

RUAHA CATHOLIC UNIVERSITY



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**Inadequacy of Penalties for Environmental Polluters in Tanzania in Connection with
the Polluter Pays Principle**

A Compulsory Research Submitted in Partial Fulfillment of the Requirement for the Award
of Bachelor of Laws Degree of Ruaha Catholic University.

BY

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July 2018

CERTIFICATION

I under signed certifies that I have read and thereby recommends for acceptance by Ruaha Catholic University, a dissertation titled **“Inadequacy of Penalties for Polluters in Tanzania in Connection with the Polluter Pays Principle”** as partial fulfillment of the requirements for the award of bachelor of laws of Ruaha Catholic University

Signed on.....day of July 2018

.....

Supervisor

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DECLARATION

I **Mkongwa, Liberatus Enhart**, do declare that this is my own original work and it has not been submitted and not being submitted for a similar course or any other degree here at Ruaha Catholic University.

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DEDICATION

I hereby dedicate this work to my lovely mother my parents Mr. Mrs. Mtaki, Maulina John Luwumba, Augustino Kalistus Mtaki, Issa A. Makombe, Orestes Kigodi, my lovely daughter Faith Mkongwa, Glory Mabena (Faith's mother) and all my family members who are Sarafina Mkongwa, Nashon Bundala, Oddo Simime, Grayson Mwasimanga and Mickdad Kibiki.

ABSTRACT

Environmental pollution has become the dominant global giant which makes humanity of this century restless. This problem is mostly the result of various economic, social and cultural malpractices of human beings on the environment. The globe has witnessed the outbreak of disastrous diseases, soil degradation, drought, extinction of some animal's species and plants due to environmental pollution.

In simple terms, the environmental pollution has caused sad effects to humanity and other creatures. That being the case, various efforts both at national and international level to combat the problem of environmental pollution have been evident. There have been several enactments of environmental laws, policies and principles to prevent and control this problem of environmental pollution but much of that because we have failed to combat through normal ways then let us use the laws particularly penal laws.

Because of that prevalence of environmental pollution over man-made environment legislation, policies and principles, the researcher was attached to carry on the increase of penalties for pollution of the environment as the only way to adhere with the polluter pays principle (PPP)

The researcher saw that the obligation over control of environment is under the hands of the public, government, legislators and to the religious leaders who teaches our people on how to adhere the laws made in the country.

LIST OF STATUTES

INTERNATIONAL INSTRUMENTS

The Rio Declaration on Environment and Development, 1992

Vienna Convention for the Protection of the Ozone Layer, 1985

Carpathian Convention, 2003

United Nations Conference on Environment and Development Rio de Janeiro, 1992

REGIONAL INSTRUMENT

African Charter on Human and People's Right, 1981

LIST OF STATUTES

Canadian Environmental Protection Act, 1987

Environmental Management Act, 2004

The Constitution of United Republic of Tanzania, 1977

The Forest Act, 2002

LIST OF CASES

S.Jaganath v. Union of India, (1996) 5 SCC 647

Environmental-legal Action v. Union of India, (1992)2

Festo Belegerele & 794 others v. Dar es Salaam City Council, Civil case No. 299 of 1988(unreported)

Joseph Kessy v. Dar es Salaam city council, Misc. Civil case No. 90 of 1991 (unreported)

Donoghue v. Stevenson, (1932) AC 562

ABBREVIATIONS

NEMC	NATIONAL	ENVIRONMENTAL
MANAGEMENT		
	COUNCIL	
PPP	POLLUTER PAYS PRINCIPLE	
UN	UNITED NATIONS	
CAP	CHAPTER	

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 INTRODUCTION

Most of the countries in the world including developed countries as well as those developing countries have been facing a great trouble of environmental pollution. This has caused a lot of dangers in domestically, regionally as well as internationally. This being the case different laws in both levels have been made to overcome the situation of massive environmental pollution which have been caused by the human activities conducted in the environment.¹

Due to the development of science and technology which has been rapidly growing, also innovations which have been conducted by scientists which are likely to affect environment at a large extent in such a way protection of environment needs a lot of care for the purpose of avoiding the causes of such pollution.²

Therefore, the researcher in this research has researched on the inadequacy of the laws in preventing pollution of environment as a concern of the world so that the polluters become liable with the principle of polluter pays principle. Thus, the researcher has reached to the point that the penalties for pollution to be increased to the person who pollutes the environment.

¹<http://www.ukessays.com/essays/environmental-studies/biggest-proble-of-environmental-pollution.http>
(Assessed on 29/04/2018)

² *Idem*

1.2 BACKGROUND OF THE PROBLEM

Protection of environment is the primary duty of every individual in the world, this is because, pollution which may be made by the neighbouring state may also affect the other nearby states sometimes more than the effect caused in the particular state. That being the case, Article 14³ has provided for the right of the individual to be protected by the society in accordance with the law.

For purpose of provision of section 4,⁴ the section makes clear that any person living in Tanzania shall have right to clean, safe and healthy environment which in that it means having safe environment is the right of everyone who lives in Tanzania. Also section 5⁵ provides for the right of action for any person to bring an action to the court of law where he finds any person polluting or is likely to do anything endangering life or environment.⁶

Therefore this research is aiming at showing the inadequacy of laws in protecting environmental pollution starting with section 170⁷, which provides for the one who causes annoyance, nuisance, inconvenience, or obstruction in the environment commits an offence and is liable for one year of imprisonment.⁸

Subject to section 187⁹ which has provided for person who discharges dangerous materials substance, oil, ,oil mixtures into environment (water, land and air) commits an offence and in that shall be liable to the imprisonment of the term not exceeding 12 years or to the fine not exceeding fifty million.¹⁰

Those penalties from the Penal Code and those provided under the Environmental Management Act, to the researcher are not satisfactory with regard to the destruction of

³ The Constitution of United Republic of Tanzania, 1977 (as amended from time to time)

⁴The Environmental Management Act, of 2004

⁵*Ibid*

⁶ *Supra* note 4

⁷ The Penal Code, Cap 16 [RE 2002]

⁸ *Idem*

⁹ *Supra* note 5

¹⁰ *Idem*

environments and health which have been caused together with the truly concern of the polluter pays principle.

Basing on those sections which have provided criminal sanctions for polluters of environment, still pollution has been taking place and seriously affecting living organisms and human beings who depend on environment for their survival.

1.3 STATEMENT OF THE PROBLEM

Environmental pollution in Tanzania has not been put into a serious care compared to the effects which have been caused by it in everyday lives. The Penal Code Cap 16 [RE 2002] and the Environmental Management Act, 2004 have both provided for offences relating to pollution of environment but to the researcher, those penalties are not enough in relation to the troubles which are caused daily by the same.

Section 170 has provided lesser penalty for one who pollutes the environment; the law has provided that the one who pollutes the environment will be held liable to the imprisonment of the term of one year. The penalty which has been provided in that provision is not enough for the protection of environment from being attacked by different activities conducted on it.¹¹

On the other side the law under section 187,¹² for the purposes of ensuring protection of environment in the country, it has also given penalty for the one who pollutes environment that means water, air and land to be liable to a fine which is not exceeding fifty million or to the imprisonment of not more than twelve (12) years or both fine and imprisonment.¹³

The researcher saw that those two laws have not been adequate in protecting pollution of environment as compared to harm which is caused to environment, in most of the circumstance the pollution of environment is not conducted by the normal person, rather it is

¹¹ The Penal Code [Cap 16 R.E 2002]

¹² *Supra* note 4

¹³ *Idem*

committed by those big firms which are even able to pay fine and continue polluting environment.

1.4 LITERATURE REVIEW

Shelton, & Kiss,¹⁴ in their hand book on environmental law they wrote that, the polluter pays principle was originally enunciated by the international instrument for the purpose of restraining national and public authorities from subsidising the pollution control cost of private firms; instead, enterprises should internalise environmental externalities by bearing the costs of controlling their pollution to the extent required by law.¹⁵

In general the authors based on the implication of the polluter pays principle and they have not provided the means in which the polluter pays principle is to be applied, however they wrote about compelling individuals who pollute the environment.¹⁶

In this book, authors also have only written on enacting laws which will have the penal impact to the protection of pollution while the researcher has seen the laws which have been enacted are not adequate for protecting pollution as compared with the objectives of polluter pays principle.

