for any aggrieved person. The person enforcing the right does not have to be one personally or physically affected by the violation. The framers as of the Constitution must be given great credit for this as indeed this clearly manifests the power of the people in the Constitution whereas in many jurisdictions the courts have gone to great lengths to look for the locus standi through interpretation, in Uganda it is provided.

The enforcement of environmental rights takes many forms. Providing information is the simplest, the cheapest, at times the most effective way of enforcing environmental rights.

By simply reporting an oil spill, illegal dumping, or a forest fire in time would save money and the environment a great deal. If the public was sensitized to know that reporting environmental degradation is very important, a lot would be achieved at the least possible expenses and would be in the interest of developers, producers, investors or government. The information does not only have to be after the fact. The information might be also before the fact such as threatened destruction of a wetland or forest.

There must exist an entity to which this information must be delivered that is within very reasonable reach of the population. The Local Councils for example are in law in charge of environment with Local Defence Units as an enforcement arm. This would be in addition to all arms of government e.g. police, local administration police, etc should be informed and available as reporting centers for environmental problems.

Action ought to be taken upon reporting for the populations to be able to continue reporting environmental damage. If it is fire the population should be mobilized to put it off or police fire station called. If it is pollution like oil spill, immediate action needs to be taken, victims compensated, culprits arrested.

If this is not done the reporter will never report again. On the other hand if the reaction is swift and appropriate action taken that would encourage reporting.

3.0 The principles of environmental law

Listed below are the main principles governing environmental law;

- The Precautionary principle
- Polluter pays Principle
- User pays principle
- Public Trust Doctrine
- Public participation
- Access to Justice and Information
- Inter – Intra generational principle and Equity
- Sustainable Development

3.1 The Precautionary Principle

The precautionary approach extends the principle of prevention of environmental damage to situations of scientific uncertainty

When there is **certainty** regarding the risk of harm to the environment, a regulatory measure is preventive; when there is **uncertainty**, a regulatory measure is precautionary

The precautionary approach does not dictate specific regulatory measures, but determines the time at which regulator measures must be adopted

In precautionary regulation the burden falls on the proponent of the new substance, act, or technology to demonstrate that it is not harmful

3.2 Recognition by national courts

The precautionary principle has been recognized by some national courts as implicit in the national environmental policies and legislation, therefore applied independently from its status at international level and its incorporation in the national regime:

"The precautionary principle is a statement of common sense prior to the principle being spelt out" […] "where uncertainty or ignorance exists concerning the nature of environmental harm (whether this follows from policies, decisions, or activities), decisions-makers should be cautious
(Leatch v. National Parks and Wildlife Service - 1994 -Australia)

3.3 Polluter Pays Principle

National authorities should endeavour to promote the internalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment" (Rio Principle 16)

3.4 Rationale

PPP introduces economic thinking into environmental law - it deals with allocation of costs of pollution or damage to the environment

The costs of pollution or damage to the environment (or more in general degradation) have to be borne by the person responsible of such pollution or damage, regardless of whether the costs are incurred through direct regulation, taxes, permits or other mechanisms

The PPP also works as an incentive to modify behaviour towards the environment In more general terms, it means that the environmental costs of the production of particular goods or of providing given services should be reflected in the costs of such goods or services

PPP calls for the abolition of hidden subsidies for goods and services which result from the fact that the deterioration of the environment resulting from production or services is borne by the public and not reflected in the remuneration for such goods or services

3.5 User Pays Policy

In more general terms, it means that the environmental costs of the production of particular goods or of providing given services should be reflected in the costs of such goods or services

PPP calls for the abolition of hidden subsidies for goods and services which result from the fact that the deterioration of the environment resulting from production or services is borne by the public and not reflected in the remuneration for such goods or services

3.6 Public Trust Doctrine

The Public Trust Doctrine is one of the oldest but constantly evolving doctrines relating to the ownership and use of essential natural resources. It governs the use of property where title is presumed to be held by a given authority in trust for citizens. This doctrine is provided for under article237 of the Uganda Constitution.

The flexible statutory and judicial interpretation of the responsibilities of the trustee and the resource rights of the beneficiary could lay the basis for a vibrant and thriving legal regime on public interest litigation under the public trust doctrine.

3.7 Access to information

Prior to the enactment of the NES and the Constitution, there existed no inherent right of access to environmental information nor government held information/records. The Official Secrets Act, the Public Service Standing Orders and Public Service Act were the regulating access to information, which was at a fee.

The right to environmental information is a statutory right created by S.86 of the NES.
Art. 41, confers upon citizens a right of access to information held by the state or its organs subject to disclosure not being prejudicial to state security interests or an invasion of personal privacy.

Art. 41(2) provides that parliament is under a duty to prescribe a classification system and procedural aspects of access. However, to date, information access mechanisms have not need formulated.
(See the case of Greenwatch V attorney General and NEMA)

3.8 Access to Justice

S. 72 of NES provides for a person to apply to court for an environmental restoration order against any person who has harmed, is harming or likely to harm the environment.

Sub section 2 provides;
"…it shall not be necessary for the plaintiff …to show that he has a right of or interest in the property in the environment or land alleged to have been harmed or in the environment or land contiguous to such environment or land…"

Art. 137(b) a person who alleges that an Act of Parliament or any law or anything done under the authority of law or any act or omission by any person or authority, is inconsistent with the Constitutional provisions, may petition the Constitutional Court for redress where appropriate.

Art. 50 of the Constitution of the Republic of Uganda

3.9 Sustainable Development

According to the National Objectives and Directive Principles of the Constitution, the State is empowered to promote sustainable development and to prevent or minimize damage and destruction to land, air, and water resources. In the case of NAPE V AES Nile Power Ltd (1999), an action was brought to court seeking a completion of the EIA process by NEMA.

3.10 Inter-generational &Equity Principle

Every generation has a responsibility to the next generation to preserve the rhythm and harmony of nature for the full enjoyment of a balanced and healthful ecology.
See the Oposa case.

3.11 Public Participation

This is one of the key aspects of the NEAP process. This is through community awareness of;-

- environmental concerns,
- How the changing state of environment affects their livelihood,
- And how their lifestyle impact on the environment and natural resource base.
- PP is stressed under Objective XVII, which requires the state to promote, inter alia, public awareness of the need for a balanced and sustainable management of the natural resource base.

ANNEXTURE 7

ACCESS TO ENVIRONMENTAL JUSTICE, THE ROLE OF THE JUDICIARY AND LEGAL PRACTITIONERS; EXPERIENCES AND LESSONS LEARNED.

By Hon Justice Ruby Opio Aweri, Judge of the High Court, Kampala.

6.0 Introduction:

Environmental law is a comparatively new branch of domestic and international law. Unlike older areas of law which have already acquired fairly defined concepts, principles and procedures, it is still in the process of being moulded. In this process of moulding, the Judiciary and the legal practitioners have a vital role to play. For the above reasons it is important for the Judiciary and the legal practitioners to have a clear understanding of environmental problems and creative vision of how the law can deal with them.

Much of what I will discuss will be based on how our Courts have been responding to environmental issues and the level of development of environmental jurisprudence. The paper will also tackle limitations to access to justice and way forward. **In** my view what the organizers of this workshop want is an inventory of what the bench and the bar have done in relation to environmental issues affecting our regime and the challenges they have to go through.

I will start with definition of some terms and general background.

The Term Access to environmental justice:-

According to UNEP access to justice in reference to environment means judicial and administrative procedures available to a person aggrieved or likely to be aggrieved by an environmental issue.

6.1 The Scope of Environmental Justice:-

According to Friends of the World Special briefing No.7 of November 2001, the concept of environmental justice is based on two basic premises - the first one is that everyone should have the right and be able to live in a healthy environment with access to enough environmental resources for a healthy life, and that it is predominantly the poorest and least powerful people who are missing those conditions.

Secondly, environmental justice also implies environmental responsibilities and these responsibilities are on the current generation to ensure that a healthy environment exists for the future generations, and or countries, organizations and individuals in this generation to ensure that development does not create

environmental problems or distribute environmental resources in ways which damage other people's health.
The above concept is globally known as the principle of sustainable development which was conceived in 1992 during the Earth Summit in Rio De Janeiro, Brazil.

In Uganda sustainable development is defined as development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

It is development which uses land, water, plant animal and genetic resources in environmentally friendly and non-degrading, technically appropriate, economically viable and in a socially acceptable manner.

Man derives life from the environment. One of the oldest books of civilization, the Bible states that God created environment first and from that material created man by blowing the sprit of life. I am told scientists are at advanced stages of creating human beings using life in the environment and DNA cells. What I want to emphasize is that man and environment are not separatable. Man derives all his survival from environment.

These are: food, security, leisure, tools for survival, transport, water, medicine, fuel, shelter, spiritual.

Despite all that we gain from the environment, man has not been living on this planet earth responsibly. Thus about a hundred years ago, ANTON CHEKHOY, a renowned Russian Dramatist and story writer, warned mankind against environmental degradation:

> **"Human beings have been endowed with reason and a creative power so that they can add to what they have been given. But until now they have been not creative, but destructive. Forests are disappearing, rivers are drying up, wildlife is becoming extinct, the climate is being ruined and every passing day the earth is becoming poorer and uglier."**

Those wise words are still relevant to this day. The media is full of concern about our environmental degradation.

Because of the importance of the environment to mankind, the need to use law to protect the environment and sustainable development becomes crucial, hence the role of the judiciary and Legal Practitioners. As was expressed by the **UNEP Executive Director** during the Global Judges symposium in Johannesburg South Africa, 18th August 2002:

> **"Law is the most prevalent and enduring foundation for orderly responses to global, regional and national environmental problems……..At the national level, law remains the most effective means of translating sustainable development policies into action. A Judiciary well informed of the rapid expanding boundaries of environmental law and in the field of sustainable development, and sensitive to their role and responsibilities in promoting the rule of law in regard to Environmentally Friendly Development, can playa**

critical role in the vindication of the public interest in a healthy and secure environment through the interpretation, enhancement and enforcement of environmental law".

Last year the **Deputy chief Justice** in a similar workshop like this one, held the same view and it is worth quoting:

"Solid legal framework and institutions are therefore essential in achieving sustainable development and effective nature resource management, whether the focus is food security, water quality, agricultural production, land use and management; well designed Laws and functioning legal system have a crucial role to play in developing countries like ours. These laws and institutions help to build foundations for good governance, resolve conflict and as a result maintain peace and security of the person and property. They protect rights and define responsibilities. They enable meaningful participation of all types of stakeholders from Central Government to rural communities. These laws when appropriate, fair and predictable encourage investment and facilitate the operations of markets. They also set norms for environmentally responsible behavior".

