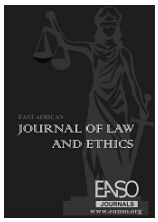

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Original Article

Profiling Tort Actions as a Tool to Remedy Environmental Harm in Cameroon

Agnes Ngwene-Aneweh Mbah-Fongkimeh, PhD[1]

[1] University of Dschang, BP 96 Dschang, Cameroon Colline de Foto, Cameroon.
[*] Author's Email: mbahagi@yahoo.com

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ABSTRACT

Environmental degradation is the prevailing topic in modern discourse. As the trend continues to grow and present a palpable threat to humankind and nature, concerted effort is required to prevent and restore environmental damage as well as compensate victims. Tort law has historically been the principal mechanism for remedying environmental harm through theories such as nuisance, negligence and trespass. Even though the primary objective of tort actions was not directly concerned with improving or preventing environmental conditions, in practice, it remained the exclusive mechanism to resolve certain environmental injuries. The challenges presented by modern complex environmental tort actions necessitated the emergence of regulation. The prevailing idea in mainstream environmental law literature is that ex ante safety regulation is preferable to ex post tort law remedies. Using a doctrinal research methodology, this write-up investigates the role of civil liability in environmental protection, through individual and citizen tort actions. The analysis questions the potential application of tort theories to protect the environment and compensate victims of environmental damage. Findings reveal that tort actions are a necessary catalyst and blend well with regulation to protect the environment, albeit shortcomings.

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INTRODUCTION

Not earlier than the later part of the 20th century, climate change, pollution from toxic chemicals and hazardous substances, ozone depletion, biodiversity loss and transboundary movement of hazardous substances were presented as separate but connected occurrences of the overwhelming effects of the activities of humans on the environment,[1] specifically through industrialization. Consequently, environmental damage has since taken centre stage in local and international political discussions. Attention has been focused on the extent to which the law may provide a solution to the problem of environmental damage.[2] This interest has sparked the development of a distinct field of law known as "Environmental Law". This budding branch of the law lacks a generally accepted succinct definition. Rather, the label "environmental law" encompasses the universe of statutes, regulations, and actions of common law impacting environmental interests.[3] These interests include both harm to humans from hazardous substances introduced into an environment, and harm to the natural habitat irrespective of direct or indirect injury to a person or other legally recognized entity.[4]

Harm to humans and to the environment regardless of the form, prior to the 1970s,[5] was remedied by tort law. Traditionally, the law of tort has been primarily concerned with the protection of private interests and served as a means of private dispute resolution with no obvious regard to third-party objectives such as environmental protection. However, by its very nature, and before the development of the field of environmental law, tort law presented the exclusive mechanism to remedy numerous types of harm to the environment through public nuisance and negligence theories.[6] Because of its malleable structure, tort law is an important element in the social response to environmental hazards. This has given rise to the celebrated notion of 'toxic tort'.[7]

The term 'toxic tort' is a phrase which refers to any claim that has, at its base, the prospect that an individual has suffered damage to person, property or to the quiet enjoyment of his/her property, or there has been damage caused to the local environment as a result of environmental pollution. The term spans broadly and therefore covers damages resulting from industrial waste pumped into the environment, whether into the air, the sea or the rivers. It covers chemical and radioactive waste. It also covers claims for nuisance resulting from noise or dust. Finally, it covers damage to the environment itself.[8]

Environmental civil liability arises from environmental damage and culminates in an environmental tort, also known as an indirect tort distinct from a traditional tort action. In environmental tort, the tortious action first pollutes or harms the environment, which then causes personal injuries and damage to property. The peculiarity of environmental torts is that they use the environment and its natural elements such as air, water, wind, land etc to cause harm to people and property and secondly, environmental damage is unbounded. Environmental pollution has become one of the most complex problems

[1] Ngundem Betaah, A. T., Albrecht, E. & Onang Egute, T., (2019), "The Human Right to a healthy environment in Cameroon: an environmental constitutionalism perspective", *Journal of Environmental law and litigation*, Vol. 34:61. P. 64

[2] Wilde, M. L., (1999), "Extending the role of tort as a means of environmental protection: an investigation of recent developments in the law of tort and the European Union", PhD thesis, University of Brunel. P. 2

[3] Latham, M., Schwartz, V. E. & Appel, C. E., (2011), "The intersection of tort and environmental law: where the twains should meet and depart", *Fordham Law Review*, Vol 80, Issue 2. P. 741

[4] *Ibid.*

[5] This era marks significant environmental law milestones evidenced by the enactment of the first group of modern environmental statutes.

[6] Latham, M., Schwartz, V. E. & Appel, C. E., (2011), *Op. Cit*., P. 750

[7] Wilde, M. L., (1999), "Extending the role of tort as a means of environmental protection: an investigation of recent developments in the law of tort and the European Union", *Op. Cit*., P. 7

[8] *Ibid.*

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facing the international community, its pervasive nature transcends geographical boundaries and its effects on the environment are of an international scope.[9] A case in point is the Tchipou quarry located in the Bamoungoum neighbourhood in Bafoussam-Cameroon, this industrial activity has left undesirable environmental consequences such as noise, air and water pollution aggravated by the fact that the quarry is located approximately 300 metres away from indigenous homes contrary to regulations.[10] The peculiarity of environmental torts is the latency of the harm. Some of the harm caused by the air and water pollution by the quarry activity may only be evident years on. For instance, on April 26th 1986, a nuclear leak and explosion took place in the Russian Chernobyl nuclear power plant. Thirty-one people died on the day of the leak. Tens of thousands of people died or suffered serious illness as a result of the radioactive fallout. Many damages take place slowly and invisibly and only become detectable many years later.[11]

Even with the proliferation of environmental laws and regulations, tort law is sometimes the first line of legal protection for persons threatened or injured by environmental hazards.[12] Victims seeking compensation resort to tort law which harnesses a dual role: providing remedies to those injured by the activities of others, and providing guidelines to actors about the general categories of risk creation concerning which the law will provide remedies in the future.[13] It is in the link between the remedial function and risk-control that the distinctiveness of tort law resides. However, the role of tort in the context of environmental protection has been limited by a number of factors, with regulation topping the list.

The prevailing idea in mainstream environmental law literature is that *ex ante* safety regulation is preferable to tort law remedies in dealing with environmental issues. The main reason usually invoked in favour of regulation is that tort law takes its part only after the harm has been done; which is considered not compatible with the objective of avoiding environmental harm.[14] Moreover, given the expansive and varying objectives of environmental legislation, it is better suited to address issues of environmental harm because tort law is neither designed for nor equipped to address certain environmental harms. Also, complex procedural technicalities have been cited among the reasons why tort law is not suitable for environmental protection.

However, even with the advent of environmental regulation, tort law still prefers a portentous tool in environmental protection. It has some important properties that make it compatible with regulation and the goal of reducing environmental risks. Even when there is a meaningful regulatory base, tort plays a 'gap-filling' role; providing a signal of the limits of propriety in the creation of chemical and other risks in the environment.[15] Therefore, investigating the proper role of tort law in remedying environmental injuries is necessary to identify the scope of available common law remedies for certain types of environmental harm.

The ensuing paragraphs will critique specific common law tort theories and their adaptability to contemporary environmental challenges. There is

[9] Al-Khalaileh, L., *et al*, (2023), "Legal regulation of civil liability for environmental damage: How appropriate are civil liability provisions and the privacy of environmental damage?", *Journal of Environmental Management and Tourism*, Vol. XIV, Iss. 5(69). P. 2175 Available at https://doi.org/10.14505/jemt.

[10] Available at https://afrik21.africa/en/Cameroon-the-environmental-disasters-of-the-tchipou-quarry/

[11] Santiago, A. L. & Jorge Alberto, F. A., (2010), "Environmental civil liability under comparism: some notes in soft law", *Revista Juridica Pielagus*, Vol. 9. P. 64. Available at https://www.redalyc.org/articulo.oa?id=587977786006

[12] Shapo, M. S., (1997), "Tort law and Environmental risk", *Pace Environmental Law Review*, Vol. 14, Issue 2. Available at https://digitalcommons.pace.edu/pelr/vol14/iss2/4. P. 531

[13] *Ibid*.