Hughes,¹⁷ in his book he wrote that, human species is part of the nature but compared to most other species we have caused far-reaching alteration of conditions of land, sea, air and living plants and other animals that share our tenure on earth. The changes which humans have in environment have in turn affected our societies. The environmental personnel's have tried to think that the unavoidable facts that human societies and individuals are interrelated

¹⁴ D. Shelton & A. Kiss, *Judicial Hand book on Environmental Law*, United Nation Environmental Programme, Lisbon 23.

¹⁵ *Idem*

¹⁶ Based on the elaboration by the researcher on the writing of the author and the topic the researcher was dealing with, this works as personal views or comments to the writer.

¹⁷ J. D. Hughes, *What is Environmental History*, Polity press, Cambridge 2006, 1.

with the environment in mutual change. In such a way the human activities have much contributed to the pollution of the environment at the largest extent.¹⁸

The author wrote well on the environment and much he has based on the causes of pollution and he based on the human activities which contribute 90 percent of the pollution in the universe in the writing he just want the laws to be enacted by the nations to rescue the pollution. The writer focused on the protection of the environment in compliance with the principle of sustainable development.¹⁹

Pain,²⁰ in the book *Criminal Law and Environmental Protection Overview of Issues and Themes* he wrote that, the community's concern about the pollution of the environment has risen in most of countries at the extent that Australian environmental Laws has made this concern to be threat and effectiveness of environment protection laws is ongoing. There has been some of the dissatisfaction in some jurisdiction as to what is perceived to be the failure of the system of regulating based upon a co-operative relationship between regulators and polluters.²¹

One response to this concern has been an increased interest by politicians and legislative in Australia and overseas, there have been the increasing of the criminal sanction and a widening of criminal offences so that government are seen much to be acting to secure environmental desirable outcomes. Example of this is the Canadian Environmental Protection Act,²² which in its provision it has imposed the substantial penalties for criminal behaviours against the environment and provides for confiscation of the pollution-related profit.²³

¹⁸ *Idem*

¹⁹ *Ibid*

²⁰ N. Pain, *Criminal Law and Environmental Protection Overview of Issues and Themes* Available at <https://www.google.com/search?q=criminalisation+of+the+environmental+pollution+&ie=utf-8&oe=utf-8> (accessed on 04May, 2017)

²¹ *Idem*

²² Canadian Environmental Protection Act, 1987

²³ *Idem*

Therefore basing on this the author has supported the researcher's topic by saying on how some of the jurisdictions do in increasing penal sanction in the issue of polluting environment in the country and in such way they have achieved because polluters fear much to pollute due to the fear of facing such sanctions.²⁴

Pereira,²⁵ in his book he wrote that, the need for protection of the environment through criminal law is recognized in number of international instruments which call on states to enact the criminal provisions for enforcement of enacted environmental laws. Among the initiatives which were discussed in the eighth UN congress on prevention of crimes and treatment of offenders which then issued a resolution on the role of criminal law in protection of natural environment.²⁶

In this general assembly resolution called upon states to modify or enact where necessary and much emphasis on enforcement of national laws which have designed to protect the environment. Therefore the international concern on protection of environment wants the state to make criminal sanctions to one who will be unresolved in the pollution of environment.²⁷

In this book the author has partly supported the author that the states should make laws which will have the penal sanction over environmental pollutants, but according to the researcher's topic is that the penal laws in protection of environment have been made enacted but the researcher's concern is that those laws in the jurisdiction does not suffice the protection of the environment as compared to the harm which have been caused by them.

²⁴ Based on the reading on the book by Pain who has discussed on the increase of the penal sanction over pollution of environment in those jurisdictions as he cited the Canadian Environmental Management Act as an example of the laws strictly punishing pollution of environment

²⁵ R.M. Pereira, *Environmental Criminal Liability and Enforcement in European and International Law*, University of Essex Law School, Bolton 2009,11.

²⁶ *Idem*

²⁷ *Ibid*

Clifford & Ivey,²⁸ according to them in their book “Problems with Defending Crimes Against the Environment” they portrays that, environment is the most precious resource and key features to development which requires people who are living in it to have use of it with regard to the sustainable development principle, therefore in this, individual or company who willfully damage environment or who will cause gross negligence to it, to be much punished. This is in the view that pollution of environment creates a lot of dangers into organism which depend on it for their sustainability.²⁹

Although the authors have jointly written on the protection of the environment but they did not say on the means by which their goals have to be fulfilled to ensure the environment free from pollution which they face. At least the authors could have provided ways which states have to use for ensuring protection of environmental pollution like turning pollution acts to the criminal offences by some of the jurisdictions as well as effecting strictly penalties to those countries which have criminalized pollution³⁰

1.5 HYPOTHESIS

It appears that laws are inadequate in protection of environmental pollution in Tanzania.

1.6 OBJECTIVES OF RESEARCH

In this research there are two types of objectives which are general objective and specific objective.

1.6.1 GENERAL OBJECTIVE

To examine the penalties which are provided by laws to environmental polluters in relation to the harms which they cause on it.

²⁸ P. Clifford & S. Ivey, *Problems with Defending Crimes Against the Environment* Available at www.aic.gov.au/media_library/publications/proceedings/26/clifford.pdf

²⁹ *Idem*

³⁰ Based on the understanding on a book by Clifford & Ivey respectively

1.6.2 SPECIFIC OBJECTIVE

To provide measures which will ensure the increase of penalty to the polluters through amendment of laws which provide for those pollution as offence against humanity for the purpose of abiding with polluter pays principle.

1.7 SIGNIFICANCE OF RESEARCH

First is to ensure an increase of concern about environmental protection through putting in for strict penalties for polluters of environment.

Second is to deter the community about the effect of pollution and the increase of penalties which will compel more the polluter to abide with polluter pays principle.

1.8 RESEARCH METHODOLOGY

The researcher in this research has employed the non-doctrinal methodology that is to say he has taken a look on laws which provide for environmental management as well as practice on protection of environment it this, the researcher also looked on inadequacy of laws in providing penalty for polluters of environment. Therefore in this the researcher used two methods of collecting data which are primary collection of data and secondary collection of data.

1.8.1 PRIMARY DATA COLLECTION

In this method of collecting data the researcher used different types of methods within it which include the following;

(a) Observation

This is the mode which the researcher preferred to use because through it was easy for him to collect data. Through this means the researcher observed on how environment have been affected through unstructured waste disposal in mining areas and solid wastes in Mbeya

City. In this the researcher was a passive observer the means which helped him to easily collect data.

(b) Interviews

The researcher in collecting data used an interview method as way of obtaining information from different people. The researcher interviewed 9 people who among of them, 2 were from Mbeya City Council who despite of it being un-structured one, but they were able to help the researcher with what they had in their knowledge.

The remaining 7 were from Geita region whereby one of them was from NEMC, 2 were from Geita Township Council who also made easy for researcher to get information on the topic of research. Beside those, the remaining 4 were people who the researcher saw it just to ask some questions in relation to the topic and they successful provided answers and though they were not absolute helpful but they gave some knowledge to the researcher.

(c) Group Discussion

In obtaining enough information on the topic the researcher conducted several group discussions with people of different level of education that at some point some of them were not able to know the topic and in such way the answers were given was not vital to the topic. For those with at least some knowledge on the topic showed collaboration with the researcher on the topic he was researching on.

In primary data collection there is primary as well as secondary authorities:

i. Primary authorities

The primary authorities which the researcher has used include the Constitution of United Republic of Tanzania and some of laws made through it which works for protection of environment in the country.

ii. Secondary source

The researcher in the secondary sources used books, journal and some articles in obtaining information on the topic

1.8.2 SECONDARY DATA COLLECTION

In secondary data collection the researcher visited the Ruaha Catholic University library which is also known as Benjamin Mkapa Learning Centre whereby through review of different researches available in library which at some point relates to the topic as well as different books which helped the researcher to obtain and widen up his knowledge.

Also in the same method the researcher visited different websites which were vital for information on the topic concerned and in that the researcher was able to get online books, journals as well as writing of different jurist. Also the researcher visited the United Nation website whereby different conventions were obtained to accomplish the searching of reliable information on the topic of research.

1.9 SCOPE AND LIMITATION

This research covers the role of the Penal Code, Cap 16 RE: 2002, in Tanzania and other laws which have been enacted for purpose of protecting environment from pollution like the Environmental Management Act of 2014. In this the research also covers the increase of penalties which helps to the protection of environment in a way that the polluter become strictly liable for pollution which they have done in the environment.

There have been difficulties to the researcher to gather information from various people; this has been caused by the lack of awareness on the topic and the people not having the chance to access some of the environmental pollution matters and the literatures concerning the matter.

