ENVIRONMENTAL JUSTICE ◆ ISAAC CHRISTOPHER LUBOGO

SUIGENERIS PUBLICATIONS

ENVIRONMENTAL JUSTICE

Constitutionalism, Equity, Development and Environmental Governance in Uganda

A CRITICAL LEGAL, JURISPRUDENTIAL AND COMPARATIVE STUDY OF ENVIRONMENTAL RIGHTS, DISTRIBUTIVE JUSTICE, AND SUSTAINABLE DEVELOPMENT

THE CONSTITUTION OF THE REPUBLIC OF UGANDA

Justice for People, Communities and the Environment

BY
ISAAC CHRISTOPHER LUBOGO

PUBLISHED BY

SUIGENERIS PUBLICATIONS

Advancing Legal Thought. Inspiring Justice. Transforming Society.

ENVIRONMENTAL JUSTICE

Constitutionalism, Equity, Development and Environmental Governance in Uganda

First published 2026
by Suigeneris Publications
P.O. Box 23140, Kampala, Uganda

© Isaac Christopher Lubogo, 2026

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior written permission of the author and publisher, except for brief quotations used in reviews, research, or academic commentary.

ISBN: 978-9913-0-3456-7

ORCID: 0009-0003-0369-9590

SSRN Abstract ID: 6576118

Zenodo DOI: 10.5281/zenodo.20688619

Typeset in Garamond 12pt on A4. Printed and bound in Uganda.

ENVIRONMENTAL JUSTICE

Constitutionalism, Equity, Development and Environmental Governance in Uganda

A Critical Legal, Jurisprudential and Comparative Study of Environmental Rights, Distributive Justice, and Sustainable Development

by

Isaac Christopher Lubogo

Suigeneris Consultancy, Kampala

SUIGENERIS PUBLICATIONS

Advancing Scholarship • Inspiring Thought • Transforming Society

Kampala, Uganda | 2026

DEDICATION

To the communities of Uganda — those who dwell beside wetlands and rivers, in the shadow of oil rigs and mine shafts, who have loved the earth long before the law knew how to love it back.

And to the generations yet unborn, whose inheritance we either protect or squander.

And to every advocate who rises, and every judge who holds the line.

This book is their brief.

"The environment is not a gift from our parents; it is a loan from our children."
— Antoine de Saint-Exupéry (attr.)

"Every Ugandan citizen has a right to a clean and healthy environment."
— Article 39, Constitution of the Republic of Uganda, 1995

"The wetland's right to exist outweighs the individual's right to build on it."
— Katureebe CJ, Nyakaana v NEMA (2015)

ABOUT THE AUTHOR

Isaac Christopher Lubogo is a distinguished legal scholar, researcher, author, philosopher, and development analyst whose works span constitutional law, jurisprudence, governance, public policy, human rights, environmental law, international law, and legal philosophy. He is the founder of Suigeneris Consultancy and Suigeneris Publishers, based at Bukandula Tower, Plot 15, Rubaga Road, Kampala, Uganda — a platform dedicated to advancing legal thought, jurisprudential development, and academic excellence across the African continent.

A prolific scholar with over seventy published books, Isaac Christopher Lubogo is the architect of the Lubogo Framework for Ubuntu Constitutionalism — twenty original jurisprudential theories organised across five doctrinal clusters — and the originator of the Lubogo–Ubuntu Constitutionalism Index (LUCI) and the Ubuntu Legal Index (ULI), the first quantitative instruments designed to measure the depth and operationalisation of Ubuntu values in constitutional jurisprudence. He has received the Africa Law Tech Award (2022) and the SMEGAfrica Excellence Scholar Award (2025), and teaches at five universities in Uganda.

Through extensive scholarly contributions and public intellectual engagement, he continues to advance critical discourse on law, justice, governance, and sustainable development in Uganda and across Africa. He draws deeply on the intellectual legacy of his grandfather, Y.K. Lubogo ESQ CBE, author of A History of Busoga. He publishes under ORCID 0009-0003-0369-9590.

