INSTITUTE FOR LAW AND ENVIRONMENTAL GOVERNANCE (ILEG) CENTRE FOR ADVANCED STUDIES IN ENVIRONMENTAL LAW AND POLICY (CASELAP) NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA)

REPORT OF THE EAST AFRICA REGIONAL JUDICIAL COLLOQUIUM ON ENVIRONMENTAL LAW AND ACCESS TO JUSTICE HELD BETWEEN 10TH-15TH APRIL 2007 AT SAROVA WHITESANDS BEACH RESORT, MOMBASA, KENYA

APRIL 2007
**TABLE OF CONTENTS**

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>ABBREVIATIONS</td>
<td>1</td>
</tr>
<tr>
<td>BACKGROUND</td>
<td>2</td>
</tr>
<tr>
<td>I. OPENING REMARKS</td>
<td>3</td>
</tr>
<tr>
<td>Mr. Collins Odote, Director, ILEG</td>
<td>3</td>
</tr>
<tr>
<td>Prof C.O. Okidi, CASELAP</td>
<td>4</td>
</tr>
<tr>
<td>Dr. Muusya Mwinzi, Director General, NEMA</td>
<td>5</td>
</tr>
<tr>
<td>Mr. Martin Ololo, Representative, DFID</td>
<td>5</td>
</tr>
<tr>
<td>Professor Peter Mbithi, Deputy Vice-Chancellor, Finance &amp; Administration, University of Nairobi (Presenting Remarks by Prof G.A. Magoha, Vice Chancellor, University of Nairobi)</td>
<td>6</td>
</tr>
<tr>
<td>II. OFFICIAL OPENING ADDRESS</td>
<td>7</td>
</tr>
<tr>
<td>Hon. Justice Evans Gicheru, Chief Justice of Kenya</td>
<td>7</td>
</tr>
<tr>
<td>Hon. Justice J. W. M. Tsekooko, Supreme Court of Uganda</td>
<td>10</td>
</tr>
<tr>
<td>Justice Damian Lubuva, Court of Appeal, Tanzania</td>
<td>11</td>
</tr>
<tr>
<td>III. KEYNOTE ADDRESS: KEY ENVIRONMENTAL CHALLENGES IN EAST AFRICA</td>
<td>12</td>
</tr>
<tr>
<td>Dr. Tom Okurut, Executive Secretary, Lake Victoria Basin Commission</td>
<td>12</td>
</tr>
<tr>
<td>IV. CONCEPTS, FUNCTION AND STRUCTURE OF ENVIRONMENTAL LAW</td>
<td>16</td>
</tr>
<tr>
<td>Professor Charles Okidi, CASELAP</td>
<td>16</td>
</tr>
<tr>
<td>V. COMMON LAW FOUNDATIONS OF ENVIRONMENTAL LAW AND ITS RELATION TO</td>
<td>19</td>
</tr>
<tr>
<td>SUSTAINABLE DEVELOPMENT</td>
<td>19</td>
</tr>
<tr>
<td>Prof. Albert Mumma, University of Nairobi</td>
<td>19</td>
</tr>
<tr>
<td>VI. OVERVIEW OF THE NATIONAL FRAMEWORK ENVIRONMENTAL LAWS</td>
<td>23</td>
</tr>
<tr>
<td>(a) Dr. Muusya Mwinzi, Director General, NEMA, Kenya</td>
<td>23</td>
</tr>
<tr>
<td>(b) Christine Akello, NEMA, Uganda</td>
<td>24</td>
</tr>
<tr>
<td>(c) Mrs. Anna Maembe, The National Environment Management Council (NEMC)-Tanzania</td>
<td>25</td>
</tr>
<tr>
<td>VII. PRECAUTIONARY APPROACH TO ENVIRONMENTAL MANAGEMENT (EIA, ENVIRONMENTAL AUDIT, MONITORING AND PRECAUTIONARY PRINCIPLE)</td>
<td>28</td>
</tr>
<tr>
<td>Prof. P.J Kabudi, University of Dar Es Salaam</td>
<td>28</td>
</tr>
<tr>
<td>VIII. COMMENTARY</td>
<td>34</td>
</tr>
<tr>
<td>Prof. Francis Situma, University of Nairobi</td>
<td>34</td>
</tr>
<tr>
<td>IX. THE USE OF CRIMINAL LAW IN ENFORCING ENVIRONMENTAL LAW</td>
<td>35</td>
</tr>
<tr>
<td>Prof. Patricia Kameri-Mbote, University Of Nairobi</td>
<td>35</td>
</tr>
<tr>
<td>X. COMMENTARY</td>
<td>37</td>
</tr>
<tr>
<td>Hon. Justice RSC Omolo, Court Of Appeal, Kenya</td>
<td>37</td>
</tr>
<tr>
<td>XI. ENVIRONMENTAL TRIBUNALS AS A MECHANISM FOR SETTLING ENVIRONMENTAL</td>
<td>39</td>
</tr>
<tr>
<td>DISPUTES</td>
<td>39</td>
</tr>
<tr>
<td>Donald Kaniaru, Chairman, National Environment Tribunal (NET), Kenya</td>
<td>39</td>
</tr>
<tr>
<td>XII. COMMENTARY</td>
<td>41</td>
</tr>
<tr>
<td>Hon Justice Mroso, Court of Appeal, Tanzania</td>
<td>41</td>
</tr>
<tr>
<td>XIII. PRINCIPLES OF ECOLOGICALLY SUSTAINABLE DEVELOPMENT- ASIA PACIFIC</td>
<td>43</td>
</tr>
<tr>
<td>EXPERIENCE</td>
<td>43</td>
</tr>
<tr>
<td>Hon. Justice Brian Preston, Chief Judge of the Land and Environment Court of New South Wales Australia</td>
<td>43</td>
</tr>
<tr>
<td>XIV. COMMENTARY</td>
<td>44</td>
</tr>
<tr>
<td>Hon. Justice A. Twinomujuni, Uganda</td>
<td>44</td>
</tr>
<tr>
<td>XV. LAW REPORTING AND ITS PLACE IN ENVIRONMENTAL MANAGEMENT: THE ROLE OF</td>
<td>45</td>
</tr>
<tr>
<td>NCLR</td>
<td>45</td>
</tr>
<tr>
<td>Mrs Gladys Shollei, Editor NCLR</td>
<td>47</td>
</tr>
<tr>
<td>XVI. TRANSBOUNDARY ENVIRONMENTAL ISSUES</td>
<td>47</td>
</tr>
<tr>
<td>Professor Francis D.P. Situma, University of Nairobi</td>
<td>47</td>
</tr>
<tr>
<td>XVII. COMMENTARY</td>
<td>49</td>
</tr>
<tr>
<td>Honourable (Retired) Justice Akilano Akiwumi, Kenya</td>
<td>49</td>
</tr>
</tbody>
</table>
# ABBREVIATIONS

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
</tr>
</thead>
<tbody>
<tr>
<td>AG</td>
<td>Attorney General</td>
</tr>
<tr>
<td>CASELAP</td>
<td>Centre for Advanced Studies in Environmental Law and Policy</td>
</tr>
<tr>
<td>CJ</td>
<td>Chief Justice</td>
</tr>
<tr>
<td>DFID</td>
<td>Department for International Development</td>
</tr>
<tr>
<td>EIA</td>
<td>Environmental Impact Assessment</td>
</tr>
<tr>
<td>EMCA</td>
<td>Environmental Management and Coordination Act</td>
</tr>
<tr>
<td>EACJ</td>
<td>East African Court of Justice</td>
</tr>
<tr>
<td>EPA</td>
<td>Economic Partnership Agreements</td>
</tr>
<tr>
<td>ILEG</td>
<td>Institute for Law and Environmental Governance</td>
</tr>
<tr>
<td>NCLR</td>
<td>National Council for Law Reporting</td>
</tr>
<tr>
<td>NEC</td>
<td>National Environment Council</td>
</tr>
<tr>
<td>NEMA</td>
<td>National Environmental Management Authority</td>
</tr>
<tr>
<td>NEMC</td>
<td>National Environment Management Council</td>
</tr>
<tr>
<td>NET</td>
<td>National Environmental Tribunal</td>
</tr>
<tr>
<td>PTD</td>
<td>Public Trust Doctrine</td>
</tr>
<tr>
<td>UNEP</td>
<td>United Nations Environmental Programme</td>
</tr>
</tbody>
</table>
BACKGROUND

The East Africa Regional Judicial Colloquium on Environmental Law was held between the 10th and 14th of April 2007 at Sarova Whitesands Beach Resort, Mombasa, Kenya. It was attended by Judges of the Supreme Court of Uganda and the Courts of Appeal of Tanzania, Uganda and Kenya. Resource persons at the colloquium comprised of scholars and policymakers from the region.

The Colloquium was organised by the Institute for Law and Environmental Governance (ILEG), the Centre for Advanced Studies in Environmental Law and Policy (CASELAP) at the University of Nairobi and the National Environment Monitoring Authority (NEMA) with financial support from the United Kingdom Department for International Development (DFID and the Ford Foundation. The objective of the Colloquium was to provide a forum for sharing judicial experiences and creating awareness about environmental law and access to justice.

This was the fifth in a series of similar colloquia that the above institutions have organised to sensitize judicial officers on environmental law in Kenya: The first Colloquium was held for magistrates in September 2005; the second and third were held for Judges of the High Court in January and April 2006 respectively; and the fourth was held for magistrates in November 2006.

This report traverses the presentations as well as the contributions during the plenary sessions of the conference. While the appendices contain the text speeches, the report is not a verbatim recording of the proceedings but a synthesis of the presentations and attendant discussions from the plenary.
I. OPENING REMARKS

Mr. Collins Odote, Director, ILEG

Mr. Odote, on behalf of the Institute for Environment Law and Governance (ILEG), welcomed the participants to the Colloquium. He indicated that the purpose of the Colloquium was to offer a forum for generating ideas and sharing experiences on mechanisms for promoting sustainable development in East Africa. He explained that the Rio Declaration calls on all people to be involved in efforts to promote sustainable development while the resolutions by Chief Justices and other Judges during the World Summit on Sustainable Development exhorted the judiciary to be involved in the same endeavour.

He revealed that ILEG in consultation with CASELAP conceived of the idea to engage with the Kenyan Judiciary in efforts to conduct judicial colloquia in environmental law in Kenya. Professor Charles Okidi on behalf of the two institutions approached the Chief Justice of the Republic of Kenya who was supportive of and did encourage the endeavour. Whereas initially the colloquia as designed and supported was to target only the Kenyan High court and senior Magistrate’s, the Chief Justice (CJ) thought otherwise, and directed that a colloquium be organized for the Court of Appeal Judges too hence the gathering. He extended his thanks to the CJ for personally presiding over the opening of each of the past Colloquia and for his support to the imitative by ILEG, CASELAP and NEMA.

With the East African Countries aspiring for political federation, he observed, harmonisation of environmental laws has become not only inevitable but also urgent. He noted that the case of Professor *Anyang Nyong’o V Attorney General* foreshadowed the reality of the drive towards deeper integration in the region. The Judges in this case noted the necessity for the partner states to undertake harmonisation of their various sectoral laws.

He informed the audience that the Colloquium offered an opportunity to share experiences about developments on the environmental law front in each of the countries. He pointed out that this is
germane considering that Uganda has had framework laws for over 10 years, Kenya six years while Tanzania two years.

In conclusion, he thanked National Council for Law Reporting (NCLR) for publishing the environment and land law reports and developing a website and DFID and FORD Foundation for their financial support towards the organisation of the colloquium.

**Prof C.O. Okidi, CASELAP**

Professor Okidi welcomed the participants to the Colloquium and indicated that he would not belabour issues that had been tackled by the planning committee for the conference. He expressed his gratitude to the Hon. Chief Justice for showing dedication to environmental issues and especially for the landmark on establishing the Land and Environmental Law Division in the High Court. He went on to thank the judges from the three partner states for taking time to attend the colloquium and for providing the leadership needed in the environmental law. He cited the example of Hon. Justice Waki who at a colloquium in 1996, gave an example of a case he had decided on the Public Trust Doctrine in relation to land, reminding the participants that the cases were not new in the courts.

Professor Okidi commended the Hon Chief Justice for inviting the judges from the three partner states adding that it would in future help to develop a common regional jurisprudence based on common understanding of East Africa. He was grateful to the Uganda and Tanzania judges for the positive response in attending the colloquium. He thanked the Hon. Chief Justice for displaying confidence in the organisers and allowing them to train the highest courts of the three states on environmental law.

He clarified that the purpose of the Colloquium was not to introduce new knowledge in environmental law but instead to build on the jurisprudence on land and environmental law. He added that it would also proffer a forum for judges to discourse on, share experiences about and exchange ideas on environmental law.
Dr. Muusya Mwinzi, Director General, NEMA

Dr. Muusya observed that the launch of the environment and land law reports enhances scholarship in the country. He thanked Professor Okidi for his dogged determination to ensure that there is a robust institutional and legal mechanism for addressing environmental matters. He noted that the Colloquium would provide a forum for judges to share ideas on environment law. He underscored that the East Africa countries are committed to environmental promotion and protection on municipal and regional basis, with the latter evidenced by their signing of a Protocol on Environment and Natural Resources Management. In conclusion, he thanked the CJ for establishing a Land and Environmental Law Court—a trailblazer in the region.

Mr. Martin Oloo, Representative, DFID

On behalf of DFID, Mr. Oloo was delighted to attend both the Colloquium and launch of the environment and law reports and website. He disclosed that DFID had been involved in processes that culminated in these two events. He revealed that the idea to publish an environment and law reports was born in 1995 and commended ILEG and the National Council for Law Reporting (NCLR) for collaborating in this endeavour. He emphasized that land and access to it was essential for food production and security. On this score, he echoed Professor Okoth Ogendo’s words that land is not simply a factor of production, but is an important social and cultural asset for a vast majority of the people. For this and other reasons, he called for management of land in a way that recognised the many attributes it has.

He indicated that DFID recognises sustainable development as a capstone of United Kingdom’s approach to international development. Mr. Oloo added that environmental degradation frustrates efforts to fight poverty as people are dependant on access to natural resources for their livelihoods. Because of this, he opined, addressing the nexus between poverty and environmental matters must be at the heart of efforts to eradicate poverty. He said that DFID recognises that economic growth depends on sustainable development of natural resources and the environment hence it is assisting countries to integrate environmental concerns into decision-making. He noted that Kenya had taken cognisance of the global drive towards environmental management and conservation and had responded by enacting framework environmental laws as well as acceded to a number of
international instruments. In spite of this, he added, the country is still experiencing environmental degradation, a development that necessitates monitoring of environmental management and governance. Mr. Oloo said that this informs the idea of collection and consolidation of cases on environmental matters. He pointed out that the reported cases covered an array of issues including public interest litigation, *locus standi*, public trust doctrine (PTD) and nuisance. He explained that the reports have the aim of availing information to judicial officers, lawyers and environmental management organs on the application, interpretation and enforcement of the new regime. It would also increase public access to information, decision-making and access to justice.

**Professor Peter Mbithi, Deputy Vice-Chancellor, Finance & Administration, University of Nairobi (Presenting Remarks by Prof G.A. Magoha, Vice Chancellor, University of Nairobi)**

He began his address by observing that the Colloquium is unique for it brings judges together to discuss environmental law. He further underscored that unless there is a jurisprudential development and harmonisation of environmental law, the foundation of life will be jeopardised. He added that the University is committed to academic excellence achieved through capacity building. He added that collaborating in organising the Colloquium was an exercise in enhancing capacity as it offers an opportunity for discourse on diverse ideas and evolving jurisprudence as well as for making suggestions on how this can be applied for the purpose of access to justice.

Aside from this, he pointed out, the University also acts as a collector and depository of information that can be used on for comparative jurisprudence. He affirmed the Institution’s support for CASELAP and to illustrate this, he revealed that the University had collected over 12,000 books, cases and materials for research and teaching on environmental law and approved the construction of the CASELAP library. He disclosed that the building would provide facilities to facilitate consolidation of teaching and research in environmental law and policy as well as house the library. He mentioned that already a number of judges and magistrates had enrolled for graduate studies in different specialisations including environmental law.
Professor Mbithi said that the University’s interest in such Colloquium goes beyond capacity building and enhancement. He reminded the audience that a number of scholars previously at the University are now judges and in his view still part of the scholarly community.

He acknowledged the involvement of UNEP in the programme and noted that it catalysed and sustained the process to get judiciary involvement in the programme. He also acknowledged NEMA’s involvement in the endeavour and stressed that this is significant as NEMA is the institution charged with the responsibility for enforcement and implementation of environmental laws. He mentioned that as judges are the final arbiters in matters related to halting environmental deterioration, NEMA will greatly benefit from the judges’ deliberations. He urged NEMA to extend its links with the University beyond CASELAP to using scientists for analysis of samples which can be used as evidence in litigation of cases. On ILEG, he noted that it has established itself as an NGO committed to promoting enlightened discourse. In his view, this is significant because no country with open governance has been successful in enforcing environmental law without the participation of the civil society.

In conclusion, he thanked DFID and FORD Foundation for offering financial assistance and the Honourable Chief Justice for trusting them to organise the event.

II. OFFICIAL OPENING ADDRESS

Hon. Justice Evans Gicheru, Chief Justice of Kenya

Justice Gicheru welcomed the judges to the Colloquium and divulged that for Kenyan judges this was the culmination of a series of colloquia organised for magistrates and judges. On this forum, he posited that it afforded an opportunity to senior judges to exchange experiences and jointly seek solutions to challenges they face in administering framework laws and transboundary issues in their countries. He asserted that this cannot be over-emphasized as enforcement, implementation and development of environmental laws- to confront the adverse effects of globalisation such as global warming and the aftermath of industrialisation-is imperative at national and international levels between States in the same geographical region as well as internationally.
Against this backdrop, he posited, it is necessary that the countries should cooperate in understanding, developing and applying environmental principles to meet the environmental challenges facing the countries individually and as a region. To illustrate the necessity of this cooperation, he referred to two articles that appeared in the Daily Nation of March 10, 2007. The first article reported that the European Union Summit had set a target to consume 20% energy from renewable sources by 2020 in a strategy to fight climate change. The second reported that EA Countries have been exhorted to pool resources to develop a pipeline and power transmission network if they are to benefit from Tanzania’s natural gas deposits. He said that the two reports signify a need for countries and regional blocs to cooperate in pursuing sustainable development and at the same time bring environmental law principles to bear on such initiatives for the mutual benefit of the countries in development and conservation of the environment. For this reason, he pointed out that the Colloquium is important as an avenue for formulating synchronised regional response to environmental challenges.

Justice Gicheru drew attention to the Johannesburg Principles on the Role of Law and Sustainable Development which stressed that the judiciary plays a critical role in the enhancement of public interest in a healthy and secure environment. Underlying the Johannesburg Principles, he explained, is the realisation that environmental law has both a direct and indirect impact on the socio-cultural and economic developments aspects of the society at national, regional and international planes.

He indicated that the highest courts contribute in developing, implementing and enforcing environmental law because they are vested with jurisdictional authority to finally pronounce what the law is with regard to particular disputes and branches of law in accordance with the doctrine of precedent under the common law. He reiterated that their judicial decisions are binding upon all the lower courts and generally also upon themselves save where there are compelling circumstances to warrant a departure.

Justice Gicheru then enumerated ways through which the highest courts can set precedents, in enforcement, development and implementation of environmental law, to be followed by the courts below and urged the participants to consider.
The first way is as case managers. On this role, he proposed that judges play a greater role in determination of disputes and enforcement of courts orders in environmental law, by fast-tracking of cases as appropriate taking cognisance of the urgency of the environmental disaster sought to be averted by the court proceedings.

The second is through promoting access to the courts. On this one, he said that besides the provisions of the Civil Procedure Rules relating to paupers, he urged greater access where suits are mounted by litigants for the benefit of the public. He also suggested that courts consider waiving filing fees as well as party to party costs by giving orders for each party to bear own costs.

The third way is by encouraging judges to ensure that rules serve to advance the cause of justice rather than impeding it. On this point, he referred to *locus standi* and whether the court grant orders against parties outside the suit and recommended that court issue directions-so as to give effect and efficiency to court orders- binding parties outside the proceedings but who are charged with the responsibility to maintain or regulate healthy environment. Fortunately, he noted, section 3(3) of EMCA has done away with the restrictions on *locus standi*.

The fourth way is to amend section 130 of EMCA, which provides that the High Court is the final court for appeal from decisions made by the National Environment Tribunal, to allow appeals to be made to the Court of Appeal. Although EMCA does not provide for appeal to the Kenya’s highest court, he reminded the audience that section 66 of the Civil Procedure Act permits appeals to the Court of Appeal from the decrees and order of the high court.

The fifth way is by amending Article 27 of the Treaty for the Establishment of the East African Community (EA Treaty), through a protocol, to extend the jurisdiction of the Court to environmental matters. He said that his suggestion is informed by the trans-boundary nature of environmental issues and the need for common standards in application of environmental law.

The last way he proposed is for courts in their judgements and rulings to identify gaps and errors in environmental laws and recommend legislative amendments. In addition, through determination of contested issues, he said the courts will offer guidance to the lowers courts on applicable principles of environmental law and how to deal with them. He said that courts may for example be asked to
determine whether or not a right to clean and healthy environment is a fundamental right. On this point, he noted that Tanzanian High Court in the case of Festo Balegele and Others v. Dar es Salaam City Council held that the right to clean and healthy environment is a fundamental right. In Kenya, he added, the High Court in the case of Waweru v. Republic has equated the right to a healthy environment to the constitutional right to life.

Focusing on the Kenyan judiciary, he said that they have already adopted a policy of mainstreaming environmental matters: first, by according priority over regular civil cases and in this respect, he explained that they have established a Land and Environmental Law Division at the High Court in Nairobi dedicated to environmental matters; second, making environmental law a compulsory subject in the curriculum for induction course and in-service programmes at the Judicial Education Institute of Kenya to be established in the next financial year; lastly, the NCLR has devoted and published a special series dedicated to land and environmental matters alongside a specialised website, both which would be launched on this day.

To illustrate how the judiciary direction is a catalyst for legislative change, he referred to the case of Kenya Ports Authority v. East African Power and Lighting Company Limited where the court, dismissing a claim for pecuniary loss arising out of purely precautionary measures taken to clean the environment under the common law, suggested legislative amendment to allow one to sue for such a remedy. He pointed out that this is in essence is the polluter-pays principle, now entrenched in section 3 of EMCA.

HE concluded by thanking DFID for its assistance that enable the publication of the Environment and Land Law Series of the Kenya Law Reports, NCLR for publishing the reports and UNEP, CASELAP, NEMA and ILEG for collaborating in organising the Colloquium. Chief Justice Gicheru then officially opened the Colloquium and launched the Environment and Land Law reports and the website.

Hon. Justice J. W. M. Tsekooko, Supreme Court of Uganda
He started by thanking the CJ for convincing the organisers to invite judges from Tanzania and Uganda to participate in the Colloquium. For him, attending the Colloquium was significant for three reasons.

First, the judiciaries of the EA Countries have been involved in Continuing Legal Education (CLE) for the past ten years, or so, organised by the East African Judicial Education Committee. Justice Tsekooko indicated that the Colloquium dovetails with the objectives of CLE that include enhancing the skills of the judiciary so as to make them more effective and competent in the delivery of justice. In addition, he pointed out, the Colloquium serves to augment efforts towards regional unity.

The second reason is that matters relating to the environment are of great interest not least because they affect the social and economic spheres of life as well as fundamental rights of the citizens. As a result, it is imperative that judicial officers receive necessary training. He noted that the Constituent Assembly which drafted the Constitution of Uganda considered environmental rights to be fundamental hence their inclusion in the constitution. He added that the centrality of the environment in the region is exemplified by the inclusion of provisions on the management of the environment and natural resources in the Treaty.

Focusing on Uganda, he said that debates about the environment have been raging for several years. He gave the example of the debate swirling around the proposed construction of a second dam at Bujagali near Jinja with court cases airing voiced concerns about the preservation and management of the environment, and the raging controversy over the excision of a large swathe of Mabira Forest.

Justice Damian Lubuva, Court of Appeal, Tanzania

Justice Lubuva began thanking the CJ for convincing the organisers to invite judges from Tanzania and Uganda to participate in the Colloquium.

He informed the audience that Tanzania has organised a few workshops for judicial officers. He pointed out that even after the Rio Declaration and Johannesburg Principles on the Role of Law and Sustainable Development, only very few workshops had been organised in Tanzania.
Justice Lubuva admitted that similar colloquia are necessary in Tanzania with a view to building capacity and enhancing knowledge on environmental promotion and protection matters. He indicated that in 2001, Tanzania established a Land Division of the High Court. He added that the country needed more publications and information on environmental law as well as more training to expand the frontiers of knowledge of judiciary officers. In conclusion, he hoped that UNEP will continue in its efforts to enhance the capacity of the officers in environmental law.

III. KEYNOTE ADDRESS: KEY ENVIRONMENTAL CHALLENGES IN EAST AFRICA

Dr. Tom Okurut, Executive Secretary, Lake Victoria Basin Commission

Dr. Okurut stated that the aim of his address was to stimulate debates about environmental challenges in East Africa for the remainder of the session. His adduced his thesis that man is the main driver of environmental change and his exclusion from the process would frustrate any efforts for promoting and protecting the environment. From an academic perspective, he said, laws and policies on matters of the environment are categorised into environmental law and natural resources. He said that he preferred them being referred to as environmental law.

He explained that the region is endowed with vast environmental resources and natural resources, but noted that sustaining them is a major challenge as there is unabated environmental and natural resources degradation. Because of this, he warned, resources are progressively declining and at the same time productivity is decreasing and wondered the extent to which we can continue extraction and yet leave some for future generations.

He then highlighted some of the resources with which the region is endowed: biodiversity; marine coastal resources; forests and woodlands; water, mineral and energy resources and human resources.

With regard to biodiversity, he said the region has abundant supplies. However, these are declining rapidly. He said the region also has a long shoreline and is traversed by large rivers such as Tana, Sabaki, Galana and Pangani and many small rivers. These, he pointed out, support diverse critical habitats, rich in biodiversity and natural resources. The region also had large swathes of forests and woodland-both of which have significantly been cleared- and said that these have strong backward,
forward and horizontal linkages with other sectors of the environment as they play a significant role in poverty alleviation.

Dr. Okurut pointed out that the region’s water resources consisted of surface water (lakes, rivers, and streams), groundwater and other open water bodies, but the exact quantities are not known. He also said that the region experiences variable quantities. Hence in Lake Victoria the level of water has been reducing largely because of a decrease in rain. However, he said, this was not unique to only the lake. He disclosed that most of the water runs off to the ocean and said if ways were devised for tapping rain water, it would sufficiently meet human needs. He warned that increasing human population and associated activities have accelerated pollution in Lake Victoria. He suggested that Member States need to cooperate if they are to realise benefits and opportunities and to avoid pollution.