CHAPTER TWO

AN OVERVIEW OF FUNDAMENTAL CONCEPTS

2.0 INTRODUCTION

This chapter aims at discussing the different concepts surrounding the environment, environmental pollution and different principles which relate to the preservation of the environment from being polluted.

2.1 ENVIRONMENT

The term environment has many meaning ranging from ordinary meaning and statutory meaning as will be seen below.

(a) Ordinary Meaning

“Environment” means the totality of the natural world, often excluding humans or the combination of external physical conditions that affect and influence the growth, development, behaviours and survival of organism or it also means the complex of social and cultural condition affecting the nature of an individual person or community.³¹

Another meaning of the “environment” comprises of the surroundings which include land, air, atmosphere, water, biodiversity, wild life, forest, mineral resources, human being and ecosystem in the totality. It is the relationship between all the foregoing which makes up the environment.³² Also there have been the plain meanings of the term “environment” to mean that is the combination of all the materials which surround the human being that may include trees, stones and all natural and manmade features.³³

³¹ <http://www.thefreedictionary.com/environment> (Accessed on August 1st, 2017 At 14:23)

³² T. Ackson, *et al*, *Environmental Rights, protection and Management in Tanzania*: justification for their inclusion in the Would-Be New Constitution, 2012, 8.

³³ *Idem*

(b) Statutory meaning

The statutory meaning of the term environment is that all factors which surround human being, which in that regard the features include air, land, water, climate, sound, light, odour, taste, micro organism, the biological factors of animals and plants, cultural resources and the social economic factors of aesthetic and include both the natural and the built of environment and the way they both interact.³⁴

That means that, in the world all the materials which are found on it are the part of environment due to the fact that, as per the provision of the section 2 of the Environmental Management Act that, all the materials which human being in the world do interact with them they are part of the environment.

2.2 ENVIRONMENTAL POLLUTION

Environment pollution can be understood from plain meaning and statutory meaning as explained bellow.

(a) Plain meaning

In the plain meaning or the layman way of making definition of the word “pollution” is the situation of placing an object or materials which are not at the right place for the right time.” That means that everything which has been placed in a wrong place may be regarded as waste.

(b) Statutory Meaning

According to section 3 of the Environmental Management Act provide the meaning of the word pollution; “as the direct or indirect alteration of the physical, thermal chemical, biological, or radio-active properties of any part of the environment by discharging, emitting or disposing of waste so as to adversely affect any beneficial use, to cause a condition which is hazardous to public health safety or welfare, or to animals, birds, wildlife, fish or aquatic

³⁴ This is according to section 2 of the Environmental management Act, 2014

life or to plant or cause contravention of any condition, limitation or restriction which is the subject to a license under the Act.”³⁵

(c) Other Meaning

The most appropriate definition of environmental pollution would be introduction of different harmful pollutants into certain environment that makes this environment unhealthy to live in. The most common pollutants are usually chemicals, garbage, and waste water. Environmental pollution is happening in many parts of the world, especially in form of air and water pollution.³⁶

Pollution is also defined as the introduction of contaminants into environment that cause harm or discomfort to humans or other living organisms or that damage the environment which can come in form of chemical substance or energy such as noise, heat or light.³⁷

Therefore environmental pollution is the way of destruction the comfort of the living organisms on places which they are used to live example dumping of wastes which contain smells makes people who are residing in a specific area to lose that comfort they were getting before an act of dumping the chemical materials in the area which animal uses as their habitants is the way of destructing their comfort and their health at large has taken place.³⁸

(d) Water Pollution

Water pollution is the introduction of unnecessary ingredients which cause harm into water, this contamination of water makes the water unfit for the use. Therefore in such a way pollution indicates an act of contamination or making foul the natural water constituents.³⁹ Polluting water is much dangerous to living organisms which are living inside water due to

³⁵ This is according to section 3 Environmental Management Act, 2014

³⁶ <http://pollutionarticles.blogspot.com/2009/11/environmental-pollution-definition-and.html> Accessed on 15/11/2017 at 23:40

³⁷ <http://www.tropical-rainforest-animals.com/Environmental-Pollution.html> Accessed o 15/11/2017 at 00:08

³⁸ *Idem*

³⁹ S.N. Maheshwara, *Textbook on Environmental Law*, New edition, Asian Law House, (2006), 7.

the fact that they have no option than staying in water and also pollution affects users of water in general.⁴⁰

Water can be polluted through different ways like the use of chemicals in fishing, the use of the agricultural chemicals along water sources. Water in large extent is polluted by industries through chemicals which are used by such industries and the waste or sewage system are directed to water sources like rivers, ocean and lakes which in turn it have large effects from the chemicals themselves.⁴¹

Generally, the water pollution has many effects in lives of organisms through the chemicals which are directed to water sources by the human activities like industrial activities.

(e) Air Pollution

Air pollution is the introduction into the air of substance which is harmful or poisonous effects.⁴² Air pollution also means the presence in the outdoor atmosphere of one or more contaminants, such as dust, fumes, gases, mist, smoke or vapour in quantities with characteristics, and of duration such as to be injurious to human, plant or animals life or to which unreasonable interfere with the comfortable enjoyment of life and property.⁴³

Air pollution has been one of major problem in the universe where by the emission of fumes has much caused the green house effects which have made great destruction of the ozone layer. Industries especially in the developed countries like Japan, china and other countries have many industrial activities and in turn they have caused harm and discomfort to human and other living organism and deterioration of natural environment.⁴⁴

⁴⁰ *Idem*

⁴¹ *Ibid*, 11

⁴² <https://www.google.com/search?q=air+pollution+definition&ie=utf-8&oe=utf-8> accessed on 17/11/2017 at 9:05

⁴³ S.K. Agarwal, *Air Pollution*, A.P.H. Publishing Corporation, New Delhi 2009, 5

⁴⁴ M.J. Molina, "Air Pollution: Health and Environmental Concerns," In B.R. Gurjar, *et al* (eds), *Air Pollution: Health and Environmental Impacts*, CRC Press, London 2010, 11.

(f) Land Pollution

Land pollution is the deterioration (destruction) of the earth's land surfaces, often directly or indirectly as a result of man's activities and their misuse of land resources. It occurs when waste is not disposed of properly, or can occur when humans throw chemicals onto the soil in the form of pesticides, insecticides and fertilizers during agricultural practices.⁴⁵

Exploitation of minerals (mining activities) has also contributed to the destruction of the earth's surface. Since the Industrial Revolution, natural habitats have been destroyed, and environments have been polluted, causing diseases in both humans and many other species of animals. Human actions have also caused many large areas of land to lose or reduce their capacity to support life forms and ecosystems. This is known as land degradation.⁴⁶

Generally, is that land has been a victim of pollution over the years because human activities in larger extent have been conducted on land. Therefore due to the higher possibility of polluting the land it have to be protected by the national and international laws.

2.3 POLLUTER PAYS PRINCIPLE (PPP)

Polluter pays principle is one of the commonly acceptable practices in the world's environmental preservation practices that require the one who produce pollution in environment to bear cost of pollution and facilitate the management of environment for purpose of preventing damages to human health or environment.⁴⁷

Polluter pays principle is one of those principles and this being the sixteen one in the list which was laid down in the 1992 on United Nation Declaration of Environment and

⁴⁵ <http://eschooltoday.com/pollution/land-pollution/what-is-land-pollution.html> Accessed on 17/11/2017 at 10:23

⁴⁶ *Idem*

⁴⁷ <http://www.google.com/search?q=polluter+pays+principle&aqs=chrome> (Accessed on 05/04/2018 at 17:35)

Development which was held in Rio de Janeiro. This principle wants member states to make polluters of environment to pay for pollution which they have caused in environment.⁴⁸

2.4 SUSTAINABLE DEVELOPMENT PRINCIPLE

This is the principle which has focused on people and use of environment with the view of protecting it for the purpose of assuring safe environment to the future generations to meet their own needs. Therefore, among other things the principle of sustainable development works together with all other principles which were laid down in 1992 in Rio Declaration for the Protection of the Environment.⁴⁹

The principle generally wants individuals while using environment to use it by making consideration of the future generation who all depend on the same environment for their lives sustainability and development. Therefore working hand in hand with polluter pays principle it means that national laws to be binding on the pollution of environment and in that future generation could enjoy the environment which is not destructed by the human activities.

⁴⁸ The burden of polluting the environment is carried by the people who have polluted it and in such way the PP principle helps the member states to set the laws that have the motive of facilitating the prevention of pollution of the environment and setting the penalties for the one who has polluted it as the way of adhering to the principle.