As a matter of emphasis, at the end of the above symposium, the Global judges formulated principles, the **Johannesburg principles** which should guide the judiciary in promoting the goals to sustainable development through the application of the rule of law and democratic process. Those principles were based on the following considerations:

- *An independent judiciary and judicial process is vital for the implementation, development and enforcement of environmental law and that members of the judiciary as well as those contributing to the judicial process at the national, regional and global levels are crucial partners for promoting compliance with, and implementation and enforcement of international and national environmental law.*

- *The rapid evolution of multilateral environmental agreements, national constitutions and statutes concerning the protection of environmental increasingly requires the Courts to interpret and apply new legal instruments in keeping with the principles of sustainable development.*

- *The fragile state of the global environment requires the judiciary as a guardian of the rule of law, boldly and fearlessly to implement and enforce applicable international and national laws, which will assist in alleviating poverty and sustaining and ensuring that the present generation will enjoy and improve the quality of life of all peoples, while also ensuring that the inherent rights and interests of succeeding generations are not compromised.*

- *The judiciary has a key role in integrating Human Values set in the United Nations Millennium Declaration: Tolerance, Respect for nature and shared responsibility into contemporary global civilization by translating these shared values into action*

through strengthening respect for the rule of law both internationally and nationally.

- *The Judiciary, well informed of the rapidly expanding boundaries of environmental law and aware of its role and responsibilities in promoting the implementation, development and enforcement of laws, regulations and international agreements relating to sustainable development, plays a critical role in the enhancement of public interest in a healthy and secure environment.*

- *The importance of ensuring that environmental law and law in the field of sustainable development feature prominently in academic curricula, legal studies and training at all levels, in particular among judges and others engaged in the judicial process.*
- *The Deficiency in the knowledge, relevant skills and information in regard to environmental law is one of the principal causes that contribute to lack of effective implementation, development and enforcement of environmental law.*

- *The need to strengthen the capacity of judges, prosecutors, legislators and all persons who playa critical role at national level in the process of implementation, development and enforcement of environmental law.*

- *The people most affected by environmental degradation are the poor and that, therefore, there is an urgent need to strengthen t he capacity of the poor and their representatives to defend environmental rights, so as to ensure that the weaker sections of society are not prejudiced by environmental degradation and are enabled to enjoy their right to live in a social and physical environment that respects and promotes their dignity.*

In a nutshell, what can be derived from the **Johannesburg principles** is that since **the Rio Declaration in 1992** the issue of access to environmental justice has taken a global and national dimensions.

Mandate:

The key prayers in the administration of justice are the judiciary and the Bar. The Courts of Uganda derive judicial power from the constitution. Article 126 (1) of the constitution provides that judicial power is derived from the people and shall be exercised by the Courts in the name of the people and in conformity with the law and with the values, norms and aspirations of the people.

The same further provides that:

(a) Justice shall be done to all irrespective of their social or economic status;
(b) Justice shall not be delayed;
(c) Adequate compensation shall be awarded to victims of wrongs;
(d) Reconciliation between parties shall be promoted; and
(e) Substantive justice shall be administered without undue regard to technicalities.

The constitution further guarantees independence of the judiciary. Access to justice is therefore a constitutional guarantee.

In Uganda, jurisdiction to hear matters with regard to the enforcement of constitutional and other laws related to the environment lies with the Magistrates' Court and the High Court. In cases of the decision of NEMA on environment impact assessment no appeal shall lie to any Court but High Court shall have supervisory powers.

6.2 Need for access: -

A number of environmental issues are provided for under Article 245 (a) (b) and (c) of the Constitution; The National Environment Act (NEA) and the land Act and many other Acts and regulations. All those revolve around the following:

(a) The right to protect and preserve the environment from abuse; pollution and degradation;

Pollutions of:

(i) water - drinking water, water supply, beaches, marine life; inland water, industrial affluent.
(ii) air - motor vehicles, industrial emission and smoke etc.
(iii) Land - forest, soil pollution, soil erosion, conservation, protection, exploitation of mineral resources, agriculture.
(iv) Noise - motor vehicles, aircraft, industrial noise prayers, discos, etc.
(v) Waste - waste management, disposal, packaging and recycling.
(vi) Hazardous substances - chemicals, radio active and nuclear materials, chemicals, genetically engineered organisms, etc.
(vii) Other pollutions - Odors, tobacco smoke, pesticides, oil litter, vibration.

(b) Protection of wild life;
(c) Protection of flora/vegetation;
(d) Industrial compliance - Licenses and permits; (e) Poverty;
(1) Good governance.
(g) Sustainable development.
(h) Environmental awareness.

6.3 <u>Benchmark indicators of Access to Justice:</u>

I. Legal and administrative framework.

(i) The 1995 constitution of Uganda.

The constitution provides for environmental protection and conservation in a holistic manner right from its national objectives and directive principles of state policy. It provides that the state shall promote sustainable development and public awareness of the need to manage land, air, water and resources in a balanced and sustainable manner for

the present and future generations. It also provides for the protection of important natural resources, including land, water, wetlands, minerals, oil, fauna and flora on behalf of all the people of Uganda.

It further provides that the utilization of natural resources are to be managed in such a way as to meet the development and environmental needs of present and future generations; and in particular the state is required to take all possible measures to prevent or minimize damage and destruction to land, air, water resources due to pollution or other causes.

Article 39 of the constitution provides for the right to a clean and healthy environment. That article is supported by Article 50 which gives any person locus standi to take judicial action to redress the breach of a fundamental right, irrespective whether the breach affects him directly or not.

Article 245 of the constitution empowered parliament to provide for measures intended to:

(a) protect and preserve the environment from abuse, pollution and degradation.
(b) to manage the environment for sustainable development, and
(c) to promote environmental awareness.

As a result of the above, numerous statutes were enacted as we shall see shortly.

(ii) National Environment Act Cap. 153 Laws of the Republic of Uganda Revised Editions, 2000 volume VII.

The above law commenced operation for sustainable management of the environment.

The Act sets out major principles of environment management, namely:

- The right to a healthy environment.
- Public participation.
- Sustainable development.
- Polluter pays principle.
- Environmental awareness.
- Environmental assessments of proposed projects. Environmental co-operation.
- Access to justice etc.

The Act also established the National Environment Management Authority. Its functions are provided under section 6 of the Act.

The Act grants powers to the District to manage the environment: See Section 14. In doing that they have powers to make bye-laws. A number of districts have come up with such bye-laws e.g. Masindi District.

The Act makes it mandatory for certain projects to have environmental impact assessment before they are undertaken. See part V of the Act.

The Act provides for offences under part XIII of the Act i.e. section 95-102. The act also provides for the remedies that Court can award:

(i) an environmental restoration order.
(ii) forfeiture of the substance, equipment and appliance to be borne by the accused.
(iii) the cancellation of any license, permits or other authorization given under the Act.
(iv) that in addition to any fine, the accused does community work that promotes the protection of the environment.
(v) the issuance of restoration order against the accused.
(vi) Imprisonment or fine ranging from three months to 36 months, shs.300,000/=, shs.3,00,000/= respectively.

Other legislations:-

The following are other legislations that contain principles relating to access to environmental justice:

- The Local Government Act 1997 volume X, Laws of Uganda 2000 Revised Edition. (Principles of public participation).
- Water Act Cap.152 Laws of the Republic of Uganda 2000 Revised Edition Vol. VII. (deals with sustainable use of water and public participation).
- The land Act Vol. IX Laws of the Republic of Uganda 2000 Revised Edition. (Sustainable use of resources and public trust doctrine).
- The National Environment (control of smoking in public places) Regulations 2004.

The above law provides that every person has the right to clean and healthy environment and the right to be protected from exposure to second hand smoke. It also provides that every person has a duty to observe measures to safeguard the health of non-smokers. It further provides that every head of family is responsible for creating a climate for children to be free of second hand smoke: Regulation 3.

Under Regulation 4 there are public places where smoking is prohibited. They are:

- Offices, office buildings and work places including individual offices, public areas, corridors, lounges, eating areas, reception areas, lifts, escalators, foyers, stairwells, toilets, laundries, amenity areas;
- Court buildings;
- Factories;
- Hospitals, clinics and other health institutions;
- Educational institutions of all levels;

- Premises in which children are cared for;
- Public places of worship;
- Prisons;
- Police cells;
- Public service vehicles and other means of public transport terminals, including airports and airfields;
- Retail establishments including markets and shopping malls;
- Cinemas and theatrical performance halls;
- Sports stadia.

Under Regulation 5 there are places where smoking is restricted by providing designate rooms in which smoking can take place. These are:

- Public paces of lodging;
- Bars;
- Restaurants;
- Discotheques.

Regulation 13 provides for penalties.

6.4 II. Experiences and Lessons learned

In light of the above provision there has been an increase in environmental jurisprudence especially in the field of public interest litigation which can be demonstrated by a growing number of cases. One of the leading cases on the various aspects of access to environmental justice is the case of **Greenwatch Vs. Attorney General & another, Miscellaneous Cause No. 140/2002** where Ag. Justice Lameck N. Mukasa made several landmark pronouncements on several aspects of access to environmental justice.

In that case, Greenwatch which is a Non-governmental organization registered and incorporated as a Company Limited by guarantee with the objectives of "watching" on issues and problems of environmental management sued the Attorney General and the National environmental management Authority (NEMA) seeking the following orders and declarations:

i) A declaration that manufacture, distribution, use, sale, disposal of plastic bags, plastic containers, all other forms of plastic commonly known and referred to as "kavera" violates the rights of citizens of Uganda to a clean and healthy environment.

ii) An order banning the manufacturer, use, distribution and sale of plastic bags and plastic containers of less than 100 microns.

iii) An order directing the second respondent to issue regulations for the proper use and disposal of all other plastics whose thickness is more than 100 microns including regulations and directions as to recycling re-use of all other plastics.

iv) An environmental restoration order be issued against both respondents directing them to restore the environment to the state which it was before the menace caused by plastics.
v) An order directing the importers, manufacturers, distributors of plastics to pay for the costs of environmental restoration.
vi) No order be made as to costs.

When the matter came for hearing, the State Attorney who represented the Attorney General raised three preliminary points of objection:

The first one was that the application did not disclose a cause of Action against the Attorney General;

The Second one was that the application was not proper before Court in that it was brought by the Applicant on behalf of other Ugandans who had not authorized the Applicant to do so and without leave of Court as legally required under order 1 rule 8 of the Civil Procedure Rules before filing a representative suit.

Thirdly that the application is supported by defective affidavits which should be rejected. I shall not dwell on this objection in this paper.