On energy resources, he said that wood supplies—mainly firewood and charcoal—account for most energy requirements warning that this continues to contribute to accelerating loss of forest cover. Since charcoal is heavily traded, he wondered whether it may be necessary to impose a tax on charcoal. He added that the region has regular solar radiation but so far there is no large-scale, commercial utilization. He also said that geothermal energy was considered abundant and Kenya was already exploiting it. He said that environment concerns will become more visible on the region given that there have been discoveries of gas and oil, sounding a warning that if significant quantities of these minerals are discovered, there will be profound effects, among other matters, on the economy, environment, peace and security.

On mineral resources, he said that the EA region has significant deposits of minerals, some which cut across boundaries. Nonetheless, he said, the countries need greater mineral inventory, capacity building and developing modalities for transboundary mining and concessioning fees to make countries really benefit from the resource.

He mentioned that the EA region has abundant freshwater and marine and coastal area fisheries resources, but pointed out that there is evidence that Nile Perch is being over-exploited partly because of illegal fishing vessels offshore as well as due to legitimate market demand for freshwater fish exports.
Dr. Okurut then explained that three factors are responsible for the environmental challenge the region is facing. Pressure emanating from the interaction of the population pressure with the surroundings; legal framework to address the pressures; and compliance with the law and the structures in place to ensure compliance. He explained further that these factors impact on, among others, land use and degradation as well as water quality and pollution.

Touching on land degradation he listed the causes as including population pressure, deforestation and conflicts—that give rise to refugees. He wondered whether time has come to regulate population so as to ease pressure on land. He decried poor enforcement of the law with regard to these issues and attributed this to paucity of funds and human resources constraints.

He suggested that more awareness, especially in the government, is needed about the need to enforce the laws. He was sceptical whether this would sufficiently halt the damage where there are no alternative economic activities for people to engage, giving an example of people washing cars on the shores of Lake Victoria for an earning as they have no other option. Dr. Okurut expressed doubt whether politicians would jettison self-interests so as to pursue a course of action that would ensure sustainable development.

Dr. Okurut, in conclusion, summarised the lesson learnt so far from the challenges facing the region. He said they include, in all cases poor compliance and enforcement of the law; and that the level of interaction between the surroundings and man is very high posing serious environmental problems.

**Discussion by participants**

Professor Okidi observed that there is no place around the gulf of Lake Victoria without algae and inquired whether it is evenly distributed in the larger part of the lake. In his reaction, Dr. Okurut said that the algae are caused by heavy silt emanating from rivers in Kenya that carry a lot of nutrients.

Justice Katureebe from Uganda noted that water hyacinth has started growing in Lake Victoria and wanted to know what measures are in place to eradicate the weed. Justice Katureebe reported that
there were claims that chemicals were used to remove the hyacinth and that these have deleterious
effects on water and life. If so, he inquired why the chemicals cannot be used again and whether
indeed they are harmful. In his response, Dr. Okurut confirmed that no chemicals were used in the
fight against hyacinth but weevils. He said that re-emergence of water hyacinth has been caused by
drop in water levels-creating conducive environment for seeds to germinate- followed by a rise in
wind levels- which floats the weed all over the lake.

Ms Maembe said that a significant percentage of charcoal is consumed by urban dwellers and
charcoal dealers, who live in rural areas, are driven by this demand to clear more trees and forests
for the purpose of burning charcoal. In view of this, she wondered what mechanisms are in place to
supply alternative sources of energy so as to relieve the pressure on rural areas. In his response, Dr.
Okurut agreed that most of the charcoal is used by urban dwellers and suggested introduction of a
tax on charcoal as a policy measure to deal with deforestation. He added that high cost of energy
drives people to use biomass.

Justice Kavuma remarked that the state of underdevelopment in the region is a paradox; the region
is endowed with abundant resources yet the people are living in abject poverty. He lamented that the
resources are being exploited by foreigners with attendant negative effects on the environment. He
noted that even traditional societies were conscious of environmental matters and the customs, rules
and norms and therefore had a framework for managing the environment. He posited that what the
countries need most is to strike a balance between exploiting resources and doing so sustainably. In
response, Dr. Okurut pointed out that customs are no longer respected because of changing times
and therefore suggested the need for different strategies. For a start, he called for enforcement of
the relevant laws.

Justice Omolo was perplexed that States do not want to take responsibility for the environmental
damage but want to lay the blame on foreigners. He noted that at independence, Lake Victoria was
well managed but this is no longer the case. He added that ordinary people may be inclined towards
protecting the environment but are not able because of the need to make a living. He gave the
example of people burning charcoal and said that while they know the consequences of felling trees,
they are not able to stop as that is their only source of livelihood. In view of the prevailing
conditions in the society, he asserted, the judiciary may not able to enforce environmental laws.
Commenting on this, Dr. Okurut was of the view that poverty as a driver for environmental degradation is being overstated, giving an example of forests in Uganda which have been allocated to the rich.

IV. CONCEPTS, FUNCTION AND STRUCTURE OF ENVIRONMENTAL LAW
Professor Charles Okidi, CASELAP

At the outset, Professor Okidi indicated that there was a link between his presentation and the earlier one by Dr. Okurut. He said that the gist of his presentation was to give broad a snapshot of what environmental law is and therefore lay a foundation as well as provide a framework for tackling subsequent themes that will feature in the Colloquium.

He said that the term environment eludes a precise definition; that definitions depend on what aspect one is involved in, for instance, land-users and those involved in water issues offer different versions as to the meaning of the term. While Dr. Okurut embraced an anthropocentric definition of the environment, Professor Okidi was of the view that the definition is wider than this. In his view, environmental law is the ensemble of norms, rules, procedures and institutional arrangements found in common law, statutes and implementing regulations, case law, treaties and soft law instruments concerned with or relating to the protection, management and utilisation of the environment, and natural resources for sustainable development or intergenerational equity.

Professor Okidi then delineated concepts or tools that underpin environmental management. Specifically, these are ‘preservation’, ‘conservation’ and ‘sustainable development’. Professor Okidi defined the concept of ‘preservation’ as regulatory or management measures taken to ensure that natural resources are selectively used or left alone so as to maintain their natural characteristics in a way that they not affected by human activities. He referred to conservation as using renewable resources sustainably and to avoid waste of non-renewable resources.

He identified and highlighted phases that have informed the development of environmental law. Briefly, the phases fall in the following periods: Up to 1960, 1960-1969, 1970-1980, 1980-1989 and from 1990 to present.
In the phase he referred to as up to 1960s, he observed that there was little awareness of environmental degradation. Professor Okidi explained that the common law and civil law regimes were the main frameworks through which societies achieved protection of the environment. Alongside the two regimes, there were sectoral laws, although rarely used for environmental conservation purposes, which regulated public health and exploitation of natural resources. He explained that the enforcement mechanism was command and control based as a result evoking an association with colonial oppression.

He stated that somewhat the aspects noted in the first phase above continued in the period between 1960 -1969, with rigorous application of command and control regimes to strengthen sectoral laws, while paying little sensitivity to environmental conservation. Fortunately, he added, this same period witnessed an increased global consciousness, especially in urban centres, about environmental degradation. He observed that concerns about environmental degradation provoked action from the US, culminating in the formation of a study group to evaluate and recommend policy measures that should be taken to halt the damage. The efforts culminated in the Environment Policy Act (EPA) whose centrepiece was public participation and access to justice through Environmental Impact Assessment (EIA). The EPA served as a template for similar initiatives in the whole of North America-particularly Canada in 1995 – and Europe.

In the period 1970-1980, Professor indicated that a number of developments occurred: EPA was put into effect; Iceland, Malaysia and Iran enacted framework laws; and the Stockholm Conference was held and there from an enunciation of first soft law instruments on environmental law.

In the period 1980-1998, Prof. Okidi noted that African countries adopted framework environmental laws of differing sophistication. In East Africa, he noted, Uganda was the first country to enact framework laws. He said that Kenya borrowed heavily from Uganda thanks to the initiative of Kenya’s former Solicitor General, now Honourable Justice Benjamin Kubo. Indeed, he observed that all EA countries followed somewhat similar paths in evolving their environmental laws.

Professor further informed the audience that a number of countries-notably Canada, Brazil and Burkina Faso- have entrenched environmental protection in their constitutions, with Brazil having
more expansive provisions. He added that while most countries’ constitutional provisions are about fundamental environmental principles, Ghana has an inbuilt procedure for ensuring sustainability. Professor Okidi said constitutionalising provisions about sustainable development is interpreted to mean that Parliament is required to ratify contracts to exploit natural resources. Simply put, the constitutional provisions express a country’s recognition and commitment of the rights that accrue to the citizens as a result of living in a healthy environment. Indeed the Nigerian case of *Jonah Gbemre V. Shell Petroleum Development Company and Two Others* where plaintiffs petitioned against gas blaring in the Delta Region during drilling operations, the Federal High Court, at Port Harcourt, affirmed the proposition that a constitutional right to life includes a right to healthy environment. He noted that in Kenya, Chapter VIII of the draft constitution has sought to entrench international environmental agreements that affirm a right to life emanating from a clean environment.

Prof. Okidi then introduced the participants to the basic principles of environmental law, noting that this law comprises general principles, referred to as soft instruments. He explained that soft law arises from declarations of principles from global or regional organisations. These principles, he pointed, include an affirmation that human beings are at the centre of concerns for sustainable development and access to justice. He indicated that the principles have over the last few decades been included in different international law instruments (for instance the Stockholm Declaration, World Charter for Nature and the Rio Declaration on Environment and development) and national statutes (for example section 3(5) of EMCA of Kenya and section 5 (3) of EMA of Tanzania).

**Discussion by participants**

Justice Waki pointed out in his comments that Professor Okidi had mentioned that framework legislation on environmental law has its genesis in the 1960s and in this regard wanted to know the nexus between this and the pillage of Africa’s resources. In his response, Professor Okidi said that the choice of 1960 as the genesis of the framework for environmental law was arbitrary and nothing to do with colonisation. He further informed the audience that the drive towards enacting environmental laws is underpinned by problems relating to poverty and racism in some cities in developed countries.
A participant enquired why it took so long to enact a law on environmental law in Kenya. Responding to this question, Professor Okidi gave a background to the history of efforts aimed at enacting a law in this regard. He said that the year 1993-1995 was spent in consensus building while in the subsequent period-until EMCA was enacted in 1999- the delay arose from slow drafting from the Attorney General’s Chambers.

V. COMMON LAW FOUNDATIONS OF ENVIRONMENTAL LAW AND ITS RELATION TO SUSTAINABLE DEVELOPMENT

Prof. Albert Mumma, University of Nairobi

The crux of Professor Mumma’s presentation was on the role of the common law in promoting sustainable development. He noted that whereas previous presentations focused on the content of environmental law, his would centre on the enforcement aspects. He pointed out that over the last several decades, laws had been enacted to improve the management of the environment, noting that in the context of enforcement, a private citizen aggrieved by matters relating to the environment, may pursue either a criminal or civil law action. With regard to civil litigation, he said that the substantive law under which such a person may proceed in East Africa is the common law which he emphasized has a long history.

He informed the audience that there are four key ingredients that must be present before a person files a private action under the common law: identifying the plaintiff and defendant; establishing a cause of action and knowing the remedies to ask for. He stressed that meeting these key ingredients is the greatest challenge in any effort to pursue environmental law cases.

Identifying a plaintiff, he noted, is informed by the fact that a person takes action to seek redress for a private injury. He warned that this requirement is not to be taken lightly considering that it requires a lot of time, energy and resources to start an action emanating from violations of environmental law alongside the requirement to demonstrate sufficient interest in the matter. In order to increase accessibility, the pre-requisite for a private injury has been removed by EMCA law which stipulates that a person does not require a private right to bring an action. As a result, people who have not suffered a personal injury can now sue. However, he pointed out, costs for suing are still an impediment. He gave an example of the excision of Karura Forest in Nairobi where people could
not sue because of the costs implications. In addition, he said that damage may be occasioned to more than one person, which makes it difficult to establish a framework for suing. He noted that persons who have suffered damage occasioned by one act may only bring representative suits. This poses another challenge in that that litigants need to have a common interest which is very rare in environmental matters. He explained that in other countries, notably the US, persons who have suffered damage may file class actions, a cause of action not available locally.

Equally he said that identifying a defendant is not easier either because environmental degradation may not necessarily be caused by one person but rather is the result of cumulative activities of many persons. He gave an example of environmental damage caused by refugees and wondered who one would take action against. Similarly, alluding to the water hyacinth menace in Lake Victoria, he said that the environmental damage which is the genesis of the growth of the weed may not be attributed to specific persons or causes.

This foregoing issue, he said, came for consideration in the *Natal Fresh Produce Association vs. Agroserve (Pty) Ltd*. The plaintiffs instituted an action against the defendant (a manufacture of hormonal herbicides) alleging that the herbicides are transported through water and air and deposited on fresh produce resulting in their damage. The defendant in its defence argued that what they were doing was a legitimate business provided for under the laws of the country. Rejecting the claims by the plaintiff, the court held it was not necessarily the case that the use of hormonal herbicides anywhere in the country caused damage to fresh produce. The case supports the position that it is equally challenging to establish a cause of action.

Even when a defendant is identified, Professor Mumma gave three examples which still pose impediments to a possible suit. The first one is in cases where the culprit may be a person or institution with immunities and privileges while the second is where suits against the government may not succeed. With respect to the latter hindrance, he gave the example of the case revolving around the “Mathenge Weed” in which the plaintiffs failed in the action because of not complying with procedures that are mandatory is a suit in which the government is a party. The third one emanates from the fact that the defendants, for instance charcoal burners, are so indigent that it is not worthwhile pursuing a cause of action against them.
Alongside identifying a plaintiff and a defendant, one is also required to find a basis for suing. Under the common law, a basis for a claim is a cause of action which rises when an injury is occasioned to a person or property. He pointed out that the causes of action under the common law are trespass, nuisance, the rule in *Rylands V. Fletcher* and negligence. In spite of finding a basis for suing, other challenges may make it difficult for one to proceed with a cause of action. He gave four examples. First, an action will operate retroactively - as environmental harm will already have occurred and as a result there will be limited options available at this stage. Secondly, one would want to focus on a single instance of environmental injury, for instance, pollution emissions, but then people may not be affected by a single cause. Such an emission, he pointed out, may be the outcome of a general deterioration in the cleanliness of air in an area. Thirdly, injuries may fall foul of the statute of limitation. Last the issue of the forum for suing is not clear-cut hence one may not be sure where to start an action - whether in the tribunal or magistrates’ courts or high court, and even after this is settled, whether a matter is one that could be further pursued at the Court of Appeal. He gave an example of issues revolving around physical planning where the city council may take one to the city court while in essence the right forum could have been a tribunal.

In concluding his address, Professor Mumma dwelt on remedies available pursuant to a private claim for environmental injury. Starting with a remedy for damages, he pointed out that there are insuperable difficulties that also have to be grappled with, to wit, the fact that there are no damages for anticipation of loss as well as the fact that special damages are not recoverable in representative suits. Another challenge he noted is that it may be difficult to enforce orders against the government.

**Discussion by participants**

Alluding to the assertion that special damage are not recoverable, one participant wondered what remedy may then be available in cases where villagers are forcefully removed from their homes so as to create land for foreign investors. Responding to this query, Professor Mumma posited that special damages require proof and because of this, it is a herculean task to prove such damages where many people are involved. Giving an example of an infection caused by environmental damage and affecting many people, he wondered how possible it is to prove special damages. Professor Mumma further pointed out that recourse could be had to criminal law, an option that is being increasingly
used in environmental enforcement. However, he said, using criminal law in environmental matters is not necessarily easy. First, he pointed out, public officers may inadvertently be selective about cases to prosecute and in the process leave out some important cases. In addition, he said, there is no moral culpability in environmental cases, noting that, for example, Panpaper Mills in Webuye may be causing environmental harm, but people do not see the managers as criminals.

Justice Lubuva noted that both the constitutions of Kenya and Tanzania have no constitutional provision about the right to quality life and wondered whether it was time such a provision got embedded in the constitution. However, he asked, how this can be reconciled with the penury in the society. In other words he implied that the right to life may be torpedoed by the fact that since so many people are poor that no government, however hard it tried, may be able to assure this right. Commenting on this issue, Professor Mumma acknowledged that there may need for such a provision in the constitution if only it is easy to enforce it. To appreciate the relevance of the impracticalities involved, Professor Mumma gave an example of a requirement that each person gets 25 litres of water saying that it is impossible to guarantee such right especially in the backdrop of the fact that there may actually be no water.

Another participant sought to know whether an action can lie at common law with regard to the right to a quality life. Responding to this question, Professor Mumma said that an aggrieved person can bring an action for nuisance, but has to prove that this has hindered quiet enjoyment of land. In other words, the aggrieved person has to demonstrate proprietary interest in the land and that this interest has unreasonably been disturbed by an environmental injury emanating from a landowner.

Justice Onyango Otieno said that the people in rural areas were felling trees indiscriminately, an occurrence that is causing environmental injury. He added that asking such people to cease their activities would engender a contradiction, namely, the people’s right to private property vis-à-vis the need for sustainable development. Commenting on this, Professor Mumma said that such matters are heavily litigated in the US and pointed out that in Kenya the government can regulate for the purpose of national interest. But then, he said, by dint of being poor, such people have really limited options as burning charcoal only constitutes their source of their livelihood.
In his contribution, Justice Akiwumi citing the Philippines case of *Oposa vs Factoran* and Pakistani case of *Shehla Zia v. WAPDA*, said that that people are entitled to a clean and healthy environment. However, he noted, that most developing countries do not have such provisions in their constitutions.

VI. OVERVIEW OF THE NATIONAL FRAMEWORK ENVIRONMENTAL LAWS

(a) Dr. Muusya Mwinzi, Director General, NEMA, Kenya

Dr. Mwinzi indicated that NEMA was established under the Environmental Management and Co-ordination Act (EMCA), 1999, whose overarching objective is to establish an appropriate legal and institutional framework for the management of the environment. He indicated that prior to the enactment of EMCA, there were several sectoral laws that dealt with diverse matters –for example, water livestock, fisheries, etc.-that are now provided for in EMCA.

He stressed that section 3 of EMCA guaranteed the right of every person to a clean and healthy environment and the correlative duty to safeguard and enhance the environment. To ventilate this right, the same section allows persons to bring suits to demand the right to a clean and healthy environment even where they cannot show any personal loss or injury suffered or likely to be suffered.

He mentioned that NEMA, in partnership with CASELAP and ILEG, has in the past organised similar Colloquia for the Kenyan Judiciary, whose aim is to raise awareness among members of the judiciary about environmental law in the country. He noted that following these colloquia judges are now adjudicating environmental cases faster than before.

He stressed that environmental issues transcend political boundaries hence the signing of multilateral agreements to regulate transboundary issues and gave the example of the Protocol establishing Lake Victoria Basin Commission, that is Protocol for the Sustainable Management of Lake Victoria. He added that the judiciary, by adjudicating environmental disputes and therefrom developing jurisprudence, plays a critical role in the implementation of environmental law.
He highlighted the environmental problems facing Kenya and appealed for judicial intervention. These include improper solid waste, pollution of water sources, population growth and land degradation.

He exhorted the judiciary to take an active role in expediting environmental cases. He noted that the judiciary is an impartial arbiter in environmental cases and this makes it a crucial partner in ensuring compliance with environmental laws.

He pointed out that NEMA has the mandate to coordinate the activities of Lead Agencies such as Government ministries, departments, state corporations and local authorities with specific mandate on environmental management. He urged that the judiciary needs to take cognizance of this working relationship between NEMA and Lead Agencies.

(b) Christine Akello, NEMA, Uganda

Christine began her address by informing the audience that the policy behind the drive for consensus on an appropriate framework for environmental law in Uganda was informed by the National Environment Action Plan. She said that the legal framework for environmental law is contained in the Constitution, the National Environment Act and sectoral laws covering an array of matters such as water, land, forests and investments.

She added that the constitution guarantees a right to a clean and healthy environment. She noted that experience in the past with environmental problems had goaded policymakers to re-assess the strategies for responding to and addressing environmental harm and included these in the laws. These strategies include the precautionary principle, environmental planning, Environmental Impact Assessment (EIA), environmental audits and environmental standard setting and licensing.

Christine outlined the experiences of NEMA with regard to the implementation of environmental laws. She pointed out that NEMA is drafting regulations, for instance on access to genetic resources and waste management, to give effect to the provisions of the main Act. She added that a case has been filed in court on the basis of the Polluter Pays Principle. She further said that there are a few
cases that have been decided on the issue of access to justice but added that the framework for deciding environmental cases is evolving and developing in the country.

(c) Mrs. Anna Maembe, The National Environment Management Council (NEMC)-Tanzania

Anne indicated that in Tanzania, environmental management includes the protection, conservation and sustainable use of various elements or components of the environment. She indicated that the Constitution of the United Republic of Tanzania gives responsibility to every person to safeguard natural resources.

She outlined the policy available for environmental management in Tanzania. At the apex of the institutional hierarchy, she indicated, is the umbrella National Environmental Policy, which outlines the instruments for implementation as well as available environmental legislation. She added that the country also has sectoral policies which include the land, energy and minerals policy. She said much legislation reflect sectoral policies with the exception of the Environment Management Act, enacted in 2004. She pointed out that EMA is the framework legislation and this is supplemented by the provisions in various sectoral legislation such as those dealing with, among other resources, national parks, water and mining.

She further pointed out that EMA provides for institutional arrangements to deal with environmental matters. In this regard, she gave the examples of the National Environmental Advisory Committee and the ministry responsible for the environment.

Mrs Maembe highlighted various environmental challenges that the country faces bringing out the six major ones as land degradation, lack of accessible and good quality water for both urban and rural inhabitants, environmental pollution for both urban and rural inhabitants, loss of wildlife habitants and biodiversity, deterioration of aquatic systems and deforestation.

Turning to EMA, she said the Act was enacted in 2004-and became operational in July 2005 its objective being to provide a legal framework for promoting the enhancement, protection conservation and management of the environment. She added that EMA contains general principles
principally the right to clean, safe and healthy environment and a right to bring an action on the environment. She informed the audience that NEMC has already won a case against an investor who wanted to undertake prawn fishing in a unique section of River Rufiji. She added that EMA also contains principles and tools for environmental management including Polluter pays principle, principle of eco-system integrity and principle of access to justice.

In conclusion, she highlighted enforcement challenges facing NEMC. These include development of surveillance monitoring system, limited capacity for enforcers such as the police, human resources constraints for instance lawyers, customs inspectors and port officials, budgetary constraints and low public awareness.

She opined that the judiciary in Tanzania and in the East African region is a very key player in effective enforcement of environmental legislation. Although there are views that voluntary compliance through education and awareness can help to redress the environmental challenges, she said that EMA is of the view that courts of law can expedite compliance and enforcement.

**Discussion by participants**

Justice Githinji was of the opinion that there is an institutional flaw in NEMA with regard to how it operates. First, NEMA does not have gazetted officers with powers to prosecute cases as the AG’s office takes inordinately long. Secondly, NEMA is ranged against well-resourced investors. He suggested that NEMA consider proposing amendments to EMCA so that it has powers to prosecute cases. Ms Okello responded that NEMA Uganda is very powerful and even has its own inspectors with wide powers. Dr. Mwinzi said that inspectors play the role of prosecutors with regard to NEMA, Kenya, but said there was a problem on staff retention.

Justice Okubasu observed that there is a common thread in all the presentations, noting that EA countries have similar environmental problems and have adopted similar approaches to grappling with them. He underscored that the judiciary cannot act *suo moto* as this would compromise its independence. He opined that the framework laws are very good but there is a problem with implementation.
Justice Onyango Otieno also remarked that in his opinion, EMCA- Kenya is well drafted, but there is poor implementation and enforcement. In his view, there should not be an issue of conflict between NEMA and the government as the latter is actually part of the government. He suggested that there may be need to decentralise environmental law to the grassroots.

Justice Nsekela identified three sources of environmental problems in EA. One, there is the ordinary people eking out a living and in the process causing environmental harm. Two, there are investors who would like to make money and contribute in other ways in the economies and yet their activities are the source of problems. Third, there are politicians who sacrifice national interests on the altar of self-interest. In his view, these sources pose a real dilemma for enforcement of environmental matters. With regard to national authorities, he wondered the extent to which the regulatory bodies can give directions to stop environmental degradation. Reacting to this, Dr. Mwinzi said that the government has always complied with NEMA directives.

Justice Lubuva noted that there is a conflict between authorities and communities with regard to access and use of natural resources. For this reason, he suggested that it may be prudent for the authorities to explain to communities the reasons for certain decisions. He gave the example of Tanzania where the government moved a community from a park in Moshi while the community wanted to remain at the park for the reason that its ancestors are buried there. Reacting to these remarks, Justice Onyango Otieno said that most of the people experiencing the effects of environmental degradation are in the rural grassroots as developers are acquiring their lands. On this point, he wanted to know what authorities are doing to make people aware about environmental conservation. He observed that many sensitisation activities are being carried on in the cities instead of the rural areas. Dr. Mwinzi commented that awareness is increasing and efforts will be stepped-up.

Justice Deverell said that in his view, the standards for products are very vital and wondered whether there were common standards and if lack of them was delaying implementation of some of the provisions of the laws.

Justice Mpagi-Bahingeine thought that there were two schools of thought insofar as the courts’ application of environmental laws is concerned. On the one hand, there is a group of stakeholders
that favours a liberal interpretation approach to environmental matters such as people filling cases using letters. On the other hand, the courts may not be inclined to this approach as they believe court procedures serve a fundamental element of court processes, an approach which was making people hesitant to file cases. She suggested that the judiciary may have to be more responsive to stakeholders’ views on the issue.

Commenting on the issue of finances, Professor Situma was of the view that the problems of budgetary constraints are over-stated and that there may be alternative ways of raising finances. In this context, he wanted to know what NEMA is doing to build capacity. Responding to this issue, Ms Maembe - NEMC Tanzania, said there was a high turnover of staff in Tanzania as the pay was better in the private sector. Dr. Mwinzi expressed similar sentiments with regard to Kenya. With regard to finances, Dr. Mwinzi said NEMA has capacity to raise revenues, like in the UK where the Environmental Protection Agency raises 80% from levies, but that this is only possible once NEMA starts operating at fully capacity.

VII. PRECAUTIONARY APPROACH TO ENVIRONMENTAL MANAGEMENT (EIA, ENVIRONMENTAL AUDIT, MONITORING AND PRECAUTIONARY PRINCIPLE)

Prof. P.J Kabudi, University of Dar Es Salaam

Prof. Kabudi in his introductory remarks observed that the problems of environmental management constituted the main preoccupations of humankind mainly being a reaction to pollution and massive ecological degradation. He observed that natural resources were exhaustible and therefore should be sustainably utilized. He pointed out that the global nature of environmental problems, resulted into the development of the distinctive branch of international environmental law and national environmental law. He noted that although environmental law had developed steadily, most of it was as a result of crisis management, and that some of these principles had been integrated into the national legislation.
He noted that the precautionary approach required that environmental assessments be conducted before a development or project or activity was undertaken in order to determine the negative or positive impact that it would have on the environment and provide for mitigation measures. The approach was incorporated in international and national legal instruments governing environmental management.