[14] Tolosa, P. C. (2008), "Advantages and restrictions of tort law to deal with environmental damages", Revue générale de droit, Vol. 38, Number 1. https://doi.org/10.7202/1027047ar p. 111

[15] Shapo, M. S., (1997), "Tort law and Environmental risk", *Op. Cit*. p. 531

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a need to clarify how tort has the potential to fill an important role as part of an overall system of environmental regulation in Cameroon.

TORT THEORIES RELEVANT TO ENVIRONMENTAL PROTECTION AND THE COMPONENT OF ENVIRONMENTAL TORT

Tort law is intended to provide a peaceful means by which to restore injured parties to their original position for harm caused by another's wrongful conduct.[16] It is a fault-based compensation system intended to correct alleged injury or harm. Before the development and subsequent enactment of environmental statutes and regulations, tort law theories had been successfully applied to remedy numerous types of harm to the environment.[17] Today, civil claims for pollution and public nuisance still come to court under the common law of torts.

Traditional Tort Theories Relevant to Environmental Protection

The classic environmental tort actions are based on nuisance, negligence, trespass and strict liability under the rule in *Rylands v. Fletcher*. These liability theories are said to provide both swords and shields for environmental interests menaced or injured by risky activity.[18] Emphasis will be on the law of nuisance (2) and negligence because they resonate with our context. However, it is necessary to have a brief glimpse of the theories of trespass and strict liability and their relevance to environmental protection (1).

Nuisance

The tort of nuisance dates back to twelfth-century English common law where it was a criminal writ enforceable only by the crown.[19] Much later, and because of the potential ambiguity of the term, nuisance became a catch-all means of holding people accountable for low-level crimes. Nuisance theory derives from a form of action designed to restore ancillary rights, associated with land ownership and enables the plaintiff to sue for unreasonable interference with the right to use and enjoyment of one's property. The categories of rights protected by nuisance encompassed both rights derived by agreement such as easement and profits, and natural rights conferred by law.[20] The latter category included the right to wholesome air and unpolluted water. Interference with these rights was actionable on the grounds that it impaired the ability of the landholder to use his property in an ordinary way.[21] More broadly, "nuisance" includes anything that annoys or disturbs the free use of one's property, or which renders its ordinary use or physical occupation uncomfortable, and this extends to everything that endangers life or health, gives offence to the senses, violates the laws of decency, or obstructs the reasonable and comfortable use of property.[22]

Nuisance law emerged as a widely used theory to address environmental interests long before the Industrial Revolution. Most specifically at early common law, courts were of the opinion that any adverse interference with natural rights would give rise to an action in nuisance. Thus, pollution-related actions were brought with respect to the corruption of the wholesome air resulting from emissions of lime kilns, dye houses, tallow furnaces and smith's forges.[23] With regard to land, nuisance was a preferred course of action as opposed to trespass because most forms of pollution consist of gases, vapours, and particles of diffused chemicals which lack the physical presence needed for an action in trespass. The amplified use of nuisance law to address environmental issues is explained by the perceived vagueness and broad latitude of the tort

[16] Latham, M., Schwartz, V. E. & Appel, C. E., (2011), *Op. Cit*., P. 746
[17] *Ibid*.
[18] Shapo, M. S., (1997), "Tort law and Environmental risk", *Op. Cit*. P. 532
[19] Latham, M., Schwartz, V. E. & Appel, C. E., (2011), *Op. Cit*., P. 751
[20] Wilde, M. L., (1999), *Op. Cit*., P. 21
[21] *Ibid.*
[22] Fraley, J. M., (2018) "Liability for Unintentional Nuisances: How the Restatement of Torts Almost Negligently killed the Right to Exclude in Property Law", *West Virginia Law Review*, Vol. 121, P. 17
[23] *Ibid.*, P. 22

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action.[24] Today, nuisance can be public or private depending on the interest protected by the law.

Private Nuisance

The phrase 'private nuisance', connotes an invasion of another's interest in the private use and enjoyment of land. Private nuisance actions therefore protect an owner or a tenant from unreasonable interference with the use and enjoyment of land. Common examples of such interferences will include: emitting loud noises or foul odours; and conducting obnoxious or unlawful activities on adjacent property. Such activities affecting a possessory interest in land may also implicate environmental interests.[25] Polluting the air or releasing hazardous substances on land that causes physical damage including injury to health is actionable but it is unsettled whether injury to health alone will support a claim for private nuisance.[26] It is worth noting that if the interference causes only a reduction in enjoyment, not physical damage, then the test to be applied is whether an ordinary person would be offended; the extraordinarily sensitive landowner or his property is not protected from invasion.[27] The remedy available for private nuisance is general damages and sometimes abatement.

Public Nuisance

According to Denning L. J., "…As all lawyers know, the tort of public nuisance is a curious mixture. It covers a multitude of sins…."[28] This is indisputably the most suited tort for environmental protection.

The notion of public nuisance is a curious blend of a multitude of claims indeed! The modern notion of public nuisance is not a well-understood tort, it cannot be confined to specific rules. This is because it can arise within various contexts and is thus very difficult to pin down. The tort of public nuisance has developed over many centuries of common law and has metamorphosed from its initial conception. The traditional public nuisance theory has its foundation in twelfth-century English common law as a tort-based crime for infringing on the rights of the crown.[29] A century later, the concept had extended to the invasion of the rights of the public, represented by the crown through actions such as interference with the operation of the public market, smoke from a lime pit that inconvenienced a whole town or obstruction of the public highway.[30] Two centuries later, the courts extended the principle of public nuisance beyond the rights of the crown to include rights common to the public such as the right to safely walk along public highways, to breathe unpolluted air and to be free from the spreading of infectious diseases.[31] Simply, a public nuisance was conduct detrimental to the public that was deemed to be a minor criminal offence.

The Restatement of Torts defines a public nuisance as an unreasonable interference with a right common to the general public.[32] This

[24] According to prosser, "there is perhaps no more impenetrable jungle in the entire law than that which surrounds the word 'nuisance'. It has meant all things to all men…..". See Prosser, L. W., (1971), *Handbook of the law of Torts*, 4th Edition, West Publishing Co., St. Paul. P. 571

[25] Latham, M., Schwartz, V. E. & Appel, C. E., (2011), *Op. Cit*., P. 752

[26] Dewees, D. N., (1992), "The comparative efficacy of tort law and regulation for environmental protection", *The Geneva papers on Risk and Insurance 17*, No. 65. P. 449

[27] *Ibid.*

[28] *Morton V. Wheeler* (1956) CA 31

[29] Schwartz, V. E. & Goldberg, P. (2006), "The Law of Public Nuisance: Maintaining Rational Boundaries on a Rational Tort", *Washburn Law Journal*. P. 543 The king could bring a suit to stop the infringement and force the offending party to repair any damage to the king's property.

[30] Kendrick, L. "The Perils of Public Nuisance". available at https://www.yalelawjournal.org. P. 13

[31] Schwartz, V. E. & Goldberg, P. (2006), *Op. Cit.*

[32] Circumstances that may sustain a holding that an interference with a public right is unreasonable include the following

(a) Whether the conduct involves a significant interference with the public health, the public safety, the public peace the public comfort or convenience or
(b) Whether the conduct is proscribed by a Statute, ordinance or administrative regulation, or
(c) Whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect, and, as the actor knows or has reason to know, has a significant effect upon the public right.

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definition has been held to be ambiguous and the courts now interpret the Restatement as laying out four distinct elements: the existence of a public right; a substantial and unreasonable interference with that right; proximate causation and injury.[33] A leading definition of the concept of public nuisance is that articulated by the Supreme Court of Canada per Major J. in *Ryan v. Victoria (City)*[34], here public nuisance was held to be any activity which unreasonably interferes with the public's interests in questions of health, safety, morality, comfort or convenience.[35] The conduct complained of must amount to an attack on the rights of the public generally to live their lives unaffected by inconvenience, discomfort or other forms of interference[36]. However, many factors are considered in determining whether a particular activity amounts to an interference and therefore a public nuisance.[37]

Public nuisance can be distinguished from private nuisance by certain elements. Firstly, to be actionable as a public nuisance, an act must interfere with a right common to the general public, not merely to a group of individuals albeit large in number. A right is common to the public if it is collective in nature that is, rights which one possesses as a member of the public. Secondly, the injury sustained must be common to the public and actions for public nuisance are generally brought by government actors.[38] Notwithstanding, private parties can bring an action for public nuisance if they have suffered a "special injury"[39] in addition to the injury suffered by the general public. A private nuisance is thus always a land-based action, typically pitting neighbouring landowners against one another.[40] Secondly, the harm or injury in question is on land owned by or in the possession of the plaintiff.