On the first objection it was contended for the Respondents that the application did not satisfy the three elements to support a cause of action as was set out in **Auto Garage V s Motokov (No.3) 1971 EA 514** that:

(i) the Plaintiff (Applicant) enjoyed a right;
(ii) that the right has been violated;
(iii) and the defendant (Respondent(s) is liable.

The Learned Judge observed that since the Applicant was a Ugandan company it was entitled to a right to a clean and a healthy environment under Article 39 of the Constitution and Section 4 (1) of the National Environment Statute, Statute 4/95 which provides that every Ugandan has a right to a clean and healthy environment.

The Learned Judge held further that the Applicant's right and cause of action was based on the allegation that the uncontrolled and indiscriminate use and disposal of plastics had caused harm to the environment and the plastics used as carrier bags, containers were dangerous to human health and life.

The Learned Judge made further references to:

Article 20 (2) of the Constitution which provides:

> **"The rights and freedom of the individual and groups enshrined in this chapter shall be respected, upheld and promoted by all organs and agencies of the Government and by all persons.**

Article 245 of the Constitution which provides:

"Parliament shall, by law, provide for measures intended-
(a) to protect and preserve the environment from abuse, pollution and degradation.
(b) to manage the environment for sustainable development; and
(c) to promote environmental awareness,;

The Constitution under the National Objectives and Directive Principles of State Policy Objective XXVII provides:-

"The Environment"

(i) The State shall promote sustainable development and public awareness of the need to manage land, air, water resources in a balanced and sustainable manner for the present and future generations.
(ii) The state shall promote and implement energy policies that will ensure that peoples' basic needs and those of environmental preservation are met".

On the cause of action against t he Attorney General, the Learned Judge concluded as follows:

> **"I have studied the application and the two affidavits filed in support and found them pointing a finger at the State that it has failed or neglected its duty towards the promotion or preservation of the environment. The State owes this duty to all Ugandans. By so failing or neglecting the government is in breach of its duty towards the citizens of Uganda. Any concerned Ugandan has a right of action against the Government of the Republic of Uganda, for that matter against the Attorney General in his representative capacity, to seek the enforcement of the failed or neglected duty of the State"**

On the cause of action against the National Environmental Management Authority, the Learned Judge observed that NEMA had a statutory duty under Section 3 of the NEMA Statute to ensure that the principles of environmental Management were observed i.e.

a) to assure all people living in the country the fundamental rights to an environment adequate for their health and well being

b) to establish adequate environmental protection standards and to monitor changes in environmental quality;

c) to require prior environmental assessment of proposed projects which may significantly affect the environment or use of natural resources.

d) to ensure that the true and total costs of environmental pollution are borne by the polluter.

Other functions as stipulated in Section 7 of the Statute.

The Learned Judge considered the above duties and functions of the 2nd Respondent and concluded that it had failed in its Statutory duty to ensure that the principles of Environmental Management were observed, which duty it owed to the citizens of Uganda. Hence there was a cause of action against it.

On the second leg of the objection that the Applicant had no locus before the Court in that it did not comply with the provisions of Order 1 rule 8 of the Civil Procedure Rules, the Learned Judge followed the decision of the Principal Judge in the case of **the Environmental Action Network Ltd Vs The Attorney General and National Environmental Management; Miscellaneous Application No. 39/2001** where he stated

> **"--------the State Attorney failed, in his preliminary objection, to distinguish between actions brought in a representative capacity pursuant to Order 1 rule 8 of the Civil Procedure Rules, and what are called Public interest litigation which are the concern of Article 50 of the Constitution and S1 26 of 1992. The two actions are distinguishable by the wording of the enactments or instruments pursuant to which they are instituted. Order 1 rule 8 of the Civil Procedure Rules governs actions by or against the parties (i.e. Plaintiff or defendant) together with parties that they seek to represent and they must have similar interest in the suit.**
>
> **On the other hand, Article 50 of the Constitution does not require that the Applicant must have the same interest as the parties he or she seeks to represent or for whose benefit the action is brought".**

The Learned Judge accordingly concluded that the wording of Clause 2 of Article 50 grants locus to any concerned person or organization to bring a public interest action on behalf of groups or individual members of the country even if that group or individual is not aware that his fundamental rights or freedom are being violated.

On Public awareness, the Learned Judge observed:

> **"There is Limited Public Awareness of the fundamental rights or freedom provided for in the Constitution, let alone legal rights and how the same can be enforced. Such illiteracy of legal rights is even evident among the elites. Our situation is not much different from that in Tanzania where Justice Rukangira, in the case of Rev. Christopher Mtikilla Vs The Attorney General, High Court Civil case No.5 of 1995, stated:**
>
> **"Given all these and other circumstances, if there should spring up a public spirited individual and seek the Court's intervention against legislation or actions that prevent the Constitution the Court, as guardian and trustee of the Constitution and what it stands for, is under an obligation to rise up to the occasion and grant him standing"**

In conclusion I find the above case very pertinent on the following aspects of access to environmental justice:

- Procedural issues;
- Cause of action.
- Locus Standi; and
- Public awareness.

The above authorities not only demand but provoke the bench and the bar to stand for those who cannot speak for themselves as a matter of Constitutional duty.

6.5 Other cases on access to environmental justice

1. **Greenwatch & another Vs. Golf Course Holdings HCCS No. 834/2000.**

   The above suit was brought under Section 72 of the NEMA Statute, Statute 4/9.5.,.-- The Plaintiffs, renown public litigants claimed that the Defendant was constructing a hotel on a wetland and green areas in Kampala against the law on sustainable Development.

2. **National Association of Professional Environmentalists (NAPE) Vs. AES Nile Power Ltd, High court Miscellaneous Cause No. 286/99.**
   The above case is on the controversial AES Nile Power project at Bujagali. The Applicants took an action to restrain the respondent from concluding a power purchase agreement with the Government of Uganda until NEMA had approved an Environmental Impact Assessment (EIA) on the project as required by Section 72 of the NEA. It was contended that a protective measure with the project could invoke as part and parcel of accessing the constitutional guarantee of the right to a clean and a healthy environment and therefore avoiding compliance was directed at the NEMA statute hence the Constitutional Regime of environmental rights in Uganda. Hon. Justice Okumu held among other things that Section 72 of the NEMA Statute was an enactment of a class actions and public interest litigation and abolishes the restrictive standing to sue on locus standi doctrine by stating that a Plaintiff need not show a right or interest in the action.

3. **The Environmental action Network Ltd vs. The Attorney General and NEMA Miscellaneous Cause No. 39/2001.**

   The above case is on a right to clean environment. The Hon. The Principal Judge held *inter alia* that the applications brought under Article 50 of the Constitution are governed by the fundamental rights and freedoms (enforcement procedure) Rules S1 No. 26/92. Hence no need for notice of intention to sue, that being public interest litigation.

4. **Greenwatch Vs. Hima Cement 1994 Ltd.**

   This was on the right against pollution. Hima Cement Factory was found to be

emitting over 80 tons of cement dust into the atmosphere from its factory. The same was causing harm and damage to people, animals, crops and the general environment. The Plaintiff took an action as a public litigant to stop the cement factory from polluting the environment, seeking pollution and environmental restoration order. The matter was however resolved amicably.

5. **Greenwatch Vs. The Attorney General and Uganda Electricity Distribution Company Ltd.**

   The above case illustrates the point that access to environmental justice requires access to information as provided by Article 41 of the Constitution.

6. **Greenwatch Vs. Uganda Wildlife Authority and Attorney General Miscellaneous Application No.92/2004 (Arising from Miscellaneous Application No.I5 of 2004).**

   The Applicant whose objectives include among others protection of the environment, including but not limited to flora and fauna, increasing public participation in the management of the environment and natural resources, enhancing public participation in the enforcement of their right to a healthy and clean environment brought an action against the Respondent for a temporary injunction restraining them from exporting, transporting, removing, relocating any chimpanzee from Uganda to the Peoples' Republic of China, or any other place or country in the world until the hearing and determination of the main application.

The main grounds of the application were set in paragraph 9-18 of the Affidavit in Support of the application:

9. That by removing chimpanzees from their natural habita1 and exporting them to China the Respondents would violate the Applicant's right to a clean and healthy environment as enshrined in the Constitution.

10. That the Constitution demands that the state and all its such organs protect the natural resources of Uganda including flora and fauna and as the decision to export chimpanzees from Uganda contravenes this directive principle of state policy.

11. That the decision to export chimpanzee is null and void as it was made ultravires the powers of the Respondents.

12. That the law empowers the Respondents to protect flora and fauna where they are and have no powers to alter the environment or move flora and fauna in away that is not in the best interest of the environment.

13. That the decision to export chimpanzees contravenes the Constitution directive principle of state policies that requires the state to ensure conservation on all natural resources.

14. That it is the duty of all the people of Uganda including the Applicants to uphold and defend t he Constitution and that this application is made in that spirit.

15. That Applicants, and all other citizens of Uganda cannot enjoy a clean and healthy environment unless it had all its amenities, to wit air, water, land and mineral resources, energy including solar energy and all plant and animal life.

16. That the Applicant would therefore be aggrieved by the decision and the action of the Respondents in exporting chimpanzees from Uganda, which action subtracts an essential ingredient of their environment.

17. That it is estimated that there are only 5000 chimpanzees left in Uganda and therefore any further reduction in this number significantly affects the fauna component of the environment in Uganda.

18. That chimpanzees are not goods or chattels, they do not belong to the Government of Uganda but are natural heritage, and a gift from God and the Respondents are only protecting them as trustees of the people of Uganda. "

When the matter came for hearing, Learned Counsel for the Respondent, Dr Byamugisha raised a preliminary objection and submitted that the application was bad in law for want of a statutory notice against the Respondents. Mr. Kenneth Kakuru who appeared for the Applicants contended that the requirement for Statutory notice obtains only in ordinary suits but not where suits are brought under Article 50 of the Constitution to redress violation of Constitutional rights. He relied on the case of **Dr J.W. Rwanyarare and others Vs Attorney General: Miscellaneous Application No.85/93** where it **was** held that in matters concerning enforcement of human rights under the Constitution no statutory notice was required because to do so would result in absurdity as the effect of it would be to condemn the violation of the right and deny the applicant the remedy. He argued further that the Rules (under Statutory Instrument 26 of 1992) are specific for the enforcement of the rights which does not require Statutory Notice.

The court held that in matters concerning enforcement of human rights and freedom under the Constitution, no statutory notice would be required as to do so would condemn them to infringement of their rights and freedoms.