In regard to the precautionary principle, Prof. Kabudi pointed out that the principles had been articulated by the resolutions and declarations of international organisations such as the United Nations Organisations and the United Nations Environment Programme (UNEP). He highlighted three principles used namely that of sustainable development and related concepts; the polluter pays principle and related concepts, and the precautionary principle and related concepts. He further explained that the precautionary principle recommended action in responding to potential environmental threats instead of waiting for absolute scientific proof and that it included concepts such as the risk assessment and risk management, pollution prevention, life-cycle assessment and life-cycle management, Environmental Impact Assessment (EIA).

Prof Kabudi pointed out that the precautionary principle imposes obligations on states to take preventive action and provides guidance for governance and management in responding to uncertainty and also to avert risks of serious or irreversible harm to the environment or human health in the absence of scientific certainty about that harm.

He pointed out that the legal basis of the precautionary approach had its basis from other laws related to environmental management namely; international environmental law, constitutional foundation, framework environmental management law, sectoral legislation and judicial precedent.

He noted that the precautionary principle was developed as part of the international soft law and was endorsed in the World Charter for Nature adopted by the UN General council of 1982. He added that it was incorporated in principle 15 of the Rio Declaration of 1992 which states that:

“In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”
Prof Kabudi observed that the principle featured in various multilateral environmental agreements such as on the preamble to the 1985 Vienna Convention for the Protection of the Ozone Layer calling for precautionary measures to be taken at international and national level to redress the depletion of the ozone layer and the preamble to the Montreal Protocol which calls for precautionary measures to control emissions from certain chlorofluorocarbons (CFCs) in order to protect the ozone layer. Others include: Article 3 (3) of the UN Framework Climate Change Conventions which states that:

“The Parties should take precautionary measures to anticipate, prevent or minimize the causes of climate change and mitigate its adverse effects. Where there are threats of serious irreversible damage, lack of scientific certainty should not be used as a reason for postponing such measures, taking into account that policies and measures to deal with climate change should be cost effective so as to ensure global benefits as the lowest possible cost.”

Prof Kabudi pointed out that the precautionary approach to environmental management also existed within some of the constitutions of the three East African countries. He cited the Constitution of the United Republic of Tanzania, 1977 which has no express provisions on environmental approach but instead it has provisions which when purposively and broadly interpreted impliedly provide for protection and conservation of the environment and articulate the precautionary approach to its management. He cited Article 9(1) (c) of the Constitution which requires the state authority and all its agencies to direct all their policy and business towards securing the “conduct of public affairs in a manner designed to ensure that the national resources and heritage are harnessed, preserved and applied toward the common good and the prevention of the exploitation of one man by another.”

Prof Kabudi stated that the Ugandan constitution had provisions on the environment and natural resources as well the right to a clean and healthy environment. He stated that the constitution of Uganda had provisions on the promotion of sustainable development and environmental protection. He cited the Directive Principle XXVII which states that:

“The utilization of natural resources of Uganda shall be managed in such a way as to meet the development and environmental needs of the present and future generations of
Ugandans and in particular, the State shall take possible measures to prevent or minimize damage and destruction to land, air and water resources resulting from pollution and/or other causes.”

He also cited the Article 245 of the Ugandan constitution which provides for the protection and preservation of the environment through an enactment of a piece of legislation by the Parliament. The article states that:

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.

He went on to quote the Ugandan Parliament which, in 1995, passed a law to provide for environmental management that incorporates and provides for precautionary approach to environmental management. This is the *National Environmental Act, Cap. 153*, which provides for principles of environmental management.

On the Kenyan case, Prof Kabudi stated that the Constitution of Kenya of 1963 did not have explicit provisions on environment and natural resources but environmental issues had been raised in the construction of the Bill of Rights under the Constitution. However, he stated that there was a provision in the draft constitution of Kenya 2002, specifically Chapter 13 dealing with the Environment and Natural Resources.

In regard to the framework legislation, he explained that all the three East African countries have enacted the framework environment management legislation with the first such legislation being the *National Environmental Act, Cap. 153* of Uganda, which was enacted in 1995. This was followed by Tanzania (Zanzibar) in 1996, which enacted the *Environmental Management and Sustainable Development Act, 1996*. Kenya followed suit by enacting in 1999 the *Environmental Management and Coordination Act, 1999*.

He added that the precautionary principle was concretized in Framework Environmental Management (EM) laws in East Africa through the provisions of a number of tools of environmental management which include environmental assessment, monitoring and auditing and
that the principle formed the basis for the different types of environmental assessments with the most known environmental assessment being the Environmental Impact Assessment (EIA).

He defined Environmental Impact Assessment as a systematic examination conducted in order to determine whether or not a programme, activity or project would have any adverse impacts on the environment. He proceeded to give specifics from each of the three East African countries citing that in Uganda the requirement of carrying out an EIA was governed by the National Environment Act and the Environmental Impact Assessment Regulations, 1998 while in Kenya it is the Environmental Management and Coordination Act, 1999 and the Environmental (Impact Assessment and Audit) Regulations. He stated that in Tanzania the Environmental Management Act, 2004 and the Environmental Impact Assessment and Audit Regulations, 2005 provided the legal framework that governs the requirement and process of EIA.

Prof. Kabudi outlined the nine steps of the EIA process from the commencement of planning for a development or project to its decommissioning. In the first step of Project Registration and Screening, he explained that the developer notifies the environmental management regulatory institution by submitting a duly-filled registration form and project brief that it intends to carry out an EIA and then the institution reviews the project brief and undertakes the screening of the proposed project. In the second step, he explained that the developer and environmental experts undertake the scoping exercise in order to identify the main stakeholders that would be negatively or positively impacted by the proposed project, the main concerns, the alternatives, and the impacts data requirements, tool and techniques for impact identification, prediction and evaluation and the project boundaries. The next step, he continued, is the baseline study where the environmental experts undertake a detailed survey of the existing social, economic, physical, ecological, social-cultural and institutional environment within the project boundary area. This is then followed by the impact Assessment where the consultant/experts undertake impact identification, impact prediction and evaluation of impact significance following a variety of appropriate techniques and approaches as specified in the guidelines issued under the Regulations.

Prof Kabudi went on to explain the fifth step namely the impact mitigation and enhancement measures whose objective is to identify both positive and negative impacts to the environment and propose mitigation and enhancement measures. This is followed by the preparation of
environmental impact statement where a report is prepared in a particular format. On the seventh step, Prof Kabudi explained that the review of Environmental Impact Statement was critical in the assessment of the quality of the EIA Report and whether it was adequately covered all the aspects identified during the scoping stage and in the terms of reference.

The eighth step is the Environmental Monitoring and Auditing where environmental monitoring is done in order to evaluate the performance of the mitigation measures following the prepared Environmental and Social Management Plan as well as Monitoring Plan. The Audit focuses on the implementation, performance and impact prediction audits. He finalised the steps by giving the ninth and final stage as the Decommissioning step where the decommissioning report is prepared either as part of the environmental impact statement or separately, indicating how impacts will be dealt with, including costs of mitigation measures.

Prof Kabudi proceeded on to define the Strategic Environmental Assessment (SEA) as a systematic process for evaluating the environmental consequences of proposed legislation, policy, plan or programme initiatives in order to ensure that they were fully included and appropriately addressed at the earliest stage of decision making. He explained that purpose of SEA was to identify the significant environmental effects of a legislation, policy, plan or programme giving the example of how the mainland Tanzania section 104 of the Environmental Management Act, 2004 requires SEA for Bills, regulations, policies, strategies, programmes and plans.

In regard to the courts and the application of the precautionary principle, Prof Kabudi cited the right to sue (locus standi) advising that the courts should be able to use a broad and innovative approach and were required to take into account the precautionary principle when exercising jurisdiction under respective Environmental Management Acts.

Citing various examples, he noted that the courts have applied the precautionary principle in judgments and there was a growing jurisprudence to that effect, for example, Rodgers Muema Nzanka and 2 others v. Tionin Kenya Limited and Nicholls v. Director of Private National Parks and Wildlife and others – Land and Environment Court of New South Wales
Prof Kabudi concluded that the precautionary principle had steadily developed as part of international and national environmental law and that the principle formed the basis for the precautionary approach to environmental management. He opined that the courts had contributed to the concrete development of the precautionary principle at the normative level or when it is articulated as part of EIA and SEA.

VIII. COMMENTARY

Prof. Francis Situma, University of Nairobi

In his commentary to the presentation, Prof Situma observed that the presentation did not explicitly explain the move from the precautionary approach to the precautionary principle. He also noted that the presentation failed to explain the distinction between the two, the nature and scope, as well as the legal context of the two. He questioned the role of the precautionary principle in the achievement of sustainable development in Africa and in the world in general. He wondered if the principle was incorporated in any of the regional agreements such as the East African Community Treaty. From Prof Kabudi’s presentation, Prof Situma sought to know how the judiciary could use the precautionary principle in promoting environmentally sustainable jurisdictions.

Discussion by participants

Justice Msffe enquired how one would sue if the natural resources such as raw paintings were damaged as a result of natural calamities like floods. He also sought to know how the Kyoto protocol would fit in the presentation on the precautionary principle. In his response, Prof Kabudi, stated that the community would sue the government for failing to prevent the depletion of the paintings. He also clarified that the Kyoto Protocol also dealt with the precautionary principle.

Justice Mulenga sought clarification on what precaution was better than the other; precautionary approach or precautionary principle and for what purpose. He wondered if it was the court that should direct the law makers to take precaution or who was to do it. Prof Kabudi clarified that the only difference between the principle and the approach was the origins. He stated that the precautionary approach originated from the US courts while the precautionary principle originated from the continental European courts.
Justice Rutakangwa sought to know if section 202 EMA Tanzania can be used to force the government to stop the depletion of natural resources giving the example of the Ngorongoro area where the construction of tourist hotels is ongoing. He also needed to know how to balance the caution between the wild animals and the Maasai community for example in settlement areas. Prof Kabudi indicated that on the issue of Ngorongoro, he would not respond because he is a board member of NEMC which dealt with the issue, and the matter was still pending before the board. He however accepted the need to have a position on how many hotels should be built in the area.

Justice Nathalia Kimaro of Tanzania wondered how the issue of everyone having the right to sue would be implemented since there were cost implications. Prof Kabudi in his response also noted that the issue of costs would be an impediment and procedures on how to handle the issue should be explored.

**IX. THE USE OF CRIMINAL LAW IN ENFORCING ENVIRONMENTAL LAW**

*Prof. Patricia Kameri-Mbote, University Of Nairobi*

Prof Kameri-Mbote began her presentation by defining the context within which criminal law is used in enforcing environmental law. She stated that there were different emerging principles used to guide sustainable environmental management and those different regional and national institutions and other law enforcement agencies had different roles in sustainable environmental management.

She briefly explained the conditions under which an act could be a crime and outlined the reasons as to why criminal law was used to enforce environmental procedures. She stated that the criminalisation of environmental violations drew upon three distinctive concerns namely harm, culpability and deterrence, adding that criminal law sought to prevent harm which was the link between the criminal conduct and punitive sanction. She went on to explain that criminal liability was enshrined in the maxim *‘actus non facit reum nisi mens sit rea’* (the doing of an act does not make a man guilty unless he has a guilty mind).
She stated that environmental law was multifaceted therefore multiple methods could be used to enforce it and that criminal law was used where there was inadequacy or failure of civil/administrative law to adequately deter violations. She explained that criminal enforcement of environmental law was necessary to protect the integrity of the regulatory system, prevent harm to the environment, to protect public health and welfare and to punish culpable violations. She noted that where criminal law was used there was societal preference to criminalize actions as an expression of moral outrage as well as to prohibit the harmful environmental activities. She noted that the use of criminal law was necessary for an economic rationale because an effectively enforced criminal statute would raise the cost of certain kinds of conduct and therefore encourage compliance with laws and regulations that would otherwise be largely ignored. She cautioned that mens rea/guilty mind was not a prerequisite in all environmental offences since some statutes required that the violator should act ‘wilfully’, ‘knowingly’ or ‘negligently’. She went on to explain that these words were critical in determining whether the mental element was required to commit an offence. According to Prof Mbote, statutory environmental offences would fall into one of the three categories: Mens rea offences; Strict liability offences where mens rea does not constitute an element of the offence and proof of the actus reus is sufficient (the defendant may raise the defence of “honest and reasonable mistake of fact”); and absolute liability offences where mens rea plays no part and the prosecutor need only prove the objective elements of the offence. The defence of honest and reasonable mistake was not available for an absolute liability offence.

She then discussed the international environmental criminal law defining it as an aggregate of provisions addressing conduct that is important to sustainable environmental management. She went on to explain that most multilateral environmental agreements contained penal provisions couched in different ways with some requiring the state parties to develop appropriate national legislation to ensure the application of the agreements and to punish infractions against their provisions while others require the enactment and enforcement of legislation necessary to effectuate their provisions with ‘appropriate penalties for violation thereof. She cited the example of the Bamako Convention, which provided that:

Each state shall introduce appropriate national legislation for imposing criminal penalties on all persons who have planned, carried out, or assisted in such illegal imports. Such penalties shall be sufficiently high to punish and deter such conduct.
Prof Kameri-Mbote explained that Kenya had utilised criminal law sanctions to enforce environmental management over the years without the use of the term environmental criminal law. She gave with the examples of environmental legislations such as those on forest, wildlife and water which have penal sanctions to enforce compliance. On EMCA, Prof Kameri-Mbote, added that it had made provisions for both substantive as well as administrative offences. She pointed out that the Kenyan courts had increasingly interpreted the provisions of EMCA giving the example of the case of *Gathoni v. Republic*, where the judge’s opinion was informed by the fact that EMCA had provisions dealing with infractions under it and that bringing the action under the Penal Code was erroneous.

She concluded by explaining that the use of environmental law enforcement demanded the use of all available mechanisms with the need to balance incentives (carrots) to elicit compliance with and command and control mechanisms (sticks) in the interest of environmental sustainability. She added that suitable mechanisms ought to be put in place to address environmental misconduct that extends beyond national borders due to the dictates of territorial sovereignty. She confirmed that though international environmental law was replete with examples of penal provisions, it relied on municipal institutions to enforce them underscoring the central role that national institutions played in the quest for sustainable development. Accordingly, she added that the existence of international provisions on environmental crimes also provided a good basis for building on the nascent environmental criminal law in Kenya. She underscored the need to synchronise penalties under EMCA with penalties under sectoral laws to ensure consistence in sentencing and alignment of older penal provisions with current trends and developments which should also be linked to sensitisation of criminal law enforcement agents to ensure that environmental crimes are appropriately and competently dealt with. She pointed out that environmental criminal cases that were wrongly prosecuted would delay action especially where immediate attention was imperative.

X. COMMENTARY

Hon. Justice RSC Omolo, Court Of Appeal, Kenya
Justice Omolo observed that the judiciary viewed the issues as crimes under the EMCA. He noted that if activities were criminalized, it would be an indication of the essence of mens rea. He gave the example of the secret movement of hazardous waste from one country to another.

Citing the examples of the Kibera residents who use “flying toilets” for their human waste disposal, which is a clear threat to a clean environment; Justice Omolo wondered if the courts should blame poverty for environmentally hazardous activities. He sought clarification on whether judgments on environmental matters should be done in partial or whole favor of the environment. He was surprised that no one had brought up the issue of the Kenyan constitution on environmental issues.

**Discussion by participants**

Justice Otieno Onyango wondered how large organizations that emit hazardous waste to the environment are punished for their offences when there is no one suing them. In her response, Prof Kameri- Mbote pointed out that the issue of hazardous waste would be looked at in different angles and that punishment for the organizations could be pursued under EMCA.

Justice Twinomujuni questioned how to deal with transnational boundary activities where an activity in one country could have adverse environmental effects to neighboring countries. He questioned if the East African Court of Justice had powers to handle such transboundary matters within the East African countries. He also sought to know why there is no international court of justice to handle international environmental offenders. Prof Mbote clarified that the EACJ did not have jurisdiction on environmental matters yet. On the issue of the environmental effects on neighboring countries she cited the difficulties especially of dealing with super powers such as the United States of America and China which, despite their continuing environmental violations have not been taken to any court for corrective actions.

Ms. Maembe emphasized on the need for additional training programmes for the judiciary to equip them with additional environmental skills for better performance.

Justice Waki stated that since environmental law was multifaceted leading to framework laws and other provisions for international offences, it created a scenario of numerous conflicts such as
enforcing sectoral statutes and other provisions. He opined that it would be hard to reconcile the statutes and some judges may not be well versed with all statutes. He wanted to know if there was a unified approach in the jurisdiction of environmental law. In her response on this, Prof Kameri-Mbote indicated that the conflicts between the sectoral and framework laws had not yet occurred in Kenya while conflict had been experienced in Uganda. It was for that reason that she advocated for a unified approach to environmental law.

XI. ENVIRONMENTAL TRIBUNALS AS A MECHANISM FOR SETTLING ENVIRONMENTAL DISPUTES

Donald Kaniaru, Chairman, National Environment Tribunal (NET), Kenya

Mr. Kaniaru began his presentation by observing that tribunals were very important in dealing with specialized disputes. He noted that they were a cheaper, quicker and more flexible way of dispensing justice. He explained that due to the tremendous growth in the importance attached to the subject of environment management and the environment as a whole, the international community had experienced phenomenal growth.

He explained that Kenya has an Environmental tribunal known as the National Environmental Tribunal. He added that Tanzania has provisions for it while Uganda does not have one. He stated that in Uganda, the environmental disputes are handled in the High Court and that Uganda has environmental legislation specifically dealing with environmental issues.

He explained that EMCA and the Forest Act and the Rules of procedure provided for the establishment of Kenya Environmental Tribunal, its operations, compositions and modalities of work. He observed that the procedures of choosing the members of a tribunal varied from state to state with most appointees being experts in their own right in environmental law. He gave the examples of the Pakistani Tribunal Chairperson who is not only appointed by the President after consultation with the Chief Justice, but should either be qualified for appointment as a Judge of the High Court or has previously been a Judge of the High Court.

He further explained that the Environmental Tribunals relieve ordinary Courts of backlog. He gave the advantages of the existence of a tribunal citing that its existence was extremely important since
the tools used within the tribunal were excellent and that there was abundance of information on environmental law. He added that the tribunal was flexible, had easy access, open, and used a friendly approach and that the overall costs were less especially since NET levied no costs for filing appeals. He also noted that the CJ of Kenya was reviewing the issue of costs on environmental matters for the courts.

Mr. Kaniaru pointed out that Environmental problems did not, in their nature, respect political boundaries and therefore in the already existing environmental tribunals anyone, irrespective of their countries of origin, could appear in person or by an Advocate. He gave the example of the provision in Tanzania’s *Environmental Management Act*, 2004 in respect to its Environmental Appeals Tribunal. He noted that with regard to NET, its mandate arose from the challenges to actions and decisions of NEMA and its committees. These decisions could, and were appealable to NET by anyone without having to demonstrate in the Tribunal that they had suffered direct damage or injury. He stated that in the Kenyan context “Every person …. Is entitled to a clean and healthy environment and has duty to safeguard and enhance the environment”. He also noted that there was no requirement to have *locus standi* in the proceedings before the tribunal.

He noted that in the 2006 judicial colloquium on Environmental Law, the Chief Justice had announced that he was considering setting up a Land Division in the High Court, which would also deal with environmental matters and that NET appeals would be handled in that Division. This was established this year through, Gazette Notice Number 301 of 2007. He said that this would help clarify matters effectively.

Mr. Kaniaru outlined the challenges facing the NET such as financial constraints, lack of institutional independence, lack of financial resources, insufficient staff, and lack of set remuneration for staff and lack of commitment by the government.

He concluded by saying that tribunals ensured that the national stringent principles on environmental issues were followed. He advised urgent resolution of pending issues such as whether tribunals should have both original and appellate jurisdiction and therefore be more closely integrated to the judiciary, their adequate funding, mode of appointing their personnel and
determination of remuneration or an appropriate working environment. He observed that despite the challenges, the tribunals have a crucial role to play in the field of the environment.

XII. COMMENTARY

Hon Justice Mroso, Court of Appeal, Tanzania

Justice Mroso noted that although tribunals had advantages, they faced the major weakness of lacking autonomy of existence as they were answerable to the High Court. He opined that for the sake of increasing public confidence there was need to have a division in the High Court that dealt with environmental issues. He acknowledged that since Tanzania did not have a functional tribunal, there was need to have a division within the High Court that dealt with environmental law.

Discussion by Participants

Justice Kavuma cited the example of budgetary constraints on the Ugandan land tribunal whose work has been paralyzed due to lack of funds and therefore wanted to find out if the tribunals raised funds from development partners and if so to what extent.

In his response, Mr. Kaniaru said that the budgetary allocation from the government was enough. He admitted that they were facing administrative challenges such as insufficient staff/personnel due to the long employment procedures. He accepted the proposal to seek external funding but clarified that that would be a long-term option. He suggested that there was need to amend the NET provisions to exclude the requirement of a parliamentary approval on the managerial changes at NET.

Justice Mulenga sought clarity on the demarcation on jurisdictions between the courts and the tribunals and wondered if the courts are deprived of jurisdiction on environmental issues. He supported the functions of the tribunal but suggested the facilitation of courts to achieve technical roles that will help them make better rulings.
Justice Simon Kaji suggested that the heads of tribunals should be high court judges or the equivalent to exercise good jurisdiction.

Justice Munuo recommended that section 209 of the Tanzanian constitution should be amended to include an environmental division in the high court. In response Mr. Kaniaru said the idea of a creation of a land and environmental division in the high court was a positive development that should be fast tracked.

In his recommendation, Justice Bosire felt that it was important to have specialized and well trained staff at the tribunals for a more effective and efficient performance.

Justice Omolo suggested that it was important to have the tribunal headed by a qualified person and not necessarily a judge. He clarified that the tribunals were subject to supervisory jurisdiction of the high court and could be controlled through the judicial review process. He added that the tribunal was a specialized institution but the high court, in its supervisory jurisdiction, ensures it does not exceed its mandate. Mr. Kaniaru explained that the current tribunal team was qualified and worked well despite personnel shortage.

Justice Rutakangwa agreed that the tribunal has advantages but questioned the ability and capacity of the tribunals to deal with the environmental matters adding that they are greatly impaired by the laws that create these tribunals. Mr. Kaniaru explained that the future of the tribunal could be sustained with or without state resources.

Justice Waki commented that there was no need to have limited powers to the tribunals as they helped to reduce the backlog of cases at the high court but there was danger that the tribunal would play to the whims of the executive and hence may lack independence. He therefore suggested the need to have independence from the executive as well as set out an environmental division at the high court. In his response, Mr. Kaniaru substantiated that the tribunals were mainly answerable to the high court.
XIII. PRINCIPLES OF ECOLOGICALLY SUSTAINABLE DEVELOPMENT- ASIA PACIFIC EXPERIENCE

Hon. Justice Brian Preston, Chief Judge of the Land and Environment Court of New South Wales Australia

Hon. Justice Preston begun by outlining the definition, history and key elements of sustainable development observing that the concept of sustainable development evolved from the Stockholm conference held in 1972. The conference focused on economic growth and development but in an ecologically sustainable way. He said that the meeting resulted in the government and non governmental organizations formulating policies to regulate environmental sustenance. He added that the principles were embraced by the international community in the 1992 UN Conference on Environment and Development held in Rio de Janeiro, and in the 2000 Millenium Declaration and at the 2002 World Summit on Sustainable Development.

Justice Preston then discussed the principles of ecologically sustainable development which he said were a cluster of elements of principles namely: *the principle of sustainable use*, *the principle of integration*; whose essence is to integrate environmental concerns with the economic agenda and social concern and the *Precautionary principle*. He went on to explain the essence of the precautionary principle as one that applies to certain situations that are characterized by scientific uncertainty as to the risks involved in the consequence of human interaction with the environment. Justice Preston cited the 2005 report entitled *the precautionary principle*, where the World Commission on the Ethics of Scientific Knowledge and technology identified conditions that must be present for the precautionary principle to apply. These conditions are as follows:

i. Considerable scientific uncertainty must exist;

ii. Scientifically reasonable (based on scientifically plausible reasoning) scenarios or models of possible harm that may result must have been formulated;

iii. The uncertainties that exist cannot be reduced in the short term without simultaneously increasing ignorance of other relevant factors;

iv. The potential harm is significantly serious or even irreversible for present or future generations, or otherwise morally unacceptable; and

v. There is need to act immediately to avoid a significant increase in difficulty or cost.
He then gave the general measures and processes that were applicable to the implementation and operation of the precautionary principle.

While discussing how courts in Asia utilized the principles of sustainable development, he observed that Australian Courts embraced the precautionary principle in their judicial decisions. He cited various examples such as Leatch vs. national parks and wildlife services. He cited the Pakistan case of Shehla Zia Case where the Supreme Court applying the precautionary principle, declared that it was a rule of reason, precaution and prudence, which required effective measures to be taken to minimize possible hazards to the environment. He also observed that in the supreme courts of India the precautionary principle had been adopted as part of the environmental law of the country.

He concluded by saying that the rule of law should include the concepts of sustainable development which should also factor in the cultural issues and ways of ensuring sustainable development. He encouraged the judiciaries represented to embrace the example of the Asia and Pacific countries in playing their roles in environmental management and sustainable development as a whole.

**XIV. COMMENTARY**

**Hon. Justice A. Twinomujuni, Uganda**

Justice Twinomujuni commented that courts throughout the world were in the process of incorporating environmental laws and therefore it was not possible to have environmental sustainability without the involvement of the courts. He opined that for a country to put into practice environmental laws it must also have the respect and practice of the rule of law. He added that it was important that the judiciary should be able to translate the environmental laws and the provisions to make the environmental more sustainable. He cited Uganda as one that had a problem of implementing environmental laws. He went on to say that governments were major culprits in environmental degradation making it a big challenge to the courts. He also gave the example of poverty as one of the biggest contributors to the environmental degradation. Justice Twinomujuni concluded by declaring that the Ugandan judiciary was largely unaware of the provisions of and requirements of environmental law and hence contributed to the slow implementation in the courts of the environmental issues.

**Discussion by Participants**
Prof. Okidi sought to know the uniqueness found and experienced in Asia-Pacific Judicial systems that would be beneficial to the East African Courts/Judges.

One of the participants requested for clarity on the precautionary principle especially whether it was supposed to apply in the cases of the criminal matters. Justice Preston responded by saying that criminal law had less scope at the liability stage and therefore the judiciary should use different integrative laws to make undoubtedly good judgments.

Lady Justice Kileo sought to know if there were any improvements on the Stockholm Principles of 1972 and if not, she suggested the need for improving them and passing them on to the young generation emphasizing on the need to protect the environment and making it everyone’s responsibility. Justice Preston cited the example of the Supreme Court in India that ordered the government to run environmental educational programmes in institutions and organizations to ensure that citizens were aware of their environmental rights.