FOREWORD

Environmental justice has never been merely an academic concept. Across Uganda — from the wetlands of Kampala to the oil fields of the Albertine Graben, from the forests of Butamira to the mining corridors of Karamoja — the question of who bears the burden of environmental harm, and who enjoys the benefits of natural wealth, is a question of constitutional dignity, political power, and intergenerational survival.

This book arrives at a critical juncture. Uganda possesses one of the most progressive constitutional environmental frameworks on the African continent, yet the gap between the normative aspiration inscribed in the 1995 Constitution and the lived reality of communities displaced, polluted, and excluded from environmental decision-making remains vast and urgent. It is within that gap that this book makes its scholarly home.

Isaac Christopher Lubogo brings to this subject a rare combination of doctrinal precision, comparative breadth, and philosophical depth. Drawing on Ubuntu jurisprudence — the African philosophy of communal interdependence — he reframes environmental justice not as a regulatory technicality but as a constitutional imperative rooted in the dignity of both persons and ecosystems. His analysis of Ugandan case law is meticulous; his comparative engagement with India, South Africa, Kenya, the United States, and Brazil is illuminating; and his policy prescriptions are bold, practical, and urgently needed.

The book advances an important and original thesis: that Uganda is a "paper tiger" jurisdiction — world-class environmental law on paper, with subpar enforcement in practice. The path forward, the author argues, lies not in waiting for state institutions to activate themselves, but in the legal empowerment of communities, the establishment of specialised environmental courts, and the constitutionalisation of intergenerational equity through a decisive ruling in the long-pending Mbabazi climate case.

The final chapter of this book — Chapter Nine, dedicated to equipping advocates and judicial officers with the practical tools of environmental justice in the Ugandan courtroom — is alone worth the price of the volume. It is the chapter that the environmental bar and bench in Uganda has needed and not had. It is comprehensive, grounded in authentic Ugandan authority, and immediately usable.

This is a book that lawyers, judges, policymakers, environmental activists, and scholars of African constitutionalism will read and return to for years.

Suigeneris Publications | Kampala, Uganda | 2026

PREFACE

This book began as a chapter. It grew into something larger because environmental justice in Uganda refused to stay within the confines of a single chapter, a single statute, or a single doctrinal framework. The subject expanded with every case I read, every community report I encountered, every gap between the constitutional text and the environmental reality I observed. A chapter became a manuscript; a manuscript became a book.

My engagement with environmental law has always been inseparable from my broader jurisprudential project: the development of Ubuntu constitutionalism as an indigenous African legal philosophy capable of grounding constitutional rights in the communitarian ethic of obuntu bulamu — the philosophy that a person is a person through others, and that the earth is held in trust by the living for the unborn. Environmental justice is, in this framework, not an imported Western concept but a deep expression of African communitarian values that have governed the relationship between communities and their natural environments for centuries.

The book interrogates the constitutional and statutory framework of environmental justice in Uganda across nine chapters. Chapters One through Four address the conceptual foundations, the constitutional and statutory framework, the case law, and the jurisprudential themes. Chapters Five through Eight examine sectoral applications, structural challenges, comparative models, and the reform agenda. Chapter Nine — the practitioner's chapter — is dedicated specifically to advocates, judicial officers, prosecutors, and defence counsel who must navigate environmental justice in the Ugandan courtroom daily. It covers standing, causes of action, burden of proof, remedies, criminal prosecutions, and what judges must look for — all grounded in Ugandan law and authentic precedents, supplemented by the best of international practice.

Any errors of law, fact, or interpretation that remain in these pages are mine alone.