The above case is a clear illustration of how courts in Uganda have promoted easy access to environmental justice: See also **The environmental Network Ltd Vs The Attorney General and NEMA H.C. Miscellaneous Application No. 13/2001. J.H. Ntabgoba, PJ (as he then was).**

7. Advocates Coalition for Development and Environment Vs Attorney General. Misc. Application No 100/2004

The Attorney General was sued for allegedly granting Kakira Sugar Works Ltd permit/license to change land use in Butamira Forest Reserve in violation of the

public trust doctrine and without carrying out proper environmental impact assessment. It was held that the alleged granting of permit/license to Kakira Sugar Works Ltd was illegal for contravening the public trust doctrine and also no environmental impact assessment was carried out contrary to the National Environment Act

6.6 Limitations to access to environmental Justice

1. **Cost of Litigation**:

   It is a fact that access to justice involves fairness and impartially and that justice should never be a "high horse" inaccessible to the ordinary man. The Courts of Law should be cheap, easy and quick to access. Environmental matters normally involve the interest of very poor people who can hardly afford Court fees and or Lawyers fees. These are people who cannot afford to pay costs of litigation. Being a matter of constitutional importance government should come up with a separate Court fees structures in the interest of sustainable development. The question which is asked is why pay fees for the interest of the public?

2. **Security for costs**:

Since environmental justice is a matter of public interest as it promotes sustainable development how do we consider the issue of security of costs?
Sometime back, a High Court circuit at Nakawa slammed security for costs in the tune of Shs.50 million against **Greenwatch and Advocates Coalition for development in the case of Greenwatch and another Vs. Golf Course Holdings HCCS No. 834/2000**. In that case Greenwatch and Advocates Coalition for development (ACFODE) had sued Golf Course holding of constructing a hotel on a wetland and green areas and of carrying out an illegal Environmental Impact Assessment to justify their development on the plot. The Plaintiffs sought among other things, a permanent injunction to restrain further development on the plot, a declaration that the Environmental Impact Assessment carried out by Golf Course was illegal and a declaration that the said land was a wetland and t hat an environmental restoration order b e issued against the Golf Course holdings. The Learned Counsel for the Defendant applied for security for costs on the ground that the Plaintiffs were likely to loose the case and fail to pay costs since the Defendant had acquired proper lease from Kampala City Council. The Court granted the application but reduced the amount of costs claimed from 300 million to 50 million, which was to be paid within 30 days before the case could take off. One would challenge the above order on two grounds:

(a) Access to justice is a constitutional right especially of the poor. Demanding security for costs would tantamount to shutting them from their rights.
(b) Access to justice is about sustainable development, which demands that one should use his property in a manner, which will not affect others. It is not a question of ownership but a question of sustainable use of property.
Therefore demanding security for costs on such a premise would be watering

down the law to protect the environment and sustainable development.

3. Adjudicating capacity:

One of the greatest limitations to access to environmental justice is lack of technical training in environmental law. Environmental jurisprudence as a green movement is just developing. Most Judges and Lawyers on the bar graduated some decades before environmental law was being offered. Most of them get difficulties in understanding and applying basic principles of environmental law such as sustainable development and other environmental considerations. In most cases they merely get entangled on the common law principles of nuisance, negligence and trespass. There are cases to illustrate the above scenario:

(i) Byabazaire Grace Thaddeus Vs Mukwano Industries Miscellaneous Application No. 90912000 (arising from Civil suit No. 40612000).

The Plaintiff who had a home near the Defendant's factory sued the Defendant claiming that the defendant's factory was emitting smoke which was obnoxious, poisonous, repelling and a health hazards to the community around and to the plaintiff in particular who was already affected in health. The plaint was struck out on the ground that it did not disclose a cause of action and that the plaintiff did not have locus standi in that matter should only have been taken to Court by NEMA and not by the Plaintiff.

In light of what I have discussed above it is very clear that both the Court and the lawyers involved did not apply the relevant laws properly. The Plaintiff had locus standi under Article 50 of the Constitution. The issue of Locus Standi has now been resolved in the case of Greenwatch **Vs Attorney General** (supra) by Justice Lameck Mukasa.

(ii) Greenwatch (D) Ltd and another Vs Golf Course Holdings (supra).

The brief facts of this case are as set above. The Applicants sought for an injunction but the same was dismissed on the ground that the Applicants had failed to satisfy the condition for the grant of a temporary injunction i.e. proof of prima facie case, proof of irreparable damages and the balance of convenience. The Court held that the Applicants had not proved a prima facie case against the Respondent because the Respondent had land title to the property in question. It is important to note that environmental justice is not about ownership of property but on sustainable use of such property, creating a Constitutional right to health. Therefore the Court should have applied the principle of sustainable development rather than the rigid common law principles mentioned above.

(iii**) Nape Vs AES Nile Power Ltd (supra).**

In that case the Applicant sought an injunction to stop the Respondent from

signing a power purchase agreement with Government of Uganda before Environmental Impact Assessment (EIA) was carried out. The injunction was denied. The Court held, rightly in my view, that an Environmental Impact Assessment was required as a guiding environmental regulation model for implementation of certain projects (which included the instant one). The Court further held that it was a Criminal Offence for any person to fail to prepare an EIA contrary to Section 2 0 of the A ct. In denying the injunction t he Learned Judge had this to say:

"Although the Applicant cited the Section and contended that the Respondent is likely to harm the environment he has not prayed for an order to restore the environment. What he has sought is an injunction to stop signing of the agreement and declaration. An injunction of this nature cannot be given in my view since the agreement perse does not alter the environment though the execution thereof places the respondent in a position so as to be able to alter the environment by commencing works. I would conclude here that if this is correct then the order sought relates to matter that by itself is not proximate to environmental damage as such though the signed agreement could be evidence of a reasonable likelihood of possible harm about to be done on the environment".

It is the statutory duty of NEMA to see that the law on sustainable Development is enforced to the last letter. One of the tools for enforcing the same is through EIA. The letter and sprit of the law makes it a Criminal offence for anyone who fails to prepare a proper EIA. Those were the findings of the Court. The Court further found that executing the agreement before EIA could place the Respondent in a position as to be able to alter the environment by commencing works. In light of the above status quo one would certainly contend that an injunction sought was very proximate to the environmental concerns of the Applicant thereby concluding that the Court did not apply proper principles of environmental law.

(iv) **<u>Buganda Road Cr. Case No. 73512001 Uganda Vs. Ddungu:</u>**

Although Environmental offences by nature appear to be of strict or vicarious liability, the Statutes do not expressly state so. This is likely to cause controversy. A case in point is Uganda Vs Ddungu Buganda Road Cr. Case No. 73512001.

That case involves NEMA and a Company called COIN Ltd. Mr. Ddungu was taken to Court as one of the directors of COIN Ltd for constructing a structure on a wetland and failure to carry out a n Environmental improvement order, among other things. Those allegations were supposed to have occurred between March 2000 and January 2001 at COIN Ltd.
The Court found that the alleged crimes had been committed but held that it had not been proved that it was the accused (Ddungu) who had committed the same personally or under his instructions since COIN Ltd had more than one director. However after the acquittal the Court went ahead to make restoration order

against the management COIN Ltd on the basis that the Accused was part of the management. There is therefore need for clear predictability of the law.

(v) **Rev. Grace Erisa Sentongo Vs. Yakubu Tanzanza. Nakawa Misc. Application No 8/2003(Lvdia Mugambe Magistrate Grade I)**

The defendant was sued for nuisance in the main suit for constructing abattoir adjacent to the plaintiff's residence at Lweza Zone. The suit was for a declaration that the construction of the abattoir was a violation of right to a clean and healthy environment under article 39 of the constitution. The matter was dismissed on a preliminary objection that Magistrates Court have no jurisdiction to entertain matters brought under article 50 of the constitution. This case will help in streamlining the jurisdiction of the Magistrates Court in environmental cases.

4. Delays:

Another drawback to access to environmental justice is delays of justice. Justice delayed is no doubt justice denied. The Constitution of the Republic of Uganda in Article 126 (2) (b) provides that justice shall not be delayed. Environmental justice ism ore crucial than ordinary justice as it is aimed at protecting human health and the environment for posterity. Environmental jurisprudence in Uganda has shown that our courts are not quick in redressing environmental matters expeditiously. A case in point is Greenwatch (D) Ltd and another Vs Golf course Holdings Ltd (supra).

That case has not been resolved and yet the hotel has now been completed and is now in operation. The case is unlikely to take off in view of an order for security for costs against the Applicants which I have indicated earlier.

5. **Public Participation**:

The Constitution of Uganda provides for public participation in the administration of justice. However in environmental justice, public participation is very poor. This may be due to the fact that the majority of the citizens are ignorant of their environmental rights. Associated to this is an element of poor leadership. For example the issue of high power tariffs have failed to be resolved and yet parliament had made a resolution to have it reduced.

A greater proportion of our citizenry are also oblivious of environmental damages surrounding them more especially when the damage is caused by intangible processes. For instance when Lt General Tinyefuza raised an issue of noise from a nearby mosque which was affecting his environment very few people showed concern about the damage.

Public participation is a function of access to information which is guaranteed under Article 41 of the Constitution. Access to information is an indicator of transparency and accountability in public affairs. There is a saying that "an ignorant or ill informed

or misinformed populace is prone to manipulation or exploitation as it does not know its rights.

Section 85 of the National Environment Act gives freedom of access to environmental information. However, our jurisprudence shows that in certain cases and for unknown reasons Government is not willing to grant its citizen access to information as a Constitutional right. An example is the case of Greenwatch Vs. The Attorney General and Uganda Electricity Distribution Company Ltd (supra).

6. **Poor Government policy:**

There is contention that Government is interested in attracting investors at the expense of sustainable development and when such investors are challenged they seek protection from the executive. Challenging such investors become a political risk and very few Lawyers would be willing to take up such cases. This may explain the reason why cases of public interest litigation are being persued by very few firms of Advocates.

7. **Corruption attributed to the enforcement agencies:**

8. **Advocates' Act and Law Council:**

Access to Environmental Justice is a Constitutional right. This is naturally supported by access to information. Recently however, the Law Council came out with a directive under the Advocates Act stopping Advocates from expressing their opinions publicly on Legal and Constitutional issues. Considering the fact that a right to healthy environment is a fundamental right granted by the Constitution, how tenable is that directive? My personal view is that writing an article on a legal and a Constitutional matter does not constitute touting except that it should not offend the rule of subjudice.

Our citizens should be informed of the Legal and Constitutional issues governing them. I would go by the practice in the United States where Advocates are allowed to advertise and tout for business. After all when I get a poor lawyer I am the one to pay costs. Why is it that the same law does not allow me room for choice?

9. **General fear of Litigation**:

Poor access is also due to the fact that generally people fear litigation for various reasons:-

- lack of resources and familiarity with legal institutions
- lack of knowledge of how to go to Court
- lack of knowledge and trust of remedies available to them. People associate Court with imprisonment

10. **Procedural constraints:**

Another drawback to access to justice is how a dispute over alleged or threatened degradation may reach a court of justice.