Ms Christine Okello advised that the precautionary measure was important as it helped counter any acts that are likely to cause a negative effect to the environment. Justice Preston added that there was need for the judiciary to ensure that the courts were not unreachable as that would undermine the statutes.

Mr. Kaniaru said that UNEP had been reviewing the state of the environment for all the regions and that there are marks of progress to date.

XV. LAW REPORTING AND ITS PLACE IN ENVIRONMENTAL MANAGEMENT: THE ROLE OF NCLR

Mrs Gladys Shollei, Editor NCLR

Mrs. Shollei gave a brief overview of the NCLR indicating that it was its responsibility as a state corporation to publish the Kenya law reports and to be a one stop shop for all the legal documents to the bench.
She then took the judges through an introductory session of the Kenya Law reports website giving the advantages of easy access to updated information on judicial matters and the Kenya laws which were accessible to all. She also demonstrated the use of the search options on the website to gather any kind of information. She added that the website was also linked to other international websites. She went on to explain and demonstrate the newly launched website on the environment and land law reports.

**Discussion by participants**

Mrs. Shollei clarified that the website was not for Kenyan access only but for international/global usage and that the use of the website was free except for the case search where one has to pay subscription fee to be able to access.

She also added that there was a bulletin that was produced monthly for the circulation to the Kenyan judges in the High Courts and the Court of Appeal to ensure faster access to information.

On the question by Prof Okidi on accessibility to the UNEP website, Mrs. Shollei said that it had established linkage to the UNEP judicial portal. Justice Preston said that the UNEP judicial portal was a package by IUCN (the World Conservation Union) with the WB and dealt with issues on the laws of the environment.

Justice Onyango Otieno commended NCLR for launching the website saying that it would act as a good connection to the judiciary and other interested members for easy access to information related to judicial matters. He however complained about the slow internet access/speed experienced in the Kenya High Court. Mrs. Shollei clarified that the issue of speed was a government related problem as the government was using a small band-width that was being shared by all the High Court offices. Justice Bosire added that the problem of the internet connection speeds was an institutional problem that was dependent on the Internet service providers that had been hired by the government.

Prof Okidi sought to know whether the website listing contained international and domestic treaties, the dates they were signed and the current status of the reports. Mrs. Shollei disclosed that plans were underway to have the basic framework for this available by June 2007.
Ms. Maembe asked if it was possible to use cell phones to access information on the Kenya law reports website. Ms Shollei clarified that the option to use cell phone to access information was available but the capital costs for the creation of the software was too high.

XVI. TRANSBOUNDARY ENVIRONMENTAL ISSUES

Professor Francis D.P. Situma, University of Nairobi

At the outset, Professor Situma pointed out that his paper focused on the responsibility for damage or injury occasioned to the territory of one state as a result of activities in a neighbouring state related to the exploitation of shared natural resources. He outlined three scenarios in which transboundary issues arise. The first scenario relates to international rivers and international drainage basins that traverse boundaries. The second relates to utilisation and management of ecosystems or natural habitats that straddle international boundaries while the third relates to the utilisation and management of resources that are migratory such as migratory birds that move between two or more states.

Professor Situma gave an overview of three management theories that underpin claims to proprietary benefits and preservation of state sovereignty. The theory of territorial sovereignty, he said, advances the idea that a state has absolute control over and exploitation of natural resources in its territory. He said that the principle is also referred to as the Harmon Doctrine, named after US Attorney General who defended the US against Mexico in a dispute over the diversion of the Rio Grande River. However, he indicated, that the doctrine has been rendered otiose by contemporary developments in international law generally and in international environmental law in particular.

The second management theory, he said, is that of territorial integrity whose essence is that a State is not allowed to interfere with the territorial integrity of another state. He explained that the rationale is to preserve a state’s sovereignty over environmental matters. This principle, he added, has obtained international recognition with the Arbitral Tribunal in the Trial Smelter Arbitration holding that general principles of international law impose obligations on states to prevent interference with the territorial integrity of other states. The dispute in this case, he added, arose from damage caused
by air crossing boundaries of the US and Canada. Another case, *Lac Lanoux Arbitration*, dealt with the transboundary movement of water between Spain and France.

He pointed out that the doctrine of equitable utilisation formed the third theory of management and dealt with the approach for sharing natural resources among states. He indicated that the theory is manifested in efforts to codify the law of shared resources and natural resources under Article 4 of the 1966 Helsinki Rules on the Use of the Waters of International Rivers and the United Nations Convention on the Law of the Non-Navigational Uses of International Watercourses.

Turning to the principle of joint management, Prof Situma observed that it stands for the idea that States need to be actively involved in the management of transboundary natural resources and related environmental issues. To illustrate the relevance of this principle, he gave the example of Europe which has elaborate agreements that provide a framework for sharing River Rhine. In Africa, he gave the example of the Niger Basin Authority and Zambezi Intergovernmental Monitoring and Coordinating Committee.

Referring to the procedure of state cooperation and collaboration, he said that it is crucial to the success of the principle of joint management. He pointed out that the procedure is now embedded in a number of international instruments such as Principle 24 of the Stockholm Declaration and Principle 5 of the 1992 Rio Declaration. He said that the nature and extent of the procedure was delineated in the *Gabcikovo – Nagymaros* dispute between Hungary and Slovak Republic over the Danube River.

Prof Situma then focused on the policy and legal frameworks that the East African Countries have adopted for the management of transboundary natural resources with a view to the creation of wealth and alleviation of poverty. He enumerated instruments in which the East African Countries have subscribed to: the 1968 African Convention on the Conservation of Nature; Protocol for Sustainable Development of Lake Victoria Basin; and Chapters 19 and 20 of the 1999 Treaty for the Establishment of the East African Community (Treaty).

Discussing prospects and challenges facing EA Countries, he noted that the States have done little to implement the Treaty and other instruments for the management of natural resources. To
illustrate this point, he gave two examples. The first is that gold mines in Tanzania use methyl mercury and cyanide-both dangerous chemicals- which studies show accumulate in Nile Perch and are passed on to human beings upon consumption. The second is the draining of the Yala swamp affecting water flows to Tanzania and Uganda. With respect to the latter, he said that the investors are now growing cotton and undertaking fish farming- quite a different activity from what they had initially set out to do. He wondered to what extent people affected by the foregoing activities can sue the State responsible for the resulting environmental injury.

Professor Situma also pointed out that the concept of sustainable development is not well articulated in the region asserting that if it were, it could have been incorporated in the countries’ development programs. Echoing Christine Akello’s earlier presentation, he suggested that countries need to cost exploited natural resources with a view to inclusion in development plans for, like goods and services, they are central to a country’s development aspirations. He proposed that the countries harmonise their laws so as to ensure that framework laws and policies in the region work in tandem.

**XVII. COMMENTARY**

**Honourable (Retired) Justice Akiwumi Akiwumi, Kenya**

Justice Akiwumi stated that the crux of his presentation was on transboundary environmental issues within the context of the East African Community. He reiterated that environmental matters cut across territories and in recognition of this, the Treaty contains provisions on co-operation in environment and natural resources management, although they are yet to be put into effect.

He intimated that when these provisions become effective, and considering that the provisions of the Treaty constitute applicable laws of each individual Partner State, a resident of a Partner State may sue for a breach of the related provisions of the Treaty in a national court or tribunal.

Justice Akiwumi pointed out that Article 27 of the Treaty vests the East African Court of Justice (EACJ) established under the Treaty with jurisdiction over the interpretation and application of the Treaty. He said that the decisions of EACJ take precedence over those of national courts. He enumerated some of the powers of EACJ. First, EACJ has powers to hear a matter relating to failure by either a Partner State or any of its organs to fulfil an obligation under the Treaty. Secondly, he
said, EACJ can, on reference by a Partner State, determine the legality of any Act, regulation, decision or action deemed *ultra vires*, unlawful or that infringes the provisions of the Treaty. Furthermore, he said, EACJ ensures the maintenance of the rule of law through resolving disputes thereby facilitating and strengthening economic integration.

He pointed that the Partner States are yet to take action to implement environmental provisions of the Treaty. In mitigation, he said, the national framework environment laws of the Partner States already have provisions for protection and promotion of the environment, and that these will later enhance the role of the EACJ. He theorized that when environmental management legislation and instruments are in place to give legal effect to the principles enunciated in the Treaty, there may be many cases filed at the EACJ.

Justice Akiwumi indicated that Article 126 of the Treaty contains provisions urging cooperation in legal and judicial affairs whose essence include standardising of judgments of the national courts within the Community, legal training and harmonization of national laws. He added that although there is now no East African Court of Appeal, he hoped that Article 126 of the Treaty would promote the harmonization of judicial decisions in the process of East African integration.

He pointed out certain legal, policy and policy issues will need to be addressed if and when the Community revives the East African Court of Appeal. He was of the view that such a court may duplicate the work of each Partner State’s Court of Appeal. He mentioned that there is the fact that decisions of the Court of Appeal of Tanzania and Kenya are final and not subject to appeal. With regard to Uganda, he noted that decisions of the Court of Appeal are not final and can be appealed against to the Supreme Court of Uganda.

**Discussion by participants**

In his contribution, Justice Lubuva was sceptical on whether the governments are necessarily the biggest contributors to environmental degradation. Nevertheless, he proposed that governments need to design mechanisms for protecting the environment so as to pre-empt its degradation. He added that Justice Akiwumi raised a valid point when he said that such a step would duplicate the work of each Partner State’s Court of Appeal. He opined that countries must integrate their systems
as a pre-requisite to establishing such a court, which in any institutional arrangement, would sit at
the apex of the judicial hierarchy. In his reaction to Justice Lubuva’s remarks, Professor Situma was
of the view that the government is a worse culprit and gave the example of Mabira Forest in
Uganda. He insisted governments are bound by law and therefore any person aggrieved by any
injury it occasions is not impeded from suing it.

Dr. Iwona posited that a liberal locus standi would aid efforts aimed at ensuring implementation of
instruments for the management of natural resources as people would find it easier to file cases
seeking to vindicate rights relating to environmental matters. She urged the participants to adopt the
Indian and Pakistan templates where people can file suits through such simple procedures as letters.
She asserted that reference to such theories as the Harmon Doctrine is dangerous in any efforts
aimed at securing a balanced sharing of natural resources and remarked that it was precisely for this
reason that it had been recanted in international law. Commenting on some aspects of Dr. Iwona’s
remarks, Professor Situma expressed doubt whether judges could act suo moto as has happened in
India and Pakistan as doing so would compromise their independence. He suggested that the matter
be revisited when the session will be discussing public interest litigation.

Justice Mulenga referred to the following statement from the paper “it should be noted that the obligation
of notification and consultation does not typically require States to receive the consent of the affected State” and was of
the view that such a step would engender serious differences between countries. In this respect, he
wondered why countries had to jettison the requirement for consultation. Professor Situma said that
this idea finds a basis in international law where states are regarded as equal. The implication, he
said, is that by deferring to consultation, it would be interpreted to mean that the States are not equal
hence a State cannot be afforded an opportunity to overrule another. For authority on this position,
he referred to the arbitral award in Lac Lanoux where it was held that France did not have to consult
Spain before using water from River Carol which straddles the two countries.

Professor Kabudi said that the framework environmental laws of the EA Countries—respectively
sections 124, 107 and 179 of Kenya, Uganda and Tanzania of the framework environmental laws—
has provisions asking countries to implement international agreements and protocols. In the case of
Tanzania, he said that section 180 explicitly addresses transboundary issues, a provision informed by
the fact that it shares boundaries with eight other countries. He added that even if countries have
not implemented international instruments, these can serve as interpretative aids when adjudicating on environmental matters. He further reminded the audience that the EA Countries operate under an adversarial legal system whose *modus operandi* does not allow judges to investigate matters and therefore that it is highly impossible that judges could act *suo moto*.

In her contribution Mrs Maembe informed the audience that the principle of joint management predates the framework environmental laws, noting that already in 1995 there was a joint management with respect to biodiversity. Referring to the joint management of Lake Victoria under the aegis of Lake Victoria Basin Commission, she wanted to know what lessons the region has so far learnt and if there are any other interventions required. In addition, she posed the question as to whether it is possible to harmonise environmental laws in the region. Professor Situma said that there is room for litigation of transboundary matters pursuant the provisions of the Treaty and conceded that it is time environmental laws were harmonised.

**XVIII. APPLICATION OF THE PUBLIC TRUST DOCTRINE TO ENVIRONMENTAL MANAGEMENT**

*Professor Patricia Kameri-Mbote, University of Nairobi*

Professor Kameri-Mbote began her address by asserting that the Public Trust Doctrine (PTD) is the cornerstone of environmental law and relates to ownership, protection and the use of natural and cultural resources. She further averred that PTD applies in both domestic and global jurisdictions. She explained that the notion of PTD flows from the idea that certain natural resources—notably recreational lakes and beaches, parks, wildlife, air, etc—need not be owned by either the government or investors, but are to be owned by the government for the benefit of its citizens. In other words, the precept is grounded on the idea that the sovereign is a trustee that has a fiduciary duty of stewardship of certain natural resources for the benefit of the public. Following on this, PTD signals a superior title which a state has the responsibility of looking after.

She indicated that in Kenya PTD is used conterminously with public interest. She cited the Report of the Commission of Inquiry into the Illegal/Irregular Allocation of Public Land in Kenya which asserted that land is amenable to PTD. Professor Mbote further noted that PTD is at the core of environmental claims under EMCA which provides that every person in Kenya is entitled to a clean
and healthy environment. Indeed, along with the provision in EMCA, she noted, there has been significant development in litigation in environmental cases. In this respect, Professor Kameri-Mbote observed that there has been a change from the position in the Wangari Maathai Case—which denied *locus standi* for purpose of vindication of public interest- to the contemporary practice where public interest is being vindicated through public interest litigation. Following on this, she asserted that courts now have a role to adjudicate on whether public interest is being upheld. She cited the Tanzanian case of *Christopher Mtikila V Attorney General* where the court held that one need not prove injury as a *sine qua non* to instituting a case vindicating public interest rights.

She pointed out that the state can enforce public interest in land through the doctrine of eminent domain, police powers and compulsory acquisition. However, she observed that it is not always that the state safeguards public interest as evidenced by the excision of thousands of hectares from Mabira Forest in Uganda and the issue of land grabbing in Kenya.

She noted that the concept of PTD is of Roman law provenance. She explained that in England PTD appears in common law through the Magna Carta and the writings of Blackstone. She also informed the audience that PTD is found in African societies by dint of the existence of the concept of common property.

Professor Kameri-Mbote underscored that the essence of PTD is the notion that the state is a trustee of natural resources falling within its sovereign jurisdiction and holds them for the benefit of the general public. She emphasized that in this role, the state should deal impartially with all beneficiaries and hold the property strictly for the purpose of the public, a clear caveat that such property may not be disposed off for fair cash equivalent as has happened with regard to Mabira Forest in Uganda. She asserted that fiduciary duties are inherent in the state as the general public is vulnerable and may therefore be impaired with regard to laying claim to their rights to the natural resources.

Professor Kameri-Mbote further explained that PTD also operates on a global plane. She observed that previously resources were allocated on the basis of who laid claim to them first, but over the years, because of a realisation that such resources are being depleted very fast, it has become imperative to design new mechanisms for sharing them. In other words, the emergence of global
problems around natural resources has given impetus to the need to develop new regimes for regulating access to environmental resources which include deep sea heritage, the exclusive economic zone and biological diversity.

She noted that in practice, PTD has been invoked in two instances. The first is to prevent the government from conveying public resources to public interests. On this point, she cited the case of *Illinois Central Railroad v. Illinois* where the court acceded to the revocation of a transfer of a waterfront to a railway company in Chicago on the ground that the land was held in trust for the people. The second instance is where even if resources have been conveyed to a private interest, they still remain subordinate to the public interests a position affirmed in the Kenyan case of *John Peter Mureithi & 2 others v Attorney General & 4 others*. She said that PTD has been used in other countries to prevent dumping of waste, to protect traditional heritage and to contest the allocation of water resources.

In conclusion, she wondered what remedies are available where natural resources have been allocated wrongly, either advertently or inadvertently. She underlined that it is imperative for a balance to be maintained between public and private interests with regard to natural resources. She remarked that the controversy surrounding the allocation of Mabira Forest in Uganda foreshadows that demands are increasingly being brought to bear on the public trustee to ensure that natural resources are being used for the benefit of the general public. In regard to this development, Professor Mbote posed the following questions: first, to what extent can lawyers in East Africa handle public interest litigation; secondly, whether people can afford to sue; and lastly, can courts act *suo moto* where there is flagrant breach of the public’s rights and still be within the parameters of the doctrine of separation of powers.

XIX. COMMENTARY

*Honourable Justice Bart Katureebe, Supreme Court of Uganda*

Thanking Professor Kameri-Mbote for her erudite exposition, Justice Katureebe began by observing that the government is the worst polluter. He proposed that when a government fails in its role as a public trustee, there is inevitable environmental degradation. To illustrate this point, he gave the
example of Lake George in Uganda, whose fish stock been exhausted largely because the
government did not institute any mitigating measures.

He informed the audience that when Uganda convened a Constituent Assembly to write a new
constitution way back in 1995, the country was alive to earlier environmental degradation hence the
decision to entrench provisions about the environment in the constitution. He said that section 137
of the constitution requires the state to hold natural resources—for instance water and land—for the
benefit of the public. He explained that the government has given the land to investors on the
assumption that this will contribute economic growth. However, he noted, this decision does not
take cognisance of future generations and on this basis, gives short shrift to the countries’
aspirations as captured in the constitution. A positive spin-off of this state of affairs, he said, is
increased public awareness that significantly has catalysed public debates about environment
matters.

Commenting on the precept of eminent domain and the powers of compulsory acquisition, he said
that these issues were debated during the writing of Uganda’s constitution. He noted that section
126 thereof provides that the government can acquire land from private persons under three
conditions: where land is required for public purpose; acquisition is followed by adequate
compensation; and, acquisition is done under a law that allows a citizen to apply to court to be heard
about the matter. He concluded by wondering whether the government can give away land-by
changing use where it is held for public interest.

**Discussion by participants**

In her contribution, Dr. Iwona Rummel-Bulska was of the view that Professor Kameri-Mbote’s
presentation emphasized the limits of the state, to wit, once the government is democratically
elected, there is an implicit contract to take care of the citizens’ interest. Following on this, she
added, democracy includes a duty to take care of the environment. She said this is the duty that
NGOs and lawyers need to ensure that it is upheld by vigorously espousing the rights of the
citizenry.
Justice Waki sought to know who is responsible for monitoring the level of pollution, for instance gas emissions, in the country. Professor Kameri-Mbote admitted that there are concerns about levels of pollution in small countries, noting that there is a scientific panel charged with the responsibility of tracking the magnitude of pollution. However, she was of the view that the panel's efforts are futile where pollution emanating from big countries is not being addressed.

Justice Onyango sought to know to what extent the public- for example in Tana River and Turkana districts- is aware that the government holds land in trust for them. In his opinion more public awareness would make people alive to what their rights are. Professor Kameri-Mbote concurred with this observation and remarked that more people are getting aware about the environmental framework laws.

Justice Omolo reminded the audience that whereas the government is elected on a platform to do certain things, the same procedure does not apply to judges. By dint of this, he asked the extent to which judges can stop government actions and sought to find where the balance is between judges and the executive insofar as public interest is concerned. Commenting on this, Justice Tsekooko opined that constitutions vest judges with the power to take actions so as to protect the interests of helpless members of the public. In her response, Professor Kameri-Mbote said that striking the balance between the legislature and executive is problematic and opined that more creative strategies for achieving this are needed.

Justice Lubuva inquired why the presentation lacked autochthonous information, for instance, the ideals espoused in the Ujamaa concept in Tanzania and the ethos and values captured in Jomo Kenyatta's book, *Facing Mount Kenya*. Professor Kameri-Mbote admitted that her paper was bereft of local materials because it was still being developed and promised to study the information with a view to its inclusion in the improved version of the paper.

Justice Mroso noted that there is a quest for development and hence need for investors. However, he wondered how countries can achieve their development and at the same time preserve the environment. He posited that while demands for development are undeniable, politicians and policymakers need to be sensitised about the need to preserve the environment as it forms the bedrock for any envisaged development.
XX. ENVIRONMENTAL LAW OF EAST AFRICA

Dr. Iwona Rummel-Bulska, UNEP

Dr. Iwona said that the gist of her presentation was how EA Countries are responding to environmental challenges through development and implementation of environmental laws as well as the role of UNEP in this process. She noted that environmental law is very broad, but underlined that it is an essential tool for the governance and management of the environment and natural resources.

She explained that the common law has influenced the development of environment laws and policy in the region and noted that since the 1990s, the EA Countries have been developing and harmonising their laws in selected sectors through enacting internal legislative, regulatory and administrative framework for each country. She added that several policy concepts-including precautionary principle, public participation and environment justice-undergird the framework environment laws.

She said that the fact that EA Countries have adopted similar approaches is informed by the fact that they share borders and some resources, have a common legal tradition and there is a long history of cooperation among them dating to the colonial times. She noted that all the countries started efforts to enact environment laws in the 1990s and added that while the Tanzania and Uganda constitutions have entrenched provisions about protecting the environment, Kenya has not.

Dr. Iwona added that the Treaty urges the EA Countries to cooperate in environment and natural resources management. The EA Countries have also signed a Protocol on Environment and Natural Resources Management which covers the gamut of environmental issues. She also said that the countries have made significant progress in joint international agreements dealing with environmental matters adding that they have ratified the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal and have transposed this Basel Convention into Article 113 of the Treaty which calls on Partner States to cooperate and adopt common positions against illegal trade and movement of chemicals, substances and hazardous wastes. She added that the countries are also Parties to various agreements that address
environmental concerns, for example, the Ramsar Convention on Wetlands and the African Convention on the Conservation of Nature and Natural Resources.

Turning to the issue of access to justice on environment matters, Dr. Iwona said that the countries have been inclined towards ensuring greater access to information, public participation and access to justice in environment matters, a precept encapsulated in Principle 10 of the 1992 Rio Declaration. In Kenya, she observed, for a long time the courts have upheld the common law position on *locus standi* hence making redress for environmental injury difficult. However, she further observed, this strict interpretation and application of *locus standi* has been relaxed by EMCA which asserts every person’s right to and duty to a clean and healthy environment.

Focusing on UNEP, Dr. Iwona said the organisation has offered support for environment protection through developing the legal processes. On this score, she said UNEP has supported the Judges and Parliamentarians Programmes and development of various databases, relevant publications and information sources. The most relevant UNEP initiative so far, she added is the Project on the Development of Environmental Law and Institutions in Africa (PADELIA), whose essence is to support the development of environmental law and institutions in selected African countries. She noted that EA Countries have notched a number of achievements under the auspices of PADELIA, among them, holding six workshops on the development and harmonisation of environmental laws for the region and the development of 8 volumes of environmental law implementation whose *raison d'être* is capacity-building. With regard to information, she explained that UNEP, in collaboration with UN Food and Agricultural Organisation, has developed a searchable database, called ECOLEX containing treaties, national legislation, legal literature and court decisions. She termed ECOLEX as the comprehensive global source of information on environmental law.

**Discussion by participants**

Contributing to Dr. Iwona’s address, Mr. Kaniaru explained that so far the EA Countries have significant harmonisation of environmental laws and gave the examples of the Forests Act. He also added that the principle of greater access to information, public participation and access to justice is now contained in regional instruments and framework laws of respective countries.
Justice Lubuva suggested that officials including judges from Tanzania need more knowledge and information on environmental law and asked if UNEP could assist. In her response, Dr. Iwona said that UNEP could be inclined to consider such an idea and asked Tanzania to submit a proposal for consideration.

XXI. THE ROLE OF THE PRIVATE SECTOR (BANKS) IN PROMOTING ENFORCEMENT AND COMPLIANCE WITH ENVIRONMENTAL LAW

Mr. Francis Okomo-Okello, Chairman, Barclays (K) Limited

At the outset, Mr. Okello pointed out that his thesis is that the private sector has a central role to play in the promotion and protection of the environment. Following on this, he sought to disabuse the notion that business is against the environment and noted that environmental stewardship is collaborative and all inclusive. He underscored that before one invests in a country, there are certain imperatives that they ordinarily consider: rule of law with a strong judiciary capable of enforcing contracts; a democratic culture; good governance broadly from a political and economic perspective; macro-economic indicators such as Gross Domestic Product (GDP) and Gross National Product (GNP) and sustainability.

Mr. Okello posited that the subject of environmental governance is an idea whose time has come and asserted that there now is a symbiotic relationship between economic development and sustainable use of the environment. He said this notion has been affirmed in the 1992 Rio Declaration and it is against such background that emerging countries like Kenya has initiated the process of developing and harmonising the framework environmental laws with a view to promoting environmental protection and sustainable development. Underscoring that such developments are inevitable, he averred that countries have to explore ways of turning them into economic opportunities.

He then sought to situate the role of the private sector on the broad canvas of environmental issues, a fact that has been underlined in a number of initiatives. One such initiative, he said, is the Millennium Development Goals (MDGs) whose centrepiece is environment sustainability. The others, he added, are the World Summit on Sustainable Development which roots for Public-Private
Sector Partnerships as a *sine qua non* to achieving some of the MDG goals and programmes being undertaken under the aegis of the New Partnership for Africa’s Development.

He asserted that the foregoing initiatives may not be achieved without finances from both multilateral and domestic banks. He pointed out that major industrial and commercial projects have been financed by banks after verifying their technical and economic viability. Unfortunately, he indicated, some of these projects have been the genesis of environmental degradation and disasters of great magnitude. Because they finance some of these projects, he said, banks are implicitly responsible for their environmental impacts. By virtue of the foregoing, banks have been identified as key stakeholders and participants in the process of economic development and therefore play a fundamental role in the promotion of compliance with environmental laws and regulations by investors.

He made a case for inclusion of environmental matters in the constitution because of its superiority in the legal hierarchy as well as the fact that it will increase the visibility of environmental matters and by so doing enhance public awareness of environmental matters. He said such a provision, when read together with the section of EMCA guaranteeing every person a right to a clean and healthy environment, would ameliorate the rigid common law principle of *locus standi*—enunciated in the *Wangari Maathai case*—which technically requires the Attorney General to sue on behalf of the public and as a result circumscribes the ability of individuals to sue on environmental matters relating to natural resources.

He touched on possible implementation mechanisms available to bankers so as to discharge their responsibility of promoting and protecting the environment. He suggested the establishment of Environmental Trust Fund (ETF) and Environmental Restoration Fund (ERF) as provided for in sections 24 (1) and 25(1) of EMCA. He said that the ETF would facilitate and maintain management of the environment and natural resources through research, capacity building, environmental awards, etc while the ERF would provide insurance for mitigating environmental injury where the culprit cannot be identified.

Turning to environmental litigation, he posited that EMCA has created a jurisprudence that allows for pro-active management of the environment and tones down the adversarial approach to...
environmental matters. He posited that the criminal jurisprudence in EMCA is underpinned by a restitutive rather than retributive form of criminal justice as the basis for the preponderance of mitigative approach in environmental management. He proposed that both the Bench and Bar embrace this approach on issues of environmental management. He appealed to everyone to assume the role of environmental stewardship and concurred with Justice Akiwumi’s proposition that we all have responsibility for environmental stewardship. He concluded by echoing part of Wangari Maathai’s words-in her acceptance speech when receiving the Nobel Peace Prize-that there can be no development without sustainable management of the environment in a democratic and peaceful space.