In early common Law, public nuisance was a criminal action and the defendant could face actions for abatement and damages from a private plaintiff, and criminal prosecution from the crown.[41] According to the Second Restatement, public nuisance subsequently grew to cover a large, miscellaneous and diversified group of minor criminal offences,[42] all of which involved some interference with public health, public safety, public morals, public peace, public comfort and public convenience.[43] In assessing whether a conduct amounted to a criminal offence, courts weighed the value of the conduct against the harm it caused.[44] Critics held that by relying on the requirement of a criminal element in public nuisance, the court did destructive violence to the tort law of public nuisance especially because the definition of public nuisance does not require that all the elements of criminal liability be present before a defendant is liable in tort so there was no reason to yoke the

[33] Jacobson, J. D. & Herbig, R. S. (2009), "Public Nuisance Law: Resistance to Expansive New Theories" *Mass Torts*, Vol. 8 No. 1, The American Bar Association.

[34] [1999] 1 S. C. R. 201

[35] Mcnally, W. E., Cotton, B. & Fischer, P., "Is the Tort of Public Nuisance still a useful Tool for the Plaintiffs' Personal Injury Bar?" P. 3

[36] *Ibid.*

[37] These factors include: the degree of inconvenience caused by the activity, the utility of the activity to the public, the character of the neighbourhood amongst others

[38] In Cameroon this will be the State Counsel suing *parens patriae* literally translated to mean "parent of the nation", on behalf of the people of a jurisdiction for an infringement on public rights by a private actor.

[39] In other words, the private party must have suffered an injury distinct in kind and more severe than that suffered by the general public.

[40] Dana, D. A., "Public Nuisance Law when Politics Fails", P. 69

[41] Kendrick, L. "The Perils of Public Nuisance", *Op. Cit*. P. 13

[42] Public Nuisance included interference with the public health as in the case of keeping diseased animals; maintenance of a pond breeding mosquitoes; with the public safety as in the case of storage of explosives in the midst of a city or the shooting of fireworks in the public streets; with public peace as by loud and disturbing noises; with public morals, as in the case of running houses of prostitution or indecent exhibitions; with public comfort as in the case of widely disseminated bad odors, dust and smoke; with the public convenience as by the obstruction of a public highway or a navigable stream etc

[43] Kendrick, L., *Op. Cit*., P. 17

[44] Schwartz, V. E. & Goldberg, P. (2006), *Op. Cit*., P. 544

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tort of public nuisance to criminal activity.[45] Historical developments have gradually moved tortious public nuisance out of the realm of criminal law. The standard of proof in nuisance cases just like in tort causes generally has been a preponderance of the evidence rather than beyond reasonable doubt and the growing reliance on the use of injunctions as a remedy in nuisance cases has accentuated the separation between the crime and the tort of public nuisance.[46]

During the rise of the environmental movement of the late 1960s and 1970s, public nuisance aspired to global dimensions and offered promise as a litigation-based vector for environmental reforms.[47] Its growth is particularly notable in climate change and environmental litigation generally. Given its history addressing air and water pollution, public nuisance was the "tort of choice" for litigants to address environmental ills when regulation failed[48] and to seek breathtakingly broad relief from global warming and trans-border pollution.[49] Environmental public-nuisance suits have therefore taken on a central role in numerous lawsuits by state or municipal authorities against various industries for their negative impact on public health.[50] Besides State and municipal authorities, private individuals and conservation organisations have increasingly been given standing to challenge environmental degradation because they are acting as representatives of the public interest.[51] Notwithstanding the provision of the law, the trend has been slow in Cameroon as compared to other jurisdictions,[52] where tort law has historically provided the principal mechanism for remedying harm to the environment.[53]

In Cameroon, the notion of public nuisance is incorporated into the legal order both through common law[54] and by Statute making nuisance a crime and covering a wide range of activities offensive to health and harmful to the environment.[55]It is common practice that actionable nuisance could either be physical injury to premises occupied by the plaintiff or to the property situated on such premises; or, secondly, an interference with the use of such premises or property of the plaintiff.[56] A public nuisance action may be initiated by public authorities, by a private citizen who has suffered a physical injury "different in kind" from that suffered by the general public or by a private citizen for the interest of the public. To succeed in a claim a plaintiff must prove firstly, that there was an unreasonable interference with a public right by the defendant, secondly, the interference resulted in a common injury to the general public and finally, the defendant's conduct must have proximately caused the public nuisance. Statutorily, the Cameroon Penal Code and other environmental protection regulations specifically prohibit and abate public nuisance conduct that is detrimental to the environment.

[45] Bryson, J. E. & Macbeth, A., (1972) "Public Nuisance, the Restatement (Second) of Torts, and Environmental Law", *Ecology Law Quarterly*, Vol 2, No. 2. P. 245

[46] *Ibid*.,

[47] Antolini, D. E., (2001), "Modernizing Public Nuisance: Solving the Paradox of the Special Injury Rule", 28 *ECOLOGY L. R.,* P. 755

[48] Kendrick, L., *Op. Cit.,* P. 21

[49] Faulk, R. O., (2010), "Uncommon Law: Ruminations on Public Nuisance", *MO. ENVTL. L & POL'Y REV*., VOL. 18, NO. 1. P. 2

[50] Kendrick, L., *Op. Cit.,* P. 23

[51] Article 8(2), Law No. 96/12 of 05 August 1996 Relating to Environmental Management.

[52] In countries like the USA, public nuisance has been used as the cause of action against manufacturers

[53] Latham, M., Schwartz, V. E. & Appel, C. E., (2011), "The Intersection of Tort and Environmental Law: where the twains should Meet and Depart", *Fordham Law Review*, Vol. 80, Issue 2. P. 737. Available at https://ir.lawnet.fordham.edu/flr/vol80/iss2/12.

[54] Being a former colony of Britain, Common law remains a source of law in the English-speaking regions of Cameroon.

[55] Law No. 2016/007 of 12 July 2016 relating to the Penal Code, Section 230 punishes obstruction of the public highway, section 229 punishes infringement of regulations relating to the discard of toxic waste and explosive substances. Coupled with a host of other laws on environmental protection. These offences are all classified as misdemeanours and simple offenses

[56] McRae Jr., W. A., (2021), "The Development of Nuisance in the Early Common Law", Florida Law Review, vol. 1, Issue 1, Article 2. P. 11. Available at https://scholarship.law.dfl.edu/flr/vol1/iss1/2.

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Other Tort Theories Relevant to Environmental Protection.

Besides the nuisance theory which appears to be the most used for environmental protection, there are other common law tort theories such as trespass, negligence and the strict liability rule in *Rylands v. Fletcher*, relevant to environmental protection.