In Uganda like other common law jurisdictions a court is seized with jurisdiction only after a formal pleading in filed. Other jurisdictions have however departed from the above orthodox rule. The best example is the Indian Supreme Court as seen in the case of **SUDIP MAZUNDAR Vs STATE OF MADYA PRADESH (1994) SUPP 2** Supreme Court cases 327.

In that case the court gave an order on the basis of a letter addressed to the Chief Justice by a journalist. In that letter the journalist alleged that the safety precautions in the Indian Army's ammunition test firing range in Madya Pradesh were inadequate, with the result that villagers in the vicinity, who tended to stray into the range, were either killed or injured. After hearing the respondents the court gave an order requiring the state government to take adequate precautions. The court also laid down a time frame within which the order was to be complied with.

In another case of **M.C. Mehta Vs Kamal Nath and others (1996) Supp 10 S.C.R. 12** the court acted in a news item which appeared in a newspaper and stated that "a private motel in which the respondent's family had direct link, had floated a club at the bank of River Beas by encroaching land including substantial forest land which was later regularized and leased out to the company when the respondent was a Minister in the Central Government. It was stated that the motel used bulldozers and earth movers to turn the course of the river. The bulldozers created a new channel by diverting the flow of the river.

According to the news item, three private companies were engaged to reclaim vast tracts of land around the motel. The course of the river was being diverted to save the motel from future floods. The court took notice of the news item because the facts disclosed therein, if true, would be a serious act of environmental degradation on the part of the motel"

In its landmark judgment the court said:

"The Public Trust Doctrine primarily rest on the principle that certain resources like air, sea, waters and forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. They should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes."

Barnabas Samatta, the Chief Justice of Tanzania in his comments on the above cases had this to say:

"There can be no doubt that the dramatic change which the Supreme Court of India has effected on the manner in which courts may be reached in matters of public interest has considerably widened access to justice in that country. So far, as far as I know, no other jurisdiction has been so radical as that in its approach on access to courts. Should the East African courts follow the importance of protection of natural environment dictate that the question be answered in the affirmative? It is unlikely that there will be unanimity of judicial opinion on the correct answers to these questions."

I want to pose the above questions to the participants. Personally I am of the view that the Indian jurisprudence on access to justice is a better approach.

Another approach would be to adopt the methods applied by lay Magistrates in drafting claims on behalf of litigants. The aim is to move away from Orthodox style of litigation.

11. <u>Courts located far from poor people:</u>

The administration of justice in Uganda was established to strengthen colonial administration. To make it coercive it was established in isolated areas too far from the local people. In most cases one has to travel between 20 - 30 miles in order to access justice. Court location is to that extent a great disincentive to access to justice. This is coupled with abject poverty. Good governance requires that services should be taken nearer to the people. Courts which serve the greatest bulk of our society should therefore be established nearest to the people i.e. the Magistrates' courts.

As for the High Court, efforts have recently been made to increase the number of High Court Circuits by creating new circuits of Arua, Masindi, Soroti and Kabale: See Statutory instruments 2004 No. 20.

However the above efforts should b e supported by manpower. If there are no judges to man those stations their creation would not have much impact.

12. <u>Lack of Judicial activism:</u>

The bench and the bar should break off from Orthodox methods of litigation by being creative in order to realize the dynamic nature of the law. The words of **<u>Dr G.L. Peiris in his book. Towards Equity page 273-274</u>** is pertinent here:

> **"A judge is not there simply to discover a body of rules then to apply those rules mechanically to situations that arise in litigation where he is called upon to adjudicate. There is a creative role for the judge to discharge, in the sense that he must evaluate for himself the rationale of the rules that he is called upon to apply. It is only then that the law becomes a living mechanism, virile, vibrant, productive and of use to the community. Otherwise it becomes**

arid and sterile."

As a matter of fact judicial activism is provided in the 1995 Constitution under Article 126(1) where it is provided that judicial power should be exercised by court is the name of the people and in conformity with law and with values, norms and aspirations of the people. As to how far our courts have lived up to the above expectations is up to the participants to evaluate.

13. Poor funding:

To offer an adequate service you must have the relevant resources. A good judiciary must have a well-equipped library and modem information technology. It must also have a well motivated staff. All these need adequate funding. Without requisite resources, the judiciary is rendered weak. This reminds me of Amini's regime where courts could not sit because of lack of stationery. In fact litigants were required to provide stationery before their causes could move. Lack of adequate funding is therefore a crucial bottleneck to access to justice.

14. Political Will:

For there to be access to justice the public must have confidence in the judiciary. This can only be realized if whatever is done by the judiciary is supported by the executive at least constructively. There must not be arms twisting between the three arms of Government.
All should support and compliment each.

15. Enforcement constraints:

There is no doubt that some of the environmental legislations are very difficult to enforce. For instance I see a lot of difficulties in enforcing a ban on smoking in public places. For instance how easy is it to enforce non-smoking in sports stadia and cinema and theatrical halls? Those places should have been restricted places but not prohibited places. The same should have been with airports and airfields. They should have been made restricted places for smoking.
Other enforcement constraints relate to lack of staff and resources to enhance sound environmental management at national and district level.

16. Other limitations:

These include unfriendly court environment, Lack of understanding of language of the law and court procedure by the majority of court users.

ROAD MAP

1. Open up to allow advocates to speak freely and express their views on legal land Constitution matters on behalf of the disadvantaged or marginalized groups.
2. Our development partners like TEAN, Greenwatch, NAPE, NEMA, ACODE, ELI

and UNEP are doing a lot of support in capacity building. These organizations have committed their resources in training lawyers and judicial officers. Some of them are also doing public litigation cases as a service to the nation.

3. Need for constant training for the bench and the bar.
4. The need to create environmental and human rights department of the High court. A leaf can be borrowed from India which has developed a special "Green Bench" following the case of **VELLORE CITIZEN'S WELFARE.**
5. There is need to publicize and circulate environmental case laws and materials. Prof. Okidi, John Ntabirweki, UNEP, ELI, ACFODE, NEMA and their officers should be commended for their contributions in terms of books and other resource materials on environmental law.
6. Possibility of creating environmental tribunals.
7. The need for judicial activism.
8. Explore the possibility of making environmental education gain foundation from primary up to tertiary institutions. The same should be made compulsory in law schools.
9. All the environment enforcement agents and friends should be effectively supported and strengthened.
10. There must be political will in support of environmental protection. Government must be transparent and accountable in all matters concerning sustainable development.
11. Access to environmental justice should be incorporated in chainlink initiative to create public awareness and accountability.
12. Substantive justice should be the basis rather than technicalities.
    Courts should administer substantial and sustainable justice, justice which can stand the test of time like the case of Donoghue vs. Stevenson
13. Need for an effective, efficient and independent Judiciary which is well informed of environmental issues. The Judiciary and its members must be well funded and motivated with adequate remuneration otherwise their conscience would be compromised. The adage that whoever controls your subsistence also controls your conscience is not a recent truth. Equally important is that the method of recruitment to the Judiciary should not leave room for the appointment of officers who would be sympathetic to the political agenda of the day. I would say that the current system of an independent Judicial service commission and Parliamentary approval appears to satisfy the above goal.

Conclusion

Character, Sir Thomas More in Robert Bolt's A **MAN FOR ALL SEASONS** had this to say: *in the thickets of the law, I am a forester*. It is my sincere hope that after this workshop you will become foresters in the thickets of environmental law and practice

Thank you.

HON. MR JUSTICE RUBBY AWERI OPIO

ANNEXTURE *8*

THE ROLE OF THE PRACTICING ADVOCATE IN PUBLIC INTEREST LITIGATION *By: Phillip Karugaba*

THE ENVIRONMENTAL ACTION NETWORK (TEAN)

(www.tean.globalink.org) (tean@globalink.org)

1. INTRODUCTION

When I saw the topic that I was asked to speak on, I wondered why I would have to speak to judicial officers about the role of an Advocate. First, because judicial officers do not perform the roles of Advocates. And secondly because judicial officers have their own, wide and varied, expectations of Advocates. You all probably would love to tell me precisely how to conduct myself in your Courts.

I pondered the fun I would have had if I was to speak to judicial officers of what we Advocates would like the judicial officer's role to be in public interest litigation. It was a truly mouth watering prospect.

As officers of the Courts, judicial officer and Advocate, act as nursemaids in the delivery of justice. Our roles as such are, and should always be, complimentary. This requirement is even doubly so in the context of this new and exciting emergent field of public interest litigation.

Hopefully by explaining first what I perceive to be our role as Advocates I will be acting on the biblical advice of first removing the log in my eye before daring to touch the spec in the supposedly sightless eyes of the judicial officer. Because of the very nature of the subjects of public interest litigation, they affect us and the judicial officer must go beyond the traditional role, he or she cannot remain sightless.

2. THE CONCEPT OF PUBLIC INTEREST LITIGATION

Public interest litigation describes legal actions brought to protect or enforce rights enjoyed by members of the public or large parts of it. Borrowing from other authors could enrich this concept;

The Ford Foundation speaking on public interest law states;

> "*Public interest law is the name that has recently been given to efforts that provide legal representation to previously unrepresented groups and interests. Such efforts have been undertaken in the recognition that ordinary marketplace for legal services fails to provide such services to significant segments of the population and to significant interests. Such groups and interests include the proper environmentalists, consumers, racial and ethnic minorities and others"*[8]

[8] Quoted in JASPER VIKAS GEORGE: Social Change and Public Interest Litigation in India

According to **BHAGWATI J** in **BANDHUA MUKTI MORCHA-V-UNION OF INDIA AIR 1984 S.C;**

> *"Public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the Government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social and economic justice, which is the signature tune of our Constitution".*[9]

India has probably seen a more dynamic use of PIL than any other country. GEORGE[10] traces the history of PIL in India to the post emergency (1977-1979) era when following the massive erosion of civil liberties and with the rise of investigative journalism exposing the gory misdeeds of the Government, two Supreme Court judges notably Justice Krishina and Justice Bhagwati recognised the possibility of bringing access to justice to the poor and exploited people, by relaxing the rules of standing. PIL thus emerged as a result of an informal nexus of pro-active judges, media persons and social activists.[11]

Underlying the concept of PIL is the notion of some person or persons unable to access the Court under their own steam either on account of poverty, illiteracy, ignorance or incapacity of one sort of the other.

Another consideration to be borne in mind is the very wide and disparate applications of PIL. While in Uganda PIL has been predominantly about green issues (and tobacco control), it has also had application to broad human rights issues such as the death penalty petition, the FIDA – Divorce Act petition[12], the Seventh Day Adventist student's petition against Makerere University, the MP's challenge to the sale of UCB tower[13] among others.