**Discussion by participants**

Justice Preston pointed out that in New South Wales, Australia, when sentencing for environmental crime, the court is required to publicise the offence and offender in some publications such as the industry one. In view of this, he asked if it was possible to notify the financier about environmental dereliction. In his response, Mr. Okello said that the Nation Media Group (NMG) has a partnership with the Kenya Law Reports to report cases touching on environmental matters on a priority basis. The aim, he said, is not so much to focus on the offending party as to create public awareness about environmental matters.

Justice Lubuva structured his question around presence of a democratic culture as a prerequisite to investments. Giving two hypothetical examples, he said one country may have experienced environmental degradation while the other does not. Where there is environmental degradation, the country may employ despotic means to sort out such a problem. Against this background, he wondered the extent to which investors would want to invest in a country with a despotic streak. Responding to this concern, Mr. Okello reiterated that business thrives in a sustainable and predictable environment. Democratic culture pre-supposes, among others, presence of consultation to which the people acquiesce and creation of structures and institutions for managing public affairs. He admitted that while there is evidence that some countries apply a dose of despotism, the general view is that investors are not encouraged to invest there.
Justice Githinji inquired how banks promote environmental matters and in the context of Barclays Bank wanted to know whether there are environmental projects that the bank promotes other than those relating to lending. Mr. Okello indicated that banks get involved in promoting and protecting the environment for reasons that include Corporate Social Responsibility (CSR) and said that in Kenya this is illustrated by Barclays Bank’s involvement in efforts to restore the Aberdares. He further pointed out that for the reason that a project requires an EIA licence, it is necessary that the banks have the information before lending money.

Justice Onyango pointed out that there are a number of businesses, for instance those logging timber, whose operations impact on the environment and are of such a scale that it would be presumptuous to assume that they not being financed. On this score, he wanted to know what criteria banks use to ensure they do not lend to businesses whose activities cause environmental depredation and whether there is a mechanism for ensuring that all banks actually have somewhat similar standards. In his reaction, Mr. Okello contended that the equitable principle is voluntary and banks have the latitude to decide on which projects to finance. He stressed that the question raised the matter of ethical financing. He said that this issue poses a dilemma for financers; on one hand, some banks may vacillate from financing a project because of ethical concerns while on the other hand there are those willing to finance the same project. He intimated that creating more awareness may ameliorate this contradiction. He added that although the subject of ethical financing is tenuous, the good news is that banks are increasingly becoming aware and sensitive to environmental issues. He suggested banks may require a sectoral code but was not sure how soon one will be available. He informed the audience that banks focus on different areas of lending and indicated that generally banks retain certain pre-tax profits for use in environmental purposes.

XXII. WORLD BANK PROCEDURES IN PROMOTING ENVIRONMENTAL PROTECTION IN ITS FINANCED PROJECTS

Dr. Nightingale Rukuba-Ngaiza, Senior Legal Counsel, the World Bank

Dr. Rukuba-Ngaiza took the participants through the procedures that the World Bank (WB) employs to promote environmental protection in the projects it finances. One of the safeguards she spoke about is environmental assessment which ensures projects are environmentally sound and sustainable. Dr. Ngaiza said that these safeguards are used for projects that will affect, among others,
natural habitats, forests, cultural property, disputed areas and dams. She added that this safeguard protects and prevents further degradation of natural habitats so as to conserve their biodiversity, minimize risks from chemical treatments, reduce dependency and deforestation, enhance environmental contribution of forests and prevent the destruction of cultural property such as shrines, historical sites etc. She said that when used with regard to indigenous people, it requires the development of a plan to ensure that they are consulted and their views taken into account in the project design.

She admitted that the environment assessment process and public consultations have been weak at the Bank and indeed complaints to the Bank have touched on this issue. She said that although the Bank recognizes the need for consultation, there were a few problems with the modalities for carrying this out, for example, there is the question whether to consult NGOs or the public. If the NGOs are to be consulted, she wondered whether they are legitimate, that is, who they represent and to whom are they accountable? Nevertheless, she said, for projects which pose significant impacts to the environment, the borrower is required to consult affected groups and local NGOs before terms of reference are prepared, when the draft environmental assessment is available and throughout project implementation phase as necessary.

She informed the participants that EA Countries have detailed analysis of project files and interviews courtesy of the work of local NGOs/Academics, policy and legal research. She noted that there exists relevant national legislation, namely constitutions and framework laws, to support consultations. However she observed that certain laws, for example the Official Secrets Act, may not render certain projects amenable to public consultation. She gave the example of Songo Songo Gas Development Project in Tanzania as one where adequate consultations as well as good information dissemination strategies were employed.

She then highlighted weaknesses that surround environmental assessments and consultations. These are political interference with the processes, for example the Titanium Project, in which there was incitement to violence; capacity constraints (technical, human and financial) alongside a judiciary not pro-active like in Asia; geographical limitation that hinder NGOs from participating in such processes as well as lack of information as has happened with respect to Bujagali Hydro-power Project in Uganda and weak mechanisms for dissemination of information.
Discussion by participants

Dr. Iwona sought a number of clarifications with respect to Dr. Rukuba-Ngaiza’s presentation. First, she wanted to know how failure to hold public consultation would impact on World Bank financing. Secondly, she inquired whether the remit of the inspection tribunal is strictly on environmental matters or it extends to other matters. Lastly, she inquired whether the Bank was involved in public participation prior to commissioning the Titanium Project in Kwale, Kenya. In her reaction, Dr Rukuba-Ngaiza affirmed that the Bank’s policy is to withdraw funding where there are genuine concerns about environmental matters. With regard to the inspection panel, she pointed out that it comprises independent experts—not staff of the Bank—to whom complaints can be channelled about environmental measures. The *modus operandi* of the inspection panel, she pointed out, is to make recommendation only after they have been discussed by the Board of the Bank. With respect to the Titanium project, she affirmed that the Bank was involved only with the aim of gleaning information and gaining experience that would be used to develop a template for use in evaluating its future projects.

Justice Waki’s question touched on inspection panels and the consultation process. He pointed out that if the foregoing processes resulted in a negative report, the Bank policy is to withdraw funding. He added that by so doing, alternative financiers will be sought, negating the Bank policy. Normatively, from a moral perspective, he wondered why the Bank should not share adverse information about projects with governments and other institutions so as to forestall any possible environmental damage. In her response, Dr. Rukuba-Ngaiza reckoned that this is a matter out of the Bank’s power.

Justice Mroso enquired the extent to which the Bank can exert powers on other institutions to prevent them from funding projects whose activities are not in consonance with environmental promotion and protection. In an issue related to this, Justice Onyango alluded to the Sondu-Miriu power project which had to be delayed because of certain problems. While the project was funded by the Japanese government, he wanted to know whether the Bank and UNEP, through consultation and interventions, evaluated the environmental impact of the project. Dr. Rukuba-Ngaiza was categorical that the only recourse for the Bank is to persuade parties involved to
withdraw from supporting such projects and has no powers to pursue any other action. On the issue of UNEP, Dr. Iwona stressed that UNEP is not a watchdog body and cannot intervene to stop a sovereign power from proceeding with a project.

On her part, Justice Kimaro sought to know whether women are involved in public participation exercises. On this issue, Dr. Rukuba-Ngaiza admitted that many are still excluded from the consultative process. She disclosed that the Bank attempts to mitigate this disadvantage by looking for a good stakeholder’s assessment to ensure broad inclusion. She indicated that those assessing the stakeholders’ participation have the discretion to design appropriate mechanisms to ensure broad participation.

XXIII. PUBLIC INTEREST LITIGATION AND ENVIRONMENTAL MANAGEMENT: VIEWS FROM THE BENCH

Hon. Justice Harold R. Nsekela, Court of Appeal, Tanzania

Justice Nsekela acknowledged that he was no expert in the environmental law despite his ten years experience on the bench. He quoted Justice Preston saying that public litigation was not an end in itself but a means to an end. He explained that public interest litigation was simply litigation but in the interest of the public. Justice Nsekela noted that most citizens were unaware of the rights and those who were informed could not seek the courts intervention due to the high costs involved. He urged the judges therefore to consider public interest cases and determine what costs to charge, if any.

Justice Nsekela pointed out that cases on public interest litigation can be filed by persons who have no direct interest on the cases and therefore the courts should develop a liberal approach on *locus standi*. He then urged judges for changes in the courts for filing of cases to allow persons with no personal interest to go to courts. He cited the example of the High Court of the Tanzania case- *Rev Mtikila vs. A-G*- where the judge held that *locus standi* must be given a wide meaning and urged judges to jettison strict interpretation of the common law *locus standi* where the constitutional rights of citizens were being infringed.
Justice Nsekela argued that the costs incurred in the courts was a big hindrance to filling cases that directly affect the environment in an immense manner and therefore suggested that the courts needed to come up with ways that determine who should incur the court costs so as to ensure unity and uniformity. He added that an injunction could be taken to protect public interest but wondered who was to meet the costs involved. In his opinion, the courts should be able to give orders to the government to comply with statutory obligations. He added that private companies/organizations that were not complying with environmental laws should also be targeted to ensure environmental sustenance such as by ordering the closure of a factory polluting the environment. He wondered what would happen if the rulings made were not complied with especially by the government.

In his conclusion, he noted that the courts are the guardians of the law and therefore should be able to ensure implementation of environmental laws and ensure that judgments made on environmental issues can be able to withstand the test of time. He urged the judges to also read jurisprudence from other countries to enrich their judgments and give them innovative ideas.

XXIV. PUBLIC INTEREST LITIGATION AND ENVIRONMENTAL MANAGEMENT: VIEWS FROM THE BAR

Philip Karugaba, Environmental Action Network, Uganda

Mr. Karugaba begun by defining the concept of public interest litigation as legal actions or an interest brought to protect the rights enjoyed by the society or part of the society. He traced the history of Public interest litigation to India citing the example of the inhuman conditions under which trial prisoners was held, a case which was filed on the basis of a newspaper article highlighting the plight of the prisoners and speedy trial was firmly established leading to the release of the prisoners. He went on to say that this has then spread on to other areas such as social issues and environmental issues.

He then discussed the public interest litigation within East Africa, citing various cases in the EAC region. In Tanzania he gave such examples as the landmark case of the Rufiji Delta Prawn Farm case which was filed by the Lawyers Environmental Action Team (LEAT) to halt the allocation of the
mangrove swamps for use as a prawn farm. LEAT obtained an injunction and the developer abandoned the project.

In Kenya, Mr. Karugaba gave the example of the cases of Prof. Wangari Maathai where her cases were dismissed on the basis of *locus standi* but received more support through the media hence heightening the debate and increasing environmental protection and awareness. In Uganda, Mr. Karugaba cited the pending crisis on the case of Mabira Central forest Reserve where the government decided to give it out for sugar cane plantations at the expense of the local community and the ecosystem in general. He added that on this case efforts to save Mabira forest were still underway as they some environmental organizations were filing private prosecutions against the minister of lands and environment and the management of the sugar company (SCOUL) for treason.

Mr. Karugaba then discussed what the bar would want the judiciary to do in public interest litigation cases. He argued that since all persons including the judges were affected by environmental degradation, they should be cautious in making judgments that were environment related. He urged the judges to have a broad view of the issues in a case by having a focus on the merits and ensuring that cases should not be turned away from the courts due to procedural hiccups. He also urged the judges to ensure they evolve new approaches to new challenges of the day by adopting *epistolary/Suo Moto* jurisdictions for the purpose of bringing justice to socially and economically disadvantaged groups. He added that in a public interest litigation case, judiciary should explore the issue awarding no costs especially where there is no personal gain involved. He finally urged the judges to consider that although the cases they handled were local, the impacts of their decisions would be felt internationally and therefore there was need to ensure they create no harm through the judgments but instead prevent or stop harm from occurring.

In his conclusion, Mr. Karugaba emphasized that there was need for the judges to ensure they made fair judgments as well as be mindful of the ramifications of their judgments as they stood on historical cross roads where the respective countries need them more and therefore they must not fail them.

**Comments by Justice Preston on public interest litigation**
Judge Preston gave a brief overview of how the Australian judiciary dealt with public interest litigation. He argued that the issue of costs should be considered to avoid making costs a barrier to justice. He therefore suggested the need to come up with a fund to cater for the public interest litigation. Justice Preston clarified that the court does not take a partisan role in pushing forward the interests or certain views of the public and suggested that there was need to have a catalyst to encourage the public to bring forward the issues into the courts.

**Discussion by participants:**

Justice Otieno wanted to know how courts could be involved in identifying culprits of environmental degradation, for example on the newspapers without affecting the independence of the courts. He suggested that the correct approach to ensure that the courts remain independent would be to use NEMA in the three EAC countries which are fully aware of the environmental issues and can therefore bring them forward as environmental cases. He affirmed that the correct approach should be for the courts to wait for the cases to be brought forth and therefore remain independent.

Justice Omolo assured participants that being a member of the rules committee he would make a suggestion to include a provision on public interest litigation in the civil procedure rules and thus deal with some of the procedural hurdles to public interest litigation currently in Kenya.

Justice Lubuva argued that the issue of having the courts to reach out *suo moto* was not a good idea. He explained that it would be a conflict with the independence of the courts. He also emphasized that the rules of procedure were the basic tools for the courts to operate and despite the suggestion to apply them flexibly, he affirmed that they are fundamental and could not be overlooked.

Justice Mroso commenting on the issue of reducing the court costs, said that in some cases, they required the costs to be charged regardless of the ruling. He further suggested the need to have funds that could be used to fund litigation of environmental cases.

In regard to the issue of involving the courts in looking out for environmental law breakers, Justice Twinomujuni suggested that the special environmental groups and tribunals created to investigate environmental issues could be better placed. Mr. Karugaba opined that it was important to hear the
voice of the judiciary in the public arena on environmental issues. Justice Tsekooko argued that all interested in public interest litigation should be willing to take the matters to the courts for jurisdiction.

Justice Engwau recommended that NEMA should go seek out those involved in the environment degradation and unite with the other organizations dealing with environmental issues for cost sharing purposes.

Justice Msoffe appreciated the sensitization on environmental issues but wondered if there was anything that the judiciary could do to correct errors in public interest litigation.

**XXV. ENHANCING THE ROLE OF COURTS IN PROMOTING ENFORCEMENT AND COMPLIANCE WITH ENVIRONMENTAL LAW**

(a) **Hon Mr. Justice Steven Kavuma**

Justice Kavuma noted that courts played a very crucial role in enforcing environmental law. He added that they were the best in solving conflicts between and among various players. He went on to say that to effectively play these roles, the courts must be able to uphold their independence and the ability to promote the rule of law as well as to adjudicate environmental disputes justly without fear or favor.

He cited the example of the Ugandan courts having the basic legal requirements needed to settle environmental disputes. He went on to say that the environment is a common commodity to all people and therefore courts should have jurisdiction in the interest of the human race. He gave examples of the other provisions that exist to promote environmental law in the constitutions such as article 39 of the Ugandan Constitution on the right to a clean environment. He added that the courts faced the challenge of using the various provisions to be able to make fair decisions.

He then outlined the factors that undermine compliance with environmental law such as inadequate funding that limits the capacity of the courts, lack of awareness by the judiciary, isolated activities by
other arms of the government that inhibit the enforcement of the environmental law and the lack of compliance by the government to follow the rulings made by the courts.

He suggested that the courts should be bold to be able to make reasonable judgments but should read and get armed with information and hence be able to use the resources and provisions to make liberal interpretations.

(b) Hon. Lady Justice Munuo

Lady Justice Munuo began her presentation by defining the environment according to EMA which says that environment means land, water and atmosphere. She observed that under that definition, environmental law comprises of all laws pertaining to conservation, protection, control and development of the environment in terms of land, water and the atmosphere of the earth such as the National Parks Act, Ngorongoro conservation Act, plant protection Act among others.

Lady Justice Munuo highlighted various rulings related to the environmental issues that had been made in Tanzania adding that the natural resources were part and parcel of the economic assets which constitute national wealth. She went on to discuss that persons wishing to harvest natural resources ought to purchase a license or permit and also pay due taxes so that the revenue so generated could enrich the national coffers and some of the revenue be recycled for the development and the sustenance of natural resources for this, and for future generations.

Lady Justice Munuo further explained that courts should seriously determine cases arising from non-compliance with environmental law and impose deserving penalties within the prescribed law to reduce environmental destruction and economic losses. He advised that the seminars and workshops on environmental issues should be carried out to reach all judicial officers right to the lowest level courts.

Lady Justice Munuo gave one of the functions of the National Environment Management Act as to specify standards, norms and criteria for the protection of beneficial uses and the maintenance of the quality of the environment. She stated that it was not enough to set high standards for the environment and that
there must be machinery for promoting and enforcing compliance with the standards as well as have power to sanction those who failed to comply with the set standards.

She observed that even if a tribunal was designated for environmental matters, the courts still remained the only resort for environmental prerogative actions by way of certiorari, mandamus and prohibition. In this respect, she urged that the role of the courts in promoting and enforcing compliance with, or sanctioning non-compliance with environmental law was very crucial.

Lady Justice Munuo concluded by saying that proper management of environmental law was crucial in controlling and minimizing global warming, pollution and environmental destruction stating that the courts should be enhanced and empowered to effectively administer justice in the realm of environmental law to minimize disasters and environmental calamities.

(c) Hon. Justice P.N. Waki, Kenya

Justice Waki based his presentation on the six principles from the 2002 symposium held in Johannesburg, South Africa explaining that there was need to build on the already agreed on conventions as they had positions which could be used to relate to the EAC case.

From the 2002 symposium, he pointed out some of the principles that were applicable to the East African countries. This included the fifth principle which stated that: “Rapid evolution of the multilateral environmental agreements, national constitutions and statutes concerning the protection of the environment requires the courts to interpret and apply new legal instruments in keeping with the principles of sustainable development. Justice Waki further stated that in Kenya the rules under the framework law and the multilateral environmental agreements were already in place but there was need to enhance the capacity of the courts to enforce this environmental law.

Justice Waki also cited the second principle of the 2002 symposium that was applicable to the East African States observing that the fragile state of the global environment requires the judiciary as the guardian of the rule of law to boldly and fearlessly implement and enforce applicable international and national laws which would assist in alleviating poverty by ensuring that the rights and interests of succeeding generations were attended to.
He went on to explain that the judiciary is the guardian of the rule of law. He quoted the former CJ of India, Hon Baghwati who emphasized on making and interpreting the law and keeping a harmonious balance between development and environmental protection in ensuring that the law was upheld. He said that law must be a powerful source of change and protection for the environment. He added that the poor are the most affected by environmental degradation. Justice Waki urged that judges must adopt a proactive approach, liberal approach and a generous approach in developing environmental law.

Examining the third principle from the 2002 symposium, Justice Waki observed that the people most affected by environmental degradation are the poor and therefore there was an urgent need to strengthen the capacity of the poor and their representatives to defend environmental rights to ensure the weaker sections of society are not prejudiced by the environmental degradation and are able to enjoy their rights to live in a social and physical environment that respects and promotes their dignity. In addition, the Sixth principle stated that the deficiency in the knowledge of relevant skills and information in regard to the environmental law was one of the principle causes that contribute to the lack of effective implementation, development and enforcement of environmental law,

Justice Waki went on to explain that lack of capacity building and the deficiency in the knowledge and awareness by the judiciary leads to poor implementation of environmental law which then extends to the poor people in the society. He was also supportive of the idea to pursue the reduction of judicial fees on environmental matters.

In conclusion Justice Waki, referring to the Latimer house principles on the independence of the judiciary and judicial process, expressed his concern about the lack of institutional independence. He pointed out that the Kenyan judiciary did not seem to enjoy the independence that it deserves. He explained that the Kenyan judiciary had forwarded a bill to parliament which was still pending presentation and therefore he implored the AG to table the bill in parliament for eventual enactment.
Discussion by participants

The AG, Hon. A. Wako, touching on the independence of the Kenyan courts, clarified that the courts must be bold and able to act fairly without fear. He explained that independence meant that they should be able to make their judgments fairly and justly in accordance with the rule of law. He then observed that in some cases judges were their own enemies.

In regard to the issue raised by Justice Waki on the pending Bill, the AG clarified that it was faced with procedural problems as it was first entrusted to Parliament directly to enact the bill, while it should have been handed over to the Ministry of Justice first. He went on to confirm that despite all the wrong procedures followed, the Bill was currently in his hands and therefore assured the judges that it would be taken to Parliament. The AG urged the judiciary to trust the executive as that would be a beginning to better working relations. He firmly stated that the executive in Kenya had not been an impediment to the judiciary. He pointed out the Latimer principles specify the accountability of and relationship between the three arms of government. He stated that each institution had its role to play as well as each being a check mechanism for the other.

He therefore requested the judges to appreciate the executive as they cannot exist without each other and therefore be able to function well in accordance to the law. He stated that the judiciary needs to ensure that if the government acts against the law, they should act on the issue and therefore promote judicial activism in making laws that are right without any favoritism.

Mr. Okello questioned the role of the judiciary in relation to the interpretation of the environmental law. He added that it was important for the judiciary to learn from other judiciaries on how they dealt with environmental law.

XXVI. OFFICIAL CLOSING:

(a) Collins Odote, Director, ILEG

In his closing remarks, Mr. Collins Odote, on behalf of ILEG thanked the Court of Appeal judges from Kenya and Tanzania and the Supreme Court of Uganda for attending and actively participating in the meetings. He was optimistic that the meeting had been of great assistance to the judges towards environmental management and making judgments. He especially thanked Hon Justice
Brian Preston for finding time to attend and participate in the meeting and was particularly grateful to the CJ of Kenya, in absentia, for allowing the court of appeal judges of Kenya to attend the Colloquium and for taking the first hand step of extending the invitations to the Tanzania and Ugandan judges. He pointed out that this was the last Colloquium as they had covered the entire judiciary in Kenya and hoped that this would be a beginning for better opportunities in the future.

Mr. Odote expressed gratitude to the funding organizations namely DFID, Ford Foundation and UNEP stating that the cooperation was a good approach to dealing with environmental issues. He appreciated Prof. Okidi for working tirelessly to ensure the meeting was successful. He concluded by pointing out that the end of this Colloquium was truly a dream come true hoping that it had been informative and educative.

(b) Prof Okidi, CASELAP

Prof. Okidi in his closing remarks pointed out that the beginning of the dream was in the 1990's. He passed on special gratitude to the CJ of Kenya for his continuous support to the extent of taking up the invitations to the court of appeal judges of Tanzania and the supreme court of Uganda. In regard to the just concluded Colloquium Prof Okidi observed that it gave him personal satisfaction to see that the judges had been called to better environmental management and protection in the three East African countries. He was grateful to the judges for attending and participating adding that it was a personal call to all the judges to ensure effective environmental protection.

Prof Okidi was particularly grateful to the co-organizers from ILEG, NEMA and UNEP. He thanked the AG for giving exceptional encouragement in the beginning and for picking up the process of the framework laws. He added that the AG had sent him a letter on the 6th January 2000 informing him that the president had given accent to the bill to become law.

He then wished all the participants well in promoting sustainable development and environmental justice.
(c) Dr. Iwona Rummel-Bulska, UNEP

Dr. Iwona informed the participants that she had been involved in environmental law since 1982 at UNEP and admitted that she had faced problems developing environmental law since many lawyers were of the view that the issues would fall under other laws such as water issues, land issues, etc respectively. She said that this was a great progress on environmental issues and on environmental law. Finally she thanked all the judges for finding time to attend the Colloquium.

(d) Hon. Justice John Tsekooko, Supreme Court of Uganda

Justice Tsekooko admitted that he had gained highly from the Colloquium and appealed to his colleagues in the judiciary to render judgments that were not detrimental to the environment. He pleaded with the AG to consult the political leaders to ensure the financing of further training for the judges since all the previous funding was from the donor community was not sustainable and is pegged on certain conditions.

(e) Hon. Justice Daniel Lubuva, Court of Appeal, Tanzania

Justice Lubuva observed that the Colloquium was lively, friendly and educative. He pointed out that he had benefited immensely from it saying that the field was new and that even though the judges were already involved in deciding cases, some basic principles were widely covered hence left the judges feeling enriched and enhanced. He was very grateful to the organizers for the initiative on conducting the Colloquium on environmental law which would go along way in enhancing justice in environmental issues.

(f) Hon. RSC Justice Omolo, Court of Appeal, Kenya

Justice Omolo pointed out that his first time to get involved in environmental law was in 1995 when Kenya was trying to draft the framework law. He went on to say that any judge who refuses to learn ought not to be a judge and therefore the environmental principles learnt would be used to make fair judgments.
Justice Omolo commenting on the issue of cost and provisions on public interest litigation, said that costs were at the discretion of the courts and that if the issue at hand was a honest one then the judiciary would pass a recommendation to the AG to make a provision that will include the waving of fees of cases related to public interest litigation. He noted that there was no female justice in the Court of Appeal and hoped that the matter was being looked into.

He was grateful to the organizers and commended them for a job well done.

(g) Hon. Amos Wako, the Attorney General, Kenya – Chief Guest

The AG in his closing speech appreciated the efforts by the Hon. Chief Justice of Kenya to convene the Colloquium because the result would enhance quality of enforcement of the framework environmental laws, sectoral statues and the corresponding implementing regulations for inter-generational equity. In his appreciation of the process through which the government of Kenya had gone through in making the environmental laws, he took the judges through memory lane citing the various stakeholders workshops held on environmental issues, the preparations process of the bill towards becoming law through the presidential assent on the 7th January 2000.

The AG admitted that it was indeed a big step towards a judiciary that is environmentally sensitive from the controversial decisions on the case of Prof Wangari Maathai vs. Times Media Trust (Civil Case No. 5403 of 1989) decided by High Court Justice Dugdale on 11 December 1989, different forms of ill-motives were imputed on the judiciary for denying *locus standi* to the plaintiff to the coming into force of the framework laws there has been a rapid shift on the part of the judiciary. He cited various rulings that indicate that the judiciary has become highly sensitized and applied diverse principles of environmental law and with literature and jurisprudence from global sources.

The AG noted that various critical lessons emerged from the examples of the Kenyan cases; firstly that the Kenyan Judges had taken an aggressive posture to provide leadership in a new direction in environmental jurisprudence. Secondly, he noted that the legal practitioners lacked
knowledge and skills in environmental law and may not be making concerted efforts to learn. Thirdly, giving an example of cases where lawyers acting for the AG, the Ministry of Environment and Natural Resources and NEMA, were not aware of the liberal locus standi rule in EMCA, the AG noted that the Government would be plunged into embarrassment by suits and costs arising from environmental degradation.