Trespass

Trespass protects interests in real property from tangible invasion.[57] An action in trespass is thus designed to provide redress for unauthorized, forcible and direct incursions upon a person's property. It is held to be the strictest of strict liability torts[58], and even though it was originally intended to protect against others coming onto or using one's land, the doctrine has been extended to include small invasions such as the settling of dust and vapours on one's property.[59] Thus trespass may be available in some cases when private nuisance is not.[60]

The Strict Liability Rule in Rylands v. Fletcher

The strict liability doctrine as established by the rule in *Rylands v. Fletcher*[61], where the defendant was liable for any escapes resulting from an unnatural use of land, has since been extrapolated and is a principal tool in the kit of tort remedies for environmental harms.[62] The advantages of this tort for environmental protection are twofold: firstly, in circumstances where it applies, the plaintiff may rely upon the strict standard without the need to demonstrate an interest in land. Secondly, it may circumvent the 'character of the neighbourhood test'.[63] This is because, whether or not an activity constitutes an unnatural use of land should be judged by reference to the activity itself, not the predominant land use in the area. Thus, where the defendant is engaged in hazardous activity in an industrial area, a plaintiff, who might otherwise be defeated under the character of the neighbourhood test, may succeed under *Rylands v. Fletcher*.[64]

Negligence

The tort of negligence at its inception, was designed to provide a remedy for harm resulting from a careless as opposed to a deliberate and forceful act. A negligence claim can be brought by essentially any party directly injured by another's failure to exercise reasonable care under a particular circumstance.[65] The basic elements of the tort consist of three things: a duty to take care, a breach of that duty, and a loss sustained by a third party as a result of that breach of duty. Basically, a duty of care is owed to those persons who are at potential risk from an activity; in other words, they must be foreseeable victims of any misfeasance.[66]

The negligence theory underlying environmental tort actions is broad in scope and can potentially reach those environmental harms that do not implicate a possessory interest in the use and

[57] Dewees, D. N., (1992), *Op. Cit*., P. 450
[58] Shapo, M. S., (1997), "Tort law and Environmental risk", *Op. Cit*. P. 541
[59] Dewees, D. N., (1992), *Op. Cit.*
[60] *Ibid.*
[61] 3 L. R. – H. L. 330 (1868)
[62] Shapo, M. S., (1997), *Op. Cit*. P. 533
[63] Character of the neighbourhood in torts refers to what might reasonably be expected of a particular area or locality. So, whilst it would be unreasonable for a factory to cause a lot of noise in the middle of an idyllic countryside or residential area, the same noise would likely be found reasonable in an industrial setup. Thus, the relative amplitude of a nuisance depends on its context-*Sturges v. Bridgeman* (1879) 11 Ch D 852

[64] Wilde, M. L., (1999), *Op. Cit*., P. 33

[65] Whether the defendants conduct is reasonable will be judged depending on the circumstances of the case and what a reasonable man will have in contemplation. The reasonable man here is determined by an objective test-*Blyth v. Birmingham Waterworks Co*. (1856) 11 Ex 781, the reasonable man should be in a position to foresee that damage would be caused to the third party by his failure to act with due care

[66] In *Donoghue v. Stevenson* [1932] A. C. 562, Lord Atkin formulated his famous proximity test to assist with determining foreseeable victims, he said "you must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. who, then, in the law is your neighbour? The answer seems to be persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question".

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enjoyment of land.[67] Examples of negligence actions with an environmental effect include physical injuries sustained from exposure to hazardous substances released into the environment, the failure to adequately reduce or warn of such serious risks or injury or perhaps the failure to promptly remediate an acknowledged harm to the environment.[68] In the case of *KETCH v. MINEP*[69], the defendant company was accused of polluting the air with an enormous quantity of dust through the exploitation of a quarry without carrying out the requisite environmental impact assessment which happens to be a statutory obligation.

It is manifestly more difficult to establish liability in negligence due to the need to establish a breach of the duty of care in addition to the foreseeability of damage.[70] So, in seeking to determine whether conduct is reasonable, negligence law will ask whether that activity has exposed persons to an unreasonable risk of harm. It makes a judgement not only about the pecuniary value of injuries sued upon but also about the worth of the activity at issue. In deciding whether a defendant acted reasonably, a court will use foreseeability as an important measure. Thus, it will ask how the defendant would have assessed the risk before taking it.[71] Environmental tort actions though hinged on classic tort theories, present some special features.

Components of Environmental Torts

The classic tort theories of nuisance, negligence and trespass have mutated over time from tort actions protecting property rights through the use of injunctions and damages, to the new status of 'environmental or toxic' torts. Environmental tort actions have served as an important vehicle for legal challenges to all forms of environmental threats such as pollution and emissions of greenhouse gases. The question is whether environmental torts are different from classic torts. It is true that environmental torts in recent times are mostly related to trans-border pollution emanating from uncertain sources. With these changes, a new class of torts has emerged that targets personal injuries caused by toxic substances in the environment. The peculiarity is that this calibre of torts uses the environment as a medium to cause harm to people and property or the harm is sometimes limited only to the environment. These hybrid environmental torts are therefore quite different from the trespass-nuisance precedent that is part of the traditional tort theory.[72] The following lines will highlight the distinguishing criteria of environmental torts *vis-à-vis* traditional torts.

Multiple and Unequal Status of Plaintiffs and Defendants.

Few environmental problems arise between a single polluter and a single pollutee. The overwhelming preponderance of pollution problems arise with multiple victims, often with multiple sources, and often with great uncertainty relating to discharge, dispersion and harm.[73] Just like in any tort action, the plaintiff in an environmental tort suit must prove that the defendant is responsible for the harm at issue. Unfortunately, the source of the environmental contaminant is not always easily identifiable or there may be multiple sources of the environmental pollutant emanating from different defendants that cause harm to the plaintiff.[74] Thus it could be impossible to identify each defendant's level of responsibility for the victim's harm.

An environmental tort is an indirect tort action[75] that uses the environment as its intermediary and

[67] Latham, M., Schwartz, V. E. & Appel, C. E., (2011), *Op. Cit*., P. 752
[68] *Ibid*.
[69] Case No. 0016/PV/MINEP/DPEF/SPE of 20th June 2004 (unreported)
[70] Wilde, M. L., (1999), *Op. Cit*., P. 38
[71] Shapo, M. S., (1997), *Op. Cit*. P. 533
[72] Santiago, A. L. & Jorge Alberto, F. A., (2010), "Environmental civil liability under comparism: some notes in soft law", *Revista Juridica Pielagus*, Vol. 9. P. 63. Available at https://www.redalyc.org/articulo.oa?id=587977786006.
[73] Dewees, D. N., (1992), *Op. Cit.*, P. 448
[74] Santiago, A. L. & Jorge Alberto, F. A., (2010), *Op. Cit*.
[75] The primary conduct resulting in the harm is directed to the environment through release or dumping of harmful substances on the environment which in turn causes harm to individuals or their property.

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affects multiple victims. Natural elements such as air, water, soil, rock and living creatures help transport pollutants and contaminants across local and international boundaries. The effect is that victims of environmental hazards are many and dispersed. Moreover, the victims are usually ordinary people who have little knowledge about, and evidence of, the sorts of chemicals to which they have been exposed and some may only discover the injury after the statute of limitations has run.[76] On the other hand, defendants are usually enterprises that are equipped with advanced techniques and updated information and have a special economic status in the society. The apparent disparity in the *status quo* between the defendant and the plaintiff in environmental tort actions is the bedrock of the citizen environmental suits to be discussed subsequently.

Severity and the Long Latency of Environmental Harm

Unlike in most traditional torts where the injury immediately follows the tort action and will normally disappear once the action stops, in environmental torts, toxins such as impure water, hazardous chemicals and defective synthetics often breed disease rather than cause diseases instantaneously. There is a long latency period between the time of exposure to a pollutant and the time the diseases resulting from that exposure become detectable.[77] Sometimes the causes and consequences of the environmental harm are unknown, for instance, where the harm appears long after the pollution took place such as cases of congenital harm in children due to their ancestors' exposure to pollution.[78] Another scenario is that some environmental damages may begin to occur immediately or soon after the release of a substance but at that time they are not detected nor are they detectable and it may take several years before people suddenly realise the existence of the environmental harm.

Harm or injury resulting from environmental torts is usually more severe because of their long latency, post-generational-consequences and the difficulty of limiting them within a certain boundary because the elements of nature are always at work. Common examples include cases of air pollution due to carbon dioxide emissions or sea pollution due to oil spills on high seas. The damages resulting from environmental torts are usually unbounded, the extent of a disaster is unpredictable and the array of disorders is far more wide-ranging.

The Inevitability of Environmental Torts.

Environmental damage appears to be one of the most serious and difficult issues confronting modern industrial civilization. It is a by-product of industrialization and it is considered the price to be paid by human beings for the use and change of nature. Therefore, a certain level of environmental pollution is permitted by law, however, operators of environmental torts will not escape liability because liability here does not depend on actual negligence or intent to harm. Environmental tort liability is based on the breach of an absolute duty to make something safe, in this case, the environment.