However this pales in comparison to the use of PIL in India where it has been elevated to a tool of social reform giving the Judiciary opportunity to participate in the improvement of the welfare of the community. The first PIL case[14] in India focused on the inhuman conditions of under trial prisoners. It was filed on the basis of a newspaper article highlighting the plight of the prisoners. The right to speedy trial was firmly established and more than 40,000 prisoners were released.

From this great foundation, the application of PIL has spread from political issues to social issues such as the rights of the homeless to stay on the streets, the right to carry on the trade of prostitution, prisoner's rights

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[9] NARAYAMA: Public Interest Litigation [2nd Edn 2001]
[10] ibid
[11] ibid
[12] UGANDA ASSOCIATION OF WOMEN LAWYERS & 5 OTHERS -V- ATTORNEY GENERAL [Constitutional Petition No. 2 of 2003].
[13] KIKUNGWE ISSA & 4 OTHERS –V- STANDARD BANK & 3 OTHERS [High Court Misc. Application No. 394 OF 2004 and 395 OF 2004],
[14] HUSSAINARA KHATOON –V- STATE OF BIHAR AIR 1979 SC 1360 cited in GEORGE ibid

With this backdrop of a powerful legal weapon, poverty, ignorance and social need, we can move to a consideration of the role of the Advocate.

3. THE ROLE OF THE ADVOCATE

A. The Inspiration

It should immediately be apparent that the special needs of PIL are somewhat at odds with our traditional role as lawyers with our ethical constraints. How are we who are required to remain inert until activated by a fee- paying client, suddenly expected to be prowling the streets, trekking in forests and browsing newspapers to pick up hot issues? What with our designer suits, black robes, shiny cars and swank mobile phones down in the ditches with the downtrodden in the style of Mother Theresa and Ghandi?

Our Clients are traditionally supposed to seek us out, without the benefit of advertising or other solicitation. This paradigm is based on each individual being aware of their rights and having the means to understand or perceive of a violation of rights and the wisdom to seek recourse. PIL presents a radical paradigm shift. It calls for new thinking and rightly so in a context where we have high rates of illiteracy, poverty and ignorance.

Perhaps this paradigm shift may not be viewed as too strange bearing in mind the penchant of some lawyers to ambulance chase. However PIL does not hold the promise of huge damages awards that so inspire the ambulance chaser. The conduct of PIL requires great dedication and commitment of the Advocate. The Advocate must often live and breathe the cause and be inspired divinely or otherwise.

This bible verse with which I have prefaced my papers on public interest litigation first came to me off the wall of the Chambers of Kenneth Kakuru.

> "Speak up for those who cannot speak for themselves, for the rights of all who are destitute, speak up and judge fairly; defend the rights of the poor and needy."
>
> *Proverbs 31: 8-9*[15]

Little wonder then that Kenneth has led the charge in wielding PIL as a tool for social change.

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[15] *See also Psalm 82. 3-4 "Defend the poor and the fatherless. Do justice to the poor and afflicted and needy. Deliver the poor and needy. Free them from the hand of the wicked."*

B. What then must the Advocate do?

Our traditional role as Advocates has been to render legal advice and present the interests of our Clients in Court. This fundamental role does not change one bit in PIL. In fact, it is simply compounded given the poverty, ignorance, illiteracy and often the oppression or denial of rights.

George Bizos a leading South African human rights lawyer who stood up against the apartheid regime said;

> *"It has been said that the Courtroom is the last forum in which the oppressed can speak their minds. Our jobs as lawyers is to facilitate that opportunity"* [16]

An Advocate trained in institutions and earning a living in courts, built by the tax payer, has a moral obligation to help the public access justice even if it entails a sacrifice on his part.

Bizos [17] says in the same article;

> "Lawyers should do enough work to make a good living, but if they have a social conscience then they should not shun badly paid work or even, if circumstances present themselves, they should in some cases work for nothing. If they do that, not only is it good for their country or community but it is also socially significant"

PIL comes with some additional responsibility to the traditional roles. We have already pointed the need for inspiration. In acting for private clients, cash can be truly inspirational (just ask Kampala Associated Advocates). In acting for PIL matters, divine inspiration is recommended, but any will do provided it is neither bottled nor self-seeking.

In many of the cases, the private interests arraigned against the public interest cause are powerful and massive, pitting the PIL Advocate in a David and Goliath contest. Where else should help come from but above?

The PIL Advocate must;

i. Be proactive

The point has been made that PIL matters often arise in the context of some form of incapacity. The PIL Advocate must recognise this and break from the traditional mode of waiting for instructions and rather seek them out himself.

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[16] International Bar News September 2003. "Driven to defend the disadvantaged. A profile of George Bizos"
[17] Ibid

The Advocate must view the facilitation of access to justice not like a hotel bellboy who waits for the guests to arrive heavy laden at the hotel lobby but rather like an explorer going out and bringing forth new discoveries; new areas of the law that need to be addressed, new clients in need of a remedy. The PIL Advocate needs to meet these people (or causes) in their settings, help them pack their bags, arrange the transportation and then usher them into the temple of justice.

ii. Research

Very often PIL will break into new areas entirely, either in terms of local science or legal jurisprudence. Often this is compounded by the fact that the subject of the litigation may never have been covered at the University. Hence our school notes, often our point of first reference in times of trouble become irrelevant. Establishing the scientific basis to challenge the spraying of the water hyacinth or devising a solution to the emission of cement dust into the atmosphere, are most certainly not topics you will find anywhere in your notes from law school.

The PIL Advocate must be prepared to invest substantial time in tracking down relevant authority for the prepositions made in Court.

iii. Associate

As part of the preparatory process, the PIL Advocate may have to enter into relations with people from other disciplines.

This association may take the level of informal interaction between interest groups or memberships of more formal organisations. TEAN received great assistance in its PIL work from Environmental Law Alliance Worldwide (ELAW) (www.elaw.org) and Globalink (an electronic network on tobacco control) (www.globalink.org).

Greenwatch also benefits greatly from similar networks and associations.

iv. Advocate

"Advocate" is used in the sense of championing a social cause. In a break from our traditional mode, the PIL Advocate must be prepared to take to podiums, studios and newspapers, to champion the cause.

In the context of representing private interests, such action is often unnecessary and may in fact be viewed as unprofessional. In PIL matters, coming often from the backdrop of ignorance, it is necessary to educate the public on the cause and rights sought to be protected.
Even then this has to be done with every caution to avoid falling foul of our ethical restraints.

v. Persist

I add this with caution for it is perhaps more a quality required of the PIL Advocate than a role. In the course of PIL, the days are long and hard, the trials are many as are the misunderstandings sometimes even within your own camp, from the very people for whom relief is sought.

It pays to recall the words of Robert Strauss "*success is a little like fighting a gorilla. You don't quit when you are tired, you quit when the gorilla is tired"* and perhaps that sums it up quite well.

vi. Do no harm

This far we have spoken of the role of the Advocate who initiates a PIL case. There is also a role of the Advocate who defends a PIL case. My call to such Advocates is to do no harm. To do no harm to the fundamental laws and principles that underlies the PIL actions.

The common response to PIL is to raise a whole host of technical objections which have nothing at all to do with the merits of the suit. Yes as defence Counsel we can rightly claim that that is indeed our task. To defend our Client at all costs and set up such a barrier for the Plaintiff to overcome that he either gets knocked out or fails to surmount it. Preliminary objections, security for costs applications are thus common in PIL. Because of the absence of private proprietary interest in PIL, a successful application for security for costs can be devastating to the action

By do no harm, I mean that defence Counsel should remember that PIL is a tool of universal application just like a say an adapter plug. All sorts of gadgets can be connected to it. In the same way we use PIL to connect to the Courts in defence of rights.

It is rooted in the Constitution and is available to defend the rights of all. If you so devastate it by persuading the Judiciary to render it ineffective, what protection will you yourself have when you need it?

4. CONCLUSION

Thus the role of the Advocate in PIL breaks away from the traditional. New methods and approaches are required in handling new problems and fashioning creative solutions to meet the needs of society.

Hopefully, with the log now out of the eye of the Advocate, we will see better to remove that spec blurring the judicial sight for in PIL, what is required is not the traditional impartial judicial officer. No indeed, for these are often special matters often affecting the judicial officer as well, directly or indirectly. It is a job for all of us and one that we should not shirk from.

Judicial officer and PIL Advocate are partners in birthing this new creature of PIL that holds so much promise in democratising rights and access to justice. Let's reach out, hold hands and work together in this process. We owe it humanity.

"Problems can become opportunities when the right people come together"

Robert Redford

ANNEXTURE 9

PRACTCAL EXERCISE: THE MOOT.

On the 4th 2006, Mr. John Jones Basadha, the Green World learnt from the Monitor News paper, that Mr. Visram Lalani Kamji intends to develop at Masese beach on the shores of the Lake Victoria, he is a direction of a Kenya-based multinational million project. Whereas the monitor reported that Government had 'passed' the project but no EIA has been carried out at all, the company is already reclaiming the wetland by filling it with murrum. It intends to create a big hotel garden.

The Uganda Investment Authority had already granted the investment license and construction was to start immediately. The government had granted the company a 999 year, lease title although part of the land is in a forest reserve and wetland, and which is a habitat for migratory birds.

NEMA is not happy with the project and sent two inspectors who were chased and threatened by the company officers.

Nevertheless, NEMA issued a restoration ordered required the company to stop construction and restore the wetland.

The company ignored the order.

The company has bought on the site several drums of chemicals labeled "Petroleum Product Danger."

The company has refused to disclose information as to what the drums contain. But they are for use in the construction process.

On 15th May, Green World visited the project site and carried out interviews with local people. The community was not happy with the project. They fear they would lose access to firewood, honey, medical plants etc. A women's group called **Twekambe** headed by **Mrs. Christine Musoke** as chairperson with its 150 registered members, that had started selling tree seedlings feared they would loose business. Other women groups that had started handicraft business from materials obtained from the wetland had the fears. However, others are happy with the project especially men as they hope to seek employment from the projects.

Tourists had started coming to the area to watch birds, butterflies and were buying local fruit, vegetables and handicrafts. The forests reserve is the only one where migratory birds from Europe rest on their journey to and from the south. It is their only breeding place in East Africa.

The fence of the site is at the shore itself.

Nevertheless, Mr. Lalani Kamji insists he has an Investment License, a land title, approved building plans and a letter from the Minister of lands and Environment authorizing him to construct the hotel.

The government spokesperson has said the hotel is required urgently, as it has to be ready before 2007 Commonwealth Summit.