The AG assured the judges that his office would take corrective actions following the example of Kenyan Judiciary and mounting a crash programme of capacity building among his state counsels. He gave immediate instructions for ensuring that all Lawyers to be employed as state counsels and in public authorities should have taken a certain number of hours of environmental law courses. Accepting that his initiatives may be late, he said that it would be better if lawyers in public and civil society could move aggressively to courts that were already well prepared for them. In this respect he said the courts could well be on the lead in charting the course of jurisprudence in the field of the environmental law.

He assured the judges that his office and the cabinet would ensure that all new bills would be consistent with EMCA and that necessary decisions would be taken to effect amendment to any provisions of new sectoral statutes which are inconsistent with EMCA.

He stated a few challenges concerning the judiciary and its developments such as low literacy levels of the community and poverty. He opined that the East African Community should consider the expanding the jurisdiction of the East African Court of Justice to allow the hearing of appeals in environmental cases from national courts.

The AG committed to proper development and implementation of environmental law to ensure sustainable development and realization of intergenerational equity stating that he promoted these ideals in the development of treaty laws of the East African Community. He concluded by stating that he appreciated the opportunity to be with judges of the highest benches in the three countries and trusted that there would be formal and informal consultations among themselves on this important area of law, and in the mutual efforts to enhance the rule of law in the region. He was persuaded that this had been an important occasion for all the judges. He then declared the Colloquium officially closed.
APPENDICES

a. Conference Programme

EAST AFRICA REGIONAL JUDICIAL COLLOQUIUM ON ENVIRONMENTAL LAW
10th to 15th APRIL 2007
Whitesands Hotel, Mombasa

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
<th>Resource persons</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Day One – 10th April 2007 (Tuesday)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Whole Day</td>
<td>Arrival of Judges and Registration</td>
<td>ILEG</td>
</tr>
<tr>
<td>6.30 p.m. – 9.00 p.m.</td>
<td>Dinner</td>
<td>ILEG</td>
</tr>
<tr>
<td><strong>Day Two – 11th April, 2007 (Wednesday)</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>8.00 – 9.00 a.m.</td>
<td>Registration Continues</td>
<td>ILEG</td>
</tr>
</tbody>
</table>

SESSION ONE: OPENING CEREMONY
Chair: Donald Kaniaru, National Environment Tribunal (Kenya)

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
<th>Resource persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.00 – 10.00 a.m.</td>
<td>Introductory Remarks</td>
<td>Representatives of ILEG, NEMA and CASELAP</td>
</tr>
<tr>
<td></td>
<td>Remarks From Colloquium Supporters</td>
<td>Representatives of DFID and FORD Foundation</td>
</tr>
<tr>
<td></td>
<td>Global Initiatives in Judicial Training</td>
<td>Executive Director, UNEP</td>
</tr>
<tr>
<td></td>
<td>Welcome Address</td>
<td>Vice-Chancellor University of Nairobi</td>
</tr>
<tr>
<td></td>
<td>Brief Demonstration of NCLR</td>
<td>Mrs. Gladys Shollei</td>
</tr>
<tr>
<td>Time</td>
<td>Session</td>
<td>Speaker/Details</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>10.00-10.30 a.m</td>
<td>TEA BREAK</td>
<td></td>
</tr>
<tr>
<td>10.30-10.40 a.m.</td>
<td>Statements by Representatives of the Judiciary of Uganda and Tanzania</td>
<td>Hon Mr Justice J W M Tsekooko, JSC - Uganda Judge From Tanzania</td>
</tr>
</tbody>
</table>

**SESSION TWO: KEYNOTE ADDRESS**

<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
<th>Speaker/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>10.40 a.m. – 11.10 am</td>
<td>Key Environmental Challenges in East Africa</td>
<td>Dr. Tom Okurut, Executive Secretary Lake Victoria Basin Commission</td>
</tr>
<tr>
<td>11.10 am – 11.30 am</td>
<td>Plenary discussion</td>
<td></td>
</tr>
</tbody>
</table>

**SESSION THREE: ENVIRONMENTAL LAW FOUNDATION AND ISSUES**

<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
<th>Speaker/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>11.30 am - 12.00 am</td>
<td>Concept, Function and Structure of Environmental Law</td>
<td>Prof. C.O Okidi CASELAP, University of Nairobi (UoN)</td>
</tr>
<tr>
<td>12.00 am - 12.30 pm</td>
<td>Plenary Discussion</td>
<td></td>
</tr>
<tr>
<td>12.30 am - 2.00 pm</td>
<td>LUNCH BREAK</td>
<td></td>
</tr>
<tr>
<td>2.00 pm – 2.30 pm</td>
<td>Common Law Foundations of Environmental Law and its Relation to Sustainable Development</td>
<td>Professor Albert Mumma, School of Law – UoN</td>
</tr>
<tr>
<td>2.30 pm – 3.00 p.m.</td>
<td>Plenary discussion</td>
<td></td>
</tr>
<tr>
<td>3.00 pm – 4.00 pm</td>
<td>Overview of The National Framework Environmental Laws</td>
<td>Representatives NEMA Kenya, Uganda and Tanzania: Ms Anna Maembe, NEMC – Tanzania:</td>
</tr>
<tr>
<td>Time</td>
<td>Session</td>
<td>Speaker/Institution</td>
</tr>
<tr>
<td>---------------------</td>
<td>----------------------------------------------</td>
<td>--------------------------------------------</td>
</tr>
<tr>
<td>9.00-9.30 a.m.</td>
<td>Precautionary Approach to Environmental Management (EIA, Environmental Audit, Monitoring and Precautionary Principle)</td>
<td>Professor Kabudi, Faculty of Law, University of Dar-es-Salaam</td>
</tr>
<tr>
<td>9.30 am -9.45 am</td>
<td>Commentary</td>
<td>Prof. Francis Situma, School of Law - UoN</td>
</tr>
<tr>
<td>9.45 am – 10.15 am</td>
<td>Plenary Discussions</td>
<td></td>
</tr>
<tr>
<td>10.15a.m.-10.35 a.m.</td>
<td>TEA BREAK</td>
<td></td>
</tr>
<tr>
<td>10.35 am – 11.05 am</td>
<td>The Use of Criminal Law In Enforcing Environmental Compliance</td>
<td>Professor Patricia Kameri-Mbote, School of Law – UoN</td>
</tr>
<tr>
<td>11.05 am -11.20 am</td>
<td>Commentary</td>
<td>Kenyan Judge</td>
</tr>
<tr>
<td>11. 20 am - 11.50 am</td>
<td>Plenary discussion</td>
<td></td>
</tr>
<tr>
<td>11.50 am -12.20 pm</td>
<td>Environmental Tribunals as a Mechanism for Settling Environmental Disputes</td>
<td>Donald Kaniaru Chairman, NET Kenya</td>
</tr>
<tr>
<td>12.20 pm -12.35 pm</td>
<td>Commentary</td>
<td>Tanzanian Judge</td>
</tr>
<tr>
<td>12.35 pm -1.00 p.m.</td>
<td>Plenary Discussions</td>
<td></td>
</tr>
<tr>
<td>1.00 pm -2.30 pm</td>
<td>LUNCH BREAK</td>
<td></td>
</tr>
<tr>
<td>Time</td>
<td>Session</td>
<td>Speaker/Resource</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------------------------------------------------------------------</td>
<td>--------------------------------------------------------</td>
</tr>
<tr>
<td>2.30 pm - 3.00 pm</td>
<td>The Role of the Judiciary in Promoting Sustainable Development: Experience from Asia and the Pacific</td>
<td>Hon. Justice Brian Preston, Chief Judge Land and Environment Court, Australia</td>
</tr>
<tr>
<td>3.00 pm - 3.15 pm</td>
<td>Commentary</td>
<td>Hon. Mr Justice A Twinomujuni, JA - Uganda</td>
</tr>
<tr>
<td>3.15 pm - 3.45 pm</td>
<td>Plenary Discussions</td>
<td></td>
</tr>
<tr>
<td>3.45 pm - 4.05 pm</td>
<td>Law Reporting and its place in Environmental Management: The Role of NCLR</td>
<td>Mrs Gladys Shollei, Editor NCLR</td>
</tr>
<tr>
<td>4.05 pm - 4.20 pm</td>
<td>Plenary Discussion</td>
<td></td>
</tr>
<tr>
<td>4.20 pm - 4.45 pm</td>
<td>TEA BREAK</td>
<td></td>
</tr>
<tr>
<td></td>
<td>END OF DAY THREE</td>
<td></td>
</tr>
</tbody>
</table>

Day Four: 13th April 2007 (Friday)

<table>
<thead>
<tr>
<th>Time</th>
<th>Session</th>
<th>Speaker/Resource</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.00 am - 9.30 am</td>
<td>Transboundary Environmental Issues</td>
<td>Prof. Francis Situma</td>
</tr>
<tr>
<td>9.30 am - 9.45 am</td>
<td>Commentary</td>
<td>Kenyan Judge</td>
</tr>
<tr>
<td>9.45 am - 10.15 am</td>
<td>Plenary Discussion</td>
<td></td>
</tr>
<tr>
<td>10.15 am - 10.45 am</td>
<td>TEA BREAK</td>
<td></td>
</tr>
<tr>
<td>10.45 am - 11.15 am</td>
<td>Application of the Public Trust Doctrine to Environmental Management</td>
<td>Prof. Patricia K. Mbote</td>
</tr>
<tr>
<td>11.15 am - 11.30 am</td>
<td>Commentary</td>
<td>Hon. Mr Justice B M Katureebe, JSC - Uganda</td>
</tr>
<tr>
<td>11.30 am - 12.00 pm</td>
<td>Plenary Discussions</td>
<td></td>
</tr>
<tr>
<td>12.00 pm - 12.30 pm</td>
<td>Environmental Law of East Africa</td>
<td>Dr Iwona Rummel-Bulska, UNEP</td>
</tr>
<tr>
<td>12.30 am - 1.00 pm</td>
<td>Plenary Discussions</td>
<td></td>
</tr>
<tr>
<td>1.00 pm - 2.30 pm</td>
<td>LUNCH BREAK</td>
<td></td>
</tr>
<tr>
<td>Time</td>
<td>Session Title</td>
<td>Speaker/Organisation</td>
</tr>
<tr>
<td>-----------------</td>
<td>-------------------------------------------------------------------------------</td>
<td>-------------------------------</td>
</tr>
<tr>
<td>2.30 pm - 3.00 pm</td>
<td>The Role of the Private Sector (Banks) in Promoting Enforcement and Compliance with Environmental Law</td>
<td>Francis Okomo-Okello Chairman, Barclays Bank (K) Limited</td>
</tr>
<tr>
<td>3.00 pm – 3.30 pm</td>
<td>The World Bank Procedure in promoting Environmental protection in its Financed projects</td>
<td>Ms Nightingale Rukuba-Ngaiza Senior Legal, Counsel World Bank</td>
</tr>
<tr>
<td>3.30 pm - 4.00 pm</td>
<td>Plenary Discussions</td>
<td></td>
</tr>
<tr>
<td>4.20 pm</td>
<td>TEA BREAK</td>
<td></td>
</tr>
</tbody>
</table>

**Day Five: 14th April, 2007 (Saturday)**

**SESSION SIX:**
**PUBLIC INTEREST LITIGATION**

<table>
<thead>
<tr>
<th>Time</th>
<th>Session Title</th>
<th>Speaker/Organisation</th>
</tr>
</thead>
<tbody>
<tr>
<td>9.00 am - 9.30 am</td>
<td>Public Interest Litigation and Environmental Management: Views from the Bench</td>
<td>Tanzanian Judge</td>
</tr>
<tr>
<td>9.30 a.m. - 10.00 a.m.</td>
<td>Public Interest Litigation and Environmental management: Views from the Bar</td>
<td>Phillip Karugaba, Environmental Action Network, Uganda</td>
</tr>
<tr>
<td>10.00 a.m. - 10.30 a.m.</td>
<td>Plenary Discussions</td>
<td></td>
</tr>
</tbody>
</table>

**SESSION SEVEN: PANEL DISCUSSION**

<table>
<thead>
<tr>
<th>Time</th>
<th>Session Title</th>
<th>Panel Discussion - three Judges:</th>
</tr>
</thead>
<tbody>
<tr>
<td>11.00 a.m. - 12.30 p.m.</td>
<td>Enhancing the Role of Courts In Promoting Enforcement and Compliance with Environmental Law</td>
<td>Hon Mr Justice Steve Kavuma, JA - Uganda</td>
</tr>
<tr>
<td>Time</td>
<td>Activity</td>
<td>Participants</td>
</tr>
<tr>
<td>--------------</td>
<td>--------------------------------------------------------</td>
<td>---------------------------------------------------</td>
</tr>
<tr>
<td>12.30-1.30 P.M.</td>
<td>LUNCH BREAK</td>
<td>Judge From Tanzania</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Judge From Kenya</td>
</tr>
<tr>
<td>1.45-5.00 p.m.</td>
<td>FIELD TRIP: Bamburi Land Rehabilitation project</td>
<td></td>
</tr>
<tr>
<td>6.30-9.00 p.m.</td>
<td>Farewell Dinner and Official Closing</td>
<td>Hon Amos Wako, Attorney General of Kenya</td>
</tr>
</tbody>
</table>

**Day Six: 15th April 2007 (Sunday)**

<table>
<thead>
<tr>
<th>Time</th>
<th>Activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whole Day</td>
<td>Departures</td>
</tr>
</tbody>
</table>
### List of participants

<table>
<thead>
<tr>
<th>NAME</th>
<th>DESIGNATION</th>
<th>EMAIL &amp; Telephone</th>
<th>ADDRESS</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Hon Chief Justice, Evan Gicheru</td>
<td>Chief Justice of Kenya</td>
<td>Tel: 254-20-221221</td>
<td>Chief Justice's Chambers Law Courts P.O. Box 30041 Nairobi</td>
</tr>
<tr>
<td>2. Hon S. Amos Wako</td>
<td>Attorney General of Kenya</td>
<td><a href="mailto:awako@ag.go.ke">awako@ag.go.ke</a></td>
<td>Attorney General's Chambers P.O.Box 40112 Nairobi</td>
</tr>
<tr>
<td>3. Hon C. K. Njai</td>
<td>Registrar, High Court of Kenya</td>
<td><a href="mailto:reghck@nbnet.co.ke">reghck@nbnet.co.ke</a> Tel: 254-20-221221</td>
<td>Registrar’s Chambers Law Courts P.O. Box 30041-00100 Nairobi</td>
</tr>
<tr>
<td>4. Prof Peter M.F. Mbithi</td>
<td>Deputy Vice Chancellor, Administration and Finance, University of Nairobi (UoN)</td>
<td></td>
<td>University of Nairobi P.O. Box 30197 Nairobi</td>
</tr>
</tbody>
</table>

### Judges from Uganda

<p>| 5. Hon Justice J W M Tsekooko | Judge of the Supreme Court of Uganda, and Chair, Judicial Training Committee | <a href="mailto:tsekooko@yahoo.com">tsekooko@yahoo.com</a> Tel: 256-414-270961 | Supreme Court of Uganda P.O. Box 6679 Kampala |
| 6. Hon Justice J N. Mulenga | Judge of the Supreme Court of Uganda | <a href="mailto:abahana@utlonline.co.ug">abahana@utlonline.co.ug</a> Tel: 256-414-271829 | Supreme Court of Uganda P.O. Box 6679 Kampala |</p>
<table>
<thead>
<tr>
<th></th>
<th>Name</th>
<th>Position</th>
<th>Email</th>
<th>Contact Information</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Hon Justice B M Katureebe</td>
<td>Judge of the Supreme Court of Uganda</td>
<td><a href="mailto:bkatureebe@judicature.go.ug">bkatureebe@judicature.go.ug</a></td>
<td>Tel: 256-414-270905</td>
<td>Supreme Court of Uganda</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>P.O. Box 6679 Kampala</td>
</tr>
<tr>
<td>8</td>
<td>Hon Justice Steven Kavuma</td>
<td>Judge of the Court of Appeal of Uganda</td>
<td><a href="mailto:stevenkavuma@yahoo.com">stevenkavuma@yahoo.com</a></td>
<td>Tel: 256-414-258456</td>
<td>Court of Appeal of Uganda</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>P.O. Box 6679 Kampala</td>
</tr>
<tr>
<td>9</td>
<td>Hon Justice G. Engwau</td>
<td>Judge of the Court of Appeal of Uganda</td>
<td><a href="mailto:sengwau@judicature.go.ug">sengwau@judicature.go.ug</a></td>
<td>Tel: 256-414-258420</td>
<td>Court of Appeal of Uganda</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>P.O. Box 6679 Kampala</td>
</tr>
<tr>
<td>10</td>
<td>Hon Lady Justice Alice Mpagi Bahingeine</td>
<td>Judge of the Court of Appeal of Uganda</td>
<td><a href="mailto:ampagi@judicature.go.ug">ampagi@judicature.go.ug</a></td>
<td>Tel: 256-414-258420</td>
<td>Court of Appeal of Uganda</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>P.O. Box 6679 Kampala</td>
</tr>
<tr>
<td>11</td>
<td>Hon Justice A Twinomujuni</td>
<td>Judge of the Court of Appeal of Uganda</td>
<td><a href="mailto:amostwinoo@yahoo.com">amostwinoo@yahoo.com</a></td>
<td>Tel: 256-414-258537</td>
<td>Court of Appeal of Uganda</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>P.O. Box 6679 Kampala</td>
</tr>
</tbody>
</table>

**JUDGES FROM TANZANIA**

<table>
<thead>
<tr>
<th></th>
<th>Name</th>
<th>Position</th>
<th>Email</th>
<th>Contact Information</th>
<th>Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>Hon Justice Damian Z. Lubuva</td>
<td>Judge of the Court of Appeal of Tanzania</td>
<td></td>
<td>Tel: 255-22-2127657</td>
<td>Court of Appeal of Tanzania</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>P.O. Box 9004 Dar es Salaam</td>
</tr>
<tr>
<td>13</td>
<td>Hon Justice John Mroso</td>
<td>Judge of the Court of Appeal of Tanzania</td>
<td><a href="mailto:johnmroso@yahoo.co.uk">johnmroso@yahoo.co.uk</a></td>
<td>Tel: 255-22-2127657</td>
<td>Court of Appeal of Tanzania</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>P.O. Box 9004 Dar es Salaam</td>
</tr>
<tr>
<td>14</td>
<td>Hon Madam</td>
<td>Judge of the Court of</td>
<td><a href="mailto:cumunuo@yahoo.co.uk">cumunuo@yahoo.co.uk</a></td>
<td></td>
<td>Court of Appeal of</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Tanzania</td>
</tr>
<tr>
<td>No.</td>
<td>Name</td>
<td>Position</td>
<td>Contact Information</td>
<td>Location</td>
<td></td>
</tr>
<tr>
<td>-----</td>
<td>-----------------------------</td>
<td>---------------------------------</td>
<td>-------------------------------------</td>
<td>-------------------------------</td>
<td></td>
</tr>
<tr>
<td>86</td>
<td>Justice Eusebia N. Munuo</td>
<td>Appeal of Tanzania</td>
<td>Tel: 256-22-2127657</td>
<td>Tanzania</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>P.O. Box 9004</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Dar es Salaam</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td>Hon Justice Harold R. Nsekela</td>
<td>Judge of the Court of</td>
<td><a href="mailto:hrnsekela@yahoo.co.uk">hrnsekela@yahoo.co.uk</a></td>
<td>Court of Appeal of Tanzania</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Appeal of Tanzania</td>
<td>Tel: 255-22-211586-90</td>
<td>P.O. Box 9004</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Dar es Salaam</td>
<td></td>
</tr>
<tr>
<td>16</td>
<td>Hon Justice January H. Mosoffe</td>
<td>Judge of the Court of</td>
<td><a href="mailto:msoffejanuary@yahoo.com">msoffejanuary@yahoo.com</a></td>
<td>Court of Appeal of Tanzania</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Appeal of Tanzania</td>
<td>Tel: 255-22-2127657</td>
<td>P.O. Box 9004</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Dar es Salaam</td>
<td></td>
</tr>
<tr>
<td>17</td>
<td>Hon Justice Simon N Kaji</td>
<td>Judge of the Court of</td>
<td>Tel: 212-22-2127657</td>
<td>Court of Appeal of Tanzania</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Appeal of Tanzania</td>
<td></td>
<td>P.O. Box 9004</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Dar es Salaam</td>
<td></td>
</tr>
<tr>
<td>18</td>
<td>Hon Justice Edward M. K. Rutakangwa</td>
<td>Judge of the Court of</td>
<td><a href="mailto:edwardrutakangwa@hotmail.com">edwardrutakangwa@hotmail.com</a></td>
<td>Court of Appeal of Tanzania</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Appeal of Tanzania</td>
<td>Tel: 255-22-2127657</td>
<td>P.O. Box 9004</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Dar es Salaam</td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Hon Madam Justice Engera A. Kileo</td>
<td>Judge of the Court of</td>
<td><a href="mailto:Engerak2002@yahoo.com">Engerak2002@yahoo.com</a></td>
<td>Court of Appeal of Tanzania</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Appeal of Tanzania</td>
<td>Tel: 255-22-2127657</td>
<td>P.O. Box 9004</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Dar es Salaam</td>
<td></td>
</tr>
<tr>
<td>20</td>
<td>Hon Madam Justice Nathalia P. Kimaro</td>
<td>Judge of the Court of</td>
<td><a href="mailto:npkimaro@yahoo.com">npkimaro@yahoo.com</a></td>
<td>Court of Appeal of Tanzania</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Appeal of Tanzania</td>
<td>Tel: 255-22-2127657</td>
<td>P.O. Box 9004</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Dar es Salaam</td>
<td></td>
</tr>
<tr>
<td></td>
<td><strong>JUDGES FROM KENYA</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>21</td>
<td>Hon Justice R S C Omolo</td>
<td>Judge of the Court of</td>
<td><a href="mailto:justiceomolo@nbinet.co.ke">justiceomolo@nbinet.co.ke</a></td>
<td>Court of Appeal of Kenya</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Appeal of Kenya</td>
<td></td>
<td>P.O. Box 30041-</td>
<td></td>
</tr>
<tr>
<td>No.</td>
<td>Judge Name</td>
<td>Title</td>
<td>Contact Details</td>
<td>Location</td>
<td></td>
</tr>
<tr>
<td>-----</td>
<td>-----------------------------------</td>
<td>------------------------------------------</td>
<td>------------------------------------------</td>
<td>------------------------</td>
<td></td>
</tr>
<tr>
<td>22</td>
<td>Hon Justice S E O Bosire</td>
<td>Judge of the Court of Appeal of Kenya</td>
<td>Tel: 254-20-221221</td>
<td>Court of Appeal of Kenya P.O. Box 30041-00100 Nairobi</td>
<td></td>
</tr>
<tr>
<td>23</td>
<td>Hon Justice E O'Kubasu</td>
<td>Judge of the Court of Appeal of Kenya</td>
<td>Tel: 254-20-221221 <a href="mailto:jdgoku@nbinet.co.ke">jdgoku@nbinet.co.ke</a></td>
<td>Court of Appeal of Kenya P.O. Box 30041-00100 Nairobi</td>
<td></td>
</tr>
<tr>
<td>24</td>
<td>Hon Justice E M Githinji</td>
<td>Judge of the Court of Appeal of Kenya</td>
<td>Tel: 254-20-221221</td>
<td>Court of Appeal of Kenya P.O. Box 30041-00100 Nairobi</td>
<td></td>
</tr>
<tr>
<td>25</td>
<td>Hon Justice P N Waki</td>
<td>Judge of the Court of Appeal of Kenya</td>
<td>Tel: 254-20-221221 <a href="mailto:judgewaki@africaonline.co.ke">judgewaki@africaonline.co.ke</a></td>
<td>Court of Appeal of Kenya P.O. Box 30041-00100 Nairobi</td>
<td></td>
</tr>
<tr>
<td>26</td>
<td>Hon Justice J W Onyango Otieno</td>
<td>Judge of the Court of Appeal of Kenya</td>
<td>Tel: 254-20-221221</td>
<td>Court of Appeal of Kenya P.O. Box 30041-00100 Nairobi</td>
<td></td>
</tr>
<tr>
<td>27</td>
<td>Hon Justice W S Deverell</td>
<td>Judge of the Court of Appeal of Kenya</td>
<td>Tel: 254-20-221221 <a href="mailto:deverells@wananchionline.com">deverells@wananchionline.com</a></td>
<td>Court of Appeal of Kenya</td>
<td></td>
</tr>
<tr>
<td>Invited by Kenyan Judiciary</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------------------</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>28</strong> Hon Retired Justice Akilano Akiwumi</td>
<td>Retired Judge of the Court of Appeal of Kenya</td>
<td>Tel: 254-20-3874402</td>
<td>P.O. Box 25427-00603</td>
<td>Nairobi</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>RESOURCE PERSONS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>29</strong> Hon Mr Justice Brian Preston</td>
</tr>
</tbody>
</table>

| **30** Dr Avingnon Mwinzi | Director General, National Environment Management Authority (NEMA) - Kenya | amwinzi@nema.go.ke ammwinzi@yahoo.com | NEMA – Kenya P.O. Box 67839 Nairobi |

| **31** Prof Charles Okidi | Director, Centre for Advanced Studies in Environmental Law and Policy (CASELAP) - UoN | charlesokidi@yahoo.com idsdirector@swiftkenya.com | CASELAP University of Nairobi P.O. Box 30197 Nairobi |

| **32** Dr Tom Okurut | Executive Secretary, Lake Victoria Basin Commission | tookurut@yahoo.co.uk Tel: 254-57-2026344 | Lake Victoria Basin Commission P.O. Box 1510 Kisumu |