An understanding of classic torts theories relevant to environmental protection and the peculiarities of environmental torts affirms the potential of tort actions and necessitates a focus on the actual role it plays in environmental protection.

THE ROLE OF TORT/CIVIL ACTIONS FOR ENVIRONMENTAL PROTECTION

The content of environmental legislation specifically consists of licensing regimes which permits emissions up to a certain limit.[79] Violating such statutory standards will usually trigger liability under the regulatory law where the regulator may then have recourse to criminal penalties when these limits are breached. Even

[76] Santiago, A. L. & Jorge Alberto, F. A., (2010), *Op. Cit*., P. 64

[77] Santiago, A. L. & Jorge Alberto, F. A., (2010), *Op. Cit*., P. 64

[78] Tolosa, P. M., (2008), "Advantages and restrictions of tort law to deal with environmental damages", *Revue générale de droit*, Vol. 38, Number 1. P. 124

[79] Wilde, M. L., (1999), *Op. Cit*., P. 105

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though the deterrent effect of criminal sanctions for environmental regulation is applauded, no system of environmental regulation can rely entirely upon one mechanism; each method has strengths and weaknesses according to the circumstances. So far, the use of licences, backed by criminal sanctions, to control and regulate emissions, leaves gaps in enforcement which tort law has shown a potential role in reducing.[80] In fact, both regulation and tort law may be said to impact environmental interests: while statute prospectively regulates conduct, mindful of minimizing harm to human health and the environment, the tort system acts to remedy the harm that has occurred.[81]

In Cameroon, regulatory agencies' efforts in curbing pollution have been daunting. It is not clear what the tolerated level of pollution is nor is there equipment to measure the accepted level like in some other countries. Moreover, the fines levied against polluters are usually a paltry sum that can neither remediate the harm nor can it serve as a deterrent such as in the case of *Union des Brasseries du Cameroun (UCB) v. MINEF*[82] where despite the meagre penalty levied as a sanction for pollution, the company refused to stop the polluting activity. Where, however, the pollution causes a private loss, the individual may choose to pursue the matter by way of a private action and this is advantageous on multiple fronts. The remedies available under civil law are more flexible than criminal sanctions and may require the polluter to internalize a greater proportion of the pollution cost while at the same time, restituting the victim to their original pre-injury condition. Whereas fines are arbitrary and go straight to the public treasury, damages sought by an individual in a private suit will more accurately reflect the value of the damage caused and may be applied to the cost of remediation. Moreover, the courts through an injunction, can take a proactive stance thereby requiring the polluter to actually take abatement measures or to rectify the damage which has already occurred.[83]

Environmental liability demands that environmental damage should be borne by the polluter whether civilly or criminally. Traditional tortious liability rules do not necessarily fit in when environmental damage is at issue basically because civil liability is concerned only with the claimant's interests, not with protecting the environment and also because civil liability is hinged on causation.[84] The practice by the courts over the years and with regards to environmental damage tortious actions has been to relax the traditional liability rules in the embrace of a new policy suit of liability specific to environmental damage cases but still inspired by common law liability principles. The following paragraphs will expatiate on the standard of environmental tort liability (A) and private enforcement of environmental standards (B)

Liability Standards in Environmental Torts

When a defendant's conduct causes environmental damage so as to infringe on other people's private rights, he is liable for environmental civil liability. Therefore, environmental tort liability refers to a liability that comes about through common law notions of tort theory, such as trespass, nuisance or negligence.[85] In the courts of Anglophone Cameroon, liability for environmental damage is determined by general principles of tort as dealt with under traditional common law. Besides tort law, criminal law and administrative regulations

[80] *Ibid*.

[81] Latham, M., Schwartz, V. E. & Appel, C. E., (2011), *Op. Cit*., P. 755

[82] Matter No. 0/65/MINEF/SG/Spe/DNIE/PEIE/C4 (unreported)

[83] Wilde, M. L., (1999), *Op. Cit*., P. 107

[84] At common law, the plaintiff, in order to establish his case must prove on a balance of probabilities that a specific factor or factors caused by the defendant resulted in his injury. This is not always so easy in environmental damage cases: the plaintiff may be faced with the difficulty of identifying the specific cause of his injury maybe because of lack of sufficient scientific data or the latent and long-distance pollution may make the establishment of a causal link illusory.

[85] Santiago, A. L. & Jorge Alberto, F. A., (2010), "Environmental civil liability under comparism: some notes in soft law", *Revista Juridica Pielagus*, Vol. 9. P. 62. Available at https://www.redalyc.org/articulo.oa?id=587977786006.

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impose statutory liability for the infringement of statutory duties. This section will elaborate on traditional tort liability standards applicable to environmental damage (1) and also statutory liability standards (2).

Fault-based Liability and Strict Liability

Liability criteria in environmental torts are experiencing a change from a subjective to an objective standard, or specifically speaking, from fault-based liability to a strict liability standard.[86] Each has advantages and disadvantages no doubt, besides the fact that the adoption of a certain regime will have a significant impact on the outcome of environmental tort litigations.[87]

By the 19th century, the fault-based liability standard had obtained a dominant place in the criteria of liability in most capitalist countries such as France, England and Germany.[88] Fault-based liability is based on some degree of blameworthiness.[89] In fact, it doesn't matter that the defendant acted either intentionally or negligently, once there is a fault, there is liability. More precisely, there must be a duty of care owed by the defendant towards the plaintiff and the defendant must have breached this duty. In the past, most judges when faced with environmental tort cases, usually applied the fault-based liability standard. As a consequence, the plaintiff was required to prove that the care exercised by the polluter for example was below a reasonable standard.[90] The burden of proof was tremendously stiff on the plaintiff who had an uphill task proving 'fault' on the part of the defendant. This wasn't always feasible in environmental pollution cases where there is frequently a certain latency period between exposure to the pollution and discovery of an injury. Most often by the time of the lawsuit, much of the important evidence may be unavailable to the plaintiff.[91] Moreover, another drawback of the fault-based liability standard is the fact that it is inconsistent with the 'polluter pays'[92] principle in that the polluter is not required to internalize all pollution costs; environmental costs which do not result from any fault on the part of the polluter are priced at zero.[93]

Strict liability also called the liability without fault standard in environmental tort does not depend on actual negligence or intent to harm. Instead, it is based on the breach of an absolute duty to make something safe.[94] This simply means that the defendant will be liable for the damage caused by his commission or omission even though he committed no fault. This does not mean that causation will be presumed.[95] The plaintiff will still have to establish the causal link between the act or omission and the damage caused or injury suffered.

The general trend is that strict liability is widely adopted in international treaties and even domestic legislation.[96] The major advantage of strict liability is that the defendant's compliance with a set standard of care or respect for statutory principles will not absolve him from liability. He must therefore investigate alternative means of reducing the risks posed by his activity or invest in cleaner and safer technology.[97] This high expectation is explained by the fact that, in

[86] Santiago, A. L. & Jorge Alberto, F. A., (2010), *Op. Cit*., P. 72

[87] Hayajneh, A. Z., (2004), "Civil Liability for environmental damage: A comparative study between Jordanian and English legal systems", PhD thesis, University of Newcastle upon Tyne, P. 40

[88] Santiago, A. L. & Jorge Alberto, F. A., (2010), *Op. Cit*., P. 71

[89] Garner,B. A., (Ed.) (2009) *Black's Law Dictionary*, West Publishing Co, P. 997

[90] Santiago, A. L. & Jorge Alberto, F. A., (2010), *Op. Cit*.,

[91] *Ibid*.

[92] The "polluter pay principle" simply means that whoever is responsible for damage to the environment should bear the cost associated with it. First set out by the OECD Council Recommendations, it has since been upheld and reiterated by the Rio Declaration and the 1996 environmental management law in article 9 (c), whereby, charges resulting from measures aimed at preventing, reducing and fighting pollution and the rehabilitation of polluted areas shall be borne by the polluter.