⁴⁹ <https://www.google.com/search?q=the+principle+of+sustainable+development&oq> (Accessed in 05/04/2018 on 18:40)

CHAPTER THREE

LEGAL FRAMEWORK ON THE ENVIRONMENTAL PROTECTION

3.1 INTRODUCTION

The pollution of the environment has been the major factor in the universe; this has been shown by the situation of the world joining their hands to show the efforts of ensuring the protection of the environment which have been much in risk over this generation. Through that the domestic laws as well as the international laws have been made to ensure the protection of the environment from the danger which they always have from the human activities on it. Therefore it is wise to know the legal framework of the environmental protection in Tanzania as will be seen in this chapter.

3.2 INTERNATIONAL INSTRUMENTS ON ENVIRONMENTAL PROTECTION

The protection of the environment has been the war in the international community due to the facts that the environment has the great impact to the economic development in the universe. However prior to 1972 UN Conference on Human environment, environmental management was not highly regarded and was put in the periphery. Therefore it was the first international conference which was convened to discuss the global environmental problems.⁵⁰

Twenty years later, the Rio de Janeiro conference which also had the impact on the environment which it discussed the environmental issues. On the conference the international organization wanted governments to rethink on the economic and find the way to stop and end the destruction of the irreplaceable natural resources and the environmental pollution on the

⁵⁰The United Nations conference on Human Environment, 1992

planet.⁵¹ The decision reached in this summit have affected greatly the management of the environment in the UN member countries as well as enactment of the International instruments as follows:

3.2.1 VIENNA CONVENTION FOR THE PROTECTION OF THE OZONE LAYER, 1985

In this international instrument for environmental protection, particularly on its preamble, the instrument itself requires member states to use the environment in the way that they do not harm the environment of the other nation.⁵² That implies that the nation have right to exploit resources pursuant to their environmental policies and they have to ensure that the activities which are carried on in their jurisdiction are much controlled in the way that they cannot bring harm to the other state.⁵³

Under this international law of the environmental protection it implies under the provision of Article 2(2)⁵⁴ that, the state part shall ensure the adherence to the environmental protection which will ensure the protection of the ozone layer through prohibition of the disposal of the wastes which may cause effects to the ozone layer and human health at large. That means that the human activities shall be conducted with the vision of ensuring the protection of the environment from causing adverse effects to the human health.⁵⁵

3.2.2 CARPATHIAN CONVENTION, 2003

This is the framework type of Convention is sub regional one and seven countries have ratified it among of them being Romania and Ukraine, though the convention is not binding (persuasive) but it provide the initiatives in the environmental protection.⁵⁶ The researcher used it because the protection of the environment is the duty of everybody and the researcher

⁵¹ *Idem*

⁵² Refer the Preamble of Vienna Convention for the Protection of the Ozone Layer, 1985

⁵³ *Idem*

⁵⁴ *Supra* note 10

⁵⁵ *Supra* note 69

⁵⁶ <http://climate-adapt.eea.europa.eu/metadata/organisations/carpathian-convention> (accessed on 09/04/2018 at 13:20)

then took this convention to see what other region cooperate in the protection of the environment.

Therefore the convention is the one which had aimed at pursuing the comprehensive policies which have to operate in the enactment and aimed at ensuring the innovative instruments which will be having the goal of making the protection and foster the sustainable development use of the environment. The convention also has also the aim of improving the life and to strengthen the economies of the local communities, much of that the convention has aimed at the protection of the environment for the interest of the future generations and in such the innovation should be done to overcome those pollutions and environmental destruction.⁵⁷

3.2.3 UNITED NATIONS SUSTAINABLE DEVELOPMENT (AGENDA 21)

In the preamble of this instrument it is provided that hunger, ill health, poverty as well as other problems we are facing have been due to the continuing deterioration of the eco-system on which we depend for our well-being. Therefore according this, the joint protection of environment makes the world be a prosperous place for life of human being and living organism which much depend on it. In this instrument it requires protection of environment from future harms which have been caused by human activities on earth.⁵⁸

Therefore because of this wants sustainable development to the people then it also encourage economic development of its people and according to it the development must go on in line with environmental management.

⁵⁷ Carpathian Convention Framework, Convention on the protection of Sustainable Development of the Carpathian (Carpathian Convention)

⁵⁸ United Nations Conference on Environment and Development Rio de Janeiro, 1992

3.2.4 WORKING ENVIRONMENT (AIR, NOISE AND VIBRATION) CONVENTION, 1977

This is one among other convention which has the intention over protection of air, noise and vibration to the workers, Tanzania in this Convention ha ratified only on air pollution and leaving others. Much as the Convention wants to protect workers from the pollution which may be occurring in their working environment but also in general it has the intention of protecting environment from being polluted.⁵⁹

In this Convention, Article 5 requires the National laws or regulations to prescribe those measures to be taken for prevention and control of disposal of hazards which may cause air pollution in the working environment, and within that the provision of Article 6 (1) makes the employers accountable and responsible for compliance with the prescribed measures⁶⁰

Therefore this Convention as was ratified by United Republic Tanzania on the part of air pollution it means that it has been endeavor to ensure protection of air which is the part of our environment. Basing on that it means that the state should ensure the protection of the air, noise and vibration as it has each state ratified for the party which itself will be accountable for it in the jurisdiction.⁶¹

3.3 REGIONAL INSTRUMENTS

There are several regional instruments which provide for environmental protection framework. This research will focus on the African region.

3.3.1 AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS, 1981

This is the charter which is regional wise with the purpose of ensuring the protection of human rights in Africa. Like all other instruments which deals with the protection of human rights in the other regions, the Charter also provides for protection of environment which also

⁵⁹ Working Environment (Air, Noise and Vibration) Convention, 1977

⁶⁰ *Ibid*

⁶¹ *Ibid*

goes hand in hand with the rights to life of the individuals in the state. Therefore basing on protection of lives of the people the Charter also provide for protection of environment whereby Article 24⁶² of the charter provides that, “all people shall have the right to a general satisfactory environment favourable to their development” the gist of this statement in the Charter is that human being must have conducive environment for their lives.⁶³

Therefore the charter has been interpreted as one which places the duty on the countries to secure ecological sustainable development and the use of natural resources. In such a way the Charter has been a pioneer to the management of the environment by the members’ states for the purpose of securing the lives of the people in the states.⁶⁴

3.4 DOMESTIC ENVIRONMENTAL PROTECTION

At domestic level there are legislations which provide the legal framework on the protection of environment. These include the Constitution, the Environmental Management Act, Forest Act and the National Environmental Policy. These are going to be discussed below.

3.4.1 THE CONSTITUTION OF UNITED REPUBLIC OF TANZANIA, 1977

The protection of environment have been then covered by the different laws of land including the mother law of land which is the Constitution of the United Republic of Tanzania particularly under Article 14⁶⁵ which in its wording it provides that “every person has the right to live and to the protection of his life by the society in accordance with the law” this impliedly means that through the protection of the environment by the society is also the protection of the human life.⁶⁶

⁶²African Charter on Human and people’s Rights,

⁶³ *Idem*

⁶⁴<http://www.theconvention.com/we.co/we-need-a-new-convention-to-protect-africas-environment> (Accessed on 10/04/2018 at 12:00)

⁶⁵The Constitution of United Republic of Tanzania, 1977 (as amended from time to time)

⁶⁶ *Idem*, Article 14

In the landmark case of *Festo Balegele & 794 others v. Dar es Salaam City Council*,⁶⁷ the community was much claiming on the act of the City Council to make their habitats to be the dumping place of the wastes produced from different places. The act of dumping such wastes was in line with the violation of the Constitutional right of them which have been provided under Article 14 of the Constitution of the United Republic of Tanzania.⁶⁸ Therefore the lives of the people was in much danger that why they sued the Council to stop the violation of their right.⁶⁹

3.4.2 NATIONAL ENVIRONMENTAL POLICY

The National Environmental policy has been the cornerstone of the environmental protection in Tanzania where as it provides the strategic way of using the environment which they are involved with. Paragraph 1 of the Policy it provides for the meaning of the environment which in that it gives the meaning of the Environment in the way that it include Air, Water, plants and animals life that include human life the social, economic, recreation, cultural and aesthetic condition and factors that influence the lives of human being and their communities, buildings, structures, machines or their devices made by man.⁷⁰