Mr. Basadha has been to Police and report this case, and also file a civil suit.

Advice on the necessary steps required to stop this project.

1. What possible charges and against who
2. What evidence is required to prove the offences?
3. What are the possible defenses available to the accused?
4. What are the possible defenses available to the accused?
5. What are the possible punishments the offender is likely to get if convicted?
6. What are the issues and likely defenses in the civil suit?

ANNEXTURE 10

GROUP DISCUSSIONS

Group One.

Kamji has been granted a lease of 99 years on a forest reserve and wet land to build a hotel. Basadha learnt of it in the media and a group of 150 women who derive likelihood from the forest are aggrieved and seek court action.

Plaintiffs

- 150 women Twekambe Group led by Mrs. Christine Musoke
- Mr. Basadha of Green world
- NEMA

Defendants

-Mr. Visram Lalani Khamji
-Attorney General
- Uganda Investment Authority

Possible charges.

S. 95 (a) National Environmental Act Cap 153
Obstruction and hindrance

S. 96 (b) National Environmental Act
Failure to prepare an E.I.A

S. 99 (h) National Environmental Act
Withholding information

What Evidence is required

-Affidavits
- Information
- State of environment report

Choice of court.

High Court
Art. 50 Constitutions S.14 Judicial Act Cap 13

Defenses

- 99 year lease
- Investment license
- Letter from M.O.L.W.E.

- Approved building plans
- Create employment
- Development of the area

Possible punishment.

S.95 imprisonment of not less than 12 months or a fine not less than Shs.120,000 and not more than 12 million shillings.

S.96 imprisonment not exceeding 18 months and a fine between 180,000 and 18 million shillings

S.99 imprisonment not less than 36 months and a fine between 360,000 and 36 million shillings.

Issues

1. Whether the grant of the lease was lawful.
2. whether one can build a hotel without an E.I.A

Possible defenses
Remedies available

<u>Group Two</u>

Facts.

Lalani Kamji of Kenya based mult project has received a 99 year lease to build a hotel at Masese beach on Lake Victoria shores which is an ecologically sensitive place.
He has began development without E.I.A and disregarded NEMA's rest

Issues

1. Whether development contravenes requirements of EIA permissible.
2. Whether the lease granted by Government on ecologically sensitive place is lawful and valid
3. What are the possible charges and against whom
4. Whether the accused have any
5. What are the remedies available?

Law Applicable.

1. Constitution
2. National Environmental Act
3. Land Act Cap
4. Uganda Wildlife Act

5. Penal Code Act
6. S. I's
7. C.P.A
8. C.P.R
9. Environmental impact assessment Regulations No. 13/98
10. National Environment (wetlands, river banks and lake shores management) Reg. No. 3\2000
11. Case Law and constitutional law

Necessary Steps

1. In statutory case against Visor
Art. 50 Constitution, 98 C.P.A
0.48 rr 1 and 2
2. Injunction application
3. Report matter to people and have Visram changed with criminal offences.

Parties to the case
-Greenwatch
-Twekambe Women's group
- Musoke
- Any person
-NEMA

Change Civil Suit
-Lalani Visram
- Attorney General
- Uganda Investment Authority

Criminal Changes

1. Failure to carry out E.I.A
C\S 20(3) and 97 NEA
2. Obstruction of NEMA inspectors C\S 96 NEA
3. Failure to comply with order c\s 102 NEA
4. Threatening with violence C\S 8\a Penal code

Evidence required

- Newspaper report
- Inspectors from NEMA (oral evidence)
-Photographs of scene
-Locus in gmo visiting
-Wanayinchi
-Any other with the leave of constitution

Defenses available

1. Lease Art. 26 Constitution 1995
2. Investment license
3. Approved building
4. Any other with leave of constitution

Possible punishments.

1. S. 96 NEA 12months imprisonment or fine of 120,000 with out exceeding 12 million shillings.
2. S. 97 NEA 8 months imprisonment or fine of 180,000 not exceeding 18million shillings

Group three

Brief facts

Kamji a Director of a Kenya based company has been granted an investment license to construct a hotel on a piece of land in respect of which he has been granted a Government lease of 99 years at Masese beach on the shores of Lake Victoria. Part of the land is forest reserve and wet land which a habitat for migratory birds.

The community obtains firewood, honey, medicine plants, and handcraft materials from the affected area. The forest reserve and wetland is also an attraction to tourists.

Kamji has not carried out the EIA (Environment Impact Assessment) for the intended hotel project. He has already placed on the cite drums of chemical. He is already reclaiming the wet land by filing the wet land with murram.
Mr. Basadha of Green wore and the local community and among others are not happy with Kamji's project.

Issues.

1. Whether Kamji (or his co.) has by his activity violated any law.
2. What are the possible charges and against whom.
3. What evidence is required to prove the offences?
4. What are the possible defenses available to the accused?
5. What are the issues likely to arise in civil proceedings?
6. What are the defenses available to the defendants if any?

The Laws Applicable.

1. The constitution of Uganda 1995
2. The National Environment Act
3. The Land Act
4. The investment Code Act
5. Uganda Wildlife Act
6. National Forestry and Tree Planting Act
7. The Local Government Act
8. The Environment Impact Assessment Regulations No. 13 of 1998
9. The National Environment (management of ozone depleting substances and product) Regulations No. 63 of 2001
10. The Penal Code
11. The National Environment (wetland, river banks and Lake shores management) regulations No.3 of 2000
12. Case Law

Resolution of issues.

Issue No.1
Hindering and obstruction of environmental inspector in execution of his duties c\s 96 (a) of the Environment Act.

Person to be charged
Khanji

2nd Offence

Failure to comply a lawful order given by environmental inspector c\s 96 (b) of the National Environmental Act.

Person to charge
Kamji

3rd Offence
Failure to submit to prepare impact assessment c\s 97(b)
-Against Kamji

4th Charge
Failure to comply with Environmental
Restoration order c\s 102 (a) of The National Environmental Act

Against Kamji

5th Charge.
Impacting hazardous waste c\s 100 (b) of the National Environmental Act

Against: Kamji

6th Charge
Dumping substance in the wet land c\s 35 (1)(a) of the National Environmental Act.

Resolution of issues No.2

1. Oral evidence
2. Expert evidence to show what the petition order brought on the land is hazardous to environment.
3. Photograph of the deposited marum and sight
4. Visit to the locus
5. Evidence of the some members of the local community

Resolution of issue No.3 (Defenses available)

1. Investment License
2. Land title
3. Application building plan
4. Letter from minister of land and environment

Issue No.4 (punishment)

1. Fine
2. Complying with restoration order
3. Imprisonment
4. Both fine and imprisonment

Issue No.5 (in respect civil proceedings and defense)

1. Whether the constitute any cause of action. Article 50 (2) the constitution
2. Who are the parties to the possible suit

IT: Green wore
IT: Twekambe women's group NEMA

Defendants: Kamji and

1. That investment license has been obtained.
2. Land title and approved building plans laws been got. Letter from the minister of land and environment.

Remedies

1. Restoration order
2. Preparing of Environmental impact Assessment
3. Cancellation of the license
4. compensation of the affected persons
5. Cost incurred in case

Forum and documents in civil action

Group Four

Facts

Jones Basadha has learnt that Viram Lalani kamji a M.D of a company intends to develop a hotel at Masese Beach on the shore of lake Victoria. There is no EIA on the project and. The company is already reclaiming the wet law by filing it with Murram.

It has already a license from UIA and a lease from Government for 99years. NEMA inspectors to the site have been chased away although it has issued a restoration order which the company has ignored.

The company has brought hazardous chemical on the site without disclose much information about them, for use in construction of members the community are happy although there are few self seekers in support. The project may have serious effect on ecotourism.

Government is in support of perfect. Basadha has complain to police and filed a suit.

Steps

- Refer to police
- File a suit
- petition
- IGG
- Parliament sectoral committee on environment

Issues

-Possible charges and against whom
-Evidence required
-Possible defenses
-Remedies
Issues and lines defenses
In civil suit?

Law Applicable.

1. Constitution of Uganda 1995 (as amended)
2. The National Environment Act
3. The Penal Code Cap. 120
4. The Uganda Wildlife Act
5. Invest Code Act Cap 92
6. Environmental impact assessment Regulations No. 13/98
7. The National Environment (wetland, river banks and Lake shores management) regulations No.3 of 2000
8. Case Law

Discussion.

1. Possible changes

-Hindering or obstructing an Environment inspector exercising his duties c\s 96(a) NES Act

Failing to control which lawful order c\s 96 (b) NES\ Act

-communication service

-environmental recreation order

- refusing an inspector entry upon law which he is empowered to do c\s 96 (c) NES/Act

-threatening violence c\s 81(b) PCA

- Failure to prepare environmental c/s 97(b) 103 NES/Act

Parties.

Mr. Visram Lalani kamji

Company officers who chase and threaten

Evidence

(a) a statement from the environment inspector
(b) statement from NEMA as absence of EIA

Possible Defenses

- defenses of property
- -Land title
- Approved building
- plans
- A letter from Ministry of lands and Environment
- Justification (lawfulness)
- Government policy (invest climate\ patriotism)

Punishments

(i) Fine or imprisonment or both S.105
(ii) Fortune
(iii) Cancellation license and a title

Issues

Whether there is a cause of action and who the possible parties are.