<p>| <strong>33</strong> Dr Iwona | Chief, Environmental | Iwona.rummel- | UNEP |</p>
<table>
<thead>
<tr>
<th>No.</th>
<th>Name</th>
<th>Position/Title</th>
<th>Contact Information</th>
<th>Address/Location</th>
</tr>
</thead>
<tbody>
<tr>
<td>34</td>
<td>Prof P.J Kabudi</td>
<td>Professor of Law - Faculty of Law, University of Dar-es-Salaam</td>
<td><a href="mailto:pjkabudi@udsm.ac.tz">pjkabudi@udsm.ac.tz</a> Tel:255-745 695099</td>
<td>Faculty of Law, University of Dar-es-Salaam P.O. Box 35093 Dar es Salaam</td>
</tr>
<tr>
<td>35</td>
<td>Ms Anna Maembe</td>
<td>National Environment Management Council (NEMC)- Tanzania</td>
<td><a href="mailto:amaembe@nemctan.org">amaembe@nemctan.org</a> <a href="mailto:amaembe@yahoo.com">amaembe@yahoo.com</a> Tel: 255-22-2125243</td>
<td>NEMC- Tanzania P.O. Box 63154 Dar es Salaam</td>
</tr>
<tr>
<td>36</td>
<td>Ms Christine Akello</td>
<td>Senior Legal Counsel, National Environment Management Authority (NEMA) - Uganda</td>
<td><a href="mailto:cakello@nemaug.org">cakello@nemaug.org</a> Tel: 256-414-251065/8</td>
<td>NEMA P.O. Box 22255 Kampala</td>
</tr>
<tr>
<td>37</td>
<td>Mr Francis Okomo Okello</td>
<td>Chairman, Barclays Bank of Kenya</td>
<td><a href="mailto:Francis.okello@ipskenya.com">Francis.okello@ipskenya.com</a> Tel: 254-722-672432</td>
<td>P.O. Box 30500 Nairobi</td>
</tr>
<tr>
<td>38</td>
<td>Mr Donald Kaniaru</td>
<td>Chairman, National Environment Tribunal – Kenya</td>
<td><a href="mailto:wkaniaru@africaonline.co.ke">wkaniaru@africaonline.co.ke</a> Tel: 254-20-4451275/7</td>
<td>P.O. Box 1038 - 00606, Sarit Centre Nairobi</td>
</tr>
<tr>
<td>39</td>
<td>Prof Patricia Kameri-Mbote</td>
<td>Professor of Law, School of Law, University of Nairobi</td>
<td><a href="mailto:pkameri-mbote@ielrc.org">pkameri-mbote@ielrc.org</a></td>
<td>P.O. Box 2394 KNH, nairobi</td>
</tr>
<tr>
<td>No.</td>
<td>Name</td>
<td>Position/Institution</td>
<td>Email/Contact Details</td>
<td>Address</td>
</tr>
<tr>
<td>-----</td>
<td>----------------------</td>
<td>----------------------------------------------------------</td>
<td>---------------------------------------------</td>
<td>----------------------------------------------</td>
</tr>
<tr>
<td>40</td>
<td>Prof Francis D.P.</td>
<td>Professor of Law, School of Law, University of Nairobi</td>
<td><a href="mailto:situma@uonbi.ac.ke">situma@uonbi.ac.ke</a>, Tel: 254-7210963281</td>
<td>P.O. Box 30197 Nairobi</td>
</tr>
<tr>
<td></td>
<td>Situma</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>41</td>
<td>Maurice Odhimamo</td>
<td>Director, Institute for Law and Environmental Governance (ILEG)</td>
<td><a href="mailto:o.makoloo@ilegkenya.org">o.makoloo@ilegkenya.org</a>, Tel: 254-20-3755593</td>
<td>ILEG P.O. Box 9561-00100 Nairobi</td>
</tr>
<tr>
<td></td>
<td>Makoloo</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>42</td>
<td>Collins Odote</td>
<td>Director, ILEG</td>
<td><a href="mailto:c.odote@ilegkenya.org">c.odote@ilegkenya.org</a>, <a href="mailto:ccodote@yahoo.com">ccodote@yahoo.com</a>, Tel: 254-20-3755593</td>
<td>ILEG P.O. Box 9561-00100 Nairobi</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>43</td>
<td>Benson Ochieng</td>
<td>Director, ILEG</td>
<td><a href="mailto:b.ochieng@ilegkenya.org">b.ochieng@ilegkenya.org</a>, Tel: 254-20-3755593</td>
<td>ILEG P.O. Box 9561-00100 Nairobi</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>44</td>
<td>Mrs Gladys Shollei</td>
<td>Editor, National Council for Law Reporting (NCLR) - Kenya</td>
<td><a href="mailto:gbossshollei@kenyalawreports.or.ke">gbossshollei@kenyalawreports.or.ke</a>, Tel: 254-20-2712767</td>
<td>National Council for Law Reporting P.O. Box 10443-00100 Nairobi</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>45</td>
<td>Mr Phillip Karugaba</td>
<td>Director, The Environmental Action Network (TEAN) - Uganda</td>
<td><a href="mailto:tean@globalink.org">tean@globalink.org</a>, Tel: 256-772 785332</td>
<td>The Environmental Action Network P.O. Box 9243 Kampala</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>46</td>
<td>Ms Nightingale Rukuba- Ngaiza</td>
<td>Senior Legal Counsel – The World Bank</td>
<td><a href="mailto:nrukubangaiza@worldbank.org">nrukubangaiza@worldbank.org</a></td>
<td>World Bank Kenya P.O. Box 30577:</td>
</tr>
<tr>
<td>No.</td>
<td>Name</td>
<td>Position</td>
<td>Contact Information</td>
<td>Address</td>
</tr>
<tr>
<td>-----</td>
<td>--------------------</td>
<td>----------------------</td>
<td>-----------------------------------</td>
<td>----------------------</td>
</tr>
<tr>
<td>47</td>
<td>Prof. Albert Mumma</td>
<td>Professor of Law,</td>
<td>Tel: 254-20-322 6359</td>
<td>Nairobi</td>
</tr>
<tr>
<td></td>
<td></td>
<td>School of Law,</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>University of Nairobi</td>
<td>Tel: 254-20-2730132</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><a href="mailto:cepla@nbnet.co.ke">cepla@nbnet.co.ke</a></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>School of Law,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>University of Nairobi</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>P.O. Box 30197</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Nairobi</td>
</tr>
<tr>
<td>48</td>
<td>Pauline Makutsa</td>
<td>Programme Officer,</td>
<td>Tel: 254-20-3755593</td>
<td>Nairobi</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ILEG</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><a href="mailto:p.makutsa@ilegkenya.org">p.makutsa@ilegkenya.org</a></td>
<td>ILEG</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><a href="mailto:ileg@ilegkenya.org">ileg@ilegkenya.org</a></td>
<td>P.O. Box 9561-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>00100</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Nairobi</td>
</tr>
<tr>
<td>49</td>
<td>Robert Kibugi</td>
<td>Project Officer, ILEG</td>
<td>Tel: 254-20-3755593</td>
<td>Nairobi</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><a href="mailto:r.kibugi@ilegkenya.org">r.kibugi@ilegkenya.org</a></td>
<td>ILEG</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>P.O. Box 9561-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>00100</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Nairobi</td>
</tr>
<tr>
<td>50</td>
<td>Velma Mashedi</td>
<td>Accountant, ILEG</td>
<td>Tel: 254-20-3755593</td>
<td>Nairobi</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><a href="mailto:v.mashedi@ilegkenya.org">v.mashedi@ilegkenya.org</a></td>
<td>ILEG</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>P.O. Box 9561-</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>00100</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Nairobi</td>
</tr>
<tr>
<td>51</td>
<td>Bosire Nyamori</td>
<td>Colloquium Rapporteur</td>
<td>Tel: 254-720 337891</td>
<td>Nairobi</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><a href="mailto:nbosire@yahoo.com">nbosire@yahoo.com</a></td>
<td></td>
</tr>
<tr>
<td>52</td>
<td>Sophie Njagi</td>
<td>Colloquium Rapporteur</td>
<td>Tel: 254-722 787283</td>
<td>P.O. Box 933,</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><a href="mailto:sophie.kageni@gmail.com">sophie.kageni@gmail.com</a></td>
<td>Village Market</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Nairobi</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Tel: 254-720 842035</td>
<td></td>
</tr>
<tr>
<td>53</td>
<td>Judy Ndirangu</td>
<td>CASELAP, University</td>
<td>Tel: 254-720 842035</td>
<td>P.O. Box 30197</td>
</tr>
<tr>
<td></td>
<td></td>
<td>of Nairobi</td>
<td></td>
<td>University of Nairobi</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
c. Speeches Delivered

1. Welcoming Remarks by Professor G.A.O Magoha, Vice Chancellor, University of Nairobi

UNIVERSITY OF NAIROBI

WELCOMING REMARKS BY PROFESSOR G.A.O. MAGOHA, VICE-CHANCELLOR, UNIVERSITY OF NAIROBI DURING THE OPENING CEREMONY OF REGIONAL JUDICIAL COLLOQUIUM ON ENVIRONMENTAL LAW AND ACCESS TO JUSTICE AT WHITESANDS HOTEL, MOMBSA ON 11TH APRIL 2007

Your Lordship, the Honourable J. Evans Gicheru, Chief Justice of the Republic of Kenya
Your Lordships, Judges of the Supreme Courts and Courts of Appeal of Partner States of East Africa
Mr. Justice Brian Preston, Chief Judge of the Land and Environment Court in New South Wales, Australia
Honourable Registrar of High Court
Representative of the Executive Director of United Nations Environment Programme
Directors-General of National Environment Management Authorities in the Partner States of East Africa
Directors of Institute for Law and environmental Governance
Distinguished Scholars And Jurists
Honourable Guests,
Ladies and Gentlemen

I have pleasure in welcoming you to this colloquium which brings together judges from the highest judicial benches in the three partner states of East Africa.

The colloquium is particularly unique because it will accord a rare opportunity to the judges to discuss the topic of environmental law and access to justice. As I understand you, Honourable Chief Justice and Distinguished Judges, you all recognize that unless deliberate efforts are taken to develop and harmonize jurisprudence in environment the very foundation of life as a whole will, in the long run, be in jeopardy.

As I welcome you all, on this noble exercise, let me make a few observations of my own about each of the institutions which have sustained the initiative since September 2005. That is when all the four institutions embarked on this task of beginning with a Symposium for magistrates.

I should first restate the commitment of the University of Nairobi as stressed in my own speech in January 2006. As an institution of higher learning, the University of Nairobi is committed in pursuit of academic excellence. We do that through capacity building or enhancement. The Learned Judges have immense capacity and experience which is
associated with your level in the judiciary. The University has, however, undertaken to do simple capacity enhancement
by organizing fora within which you can confront diverse ideas; discuss the evolving jurisprudence among yourselves
and recommend their application in access to justice. By virtue of our occupation we can also hunt literature on decided
cases which will promote deliberations on comparative jurisprudence.

To this effect I can confidently express to you the support of the University and my own for the current and planned
programmes of work of the Centre for Advanced Studies in Environmental Law and Policy (CASELAP). Already, it has
collected over 12,000 books, cases and materials for research and teaching in environmental law, currently held at the
Jomo Kenyatta Memorial Library. These materials will be moved to CASELAP’s dedicated library as soon as the
CASELAP Building is completed. The University Council already resolved that construction of CASELAP Building will
commence at the beginning of the next financial year. I will personally ensure that the construction is fast-tracked to
provide a home for those who are committed to scholarship and implementation of environmental law and policy. And,
with all humility, you will be welcome to share in CASELAP facilities.

CASELAP building will also facilitate consolidation of teaching and research in environmental law and policy courses
currently taught at the School of Law and Institute for Development Studies. I am pleased that several judges and some
magistrates have taken up postgraduate studies in different subjects including environmental law. Some have in fact
completed Master of Laws degrees while a couple have already enrolled for Ph.D. degrees. Honourable Chief Justice, the
University will sustain every encouragement to enhance the capacity and jurisprudence as your officers may wish. We
hope that they will eventually take up professorship in the University so that our students and the University at large can
benefit from the vast wealth of experience.

Honourable Chief Justice as you can see we are interested in this exercise beyond capacity building and enhancement. I
am aware that some of the Honourable Judges from our Partner States were well published lecturers before moving to
the Bench. The Kenyan High Court Bench has a number of scholars previously at our University and to us, they will
remain part of the scholarly community. Honourable judges, let us encourage this in the whole region.

I am pleased that the United Nations Environment Programme (UNEP) collaborates in this initiative. It is under the
aegis of UNEP, as I understand, that judicial colloquia on environmental law and access to justice started in 1996. As I
understand it, UNEP sustained the efforts until the role of the judiciary in environmental law and sustainable
development became popular worldwide. We urge you to sustain the efforts and bring on board the necessary resources,
experience and research materials.

I would be remiss if I did not commend UNEP for its support for Association of Environmental Law Lecturers in
African Universities (ASSELAU). I am aware that coordination is done through CASELAP and may have been slowed
down by limited physical facilities. Rest assured that such a bottleneck will be a thing of the past soon. I trust that
Distinguished Judges who may wish to benefit from comparative scholarly and analytical works will have access to the
ASSELAU network.
Ladies and Gentlemen, the involvement of the National Environment Management Authority (NEMA) in this exercise is immensely significant to us, because it is the umbrella national institution that ensures enforcement and implementation of environmental law applicable to the country. Oftentimes, there is public outcry about deterioration in environmental quality and threats to sustainability of development through use of natural resources. The Honourable Judges who will be discussing environmental law in the next few days will have the last word over all enforcement to halt deterioration of the environment or protection of the threshold of sustainability. NEMA has the exceptional opportunity to listen to the judges. There will be chances, I believe, to discuss conditions for acceptable collection, custody and presentation of evidence.

It is also appropriate to point out that NEMA has a chance to expand its management with the University of Nairobi, well beyond CASELAP. There are scientists with laboratories which can be recognized for general and referral analysis of samples with results which can pass tests of litigation. As NEMA and the Judges challenge the evidence our laboratories will be improving their calibrations and infrastructure. In the process training of our students in physical, biological and medical sciences will improve. In other words, as we seek enhancement of awareness of the Honourable Judges, we are also preparing them to challenge the University in technical fields over which litigation depend. I would therefore urge NEMA to use the judiciary in its enforcement of environmental law because in the end the challenge reaches the university.

The involvement of Institute for Law and Environmental Governance (ILEG) with us is, in my view, a laudable move. To my knowledge no country with open governance, has succeeded in enforcement of environmental law without significant participation of the civil society. It is part of public participation in environmental decision-making which is essential in democratic governance. In many countries the civil society keeps studious distance from the judiciary often with complaints about insensitivity to environmental exigencies. The Institute for Law and Environmental Governance has established itself as a constructive non-governmental organization seeking to promote enlightened discourse. Experience, I believe, has not been uniform in East Africa over time. From the University side, we urge ILEG to encourage their partner institutions to be more robust in seeking enforcement of environmental law through judicial processes.

Mr. Chief Justice, sir, Honourable Judges, this Colloquium, more than others before it, is significant because it crowns the first round of our involvement with the judiciary in environmental law. It is conceivable Honourable Chief Justice that you may wish to conduct advanced level engagement as I understand Ugandan judiciary will be doing soon. That is one of the things within the mandate of CASELAP. It will be possible for CASELAP to conduct short and inexpensive sessions once its building is ready, which I hope will be towards the end of this year.

I thank organizations which provided financial resources to support this colloquium. I thank the British Department for International Development (DFID), the Ford Foundation among others.
Finally, I am grateful to the Chief Justice for the confidence he has in us trusting to organize these events for the Honourable Judges. These, we are aware, are very special people in any society. As we declare that justice be our shield and defense, we know that by engaging in these exercises we are investing in justice. I request Honourable Judges from Tanzania and Uganda to recognize that for us, you are our judges because justice cannot be divisible within the East African Community. We are one people.

In that spirit I invite you, Honourable Chief Justice, to formally open the Colloquium and, Sir, feel free to include any other functions you deem relevant on this occasion.

Thank you.

REPUBLIC OF KENYA

SPEECH BY THE HON. MR. JUSTICE J. E. GICHERU, E.G.H.,
CHIEF JUSTICE OF THE REPUBLIC OF KENYA
ON THE OCCASION OF THE

OFFICIAL OPENING OF THE EAST AFRICAN REGIONAL COLLOQUIUM ON ENVIRONMENTAL
LAW
AT THE WHITESANDS HOTEL, MOMBASA, KENYA

HONOURABLE JUDGES OF APPEAL OF THE JURISDICTIONS REPRESENTED;
REPRESENTATIVES OF UNITED NATIONS ENVIRONMENT PROGRAMME (UNEP);
REPRESENTATIVES OF THE DEPARTMENT FOR INTERNATIONAL DEVELOPMENT (DFID);
REPRESENTATIVES OF THE NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY (NEMA);
REPRESENTATIVES OF THE UNIVERSITY OF NAIROBI AND CENTRE FOR ADVANCED
STUDIES IN ENVIRONMENTAL LAW AND POLICY (CASELAP);
REPRESENTATIVES OF THE INSTITUTE FOR LAW AND ENVIRONMENTAL GOVERNANCE
(ILEG);
LADIES AND GENTLEMEN.

I welcome you all to this regional colloquium on environmental law for the Judges of the Courts of Appeal of Kenya and Tanzania and of Supreme Court of Uganda. I am delighted to officiate at the opening of this colloquium because it is for us in the Kenya Judiciary a culmination of a series of environmental law conferences involving all the judicial cadres of our Judiciary.

It is also a splendid opportunity for the senior judiciary of the neighbouring East African Community countries represented here to exchange experiences and jointly seek solutions to the challenges that they individually face in the administration of their respective environmental laws as well as the trans-boundary issues which manifest themselves in the national arena.
The benefit of this kind of a regional forum cannot be over-emphasised. Enforcement, implementation and development of environmental law are matters of great concern at the national and intra-national levels between States of the same geographical region as well as internationally. After all global warming and the destructive industrial race between countries are concomitants of the push for the very Globalisation that we so cherish. It is therefore fitting that the East African jurisdictions should co-operatively seek to understand, develop and apply environmental law principles to meet the environmental challenges facing the countries individually and as a region. That is the object of this East African Regional Environmental Law Colloquium.

Two events that occurred exactly one (1) month ago and thousands of miles apart but which were reported in the same Kenyan Newspaper, The Saturday Nation of March 10, 2007 demonstrate the inevitability of this kind of co-operation. On the one hand, it was reported under headline “EU Summit Backs Energy Deal” that:

“A draft final statement at a European Union Summit meeting today set a binding target of 20 percent of renewable sources in EU energy consumption by 2020 in an ambitious strategy to fight climate change. The compromise circulated by EU president Germany offered flexibility on how the 27 member states contribute to the common pan-European goal for renewables such as solar, wind and hydro-electric power.”

On the other hand from East Africa (Arusha, Tanzania) it was reported under a headline “Why East African Community Must Pool Resources On Energy” that:

“East African countries need to pool together to develop a pipeline and power transmission network if it is to benefit from Tanzania’s natural gas deposits.” The region has come under increased scrutiny after recent discoveries of a third natural gas deposit in Tanzania and oil in Uganda. But experts say a lack of infrastructure limits the region’s ability to exploit its energy resources.”

The two news items exemplify the need for countries and regional blocs to work together in pursuing sustainable development and in bringing environmental law principles to bear on these enterprises for the mutual benefit of the countries in development and conservation of the environment. It is for this reason that this type of regional environmental law colloquium is important as an avenue for developing regionally synchronized responses to environmental challenges for the benefit of the sustainable development in the region.

Just like Prospero in William Shakespeare’s play, The Tempest, was able to use his spirits to command the wind and waves of the sea, Judges are similarly endowed with legal tools and techniques for enforcing, through the rule of law in environmental law governance, the necessary discipline in socio-economic growth initiatives that are conducive to sustainable development.

At the Global Judges Symposium held in Johannesburg, South Africa between 18th - 20th August, 2002, the members of the Global Judiciary present adopted the Johannesburg Principles on the Role of law and Sustainable Development and expressed in the preamble to the principles a “Conviction that 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 to the enhancement of the public interest in a healthy and secure environmental…”

Environmental law is today the most central plank among all the branches of law because of its direct and indirect impact in the cultural, social and economic development of our society with relevance at national, regional and international spheres. Modern life has a relationship however indirect and remote with the environment and the use to which we put our environmental law knowledge dictates the standard of life that we enjoy or suffer. Upon the opening in 1913 of the Peace Palace at The Hague, the great American philanthropist, Andrew Carnegie who funded its building said of international law that it would for our civilization “slowly but surely become the corner stone, dismissed for so long by the builders.” I dare say that the same may be asserted for the environmental law, which has today become, in the interests of sustainable development that supports intra- and inter-generational equity, a primary consideration in all our civilization pursuits.

How then do the highest echelons of the judiciary help in implementing, developing and enforcing the environmental law to achieve the desires of our civilization in a sustainable fashion? The highest courts of our jurisdictions are most suited to play the lead role for the rest of the Judiciary in the promotion of environmental law. These courts are entrusted with the responsibility to finally declare what the law is in respect to particular disputes and branches of law under the doctrine of precedent in the common law tradition of the East African countries. The judicial decisions of these highest courts are binding upon all the courts below them and generally also upon themselves, except where compelling circumstances warrant a departure from an earlier decision of the Court.

There are several innovative ways that the highest courts can set useful precedent to be followed by the courts below, which I urge the participants of this Colloquium to consider:

1. **Judges as Case Managers:** In line with the conventional wisdom on the need for judicial case management, Judges should play a greater role in the determination of disputes and the enforcement of court orders in environmental law, by ensuring fast tracking of the cases as necessary taking into account the urgency of the environmental disaster sought to be averted by the proceedings. The Court may properly list a case for mention after making an order for purposes of ascertaining compliance with its orders.

2. **Promoting Access to the Court:** In addition the provisions of the Civil Procedure Rules relating to suit by paupers in the ordinary cases, the courts should readily give access to the Court by litigants in environmental law disputes where the challenge is mounted by the litigant for the benefit of the general public. The Court may consider waiving the filing fees as well as the party and party costs by an order that each party bears its own costs as happened in 2006 decision of the High Court of Kenya in *Waweru v. Republic*, KLR (E&L) (1) 677.

3. **Procedure Rules must be Handmaids of Justice:** The procedure rules must be handmaids of justice and not mistresses. The rules must exist to serve justice and not to hamstring its delivery. For instance, on the question of *locus standi* and whether the Court may grant orders against parties outside a suit, the necessity to
give effect and efficiency to court orders may call for directions binding parties outside the proceeding but who are charged by law with the responsibility to maintain or regulate healthy environment.

Helpfully, the framework environmental law in Kenya expressly provides so. The Environmental Management and Co-ordination Act, 1999 (EMCA), has done away with the need to establish locus and also provided under section 3(3) (b) that where it is alleged that the entitlement to a clean and healthy environment has been, is being or is likely to be contravened, “the court may make such orders, issue such writs or give such directions as it may deem appropriate to any public officer to take measures to prevent or discontinue any act or omission deleterious to the environment.”

4. **Right of Appeal:** Taking the example of the Kenya framework law, the Environmental Management and Co-ordination Act 1999 (EMCA), although the Act does not expressly confer a right of appeal, the provisions of section 66 of the general Civil Procedure Act permits appeals to the Court of Appeal from the decrees and orders of the High Court. Section 130 of EMCA relating to appeals to the Tribunal and the High Court also limits further appeal to the Court of Appeal by providing that the appeal to the High Court under that section to be final. There may be need to amend this section to provide for appeals to the Court of Appeal on a question of law only to give the highest court an opportunity to declare and to develop the environmental law in its continuously evolving nature.

5. **Regional Jurisdiction:** Because of the trans-boundary nature of environmental issues and the need to achieve common standards in application of environmental law, a forum for region-wide application of uniform laws and principles should be sought. The jurisdiction of the East African Court of Justice under Article 27 of the Treaty for the Establishment of the East African Community may be amended by a protocol on environmental law to extend the jurisdiction of the Court to environmental matters both at the level of original jurisdiction in trans-boundary cases and at the appellate level from the decisions of the national highest courts.

6. **Legislative and Judicial Direction:** The highest courts may in their judgments and rulings identify gaps and errors in the environmental laws of their countries and recommend rectification through legislation. By their determination and elucidation of contested issues, the Judges of the highest courts will give directions to the lower courts as to the applicable principles of environmental law and how to deal with them. For instance, the highest courts in our jurisdictions will be asked, if they have not already been asked, to decide whether or not the right to a clean and healthy environment is a fundamental constitutional right. The High Court of Tanzania in the case of Festo Balegele v. Dar es Salaam City Council (Misc. Civil Case No. 909 of 1991) thought so when it interpreted the right to life and to the protection of life by society under Article 14 of the Bill of Rights under the Constitution of the Republic of Tanzania to mean that persons are entitled to a healthy environment. The Kenya High Court has also equated the right to a healthy environment to the constitutional right to life in the case Waweru v. Republic, supra where it was held that “development that threatens life is not sustainable and it ought to be halted. In environmental law, life must have this expanded meaning as a matter of necessity.” The respective appellate courts will someday give an authoritative position on the interpretation of the law.

Such is the pivotal role that the apex courts must play in providing the leadership by handing down judicial wisdom in their rulings and judgments to help effective implementation and development of environmental law, and to inform
necessary legislative reform. I trust that the Jurisdictions represented at this colloquium will be equal to the task, daunting as it may seem.

Speaking for the Kenya Judiciary, I am pleased to confirm that we have adopted a policy for the mainstreaming of environmental law matters into our judicial system giving them priority over the regular civil cases. To this end, we have indeed dedicated a special Division of the High Court known as the Land and Environmental Law Division at Nairobi to hear land and environmental law matters under a fast-tracked system. The division is run by three High Court judges and it commenced operations at the beginning of the current term of court on 15th January, 2007. Environmental law shall also be a compulsory subject in the curriculum for both induction courses and in-service programmes at the Judicial Education Institute of Kenya which we plan to establish in the next financial year.

Additionally our National Council for Law Reporting, which publishes the Official Law Reports of the Republic of Kenya, *The Kenya Law Reports*, has devoted a special series of environment and land reports entitled *Kenya Law Reports (Environment and Land)*, the first volume of which I will officially launch today. The decisions reported in the Volume will help in further developing environmental law jurisprudence and in resolving the conventional challenges. For instance, in the old case of *Mumir v. Republic* (1967) KLR (E & L) 1 reported at p. 49 of the volume the High Court (Ainley C.J. and Rudd, J.) held that a person who stores meat for human consumption has a duty to ensure that the meat was wholesome and free from disease. A specialized website for environmental law matters has been hosted by the wider Kenya Law Reports web-site. I will also launch this environment and land law Internet site today.

In 1982 case of *Kenya Ports Authority v. East African Power and Lighting Company Ltd* also reported in the Volume (KLR (E & L) 1 at p. 82, the Court of Appeal (Madan, Law & Potter JJA) while dismissing a claim for pecuniary loss arising out of purely precautionary measures taken to clean up pollution, Law J.A said *Obiter* that “since pecuniary loss arising out of purely precautionary measures is not recoverable under common law, the remedy would appear to be for legislation to be enacted to make the cost of cleaning of pollution to be recoverable from the occupiers of waterside plots as well as ship owners who are responsible for the pollution of territorial waters and harbours.” The case is a clear example of legislative direction by the Court of Appeal and the polluter-pays principle is now entrenched under section 3 of the Environmental Management and Co-ordination Act, 1999. I commend the Environment and Land law reports series to all the participants of this colloquium and hope that the organizers can make them available in the course of the conference.

I must thank the Department for International Development of Britain for its generous financial support in the publication of the Environment and Land Series of the Kenya Law Reports and the National Council for Law Reports for their industry in making the reports and in developing the Environment and Land Law website.

I also thank United Nations Environment Programme (UNEP), the University of Nairobi’s Centre for Advanced Studies in Environmental Law and Policy (CASELAP), the National Environmental Management Authority (NEMA) and the Institute for Law and Environmental Governance (ILEG) who have collaborated in the organization of this
East African Judicial Colloquium on Environmental Law for Judges of Appeal. I also thank the resource persons who have generously given their time and expertise to make the colloquium a success.

It is now my greatest pleasure to declare this colloquium officially open and to launch the first Volume of the Environment and Land law reports and web-site. I wish you very fruitful deliberations.

Thank you.