The protection of the environment under the policy particularly under paragraph 2 is that the lives of the Tanzania are much connected by the environment by the environment which the people through that they should make use of the environment in the way that they preserve the natural features which shall enhance the lives of the future generation which in that the people making the use of the environment they must focus much on the principle of sustainable development which it requires the environment to be used for the sake of the future generation which also shall have the such connection with the environment. The policy

⁶⁷ Belegele's case

⁶⁸ This is the elaboration of Article 14 of the Constitution of United Republic of Tanzania, 1977 (as amended time to time) together with the provision of Article 24 of the African Charter on Human Right, 1985

⁶⁹ *Idem*

⁷⁰ National Environmental Policy of 1997

also ensures that the environmental problems are real and are not someone else's problems rather it is the community problem.⁷¹

3.4.3 ENVIRONMENTAL MANAGEMENT ACT

This is the law which has been conferred with all powers and duties of ensuring management of environment as well as its protection from the pollution which do occur through human activities which are conducted in those environments. The law provides that every person in the nation shall have right to clean and safe environment because it is the constitutional right which the person is entitled during his life.⁷²

The environmental protection in the nation has been covered by the Environmental Management Act which in that the law has protected the environment in the way that it have imposed the duty to every individual to the protection of the environment whereas under section 6⁷³ the law provides that it is the duty of every individual to ensure the protection of the environment and in such a way the individuals have been given the right to be heard (*locus standi*) on the issue of the environmental protection. The law further requires every individual to report to the relevant authority in case of any act which may lead to the pollution of the environment.⁷⁴

3.4.4 THE FOREST ACT

The environment also has been protected by the Forest Act that has been empowered with the duty to protect the forest. It has to be noted that the forests are the one which faces great danger of disappearance due to the human activities that are carried on. The destruction of the environment is the one among the environmental pollution in the sense that the forests

⁷¹ Paragraph 2 of the National Environmental Policy, 1997

⁷² Section 4 of the Environmental Management Act, 2014

⁷³ *Ibid*

⁷⁴ *Idem*

have the great impact toward the environment in the aspect of air and water which the trees are the one which produce it respectively.⁷⁵

The Act over the forest destruction and the acts which have the great harm to the environment have been criminalised by it under section 85⁷⁶ which entails that the Act itself has been taking the destruction and the acts which have the intention of the destruction of the environment as the offence because the destruction of such forest goes against the principle of the sustainable development which requires the use of the environment for the sake of the future generation which they all depend on the environment for the survival of the their lives on the earth. Much of the that the law have put the penalty for the convicted person which is the fine or imprisonment and he may face both that means the imprisonment as well as the fine because of the destruction of the environment which is the foundation of the life of the living organisms.⁷⁷

Generally, the researcher found that the world have many instruments which starts from domestic level to the international level for the purpose of ensuring the reliable protection of the environment which all human activities are done to it. Those laws have been put into power to support the war which many nation and organization have been fighting for it. And to ensure that the environmental pollution case have no limit and in that everyone has the *locus standi* on the cases of the environmental matters.

⁷⁵ <http://education.seattlepi.com/danger-deforestation-environment-human-life-.html>

⁷⁶ The Forest Act, 2002

⁷⁷ *Idem*

CHAPTER FOUR

ENVIRONMENTAL POLLUTION, POLLUTER PAYS PRINCIPLE, FINDINGS AND ANALYSIS.

4.1 INTRODUCTION

In this chapter the researcher wants to show the criminalization of environmental pollution in Tanzania which have been done through the enacted legislation then link the penalties imposed to the polluters and make relation to polluter pays principle which is the one among principle which was discussed in 1992 in Rio de Janeiro conference with the view of ensuring that the one who pollute the environment become strictly accountable for the acts which he have done.

Not only that also there is certain statement by Plato that “the one who pollutes the water in the stream must not only pay the cost but must also restore the stream in the position which it was before the pollution” this is the gist of the polluter pays principle to the polluter of environment.

Therefore in this research the researcher has tried to search different materials which have been vital for the topic the researcher was researching on, basing on that the researcher observed the following;

(A) POLLUTER PAYS PRINCIPLE

Polluter pays principle is one among the 27 principles which were promulgated by the United Nation Conference on Environmental and Development in Rio De Janeiro Brazil in 1992. This conference was gathered to make various principles that will be used in supervision of environment in the world and all the member states had to abide with those principles including this which in itself stated that,

“National authorities should endeavor to promote the internalization of environmental costs and the use of economic infrastructures, taking into account the approach that the polluter should, in principle, bear the costs of pollution, with due regard to the public interest and without distorting international trade and investment.”⁷⁸

The 'polluter pays' is a principle that is commonly accepted practice that those who produce pollution should bear costs of managing it to prevent damage to human health or to environment.⁷⁹ In this principle the one who have contributed to the pollution of environment must himself bears those cost of polluting the environment.⁸⁰

The war against environmental pollution is the main idea which the researcher has come within his findings and the idea of increasing penalty against polluters so that to match with the polluter pays principle as the principle number 16 which was made by the United Nations Conference on Environment and Development which was held in 1992 in Rio de Janeiro. In that matter it means that the one who pollutes environment must bear full costs of the pollution which he has made to the environment.⁸¹

(B) THE GOALS AND OBJECTIVES OF THE PPP

The goal of polluter pays principle is that, whenever any legislator enacts a law, issues a regulation or promulgates a principle, it is usually in its mind to cure, deter, if not to prevent a certain mischief which has either occurred or may happen in future due to prevailing circumstances.⁸²

Similarly, it can be argued that it was the goal of promulgation of polluter pays principle to cure, to deter and to prevent any activities of environmental pollution. It suffices to say that they intended to use this principle in war against environmental pollution. The principle

⁷⁸ Report of The United Nations Conference on Environmental and Development (Rio de Janeiro, 3-14 June 1992) principle 16

⁷⁹ <https://www.google.com/search?q=what+is+polluter+pay&ie=utf-8&oe=utf-8> accessed on 19/11/2017

⁸⁰ *Idem*

⁸¹ *Ibid*

⁸² <https://www.theguardian.com/environment/2012/jul/02/polluter-pays-climate-change> accessed on 17/12/2017

intends to bring about justice in societies, whereby polluters must strictly pay damage they have caused to both the society and environment.⁸³

4.2 EFFECTS OF ENVIRONMENTAL POLLUTION

The researcher in finding came aware of effects of environmental pollution in the country under which the researcher saw the necessity of protecting environmental pollution through increasing the penalties for the polluters who will be caught polluting environment, the researcher has observed that pollution is like other criminal offences and is likely to an attempt murder to the people. The effects are as follows;

(A) EFFECTS TO HUMAN BEING

The researcher saw that environmental pollution has extremely caused effects to human health to the extent of having caused diseases which have resulted to death of individuals. Land pollution especially by the industries has been causing eruption of diseases to people. The dumping of the wastes is the one which is crucial to industries like chemical water in the environment.⁸⁴

(B) EFFECTS TO LIVING ORGANISMS

Living organisms have been much affected by pollution of environment which is done by human through different activities which human being has been conducting on earth. Those activities include the entire agricultural activities. Example in the book of “Silent Spring” written by Richard Carson, an American scientist, the man wrote the book to show the world

⁸³ *Idem*

⁸⁴ Refer to the Clouds TV news of 06/04/2018 particularly on the segment known as “mwewe” where as the named “mwewe” saw the chemical water from the industry which was dumped beside the people’s place of living. The water then started burning the glasses around the place which was dumped, that situation shows that some of the companies have no sewage system for their water which results to the affection of the individuals healthy.

how the use of chemicals in agriculture caused danger to lives of birds and finally chased away those birds which were living along the stream.⁸⁵

Much of that there have been other human activities which have caused environmental pollution in the world and in that activities like fishing activities and industrial activities have also been causing pollution too. The organisms have been suffering from the pollution through human activities conducted on it.⁸⁶

(C) EFFECTS TO INFRASTRUCTURES

Infrastructures have been also affected by pollution of environment through poor system of dumping waster which people in the state are practicing. In these years we have witnessed heavy rains which have been destructing the infrastructure because of the use of the plastic bags which have not been properly dumped and then results into restricting water from passing through its own original or normal streams.⁸⁷

4.3 POLLUTION OF ENVIRONMENT AS A CRIMINAL OFFENCE IN TANZANIA

In Tanzania, there are several legislations which have criminalised environmental pollution. These are as follows:

(a) Under Penal Code [Cap 16 RE 2002]

The Penal Code in Tanzania is the law which deals with the criminal offences and within it every criminal offence and their penalties have been provided clearly under such law of the land. On the part of the environment the law has provided the offences of pollution of air under section 185, water pollution under section 184 and noise pollution under s section 186

⁸⁵Refer the book *Silent Spring* by Rachel Carson available at, <https://books.google.co.tz/books?id=HeR1l0V0r54C&printsec=frontcover&dq=rachel+carson&hl=en&sa=X&ed=0ahUKEwi5ru2ws8bXAhXDCcAKHertAf4QuwUIKTAA>

⁸⁶ *Idem*

⁸⁷ Refer: ITV news of 26/10/2017 on the causation of the floods and destruction of the infrastructures in the city of Dar es Salaam at 20:00 to 20:55

of the Penal Code. Also the same law has provided for penalty for the person who commits those offences provided under section 184, 185 and 186 respectively under section 170.⁸⁸

The law under section 170 has provided a general overview on the pollution of the environment in a manner of causing inconveniences to the public; the same law went further to elaborate that kind of pollution and mentioned one by one under section 184, 185, and 186 of the Penal Code Cap 16 [R: E 2002].⁸⁹ Beside of providing for criminal sanction over pollution of environment but even the penalty which has been provided by the law is not adequate as compared to the harms of pollution which are caused by them in environment.