[93] Wilde, M. L., (1999), *Op. Cit*., P. 157

[94] Garner,B. A., (Ed.) (2009) *Op. Cit.,* P. 998

[95] Hayajneh, A. Z., (2004), *Op. Cit*., P. 40

[96] (1995), "Study of civil liability systems for remedying environmental damage", Final Report. McKENNA & Co., available online at http://europa.eu.int/comm/environment/liability/civilliability_finalreport.pdf.

[97] Wilde, M. L., (1999), *Op. Cit.*

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environmental damage cases, the defendant holds the information and the data about his activity and its potential effects. The technical nature of the defendant's activities along with the lack of sufficient scientific data regarding the activity and its effects, could make it impossible for the plaintiff to prove the defendant's fault or even a persuasive causation[98] in the absence of a strict liability standard.[99]

It has been argued that in certain circumstances, fault-based liability may provide a superior incentive for complying with regulatory standards than strict liability. This is because, when liability is fault-based, the operator can avoid all liability by complying with a set standard. However, under a system of strict liability, compliance with the standard will not absolve the operator of liability[100], therefore, operators will find themselves with fewer incentives to take precautions; to perform diligently or refrain from their activities since liability will be imposed upon them regardless of their precautions or carefulness.[101]

However, many experts have commended that the strict liability trend should be encouraged because, given the difficult burden of proof to establish fault and its subjective intentionality, it is only natural that the fault-based liability is being increasingly questioned in the context of environmental damage.[102] Strict liability is thought to be the practical application of the polluter pays principle which forms the backbone of any environmental liability regime.[103] The polluter is required to internalize a greater proportion of the pollution cost especially because, the polluter is more likely to be in a better economic position to bear the risk of his activity and to compensate victims of the damage caused by his activity. Therefore, strict liability for environmental damage is best justified by the risks presented by the defendant's activity rather than by fault in his conduct.[104]

Besides liability standards in tort law as discussed above, there exist other methods of handling liability for environmental damage such as criminal and administrative regulations.

Statutory Liability

Tort law and its much-elaborated theories are not the only means by which the environment can be protected. Criminal and administrative regulations impose statutory liability for the infringement of these regulations. Statutory liability for environmental damage takes the form of criminal sanctions for environmental offences, administrative fines or withdrawal of licences, respectively contained in both the penal code and in other laws regulating environmental damage. The principle of liability contained in the 1996 Environmental Management Law specifically provides that, any person who through their actions, creates conditions likely to endanger human health and the environment shall have a responsibility to eliminate the said effects.[105]

In affirmation of the role of regulation in the protection of the environment, The United Nations issued a resolution regarding the role of criminal law in protecting the environment.[106] Whereby, it invites Member States and relevant bodies to continue their efforts to protect nature and the environment by developing laws and

[98] The injury suffered by the plaintiff or the environmental damage could be the result of interaction between or amongst several defendant's activities which renders the identification of the specific source of the release almost impossible and even where possible, costly and time-consuming. Thus, without the imposition of a strict liability regime, the plaintiff will most definitely go without compensation.

[99] Hayajneh, A. Z., (2004), *Op. Cit*., P. 41

[100] Wilde, M. L., (1999), *Op. Cit*., P. 156

[101] Hayajneh, A. Z., (2004), *Op. Cit*., P. 42

[102] Santiago, A. L. & Jorge Alberto, F. A., (2010), *Op. Cit*., P. 73

[103] This principle is an important environmental policy tool because it complies with the concept of fairness and because it provides a strong incentive for individuals and industries alike to change unsound environmental patterns and reduce pollution generally.

[104] Hayajneh, A. Z., (2004), *Op. Cit*., P. 44

[105] Article 9 (d) of the Law No. 96/12 of 5th August 1996, Relating to Environmental Management.

[106] United Nations Resolution No 1994/15

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fostering legal and technical cooperation and in particular, developing criminal laws related to the protection of the environment on the basis of the polluter pays and precautionary principles. It equally enjoins States to provide for a wide array of measures in order to ensure compliance with environmental protection laws. Such as regulatory and licensing powers; administrative enforcement mechanisms; incentives; and civil and criminal sanctions for impairing or endangering the environment.[107]

Statutory liability or the approach of utilizing public law instruments is advantageous in that, unlike traditional civil liability or tort law which is concerned with the protection of private interests, the main aim of public law is the protection of public interests generally and this makes it better suited for environmental protection. Another very strong point in favour of statutory liability is the fact that it has a proactive tendency and can be used to impose preventive measures, unlike tortious liability which only has a remedial purpose. Due to the fact that some environmental damages are irreversible, or where the defendant may not be able to adequately compensate the victims, preemption available in public law is the best bet.

The attractiveness of statutory liability is watered down by its lack of flexibility since it anticipates the prohibited acts and fixes liability for them according to a planned legislative policy. Besides this inflexibility, bureaucracy, delay in the implementation of regulatory policies and corruption can be cited as some of the gridlock to the efficiency of statutory liability.

Moreover, the need for civil liability for environmental damage will always have its preferred place especially because public law does not compensate victims for environmental damage-criminal law remedies are fines and imprisonment. Therefore, a victim of environmental damage will have to bring a claim in the civil court or attach their civil action to the criminal suit, to demand compensation for personal and property damage as a result of environmental damage.

Common law rules remain very flexible and can pragmatically respond to changing circumstances. This is the reason why environmental tort actions are gaining ground in environmental protection. Both through private claims and public interest litigations.

Private Enforcement of Environmental Standards

Standing to sue at common law refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right. To have standing before a particular court denotes that the plaintiff must show that the challenged conduct has caused him actual injury and secondly, the interest sought to be protected is within those meant to be regulated by statute.[108] In traditional torts, only those who have suffered some form of loss, such as personal injury or property damage, or an interference with the rights and benefits which flow from an interest in land have the right to sue.[109]

Specifically, actions to abate public nuisance were prosecuted exclusively by local public officials or the attorney general on behalf of the Crown who is under an obligation to protect the interests of the general public. Therefore, public officials have been held to be the only proper parties to seek redress on behalf of the public. Besides public officials, private citizens can only make recourse to a public nuisance claim if they have suffered a particular damage different from that of the public. Few suits have been brought by private individuals because of the restrictive application of the requirement of standing by the courts.

In environmental torts, whether it be in claims of negligence, trespass or nuisance, standing to sue is generally restricted to individuals who have

[107] *Ibid.*

[108] Garner, B. A. (ed) (2004), Black's Law Dictionary, USA, West Publishing Co, 9th edition, P. 1537

[109] Santiago, A. L. & Jorge Alberto, F. A., (2010), *Op. Cit*., P. 79

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suffered harm of the sort traditionally redressed by tort law. The application of these criteria of standing has been criticised vehemently because there is no guarantee that the individual who has the right to sue would choose to pursue the matter. In the meantime, the environment will be continuously and substantially undergoing irreparable damage. As a response to the negative impact of such standing requirements, and in the interest of the environment, some countries have extended the right to sue non-governmental organisations or groups involved in environmental protection. Thus, the birth of citizen suits in environmental protection (2) alongside the individual right to sue for environmental torts (1).

Private Individual Suits

As demonstrated earlier, tort law theories have been successfully used to remedy different types of harm to the environment ranging from pollution to the dumping of hazardous waste. On the conditions that the harm be direct and secondly, the direct injury must be to a well-defined area, a specific person or a class of persons. The emphasis on standing or the direct injury requirement is the measuring rod for potential plaintiffs. The primary tort theories most relevant in our context, to alleged environmental harms are rooted in the law of nuisance and negligence. Our focus will be on public nuisance and private suits used to uphold environmental standards in Cameroon.

The restrictive rules on standing to sue in public nuisance vested exclusive authority in public officials however, experience has shown that public officials, because of inertia, lack of resources, political pressures, or vested interests in the nuisance, cannot always be relied on to seek redress for a community[110]. Moreover, it is said to be an anathema to any true system of justice to proclaim that a right may be enjoyed by all yet no one may protect it.[111] Therefore, an injured person should not be denied access to court simply because others in the community are injured in the same way. Civil actions proved useful in the growing number of pollution cases which could be enjoined more easily than they could be prosecuted. With this change, public nuisance became mostly a civil rather than a criminal proceeding[112]. By this, a private action for public nuisance can be an individual claim or a class action.