J. E. GICHERU, E.G.H.,
CHIEF JUSTICE.
It is a great pleasure and honour to be given this opportunity at this stage of the official opening of the East African Regional Colloquium on Environmental Law and Access to Environmental Justice to make a brief statement on behalf of my colleagues from the Judiciary of Tanzania.

In the first place on behalf of the Tanzanian Judiciary I wish to express our sincere appreciation and thanks to the Organizers of the August Colloquium for extending the invitation to the Tanzania Judiciary to participate in this colloquium. In particular, I wish to recognize the tireless effort of the Honourable Justice Evan Gicheru, the Chief Justice of Kenya in timely approving the joint initiative by the Centre for Advanced Studies in Environmental Law and Policy (CASELAP) at the University of Nairobi, The Institute for Law and Environmental Governance (ILEG), the National Environmental Management Authority (NEMA) and the United Nations Environmental Programme (UNEP) to organize the Colloquium. I highly commend his Lordship the Chief Justice
of Kenya for his wise and timely consideration to include the participation of judges from Tanzania and Uganda judiciary at the level of the Court of Appeal or similar level in this Colloquium.

Similarly, I wish to register our great appreciation to the organizers of the Colloquium for the excellent arrangements made available to us since our arrival.

The theme of the Colloquium “Environmental Law and Access to Environmental Justice” is apt and timely, particularly so in today’s world which our region East Africa, being part and parcel cannot afford to be left behind. Preservation of the environment is currently not only a household parlance but is also a world agenda which intrinsically involves the enforcement of environmental laws and the role of the courts. Towards this end, Tanzania has organized a few workshops and seminars for Judicial officers at various levels touching on some aspects of environmental laws. As yet, unlike the position as reported in Kenya, after the Rio Conference and the Johannesburg Global Judges Symposium, only a small portion of the Tanzania High Court Bench and the Magistracy have participated in such workshops and seminars. In order for the judiciary to play its role fully in this direction, the importance of Colloquia such as this hardly needs to be over emphasized, they enhance capacity building on the part of the Judiciary. A lot still remains to be done in this field in our country.

Against this background, I and my colleagues in the Tanzania Judiciary participating in this Colloquium look forward to learn and exchange ideas and experience with our colleagues from the judiciaries of Kenya and Uganda within the East Africa Region and other Judicial luminaries from Australia who, we are given to understand have had a long history of environmental cases in their courts.

In this endeavour, we have no flicker of doubt in our minds that UNEP will, as before, continue to play a leading role in this direction aimed at enhancing the role of the Judiciary in the respective countries of East Africa with regard to Environmental Law and Access to Justice.

Honourable Chair, I wish to conclude my remarks by quoting a famous Roman General who, upon his return from a war mission abroad reported to his peers saying: Veni, Vidi, Vinci i.e. I went, I saw and conquered.
In the context of this Colloquium, on behalf of my colleagues from Tanzania, I would end up saying: We have come, anxious to see and learn from this august Colloquium and no doubt we shall win by way of the successful outcome of the Colloquium

Thank You
4. Remarks by Hon. John W.N. Tsekooko Representative of the Judiciary of the Republic of Uganda

REMARKS BY HON. JOHN W.N. TSEKOOKO, JSC, UGANDA, DURING THE EAST AFRICAN JUDICIAL COLLOQUIUM ON ENVIRONMENTAL LAW ON 11TH APRIL, 2007 AT WHITE SANDS HOTEL, MOMBASA, KENYA.

My Lord the Chief Justice of Kenya,
My Lords,
Representatives of ILEG, NEMA AND CASELAP
Other distinguished participants.

Apparently this colloquium was originally intended for justices of appeal from Kenya. But out of his love for all judiciaries in East Africa, his lordship the chief justice of Kenya convinced the organizers of the colloquium to include other justices from Tanzania and Uganda. His gesture is very much appreciated by Uganda judiciary.

I am grateful to the organizers of this colloquium for offering me the opportunity to say something. According to the programme, ten minutes have been allocated for making of statements by both Tanzanian and Uganda representatives. That means I have five minutes within which I must make my statement.

First I bring greetings to you all from my Chief Justice. He had a prior commitment. Otherwise, as an ardent supporter of the unity of East Africa and of judicial education in the region, he would have been here with us to personally participate.

I am tempted to say more than making a statement.

I am a very happy to participate in this colloquium for a variety of reasons. The three judiciaries of Kenya, Tanzania and Uganda have for the past ten years, or so, been engaged in Continuing Judicial Education which is organized by the East African Judicial Education Committee of which I am
privileged to be its current chairperson. The secretariat of the EAC has helped us greatly in that effort. Among the objectives of continuing judicial education is the enhancement of judicial skills among judicial officers so as to make them more competent, more efficient and effective in the delivery of quality justice to the people of East Africa. So we gladly join in an effort like this colloquium because apart from contributing to such important areas as augmenting the effort of uniting East Africans, the colloquium falls exactly in line with the training aims and objectives of the three judiciaries in East Africa. Emerging trends and developments in Environmental Law and issues are becoming much more in the fore everyday. These issues affect not only political and economic life of everybody in East Africa but also fundamental and other human rights of our citizens. It is therefore right and proper that every judicial officer should have opportunity to participate in such training activities more and more often.

As far back as 1995 members of the constituent Assembly which enacted the Uganda constitution considered the environment so important that it made special constitutional provision on the management of the environment. Thus article 245 states-

“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 was promulgated on 8th October, 1995. However, a few months earlier, an interim parliament (NRC) had enacted the National Environmental statute providing for sustainable management of the environment.

We know that environment is considered by East Africans to be so important that the treaty for the establishment of the East African community as a whole chapter (Chapter 19-Arts 110 to 114) devoted to the environment and Natural resources management.

Although litigation in areas of environmental law has been with us, my view is that provisions in our constitutions and in Acts enacted by the sister Republics of Kenya, Uganda and Tanzania provide fertile grounds for litigation.
Debates on matters of environment in some areas have been raging on in Uganda for several years. There was the matter of planned construction of a second hydroelectric power dam at Bujagali near Jinja. Public debates and court cases indicate concerns about the preservation and proper management of the environment. There have been and continue to be debates both in and outside parliament about allocation or planned allocation to groups of developers of natural forests in such parts of Uganda as Bugala Island Forest Reserve in Kalangala District on Lake Victoria and part of Mabira forest. In the case of the latter, the debate has more or less engulfed the whole country. Who knows whether these debates will not end up in our appellate courts as environmental litigations? Therefore we must sharpen our skills in these areas. More of such colloquia are needed.

On behalf of the Uganda participants, I thank his Lordship the chief Justice of Kenya for inviting us and for ensuring that we are accorded a wonderful reception. I also thank Prof. Okidi and his team for organizing the colloquium and sponsoring Uganda judiciary representatives.

We are grateful to the government of Kenya for the allowing us in and providing security for our stay.

I thank you all for listening to me.
5. Remarks by Mr. Martin Oloo, Representative of the British Department for International Development

Speech on the occasion of the official launch of the Environmental and Land Law reports by Department for International Development (DFID)

My Lord the Chief Justice, my Lords Judges of the Courts of Appeal of Tanzania Uganda and Kenya, my Lords Judges of the High Court, Honourable Magistrates, Members of the Diplomatic Corps, His Worship the Mayor, distinguished Ladies and Gentlemen.

I am pleased to be with you today on behalf of the United Kingdom’s Department for International Development at the opening ceremony of this colloquium on environmental law for Court of Appeal judges from Kenya, Tanzania and Uganda. I understand that the Ugandan team also includes Judges of the Supreme Court. I am equally pleased that during this occasion, there will be the launch of the Environment and Land Law Reports and Website.

Let me briefly recount our involvement in both of these ideas, whose results we witness today in the launch of the reports and the magistrates and judges colloquia that climaxes with the highest courts, Appeals and Supreme Court judges represented in this room this morning.

The launch of the land and environmental Law reports is a culmination of an idea that started in August 2005 with the aim of

- Publishing the Kenya environment and land law reports and;
- Establishing a permanent system of monitoring and reporting current environmental and land issues and.

Today’s launch is a significant confirmation of the success of this programme. This would not have been possible without the support and enthusiasm of the Institute for Law and Environmental Governance and the tremendous determination and energy of the National Council for Law Reporting to produce a high quality and stimulating product. May I take this opportunity to warmly acknowledge and commend the institutions for a job well done!
To a majority of Kenyans, and to a great extent East Africans, land and access to land, is not only essential for food production and food security but for many, the ultimate form of social security. Agricultural growth and poverty reduction in depends significantly on increased agricultural production. In Kenya the bulk of food, cash crops and livestock production is carried out by rural smallholders. But, as Professor Okoth Ogendo has pointed out “land is not simply a factor of production, it is the most important cultural and social asset for the majority of the population”. Besides being central to the economy, there is a volume of evidence showing that whether a tenure system is leasehold, freehold or even communal, farmers are more likely to invest in their land and increase productivity, where they have secure land rights underpinned by an equitable and efficient legal and Institutional capacity.

Land also supports important biological resources and processes, sustains the livelihoods and constitutes an important cultural heritage for many communities. This therefore calls for the management of Land in a way that recognizes its many attributes.

DFID’s 1997 White Paper Eliminating World Poverty identified sustainable management of the environment as a cornerstone of the UK’s approach to international development. It recognised a mutual global interest and reminded us that development? is not just a rich country/poor country issue but that it matters to all of us and we need to tackle environmental problems at local, national and international levels.

The environment matters greatly to people dependent upon access to natural resources for their livelihoods and to people living in poverty. They depend directly on a wide range of natural resources and ecosystems and are often the main direct human casualties of environmental degradation; the ones most affected by polluted water, exposure to toxic waste and above all to hazards such as floods, droughts and pests. Addressing these poverty/environmental linkages must be at the core of national efforts to eradicate poverty. DFID recognizes that economic growth is dependent upon the sustainable management of natural resources and the environment and is assisting countries to integrate environmental concerns into their decision making. It is from this commitment that DFID Kenya provided the necessary support through ILEG to enable the production of the land and law reports.
In recognition of the global movement towards improved environmental management and conservation, Kenya has, under international and regional environmental conventions, agreements and protocols, assumed a number of obligations and has in the recent past developed and adopted a new regime of environmental law codified in the Environmental Management and Co-ordination Act (Act No 9 of 1999).

Serious environmental degradation in Kenya and the mismanagement of natural resources necessitate the need for strict monitoring of environmental management and governance. It is against this background that the idea for the collection, consolidation and highlighting of Kenyan environmental case law both in book and electronic format was born.

The case law covers several decades of judicial intervention on environmental matters dating back to 1909. The reported cases address important themes in environment and land jurisprudence such as public interest litigation, locus standi, the polluter pays principle, the public trust doctrine, the precautionary principle, environmental impact assessment, endangered species, protected zones, nuisance and negligence. The website contains a wide range of freely downloadable environmental law authorities emerging from the High Court and the Court of Appeal of Kenya, decisions of National Environmental Tribunal, Environment Management and Coordination Act No 8 of 1999 and its subsidiary legislations. It also contains resourceful information such as Environmental International Treaties and links to organizations involved in environmental management.

The publication of the Environment and Land Law Reports is geared towards making information freely available to judicial officers, legal practitioners and environmental management organs on the application, interpretation and enforcement of the new regime of environmental law. It will also help to empower civil society and in particular marginalized groups by expanding public access to environmental information, decision making and justice.

As I close my remarks, let me take this opportunity to thank you all for being here today for the launch of the reports and the web site which I strongly believe will be invaluable as case law, in the litigation and adjudication of environmental issues.
Honourable Judges of the Supreme Court and Courts of Appeal of the Partner States of East African Community,
Honourable Justice Brian Preston, Chief Judge of Land and Environment Court of New South Wales, Australia,
Representative of United Nations Environment Programme,
Representatives of Directors-General of National Environment management Authority,
Representative of University of Nairobi’s Centre for Advanced Studies in Environmental Law and Policy (CASELAP),
Directors of Institute of Law and Environmental Governance (ILEG),
Distinguished Scholars and Resource Persons,
Ladies and Gentlemen.

It is a pleasure for me to be with you for the closing ceremony of the Colloquium where the participants are the judges at the highest level of the judiciaries of the three Partner States of the founder member of the East African Community. The Colloquium underscores the seriousness with which the Judiciaries in general, and Chief Justices in particular, have decided to treat environmental law as a field. I am proud decision by the Hon. Chief Justice of Kenya to convene the Colloquium because the result will, no doubt, enhance quality of enforcement of the framework environmental laws, sectoral statues and the corresponding implementing regulations for inter-generational equity.

My appreciation is based on clear knowledge of what it takes to develop and finally adopt framework laws as delicately balanced statutes which evolve as a result of complex processes of
crafting and negotiations. I took personal interest and charge of that process in the case of Kenya. Before I address some of the issues which have concerned his colloquium, let me recount that history briefly, for I believe experience will be common to our sister countries.

Absence of a framework environmental law legislating an overarching agency with authority to coordinate and supervise implementation of various statutes had led to chaos and worrisome conflicts, and at times, violence by civil society organizations committed to rational environmental governance. As a consequence, the Government of Kenya for assistance from the United Nations Environment Programme (UNEP), to start off the process towards the development of the national framework law. The outcome was a report which evaluated the national environmental policy, problems existing legal and institutional framework as well as recommendations for suitable guidelines for framework environmental law and institutions.

With assistance from UNEP a National Seminar involving various environmental stakeholders was held at Golden Beach Hotel in Kwale from 23 to 27 May 1994 and I personally attended for the entire duration. The principal recommendation was that a committee, under chairmanship of the Solicitor General in my office, commences preliminary drafting of such a law. My instruction was that they consult widely with stakeholders, including through the National Environment Action Plan (NEAP).

Concurrently I directed the Task Force I had set up on Reform of Penal Laws and Procedures to set up a Committee on Environmental Law to examine how environmental penal sanctions could fit in the new legal order of environment. These initiatives culminated in a preliminary draft statute which was subjected to exhaustive debates at a national consensus building Workshop of stakeholders at Safariland Hotel, Naivasha, from 6th to 8th September 1995. I personally attended the Workshop as did the Minister for Environment and Natural Resources and the Kenya Permanent Representation to UNEP, we witnessed and participated in the debates throughout. The version of the draft will which was adopted by this Workshop was put on a rather slow process during which different government agencies considered it internally after which it was placed before Parliament towards the end of 1999. Because of the deliberate and long process of review and consensus building the bill had easy sailing through Parliament in December 1999 and it received Presidential assent on 7th January 2000. The product was a complex and delicately balanced law whose implementation will
evidently be challenging to the judiciary, prosecutorial staff at the Chambers, and the legal professionals with mandate in the field. Is complexity is probably suggested by the fact that even though the civil society members no longer on the streets to agitate for new and appropriate legal regime there has not been any floodgates of environmental litigation.

For the Distinguished Judges I can only say that we have come along way. The days are behind us when we read the controversial decisions in *Wangari Mathai V Kenya Times Media Trust* (Civil Case No. 5403 of 1989) decided by High Court Justice Dugdale on 11 December 1989. Different forms of ill-motives were imputed on the judiciary for denying *locus standi* to the plaintiff. With the coming into force of the framework law there has been a rapid shift on the part of the judiciary. You will recall, for instance, that in *Rodgers Muema Nzioka V. Tiomin Kenya Ltd.* (Civil Case No. 97 of 2001), the Learned Judge A. Hayanga granted an injunction against the mining company. Recall, too that in *Hassan and 4 others V. Kenya Wildlife Service* (Civil Case No. 2959 of 1996) Justice Mbito stunned Kenyans when by an injunction, he stopped an attempt to relocate Hirola Gazelles from their natural habitat in Arawale to the Tsavo National Park. This decision, of course, sturned many people in the Government, particularly in the Kenya Wildlife Service.

But it should have been a wake up call to Kenyans particularly in the Executive that the Judiciary in Kenya had opened a new era of informed and aggressive environmental sensitivity.

I do not wish to parade all examples which signal the change in environmental jurisprudence from the Kenyan Bench. It suffices to mention that it is not only in the trend in rulings which seem to evidence sensitivity to environmental exigencies. The rulings also show the sophistication of the judiciary in matters of environmental law. It is becoming increasingly clear that judges of the High Court have taken time to familiarize themselves with statutes and learned literature in Environmental law. You will recall, for instance, that in the case of *Peter Kinuthia Mwaniki and 2 Others V Peter Njuguna and 3 Others* (Civil case No. 313 of 2000) finally decided in June 2004 the learned Judge, Joyce Aluoch, ruled in favour of the plaintiffs. The case involved location of slaughter house in a residential area. The plaintiffs had tried unsuccessfully to get assistance from NEMA, a conduct for which the judge chastised the Director General as she “proceeded to grant, as prayed for, a permanent injunction to restrain the defendant, their agents, and servants from CONTINUING TO CONSTRUCT a slaughter” house in the parcel of land known as Plot No.
Zone 6 within Limuru Township”. She accordingly directed that the judgement be forwarded to NEMA where the Director General and his officers at district level had ignored the actual and pending environmental plight of the plaintiffs.

Particularly dramatic was ruling of the three judge Bench in Peter K. Waweru (Applicant) and Republic (Respondent) (Misc Civil Application No. 118 of 204) where the applicant had made a constitutional application alleging that his fundamental rights and freedom had been violated. The basis of the claim was that criminal charges relating to violation of Public Health Act had been preferred against him without first being served with summons to appear before a magistrate as required under section 120 of Public Health Act.

The criminal offence for which Waweru was charged related to his decision to construct a residential facility at a location where, according to public health officers, such a facility would cause nuisance, the raw sewage to be released would violate fundamental principles of environmental law and endanger lives in the neighbourhood.

The Court found indeed that the rights of the applicant were violated to the extent that proper notices required by law had not been served and no summons to show cause had been issued as per the Act.

However, there was concern by the disclosure before if that both Ol Kejuado County Council and the Water Services Board would be acting improperly if they permit construction of sewerage treatment works in a plot already allocated for private use. Moreover, the treatment works would also significantly contaminate ground water and, therefore, endanger lives.

The striking point about the case is that before the judges gave their ruling they, without prompting from learned counsel, went into detailed discussion of diverse principles of environmental law and cited literature and jurisprudence from global sources. To that extent, this is a very highly educated judgement and its reach will, I believe, be discussed for years to come. In its conclusion, the court opined, *inter alia,*
“…… that an order of mandamus shall immediately issue to compel the Ministry of Water – i.e. Nairobi Water Services Board and Olkejuado County Council to construct Sewerage Treatment Works. In this regard it is noted that the Republic is a party to these proceedings via the Attorney-General and the appropriate treatment works must be installed in reasonable time and for this purpose there shall be liberty to apply. We further order that a copy of this judgement be served by the applicant on the Ministry of Water, Ministry of Local Government, Olkejuado County Council, NEMA, the Attorney General’s Office and whatever Ministry is concerned with Physical Planning. NEMA is also urged to consider making a restoration order as may be appropriate in the circumstances”.

The final recent case I want to refer to is the well-known Samson Lereya and 4 others (Plaintiffs V The Attorney General, The Minister for Environment and Natural Resources and National Environment Management Authority (Defendants) otherwise popularly known in Kenya as Mathenge case. In this case five residents of Marigat Division brought an action seeking eradication of a weed plant on their land. The plaint averred that the Government of Kenya together with the U.N. Food and Agricultural Organization had introduced onto the Division the weed called Proposis Juliflora (Mathenge) which had turned out to be not only an ecological colonizer but also causing harm to people and animals through its highly toxic nature.

The case failed on procedural technicalities including, failure of the plaintiffs to give the government the statutory notice of intended suit as required under Government Proceedings Act (Cap. 40 Laws of Kenya.)

But, for us today, that is not the crucial lesson from the case. The important lesson is that the Learned Counsel representing the three defendants were unaware of the liberal *locus standi* rule in Section 3 of Environmental Management and Co-ordination Act, 1999. The three Judge Bench took it upon themselves to explain the rule which should have been well-known to the defendants, including the Attorney General’s chambers.

I do not want to bore Your Lordships especially those from Tanzania and Uganda. You have a good number of your own challenging cases with Tanzanian Courts delivering insightful judgments
such as Festo Belegele and 794 Others (Applicants) Versus DSM City Council (Respondent (Misc. Civil Cause No. 90 of 1991) and Reverend Christopher Mitikila case, among others, and in each case taking bold decisions based on common law doctrines. Uganda, on the other had, has many cases brought under the 1995 National Environmental Statute and is included in the book Environmental Law of Uganda, published by NEMA in 2005.

The critical lessons which emerge in Kenyan cases are many but let me highlight the following three: first, contrary to the situation preceding enactment of the Environmental Management and Coordination Act, EMCA Kenyan Judges have taken a rather aggressive posture to provide leadership in a new direction in environmental jurisprudence. As will be evident from detailed reading of Peter Waweru case the judiciary want to assert authority of environmental law in promoting sustainable development. Secondly, it is clear that the legal practitioners lack knowledge and skills in environmental law and may not be trying adequately to educate themselves. How else does one explain the fact that lawyers acting for the Attorney-General, Ministry of Environment and Natural Resources and NEMA were not aware of the liberal locus standi rule in EMCA, that was introduced in the Kenyan statute quite deliberately.

Thirdly, the Government may be plunged into embarrassment by suits and costs arising from environmental degradation.

**Line of Action**

My office will take the only logical action to rectify this situation. We must follow the example of Kenyan Judiciary and mount a crash programme of capacity building among my attorneys. A number of options are available:-

1. I will require that henceforth all Lawyers to be employed as state counsels must have taken a certain number of hours of environmental law courses. That will apply to those at the State Law Office as well as Lawyers to be seconded to serve line Ministries. We shall, in fact, give preference to postgraduate degree law level.

2. I will activate the recommendation made to me in 1994 by the Task Force on the Reform of Penal Laws and Procedures that we request all faculties (or schools) of law in
the country to require environmental law as one of the foundation courses which each student must take before graduation. As in paragraph (1) above, we shall request the respective University Senates to require a certain number of hours, as a minimum.

3. We are pleased that the Council on Legal Education, has designated environmental law as one of the subjects for continuing education. My office will initiate consultations to ensure that no tokenism is allowed.

4. There will be proper consultation between the State Law Office and NEMA to ensure that those who handle environmental law cases for NEMA are properly knowledgeable. It goes without saying that all suits against the Government involve the Attorney General and my office will be adequately prepared.

5. My Office will borrow a leaf from the Chief Justice and seek assistance in short courses or workshops on environmental law for all government officers dealing with environmental matters.

6. My office will encourage similar training in environmental law to civil society organizations to ensure that they are effective participants in environmental decision-making.

It may well be that these initiatives from my Office are coming rather belatedly. On the other hand, it may be better that lawyers in public and civil society can move aggressively to judiciaries that are already well prepared for them. In this respect the judiciaries could well be on the lead in charting the course of jurisprudence in the field of the environment.

**Consistency in Environmental Statutes**

I am aware that your Lordships will be concerned about wide spread inconsistencies between a number of statutes and section 148 of EMCA which was intended to force harmony between the sectoral laws. The framework law suffered as a drafting flaw in referring only to laws in existence prior to EMCA. That not withstanding new statutes such as the Forest Act, 2005 endeavoured to harmonize with EMCA. I am aware that such is not the case with Water Act 2002.

I take the position, in principle, that at an appropriate time the situation will be ameliorated. For accidents of history, EMCA has not been fully tested in implementation. As I explained earlier, I was
present at the 1995 Naivasha workshop and therefore aware of the very delicate balancing act together law and that balance should not be imperiled.

My Office and Cabinet are to ensure that all new bills are consistent with EMCA. It is, in fact, necessary that decisions are taken to effect amendment to any provisions of new sectoral statutes which are inconsistent with EMCA.

There may be instances of administrative inconsistency and those could be resolved through interpretation issued by my Office as was the case of National Environmental Tribunal (NET) and NEMA where the latter thought the Tribunal was subordinate to it. My Office did not hesitate to issue an opinion unequivocally stating the Tribunal was independent of NEMA.

Questions have also been raised over necessity and functions of NET. We are aware that Uganda opted to avoid a tribunal designed to resolve disputes arising from administrative decisions and to move directly to High Court. What we hear from Uganda is that practice is leading the public and project proponents to seek soft options and to avoid hasty resort to the High Court. If that is the case, there is a danger of abuse of such informal soft options.

In our view the Tribunal offers an option of non-technical and minimum cost element. We still believe that it will dispense justice more speedily than would be High Court. There is necessity for, doing a careful evaluation of NET’s performance, after say ten years. There’s also a necessity to consult with Tanzania to assess ways of making tribunals effective. Tanzania’s statute of 2004 at Part XVII makes provision for an Environmental Appeals Tribunal.

Budgeting problems have been invoked to support abandoning the idea of Tribunals. In my view this is not a good excuse. Ways should be sought for funding the Tribunals instead. Again let us be cautious about my attempt to amend a good law hastily. I will gladly go with the Ugandan approach where the 1995 Statute has not been tinkered with, ever after a decade of operations.

**Land and Environmental Division**

The Chief Justice has taken a bold step by establishing Land and Environment Division of the High Court. He cleverly started by initiating these Colloquia and, as I understand it, the entire High Court
Bench has gone through it. So too about 70 officers at magistracy level. My understanding is that he intends to involve more magistrates. The implication is that His Lordship could decide to establish Environment and Land Court from magistracy to High Court and he would have enough personnel as far as environment is concerned. We would be put our heads together to look at how, as a country, we can best promote access to environmental justice.

Challenges
There are a few challenges, which would concern the judiciary at our stage of development.

First, given the low level of development and literacy as well as preponderance of poverty, citizens may not readily move to court to seek judicial intervention in the face of grave violations. Would the judiciary consider moving on own motion or suo moto to prompt judicial intervention in cases corrective measures. Or given the knowledge already gained would the judiciary wait to be moved irrespective of the situation? What should be the guidelines?

Secondly, it is evident in Africa that governments and existing laws in natural resource rich countries have not protected interests of local and marginalised communities. This often leads to violent conflicts which undermine sustainable development. In what ways could the judiciaries intervene to ensure equity?

Thirdly, should East African community consider appeal of environmental cases from national courts to East Africa Court of Justice?

As Attorney General, I am committed to proper development and implementation of environmental law to ensure sustainable development and realization of intergenerational equity. I have promoted these ideals in the development of treaty laws of the East African Community. The new East Africa, including Burundi and Rwanda, must be managed as a unit for sustainable development. In fact, it may be time for us to consider development of harmonized regulations in key areas such as Environment Impact Assessment and environmental standards. UNEP had helped Kenya, Tanzania and Uganda make a beginning with draft regulations on these subjects, and hopefully can continue, alone or with other donors, this process in other areas.
I appreciate the opportunity to be with judges of the highest benches in the three countries and trust that there will be formal and informal consultations among yourselves on this important area of law, and in the mutual efforts to enhance the rule of law in the region. And frankly, who knows, this might be one of the many colloquia that you may hold in the region every so often. From my informal tacks and listening to your deliberations I was indeed persuaded that this has been an important occasion for all of you.

I have the honour now to declare this Colloquium closed.