(b) Under the Environmental Management Act, 2004

The Environmental Management Act beside of being the key statute in management of all the environment has also provided for the criminal section over the pollutants of the environment which under section 187⁹⁰ the law has provide for the one who will be caught polluting environment will be liable to a fine of not less than 12 years or to the fine not exceeding fifty million shillings, the law has not sufficed the environmental protection because the penalty which have been put by the law can be taken over by the polluters and continue polluting the same therefore the penalty is not protection the environment as other criminal offences of endangering human lives.

Here the researcher took concern on those big firms which have been producing many chemicals and they just dump them around the people's habitats like those mining companies which at time they dispose chemical wastes and cause side effect to the people.

⁸⁸ R.Pereira, *Environmental Criminal Liability and Enforcement in European and International Law*, Brill Nijhoff Publishers, Boston 4

⁸⁹ The Penal Code Cap 16 [R:E 2002]

⁹⁰ *Supra* note 4

4.4 THE CONCEPT OF MAINTAINING ENVIRONMENTAL POLLUTION

INTERNATIONALLY

The need for protection on the environment through criminalization through criminal law is recognized in a number of international instruments which call on states to enact criminal provision for the enforcement of environment law. One of the earliest initiatives was the eighth United Nations Congress on the prevention of crimes and treatment of offenders which issued a resolution on the role of criminal law in the protection of nature and the environment which was endorsed by the general assembly.⁹¹

The general Assembly resolution called upon states to make modification or enactment where necessary and enforce national criminal laws designed to protect environment and encourage the harmonization of national and regional legislation as well as to cooperate in the prevention, investigation and prosecution of criminal acts against the environment.⁹²

Hence environmental damage is not well provide by some of the national laws, and then is less likely that mechanism of cross-border cooperation would be available to facilitate the prosecution or investigation of environmental crimes, in such the environmental criminal law of the nation would be having equal status like other criminal laws which operates in the nation.⁹³

Therefore basing on that the researcher saw that the criminal sanction which the international organization insist in the protection of environment and in that those laws must be strict so that to make the polluters fit with the principle of polluter pay one. In the same insight the researcher observed that in Tanzania those criminal sanction required by the international concern is not sufficing the need of international protection of environment.

⁹¹ *Idem*

⁹² *Idem*

⁹³ *Ibid*, 349

To see that pollution of environment a vital issue in the community, many people have tried to join their hands in uttering some words to support the war against environmental pollution which the world faces. Besides of having been writing the books they have tried to show support through quotations.

“if humanity today succeeds in combining the new scientific capacities with a strong ethical dimension, it will certainly be able to promote the environment as a home and a resource for all and will be able to eliminate the causes of pollution and to guarantee adequate conditions of hygiene and health for small groups as well as for vast human settlement.”⁹⁴
**Pope John Paul II**

Another is the quotation that is relating with the principle of polluter pays principle which requires the one to pay for the damages caused, “If any one intentionally spoils the water of anotherlet he not only pays damage but purify the stream or cistern which contains water.”..... **Plato**

4.5 INADEQUACY OF PENALTIES FOR POLLUTERS IN TANZANIA IN CONNECTION WITH THE POLLUTER PAYS PRINCIPLE

Much as trying to search information the researcher also tried look on the causes and effects of pollution of the environment in Tanzania so in that way because the pollution is still happening due to the increase of the human activities, therefore we as the community shall find a suitable way under which the pollution of the environment will decrease or will totally get away because as it was said by Pope John Paul II that..... “Pollution of the environment does not only affect the people and other living organisms living in those environments but also it affects even the unborn children.”⁹⁵

Due to that, because the world at large with those international, national organization as well as the non-governmental organization have been fighting seriously in the way of

⁹⁴Pope John Paul II (as then was) Quotation on the Environmental Pollution. Available at http://www.azquotes.com/author/11414-Pope_John_Paul_II/tag/pollution Accessed on 16/12/2017

⁹⁵ Based on quotation quoted by the late Pope John Paul II in one of his speeches about protection of environment for the future generation use

making sure that the environments become safe place for all human and other living organisms in conducting their activities.

Due to the failure of law in the criminalization of the pollution of the land, it have created the room for the people to keep on polluting the environment due to the fact that the pollution of environment is not strictly penalized like other cases like those of murder, rape and other criminal cases.⁹⁶ Therefore in that the researcher found that the Penal Code Cp [16 R: E 2002] and the Environmental Management Act of 2004 both under their provisions have provided for the pollution of the environment as a criminal matter much on that the penalties which have been provided in the law are not that which makes our laws seem to have been seriously in preventing pollution of environment.

This takes us to the two well-known cases to any environmental expert which are the case of *Festo Belegere & 794 others v. Dar es Salaam City Council*,⁹⁷ in this case the city polluted the environment under which the pollution was endangering the lives of the people dwelling in the area but the case was tried as civil case and not criminal case under which if the case was tried as a criminal case the it would have put a precedent to all other environmental cases.⁹⁸

Another case which also was on the pollution of the environment but was tried as civil case is the case of *Joseph Kessy v. Dar es Salaam city council*,⁹⁹ this case also was tried as civil case while the practice by the respondent was dangerous to the society, in that it makes the conclusion that the pollution of the environment particularly the land should be criminalized and the environmental cases should be the tried as criminal cases and not civil cases.¹⁰⁰

⁹⁶ Refer the objective of the Penal Code Cap 16 [R:E 2002]

⁹⁷ *Supra* note 16

⁹⁸ *Ibid*

⁹⁹ *Supra* note 17

¹⁰⁰ *Ibid*

Basing on those two cases the researcher has come into consideration that since time immemorial the environmental have not being taken into consideration in the way that even before the enactment of the Environmental Management Act there were too much consideration on as there result, the municipal council used the peoples habitats as place for dumping their wastes which endangered human lives.

4.6 THE POLLUTER PAYS PRINCIPLE IN INDIA

India as a common law country which we have shared some of the laws and through that some of the laws like the Indian succession Act which works as binding law in Tanzania, the researcher saw it as prudent to look on the polluter pays principle and on how it operates in India to protect the pollution of the environment, whereas;¹⁰¹

The polluter pays principle has been accepted practice in India that those who produce pollution should bear the costs of the pollution which have been made during their activities and in such way both the industries and the companies have to be criminally responsible under the penal code.¹⁰² In this situation as the principle which entails that bearing of cost lies under the hand of the one who have polluted the environment.¹⁰³

In order to see this principle working we have to attach ourselves in the Indian case of *Environmental-legal action v. Union of India*,¹⁰⁴ which the court observed that; “We are on the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country”.¹⁰⁵

In this case the number of private companies operated, as chemical companies were creating hazardous wastes in the soil, thereby polluting the village area situated nearby, and were also running without license, so an environmental non-governmental organization filed

¹⁰¹ <https://www.theguardian.com/environmental/2012/july/02/polluter-pays-climate-change> accessed on 21/11/2017

¹⁰² *Idem*

¹⁰³ *Ibid*

¹⁰⁴ (1992)2

¹⁰⁵ *Idem*

writ petition under Article 3 of the Constitution of India which sought from the court to compel recovery of cost remedial measures from the company.¹⁰⁶

Also in the case of *S.Jaganath v. Union of India*,¹⁰⁷ where by in regard of the principle of polluter pays the court applied the rule by saying that, where it was found that the shrimp culture Industry in Chika and Pulikat lakes adjacent to the East Coast was causing salinity of soil and drinking water. This industry also caused detrimental effects on the local flora and fauna. Hence the Supreme Court ordered for closure of the shrimp culture industries. Also the court directed the industries to compensate the individuals affected by these industries and also to contribute for reversing the damages caused to the ecology.¹⁰⁸

4.7 FINDINGS ON DIFFERENT BOOKS

In the light of the research the researcher have seen on the different sources like books on the topic of research, Shelton and Kiss in their book Judicial hand book on the environmental law they have gone in line with the researcher in their wordings of the book by saying that the international law and instruments have been made to make the national authorities to enact their laws which will ensure the protection of environment and therefore polluter pays principle is the one which have to be used to by the nations in describing the laws that entails that those private firms, enterprises as well as the individuals should bear the costs for the pollution by them to the extent required by the law.¹⁰⁹

Therefore because the international laws or instruments have been made then the nations must enact laws which will be having strict rules and penalties for the polluters of the environment.