The courts permitted private parties to bring damages actions in their own name if they could prove "special Injury"[113]. The issue of "special injury" has long troubled both courts and commentators. The question has been whether a plaintiff must show damages of a distinct kind, damages of a greater degree or both.[114] Gleaning from decided cases over the years, "special injury" requirements means that for private individuals to sue for damages in public nuisance they must prove that besides the general injury suffered by the public, they have suffered an injury different in kind and degree from that of the public. There are two types of "special injury" by which a plaintiff may have standing in public nuisance claims: the first type is when the nuisance has resulted in personal harm to the plaintiff, and the second is when there is an injury to the plaintiff's land or property.

Class actions[115] have shown great potential in nuisance and environmental cases generally albeit in certain huddles. The courts have shown a perchance for class action and denied standing to a plaintiff suing in an individual capacity in public

[110] Bryson, J. E. & Macbeth, A., (1972), "Public Nuisance, the Restatement (second) of Torts, and Environmental Law", *Op. Cit*., P. 252

[111] Rothstein, M. A., (1974), "Private Actions for public nuisance: The standing problem", *West Virginia Law Review*, Vol.76, Iss.4. P.6. available at https://researchrepository.wvu.edu/wvlr/vol76/iss4/4.

[112] Kendrick, L. ( ), *Op. Cit*., P. 15

[113] This is the condition for the conferral of standing to private individuals in public nuisance claims. Special injury is synonymous to personal injury as opposed to public injury. Again, special injury would involve not only physical injury to the person or property, but also economic loss.

[114] Rothstein, M. A., (1974), *Op. Cit*., P. 4.

[115] This is a lawsuit in which the court authorizes a single person or a small group of people to represent the interests of a larger group

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nuisance. In the case of *Barrister Peter Ataba v. SOGEA SATOM & The State of Cameroon*,[116] the plaintiff made an application to the court to compel the respondents to limit the environmental and health hazards they were creating as a result of the road construction works, they were executing. He equally prayed the court to order the first respondent to pay into the coffers the sum of XAF 500,000 for the free consultation and treatment of all reported cases of illness resulting from the respondents' default to limit the environmental and health hazards. The court held that in matters of procedure, it is the rule that where numerous persons have the same interest in one cause or matter, one or more of such persons may with the approval of the court be authorized by the other persons interested to sue or defend such a suit. The court pointed out the fact that there is a common interest and a common grievance for the Muyuka populace and because the relief sought will be beneficial to all, a representative or class suit should have been used by the applicant who in this case lacked standing to sue. In public nuisance cases, class actions have sometimes failed due to the stringent requirement of "special injury" that thwarts even individual plaintiffs and also because of procedural pitfalls such as class composition and representation.[117]However, it remains the preferred means to remediate actions that jeopardise the health of the entire community or a significant part thereof.

Private standing to prosecute a public nuisance is essentially a matter of a different cause of action[118]. If the only injury is to the general public, then only public officials may prosecute the perpetrator seeking mostly injunctive relief, an order for the abatement of the nuisance or a penal sanction. If in addition to the injury to the general public, there is injury to a private right of person or property, then the action by the public official does not pre-empt private tort liability through an action for damages.

Public Interest Environmental Suits.

Public Interest litigation to prevent, mitigate, remediate or compensate for harm done to the environment has grown since the early 1970s.[119] Public interest litigation is simply any litigation in the interest of the public and is often employed strategically as a motor for social change.[120] It is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of a large number of people who are poor, ignorant or in a socially or economically backward position should not go unnoticed or unredressed.[121] In this era where the environment is high on the agendas of many states, public interest environmental litigation has proven to be an important vehicle used across the globe to initiate public nuisance tort claims. In fact, public interest litigation is widely regarded as one of the most important legal innovations with regard to environmental protection.[122]

The notion of public interest litigation has been a prevailing, prominent and continuing innovation in the modern environmental era in the United States. It is called citizen suits and specifically provided for under Federal environmental Statutes which enables private entities to bring actions to enjoin violations of regulatory

[116] Suit Number MUM/27M/08 (unreported)

[117] The Supreme Court of Cameroon in the case of *Isaac Fadu & 14 Others v. Samuel Yaro & 10 Others*, Arret No. 79/CC of 17th September 1990, held that according to Order 4 Rule 3 of the Supreme Court Civil Procedure Rules, there are conditions to be fulfilled before a suit in representative capacity can be entertained: the parties must have the same interest; the court must make an order authorizing those seeking to represent to institute the action and the other parties to be represented must give their written consent.

[118] Merrill, T. W., (2011), *Op. Cit*., P. 15

[119] Preston, B. J. (2013), "Environmental Public Interest litigation: Conditions for success", paper presented at the International Symposium: *Towards an Effective guarantee of the Green Access: Japan's achievements and critical points from a global perspective*, 30-31 March 2013, Awaji Island, Japan,

[120] Van Geel, O., (2017), "Urgenda and Beyond: The past, present and future of climate change public interest litigation", *Maastrich University Journal of Sustainability studies*. P. 57.

[121] Definition proffered in the case of *Foundation for environment and development (FEDEV) VS. China road and bridge corporation* CFIB/004m/09

[122] Ibid., P. 59

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requirements.[123] In general, citizen suit provisions authorise any person to commence a civil action against parties who have violated statutory requirements. So, this framework recognises that citizens have an interest in protecting an intangible environmental interest. While citizen suit provisions literally allow any person to initiate a lawsuit, the state environmental legislation gives individual citizens only "secondary" standing rights[124] permitting private parties to compel state government agencies to enforce the laws for the protection of the air, water and natural resources. The primary remedy available is an injunctive relief deterring the defendant from committing future violations.[125] A major drawback of this approach is the fact that it must be based on a specific area regulated by statutes and the violations need to take a form defined by particular statutory frameworks.[126]

In tort actions generally, *locus standi*[127] is an admissibility condition that acts as a gatekeeper allowing only parties who can show that they have a special interest at stake or that their substantive rights were violated to sue. The plaintiff's special interest need not be proprietary or pecuniary, but it must be more than intellectual or emotional.[128] Increasingly, standing issues have attracted attention in public law actions such as public nuisance claims, judicial review cases[129] and now in environmental public interest actions. A public nuisance is usually so widespread in its range and so indiscriminate in its effect that it is not unreasonable to expect that it be taken as the responsibility of the community at large.[130] However, the standing test restricts the range of individuals who can bring environmental public interest suits.

In practice, standing is extended not only to the individuals who have suffered an injury, or the state that has a duty to protect the public's interest but to associations and non-governmental organisations involved in environmental protection. The global trend highlights the importance of creating procedural rules that further the interest of the public in enforcing environmental regulation through litigation. In the case of the *Foundation for Environment and Development (FEDEV) vs. China Road Bridge Corporation*[131], the court held in response to a preliminary objection on standing, that it is not necessary that the person filing a public interest suit should have a direct interest in the litigation or that he must have been personally affected, it suffices that he be espousing a public cause and not be "a mere busy body or interloper or pursuing some other dubious goal such as publicity or serving a foreign interest"[132].

The 1996 Cameroon constitution in its preamble dealing with the protection of certain fundamental rights, provides that, every person shall have a right to a healthy environment and the protection of the environment shall be the duty of every citizen.[133] This constitutional provision is in tandem with other national laws, International and regional treaty provisions, enforcing the right to a healthy environment and the protection of the

[123] Chu, J., (2019), "Vindicating public environmental interest: defining the role of environmental public interest litigation in China", Ecology Law Quarterly, Vol. 45, Iss. 3. P. 491. Available at https://scholarship.law.berkeley.edu/elq.

[124] This means that the job of abating environmental nuisance has been given to a specific public agency and private actions are only possible when the duly constituted public agency has failed to act or has expressly approved of the private suit. A private citizen can only obtain standing however after a complaint has been filed with the Attorney General and he has failed to bring an action within a given period of time.

[125] Chu, J., (2019), *Op. Cit.*

[126] *Ibid*., P. 519

[127] *Locus standi* consists of two elements: capacity to sue and a sufficient interest in the matter at hand.