- Jones Basadha (Green wore)
- Twekande Group (150)
- NEMA
- Visram Kanji

(a) Whether an inv license can be granted in absence of EIA
(b) Whether a company could obtain a lease of the suit law

(c) Lively references
(i) right to private property
(ii) no right violated (cause of action)

Remedy
- Injunction
- Restoration
- Forfeit construction
- Costs
- Damages

ANNEXTURE 11

TRAINING WORKSHOP TO ENHANCE ENFORCEMENT OF ENVIRONMENTAL LAWS FOR GRADE II MAGISTRATES HOTEL TRAINGLE, JINJA. 14TH- 16TH MAY 2006

LIST OF PARTICIPANTS

No	Name	Designation &address
1.	Yeteise Charles	Mwanga Magistrate Grade II
2.	Kule Moses Lubangula	Nakasongola Grade II
3.	Etot Atikatyang	Tororo Magistrate Grade II
4.	G. Wubbo- Mutenyo	Tororo Magistrate Grade II
5.	Singiza Douglas	Masindi Magistrate Grade II
6.	Okot Edward David	Kaliro Jinja Magistrate Grade II
7.	Kakooza Elias	Masaka Magistrate Grade II
8.	Imalingat Robert	Nakawa Magistrate Grade II
9.	Ojok Oceng Alfred	Makindye Magistrate Grade II
10.	Sayekwo Emmy Geofrey	Mityana Magistrate Grade II
11.	Mackay Opolot Odele	Nakawa Magistrate Grade II
12.	Draku Grace Jawe	Kakira Magistrate Grade II
13.	Nasambu Esther	Kasangati Magistrate Grade II
14.	Atukwase Kamara Jouile	Masaka Magistrate Grade II
15.	Sande Duncan Ben	Kasese Magistrate Grade II
16.	Gatera Resty	Kabala Magistrate Grade II
17.	Ndifuna M	Mbarara Magistrate Grade II
18.	Ereemye James	Entebbe Magistrate Grade II
19.	Kagoda Samuel. M	Mukono Magistrate Grade II
20.	Tiishekwa A. Rukundo	Mediator/Advocate

Resource persons/ Facilitators

1.	Kenneth Kakuru	Director, Greenwatch
2.	Waiswa Ayazika	EIA coordinator NEMA
3.	Georgina Kugonza Musisi	Legal Counsel , NFA
4.	Hon. Mr. Justice David Wangutusi	Executive Director, JSI.
5.	Christine Akello	Senior Legal Counsel, NEMA.
6.	Vincent Wagona	Ag. Principal Senior State Attorney Directorate of Public Prosecutions
7.	Hon. Mr. Justice Ruby Opio Aweri	Judge of the High Court
8.	Phillip Karugaba	The Environment Action Network (TEAN)
9.	Kaggwa Ronald	Environmental Economist, NEMA..
10.	Caroline Kintu	Magistrate Grade I, Mbarara.

Secretariat

1. Irene Ssekyana	National Coordinator, Greenwatch
2. Harriet Kezaabu	Research Officer, Greenwatch
3. Ivan Twebembere	Research Assistant, Greenwatch
4. Harriet Bibangambah	Research Assistant, Greenwatch

ANNEXTURE 12

TRAINING WORKSHOP ON ENFORCEMENT OF ENVIRONMENTAL LAWS IN UGANDA FOR GRADE II MAGISTRATES.

14th-16th May, 2006.
Hotel Triangle - Annex, Jinja.

PROVISIONAL PROGRAMME

TIME	ACTIVITY	DESCRIPTION	FACILITATION/ RESOURCE PERSON
DAY 1: Sunday 14th May,2006			
4:00p.m-onwards	Arrival of participants at Hotel Registration and workshop handouts		*Greenwatch*
7:00 pm	**Dinner**		**Hotel Management**
DAY 2	Monday : 15th April, 2006		
8:10: 8:30 a.m	Registration and Introductions Workshop Overview		Ms. Irene Ssekyana, Greenwatch
8:30- 8:45a.m	Opening remarks	Opening remarks from Director, Greenwatch	*Mr. Kenneth Kakuru Director, Greenwatch,*
8:45-9:00 am.	Official opening ceremony	Official Opening by Executive Director, Judicial Studies Institute(JSI).	*Hon. Mr. Justice D.K. Wangutusi, Executive Director, JSI.*
9:00-9:30 a.m	The Current State of environment in Uganda	Overview of environmental problems in Uganda Challenges and successes Way Forward/what needs to be done.	*Presenter: Mr. Kaggwa Ronald, Environmental Economist-NEMA.*
9:30-10:20	**Discussions**		
10:20-10:40	**TEA BREAK**		
10:40- 11: 30	The Legal and Institutional Framework for environment	*Overview of the Legal and Institutional Framework*	*Presenter: Ms. Christine*

TIME	ACTIVITY	DESCRIPTION	FACILITATION/ RESOURCE PERSON
	management in Uganda; 10 years of NEMA, Is it time for review?	*governing Environmental Management in Uganda* *-How the law has been used in environmental management* *-Need for review of the legal and Institutional framework* *- Ombudsman* *-Tribunals, appeals*	*Akello, Senior Legal Counsel, NEMA.*
11:30-11:50a.m	**Discussions**		
11:50a.m.-12:30pm	Challenges in Monitoring and Enforcement of Environmental laws in Uganda Issues: Wetlands, wildlife, water resources, land, livestock management	*Monitoring tools* *Enforcement mechanisms and tools* *Components of a good enforcement programme* *Importance of enforcement programme* *Framework of enforcement* *Challenges in enforcement* *Responding to violations of environmental laws* *Compliance, monitoring, inspections, self monitoring, methods of enforcement* *Role of different actors: Police, NEMA, judiciary*	***Presenter**: Mr. Waisswa Ayazika, Monitoring Officer, NEMA.* ***Chair**:*
12:30 - 1:00 p.m	**Discussions**		
1:00-2:00p.m	**LUNCH BREAK**		
2:00 – 2: 30 p.m.	Introduction to Environmental Law:	*History of Environmental Law* *Sources of environmental law* *Environmental Law as a distinct discipline from Tort law* *Locus standi.*	***Presenter**: Mr. Kenneth Kakuru* ***Chai**r: Ms. Christine Akello*
2:30-2:50	**Discussions**		
2:50 –	Applying the Principles of	*How environmental law principles i.e.*	*Presenter: Ms. Sarah*

TIME	ACTIVITY	DESCRIPTION	FACILITATION/ RESOURCE PERSON
3:20a.m.	Environmental Law in the Enforcement Process	*Polluter and User Pays* *Precautionary Principle* *Inter& Intra generational Equity* *Public Participation* *Public Trust Doctrine* *Sustainable Development can be used in the Enforcement process.*	*Naigaga.* *Ag. National Coordinator, Nile Basin Discourse* *Chair: Mr. Vincent Wagona*
3:20 – 3:50pm	**Discussions**		
3:50-4:10p.m.	**AFTERNOON TEA BREAK**		
4:10 – 4:40 p.m.	Criminal Aspects of Environmental Law	*What are criminal aspects of environmental law?* *Legal technicalities relevant to criminal prosecution under environmental law.* *Overview of environmental offences* *Effective enforcement through prosecution.*	***Presenter**: Mr. Wagona Vincent, Ag. Principal State Attorney Directorate of Public Prosecution* ***Chair**: Ms. Sarah Naigaga.*
4:40-5:00p.m	**Discussions**		
5:30 p.m.	**Field Excursion**		
7:30 p.m.	**Dinner**		
	END OF DAY TWO		
DAY 3	Tuesday 16th May, 2006.		
8:30 – 9:00a.m.	Access to Environmental Justice: The Role of the Judiciary	*Is the Judiciary keeping pace with protection, management and enforcement of environmental laws?*	***Presenter**: Chief Magistrate –Jinja..* ***Chair**: Mr. Kenneth Kakuru.*
9:00-9.20a.m	**Discussions**		

TIME	ACTIVITY	DESCRIPTION	FACILITATION/ RESOURCE PERSON
9:20-9:50am	Public Interest Litigation	*The Role of the Practicing Advocate.*	*Presenter: Mr. Phillip Karugaba, Spokesperson, TEAN.*
9:50 – 10:10	Discussions		
10:10-10:40a.m.	Protecting our Forests	*The Law and Policy Achievements and Challenges in the enforcement process in the protection of f*orests.	*Ms. Georgina Kugonza, Legal Counsel, National Forestry Authority (NFA).*
10:40-11:00	**Discussions**		
11:00 – 11:20	**TEA BREAK**		
11:20- 11:40	Practical aspects of Environmental Law		*Presenter: Mr. Kenneth Kakuru*
11: 40-11:50a.m.	**Practical Exercise: The Moot**	*Introduction of the moot question and explanation*	*Mr. Kenneth Kakuru*
11:50-12:30p.m	**Discussions on the Moot**	*Participants break into groups*	
12:30-1:10pm	Presentations from Group Discussions	All Participants	
1:10-1:30p.m.	Plenary of Group discussions		***Panel : Chief Magistrate-Jinja, Mr. Kenneth Kakuru***
1:30-1:40pm	**Wrap up and Recommendations**	*Way Forward*	*All Participants*
1:40-2:00pm	**Official Closing Ceremony**	***Presentation of Certificates by Guest of Honour*** ***Closing remarks by Guest of Honour***	***Remarks from Guest of Honor, Chief Magistrate-Jinja.***
2:30 p.m.	**LUNCH**		
4:00 p.m.	**Departure**		All

ANNEXTURE 13

TRAINING WORKSHOP ON ENFORCEMENT OF ENVIRONMENTAL LAWS IN UGANDA.

FOR GRADE II MAGISTRATES.

14th- 16th May, 2006.

HOTEL TRIANGLE –ANNEX, JINJA.

EVALUATION FORM.

Please answer the following questions and return the filled form to the secretariat.

1. Did you receive your invitation on time, and was the timing of the workshop convenient?

Yes **No**

2. a) Was the venue convenient and accessible?

Yes **No**
Please explain

…….
b) Rate the venue

i) Very good ii) Good iii) Fair iv) Poor

3. Were you well received on arrival by the workshop organizers?
Yes **No**

If no, Please explain.

……

4. How did you find the workshop program?
   a) **Topics**

   ……..

   b) **Duration**

   …….

5. Rate the presentations on each topic by the different Resource Persons.

a) State of Environment in Uganda.

i) Very good ii) Good iii) Fair iv) Poor.

Comment on the nature of presentation and the presenter.

…….

……..

b) Overview of the legal and institutional framework for Environmental management in Uganda.

i) Very good ii) Good iii) Fair iv) Poor.

Comment on the nature of presentation and the presenter

……

…….

c) Challenges in Monitoring and enforcement of Environmental laws in Uganda.

i) Very good ii) Good iii) Fair iv) Poor.

Comment on the nature of presentation and the presenter.

……

……

d) Criminal Aspects of Environmental Law.

i) Very good ii) Good iii) Fair iv) Poor.
Comment on the nature of presentation

…….

……..

e) Introduction to Environmental Law
i) Very good ii) Good iii) Fair iv) Poor

Comment on the presentation:

…….

f) Applying the Principles of Environmental Law in the Enforcement process

i) very good ii) Good iii) Fair iv) Poor

Comment on the nature of presentation and the presentation

……..

……..

g) Access to Justice and Procedure in Uganda

i) Very good ii) Good iii) Fair iv) Poor

Comment on the nature of presentation

……..

h) Protecting our Forests; the Law and Policy

i) Very good ii) Good iii) Fair iv) Poor

Comment on the nature of presentation and presenter.

…….

…….

i) Practical Exercise in Initiating investigation

i) Very good ii) Good iii) Fair iv) Poor

Comment on the presentation and the presenter.

……

6. Were your expectations met? Please explain.

……

……

7. Please suggest any way in which we could improve future training programmes.

……..

8. Do you think there is need to hold another workshop covering other aspects of environmental law?

Explain.

……

Thank you.

Signature: …….