¹⁰⁶ *Supra* note 93

¹⁰⁷ (1996) 5 SCC 647

¹⁰⁸ *Idem*

¹⁰⁹ *Supra* note 19

In other way the author Hughes on the book entitled what is environmental history in this the author has made clear that the environment is the place of which human being and other living organisms are used to live. The activities of human being much depend on environment which has much facilitating their lives. Unfortunately the activities of human being have much being affecting the environment and land being one of the core places for the human settlement. In line with that the pollution must be limited to make the environment a safe place for them. In that the human being has contributed much in the pollution and they have forgotten that polluting the environment is digging them a grave.¹¹⁰

In the pollution of the environment, the enforcement of the environmental law that includes the water pollution offences which are conducted by the human activities is the matter which has to be taken in to concern.¹¹¹ In that putting emphasis in the war against environmental pollution then increasing penalties for environmental pollution has been a legal, clear and important response for the management of the environment which have been in higher danger. The partial enforcement of the laws by nations which have criminalized the pollution has facilitated to the failure of the war against it.¹¹²

Another author in the book wrote that in preventing the pollution of the pollution of the environment, it may be justified to criminalize the violation of the prohibition of the efforts of preventing pollution in order to reduce the risk in the environment.¹¹³ Whether or not criminalization is a justified depends on the weight of protected interest, the distance between the mere risk-taking and the harm and also whether or not the offender can be held responsible for the consequences of his action as a way of honouring the efforts of the polluter pays principle to the protection of the environment.¹¹⁴

¹¹⁰ *Supra* note 20

¹¹¹ A. R. Clarke, *et al*, *Routledge Handbook of Water Law and Policy*, Earthman, New York 2017, 85

¹¹² *Idem*

¹¹³ M. D. Mer, & Z. Bankowsk, *Law as Institutional Normative Order*, Routledge Taylor & Francis Group, London 2009, 139.

¹¹⁴ *Idem*

In effect, matters which were previously only actionable in civil become subject to enforcement powers, ultimately, involving the criminalization of certain kinds of activities. The legislatures have then translated the civil wrongs into criminal offences and it has been provided remarkable, effective and durable and the modern provision on statutory nuisance comprises of the most frequently used areas of environmental law in practice. Therefore it is that the nature and other forms of environmental pollution have been criminalized in most of the laws¹¹⁵.

Applying the criminal law to the environmental pollution has been a problem in the world because of the structures which have been made by the environmental legislation. In the world the environment has not been in the good chance of enjoying the interest and values of absolute protection by the laws of the countries.¹¹⁶

This has caused the pollution of the environment to increase mostly. Much of that the national laws have been very crude and toothless in the protection of those environment as such the statutes have been regulating the ways of ensuring the use of the environment particularly the land without pointing out the consequences which will face the one who have intentionally polluted the environment due to his usage.¹¹⁷

4.8 DIFFERENT VIEWS ON THE TOPIC

The researcher in testing the hypothesis and finding information from the people who had some knowledge on the topic and the effects of pollution to the environment, the researcher met some people but some of them had knowledge on the topic and the one from district council based on Geita region said that:

¹¹⁵ R. M. Harison, *Pollution Causes, Effects and Control*, 5th RSC Publishing, Birmingham 2014, 508

¹¹⁶ M. Faure, & N. Niessen, *Environmental Law in Development: Lesson from the Indonesia Experience*, Edward Elgar Publishing Ltd, Northampton 2006, 201.

¹¹⁷ *Idem*

“Pollution of the environment has been causing effects in many places particularly in the mining areas which apart from the mining companies to destruct the large part of the environment (land) but also they have been causing the pollution of the environment through the disposal of the chemical materials which have been used during the extraction of the minerals as such those chemicals causes effects to the land as well as to the human and other living organism.”¹¹⁸

The researcher also after getting those information from the person he also asked for his opinion of what should be done on the voluntary pollution of the environment and he then replied on the following, “the government has to enact the binding laws which will compel the polluter of the environment to get punished as well as for the companies to be barred from practicing the business in the country” and he uttered a Swahili sentence that:

“kama hawawezi kufuata masharti ya utunzaji wa mazingira basi wanyang’anywe leseni za kufanya kazi na watuachie mazingira yetu.” This can be translated into English as “if they are not able to follow the condition for the environmental protection in their working places they have to be taken away their licenses so that they leave our environment safe for our future generation.”¹¹⁹

The interviewee was much aggrieved by the situation of some of the investors who pollute the environment and just pay the fine without further steps to be taken against them by the government and much by the law which is the one to compel the one who pollute the environment that despite of paying the fine but also they shall make sure that they clean the polluted environment as well and even to be taken away their licenses as a way of showing them our seriousness on environmental protection.

Another one who was asked by the researcher gave the answer with reference with what have been observed through the news from the medias on the effects of the use of the plastic bags which are then dumped without regarding the system or the habit of good waste disposal which as per his views are the result of having unstructured waste disposal.¹²⁰

¹¹⁸ Based on the Interview made to the Environmental District official based in Geita Region in October 2017

¹¹⁹ *Idem*

¹²⁰ Based on an interview to person who had no enough knowledge on the topic but answers give some light to the researcher which was conducted in October 2018

He finally said the government should come with the way of giving education to the public on the waste disposal as well as finding another way of using in the packaging of the products rather than using the plastic bags which contributes much on the pollution and destruction of the infrastructure in the big cities like Dar es Salaam.¹²¹

Although he did not seem to like the criminalization of environmental pollution but he just relied on the education which is to be given to the individuals in their places about effects of polluting environment.

One environmental expert and a forest advisor praised the polluter pays principle that it helps to reduce pollution in the community if it will be taken into much consideration by the law makers and law enforcers in the country, what is mostly needed in order for the principle to operate effectively, the polluter must make their conscience to the readiness to pay in comparison to the pollution which they have caused in the environment.¹²²

He then continued to say that some polluters are not easily identified, and how can they pay? He believes that if the polluter's consciences are well-formed, they can easily abide to the legislation or principles which command them to shoulder the damages they have caused to the environment. He also advised that in order for this principle to work we should collaborate with the government and make sure that the polluters are well identified.

The researcher also visited the National Environmental Management Council (NEMC) in Geita and met one of the officials in the office,¹²³ upon an communication on the topic as the one of the organ in Tanzania which is dealing with the management of the environment he said that they have been facing some troubles in enforcing the criminal sanction over the polluters because the penal code provides for the pollution of air, water, and that of noise as

¹²¹ *Idem*

¹²² Based on the short communication with one environmental expert and a forest advisor on 23 August 2017

¹²³ Based on the interview with an official for the National Environmental Management Council (NEMC) interviewed on 18/8/2017

the criminal matter but the enforcement of the same goes in civil proceedings as he cited the constitutional case of *Festo Balegere* of dare s Salaam.¹²⁴

But in support of the researcher's topic he was quoted saying that in the use of the beautiful environment we have been given by God, the most important thing we have to do is to use it in a way that the future generation will use without problems (referred to the principle of sustainable development).¹²⁵

Also in the idea of increasing criminal sanction by the way of criminalizing the pollution in Tanzania especially the land he then argued that as long as those laws will work in the protection of the environment then it will be very important to them as NEMC as well as to environmental management.¹²⁶

4.9 TESTING OF HYPOTHESIS

Through observation and research conducted by the researcher in the topic, the researcher has successful tested the hypothesis and the researcher has observed that there is a need for increasing the penalties for polluters of environment in a way that they become accountable for acts which they have done which pollutes the environment and endangers lives of human being. The Acts which provide for environmental management should endeavor to provide for the law enforcers to take those polluter's licenses when they pollutes the environment for the purpose of deterring other polluters who have the intention to do the same.