[128] Preston, B. J., (2013) Op. Cit., P. 14

[129] Faure, M. G. & Raja, A. V., (2010), "Effectiveness of environmental public interest litigation in India: Determining the key variables", *Fordham Environmental Law Review*, Vol. 21, Number 2. P. 250. Available at http://ir.lawnet.fordham.edu/elr

[130] Estey, W., (1972), "Public nuisance and standing to sue", *Osgoode Hall Law Journal*, vol. 10, number 3, P. 564 available at http://digitalcommons.osgoode.yorku.ca/ohlj.

[131] CFIB/004M/09 (unreported)

[132] *Ibid.*

[133] Law No 96/6 of 18th January 1996 to amend the Constitution of 2nd June 1972.

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environment.[134]The environment is a common national heritage and its protection is of general interest.[135] Meaning every citizen or all people, legal persons inclusive, have a right and a duty to protect it.

Pollution is nearly always a public nuisance, in the case of the *Ministry of Environment and Forestry vs. Tame Soumedjong Henry & SOTRAMILK LTD,*[136] the activities of the respondents affected some public rights such as the right to breathe relatively clean air; the right to clean natural waters and the right to a clean environment generally. The applicant sought and got an order from the court restraining further polluting activities and ordering the respondents to rehabilitate the polluted areas. It has been suggested that everyone is entitled to a sufficient supply of untainted air, in an amount necessary for their reasonable use.[137] In fact, those who are directly affected by the violation of this third-generation right[138] sometimes lack the means or the incentive to litigate, and such environmental human rights violations will not be remedied[139] if standing requirements are not relaxed.

The hurdle of standing has been somewhat overcome legislatively in Cameroon. The law on Environmental management gives authorized associations and grassroots communities supporting environmental protection, the *locus standi* to represent plaintiffs regarding breach of the provisions of this law and causing direct and indirect harm to the environment.[140] This position was affirmed in the case of *Laikom Community Forest Management Group vs. Ngam Samson & Ors*,[141] here, the applicants by way of motion *ex-parte*, prayed the court to grant an order restraining the respondents or their agents from perpetrating activities that infringe the management plan of the Laikom community forest. Thus, as a result of an expanded standing, a plaintiff need not demonstrate a personal interest or prove the occurrence of personal injury. The operative issue is whether the environmental standards have been violated irrespective of whether the conduct has caused an actual injury. Anyone and everyone involved in or supporting the fight for environmental protection is a suitable plaintiff.[142] The plaintiff may challenge acts that are damaging to the environment and have harmed the public interest.

The conceptualization of public interest actions as public nuisance law will definitely be a useful tool in the armoury of tort law as a weapon to combat various environmental problems. Environmental public interest includes injury to public health, safety, and welfare caused by environmental problems, all of which fall within the scope of public nuisance law.[143] Citizen enforcement actions may either be brought against the government, compelling it to undertake measures that will ensure the respect of regulations or it could be brought against the polluters directly for them to reduce their emissions for example; relocating to other areas or remediate the harm

[134] Article 24 of the African Charter on Human and Peoples' Rights (Banjul Charter), adopted on June 27, 1981, was ratified by Cameroon on the 20th of June 1989. provides that all peoples shall have a right to a general satisfactory environment favourable to their development……furthermore, article 12(1)(2) of the International Convention on Economic, Social and cultural rights ratified by Cameroon on the 27th of June 1984, provides for the improvement of all aspects of environmental and industrial hygiene.

[135] Section 2 (2) of Law No. 96/12 of 15 August 1996 Relating to Environmental management in Cameroon.

[136] CFIBa/245CM/02-03 (unreported)

[137] Estey, W., (1972), P. 565

[138] The right to a healthy environment and the right to development are often classified as third generation rights and are often protected only through the lenses of first- and second-generation rights. First generation human rights are civil and political rights that protect individuals from the state's arbitrary actions they include freedom of speech and religion; second generation human rights are social and economic rights that promote equality such as the right to education, healthcare, work and social security; finally, third generation rights also called 'solidarity rights', involves the entire human community such as environmental health, cultural self-determination, solidarity and peace. Third generation human rights are reflected in General Assembly Declarations. The classification of human rights into generations is based on international legal instruments adopted by the United Nations since the Universal Declaration of Human Rights in 1948.

[139] African Charter on Human and Peoples' Rights, *Op. Cit.*

[140] Law No. 96/12 of the 5th of August 1996, relating to environmental management, article 8 (2)

[141] CFIF/O/M/02-03 (unreported)

[142] Chu, J., (2019), *Op. Cit*., P. 518

[143] *Ibid.,* P. 522

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done to the environment.[144]The plaintiff may seek injunctive relief as well as damages, instead of statutory penalties, for past injuries suffered by the public.

The potential of citizen actions grounded on tort principles is enormous and unmatched in the field of environmental protection. It helps to fill in the gap between the state's environmental policies and the implementation outcome at the local level; secondly, because regulatory agencies are unavoidably understaffed and underfunded, citizen suits provides a wider base of plaintiffs and additional resources to detect and prosecute violations and finally, plaintiffs can seek both injunctive relief and monetary damages to compensate for past environmental harm, every type of loss recognized in tort law as well as economic loss.

Conclusion

Environmental torts as an independently operating system cannot only provide a remedy for environmental harm caused by regulatory violations, but most importantly, it addresses harms that occurred or were left uncured due to limitations and gaps in existing regulatory schemes. Tort law was the first line of defence against pollution for decades before it was mostly superseded by regulatory schemes for environmental protection. Even though its role has been reduced, tort law has not been static. Public nuisance law has expanded immensely over the years and today it is a catch-all legal label that embraces everything that endangers life or health.

The civil liability regime for environmental damage is premised on the rules of tort liability and the remedies available as well. It is true that the rules and principles in tort were not made specifically for environmental matters but Tort law is the ultimate refuge of the threatened citizen. Whether a statute exists or not is immaterial, tort law exists to provide corrective justice through a liability scheme where harm has been caused to individuals and to the environment.

However, it must be said that the development of environmental statutes over the past several years is indicative of the limitations of the tort system. Amongst other things, legislative actions not only remedy certain environmental harm, but environmental regulation also serves to prevent environmental violations. Moreover, in complex toxic tort cases, the tort system is less efficient and usually challenged by questions of causation, the scope of the harm and the remediation necessary. Tort law was never intended nor is it equipped to remedy harms associated with global environmental issues such as climate change. Regrettably, environmental regulation is inflexible and the sanctions for environmental pollution are generally too minimal to serve as a deterrent.

The irresistible appeal of the tort law system is its malleability. The courts possess the authority to develop and shape the common law of torts in response to any given environmental harm. Despite the procedural and substantive hurdles inherent in the tort law system, it remains an inevitable mechanism to resolve environmental harm. In fact, some harms such as flooding someone's land, dumping a non-toxic dirt pile for example on private or public property or causing unwanted vegetation are all examples of environmental harms for which tort law provides the only means of redress. Tort law is not only an option for environmental protection, it is a worthy gap-filler with an enormous potential to complement regulation in the task of protecting the environment.

For policy implications, it is imperative to strengthen the legal framework by explicitly recognising environmental torts within Cameroonian legislation. Current environmental law focuses on administrative and penal measures. Reducing barriers to litigation for environmental tort claims and promoting legal aid and *pro bono* services for litigants seeking to

[144] Faure, M. G. & Raja, A. V., (2010), *Op. Cit*., P. 255

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pursue environmental tort actions is a good place to start. Moreover, ultimately investing in the training of legal practitioners and raising public awareness about environmental rights, coupled with a clear framework for civil liability would empower individuals and communities affected by environmental harm to seek redress.

This current analysis is far from exhaustive. There is a need for further research to assess the effectiveness of existing environmental laws and regulations in preventing environmental harm and providing remedies in Cameroon. Again, there is a place for a comparative analysis of the use of tort law for environmental protection in other developing countries with similar legal systems. Such analysis will definitely provide valuable insights and inform on the need for, the scope of tort law reforms and best practices in environmental protection in ensuring environmental justice in Cameroon.