This has been shown in this research through different books, interviews as well as sayings of prominent people, in testing it also the researcher observed that increase penalties for environmental pollution is vital in the war against pollution which we are fighting too.

¹²⁴ Idem

¹²⁵ Idem

¹²⁶ *Supra* note 83

The researcher also found the book which in its wordings portrayed that; leaving the discretion on the government officials in management of environment is not conducive for protection of the same. “Thus lacking criminal sanctions undermines deterrence objectives and minimizes importance of polluter pays principle in environmental law itself.”¹²⁷ That being the case even after environmental criminals have been caught by respective authorities they are given lesser sentences which is less than one year. That is totally not abiding with polluter pays principle objectives.¹²⁸

Therefore the author has been much in support with the researcher for the matter of awarding strict penalties for the polluter of environment in order to deter them not to continue with it and in that the researcher found that the firms are the one which much pollutes the environment and therefore, as said by the author that the polluters once caught they are given lesser penalties which may be less than a year is. It is same as in Tanzania jurisdiction which the researcher wants the increase of the penalty to safeguard the environment.

Conclusion

Under this chapter the researcher has conducted thorough investigation on the topic and found that issues of penalty for the polluters of environment should go together with the harm caused, that is to mean that in a circumstance which the one has polluted the environment must pay the penalty, return the environment in its original place and be taken away the license because polluting environment is an attempt murder.

¹²⁷C.J.Babbitt, *et al*, “Discretion and Criminalisation of Environmental Law”, vol.15:1, 1.available at, <http://www.google.com/search?q=is+there+any+need+for+criminalisation+of+environmental+pollution&aqs=chrome=utf> (Accessed on 10 may 2018 at 13:33)

¹²⁸ *Ibid*, 54

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.1 CONCLUSION

In this research the researcher concludes that human activities which are done in community or the places of people's living, then such activities should be done with regard to principles of environmental protection. In such regard the principle like the one of Polluter Pays should be regarded in the sense that it compels persons who pollutes environment to clean or to bear the costs for pollution which have been done in environment.

As it was said by Plato that the one who pollutes environment should not just pay damages but must also clean the environment which he has polluted. That means that companies and some people might have money which due to the activities which they are conducting and brings to the pollution of environment, therefore imposing fines to that person is to authorize pollution because they will just pay fine but leave environment endangered.

Therefore as the researcher has done in investigating effects of environmental pollution to the community and therefore most of those has been caused by weak policies and laws which have been enacted to work on protection of environment, this has been seen in the use of plastic bags in packaging of products, and after that they are just dumped or dispose into the environment and cause effects into the environment, and much of that it have caused the loss of the government funds on health and infrastructures destructed.

5.2 RECOMMENDATIONS

In order to make the Polluter Pays Principle and other environmental laws effective and adequate address the environmental pollution, then there should be an increase of penalty for the one who pollutes environment in the country so that to compel these who pollute

environment accountable for their actions the researcher therefore recommended on the following;-

(A) TO THE PUBLIC

It should be desire of every human being to live in a healthy environment as the constitution of the United Republic of Tanzania, 1977 (as amended time to time) provides under Article 14. Therefore the public itself needs closer solidarity to achieve this desire. In that regard the public has the primary obligation to ensure protection of environment where they live because everything bad or good which occurs in environment they are the one to be affected.

This war of fighting against pollution should be taken by whole community without taking regard of faith, colour, nationality, age or economic status. The public itself must go back to the past where the sense of neighbor sounded and was active in conscience of the past generation.

The public must abide with moral values to protect the environment as was observed from the biblical creation narratives (Genesis 1:1-2:25 that the world and its ingredients was created good and complete..."God saw everything that he had made, and indeed, it was very good".. from those biblical phrases it means that man did not himself create the universe but it was created by God. Therefore protecting environment is a primary duty of every person for the purpose of ensuring protection of environment which was created by God.

The public also must adhere to the neighbor principle which was developed by Lord Atkins in *Donoghue v. Stevenson*,¹²⁹ "love your neighbor" on this principle it implies that if one loves his/her neighbour he cannot dare to cause adverse effects on the environment and

¹²⁹ (1932) AC 562

the public must use the environment with regard to the principle of sustainable development which requires the use of the same with regard of the future generation.

(B) TO THE GOVERNMENT

The government as the stake holder in all law and policies together with enforcement in the country, therefore because issues of polluting environment are among of major issues among the community then it should wise for the government to prepare the way of providing environmental education to the public so that they become aware for the effects of pollution.

The government should be wise enough to join hands with other jurisdictions in implementation of environmental legislation and principles. Such jurisdiction include religion bodies which people are taught to be God fearing and faithful to man-made laws and principles including those governing pollution of environment.

Hon. Philip Marmo¹³⁰ once said:

“The government recognizes the religious role in implementing laws, policies and principles, religion customs people to Good morals and therefore is easy to follow the directives of the government. It should be understood that the government with its enforcement bodies like police, cannot achieve the goods of these directives if our people are immoral”

It's my recommendation that in protecting the environment against pollution government should come with nice and workable policies on it and much of it the government must suggest the good ways of packaging the products from using the plastic bags which are unhealthy to the infrastructure and the environment at large.

Also the researcher recommend that the government should find the way of presenting the bill to the parliament for amendment of the Penal Code Cap 16 [R: E 2002] and the Environmental Management Act of 2004 and increase penalties for pollution of environment

¹³⁰ Hon. Philip Marmo, Mp & Minister for Policy, Co-ordination and Parliamentary Affairs of the United Republic of Tanzania, who represented the government on the event of Episcopal ordination of Rt. Revs. Salutaris Libena and Eusebius Nzigilwa as Auxiliaries for the Catholic Archdiocese of Dar es Salaam, March, 2010.

like other criminal acts which endangers the life of human being as a way of adhering with the principle of polluter pays.

(C) TO THE LEGISLATORS

The researcher urge for people who are fully empowered to enact laws of the country to oversee that, among the international instruments which Tanzania is a part on protection of environment, then legislators must ensure review of the law and advisedly to make amendment on the Penal Code Cap 16 [R: E. 2002] and the Environmental Mangement Act 0f 2004 to provide for strict penalty than what is provided over the offence of polluting environment as one of the criminal offence and therefore those environmental cases to be of criminal nature and not of civil nature as it have been observed for many years before enactment of Environmental Management Act in 2004 in two famous environmental cases of *Festo Baregere v. Dar es Salaam City Council*, Civil Case no. 299 of 1988 (Unreported) and that of *Joseph D. Kessy V. Dar es Salaam City Counil*, Msc. Civil Case no. 90 of 1991 (Unreported) whereby they were tried as civil case.

The researcher finally recommends that amending the laws should also much increase the penalty from that which is provided in those two laws for the one who pollute environment and in such way the country through its laws will be much adhered with the principle of Polluter Pays which requires polluters to pay damages for the pollution done.

(D) THE NEED TO CONTROL ENVIRONMENTAL POLLUTION

Environmental pollution has caused and is still causing a lot of distress not only to human beings but also to plant and animals, driving many animals' species to endangerment and even extinction. All the mentioned effects of pollution by the researcher under chapter four need means to protect environment from pollution and one among them is to provide education to public and to really criminalise pollution through strict penalties.

The levels of environmental problems differs according to the stages of development, they also differ due to the environmental policies which have been or are being employed to abate or eradicate such problems, that would mean, any stage of development requires environmental consideration that causes serious environmental damage affecting quality of life of human population, both present and future. There is therefore an urgent need to ensure sustainable development which strikes a balance between demand of development and level of environmental protection.

Generally the researcher found that, the universe has experienced severe environmental pollution which are outcome of human activities on environment, human being have been source of their own cries, suffering and finally death. This is because they have not obeyed environmental protection policies.

They have not obeyed the legal framework that intends to preserve and conserve the environment according to its natural orders. Human beings have ignored laws and principles favouring environment.

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Hon. Philip Marmo, Mp & Minister for Policy, Co-ordination and Parliamentary Affairs of the United Republic of Tanzania, who represented the government on the event of Episcopal ordination of Rt. Revs. Salutaris Libena and Eusebius Nzigilwa as Auxiliaries for the Catholic Archdiocese of Dar es Salaam, March, 2010.

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