Isaac Christopher Lubogo

Suigeneris Consultancy, Kampala

June 2026

TABLE OF CONTENTS

PRELIMINARY PAGES

About the Author
Foreword
Preface
Table of Contents
Table of Cases
Table of Statutes and Legal Instruments
List of Abbreviations

PART ONE: CONCEPTUAL AND CONSTITUTIONAL FOUNDATIONS

CHAPTER ONE — THE CONCEPTUAL FOUNDATIONS OF ENVIRONMENTAL JUSTICE

1.1 Introduction: Why Environmental Justice Matters
1.2 The Three Core Questions of Environmental Justice
1.3 Defining Environmental Justice: From USEPA to the Global South
1.4 The Tripartite Framework for Legal Analysis
1.4.1 Distributive Justice
1.4.2 Procedural Justice
1.4.3 Corrective Justice
1.5 Ubuntu and Environmental Justice: An African Philosophical Foundation
1.6 The Ugandan Context: Development, Ecology, and Constitutional Promise
1.7 The Philosophical Genealogy of Environmental Rights
1.8 Environmental Justice and the Anthropocene: A Contemporary Framing
1.9 Methodology and Scope of This Book
1.10 Environmental Justice and Economic Development: False Dichotomy or Real Tension?
1.11 The Role of Traditional Knowledge Systems in Contemporary Environmental Science

CHAPTER TWO — THE CONSTITUTIONAL AND STATUTORY FRAMEWORK

2.1 Introduction: Reading a State's Environmental Commitments
2.2 The Constitutional Foundation: The Normative Peak
2.2.1 Article 39: The Substantive Environmental Right
2.2.2 The Public Trust Doctrine: Article 237 and the National Objectives
2.2.3 Citizen Duties and Legislative Mandates
2.2.4 Article 50: The Procedural Gateway
2.3 The National Environment Act 2019: The Core Environmental Justice Statute
2.3.1 Governance Architecture: NEMA and the Environment Protection Force

2.3.2 Environmental Impact Assessments as Procedural Justice Mechanisms
2.3.3 Restoration Orders Under the NEA 2019
2.3.4 Nature's Rights: A Constitutional Innovation
2.4 The Supporting Statutory Framework
2.5 International Law Influences
2.6 The "Paper Tiger" Diagnosis: World-Class Law, Subpar Enforcement
2.7 The Relationship Between Article 39 and Other Constitutional Rights
2.8 The Constitutional Court's Interpretive Approach to Environmental Provisions
2.9 Devolution and Environmental Governance: The Role of Local Government
2.10 The National Environment Act 2019 in Comparative Statutory Context
2.11 Constitutional Amendment and the Permanence of Environmental Provisions
2.12 The Doctrine of Legitimate Expectation in Environmental Permitting
2.13 Strategic Litigation versus Strategic Legislative Advocacy
2.14 The Doctrine of Severability in Environmental Statutory Interpretation

CHAPTER THREE — CASE LAW AND JURISPRUDENCE: HOW UGANDAN COURTS HAVE SHAPED ENVIRONMENTAL JUSTICE
3.1 Introduction: From Constitutional Text to Judicial Doctrine
3.2 Procedural Justice and Standing: Opening the Courtroom Door
3.2.1 Greenwatch v Attorney General and NEMA (2002)
3.2.2 British American Tobacco Ltd v Environmental Action Network Ltd (2003)
3.2.3 Uganda Wildlife Society v Attorney General (CP No. 12 of 2005)
3.3 Corrective Justice and Legal Principles: The Landmark Nyakaana Case
3.3.1 Nyakaana v National Environment Management Authority (2015)
3.4 Public Trust and Community Consent
3.4.1 ACODE v Attorney General (2004) — The Butamira Forest Reserve Case
3.5 Contemporary Applications (2024–2026)
3.5.1 Transboundary Environmental Justice: ACEDH v Uganda (EACJ, 2025)
3.5.2 Kitubulu Forest Reserve Community Action (2026)
3.5.3 Urban Environmental Enforcement: Jinja City Council (2024)
3.6 The Pending Watershed: Mbabazi & Ors v Attorney General (2012–Present)
3.7 Doctrinal Analysis: Reconciling Greenwatch and Nyakaana
3.8 The Doctrine of Standing Expanded: Representative and Class Actions
3.9 Interim and Interlocutory Jurisprudence in Environmental Cases
3.10 The Limits of Current Jurisprudence: Unresolved Questions
3.11 The Judiciary's Institutional Development: Specialised Training and Capacity
3.12 The Doctrinal Significance of the Jinja Mivule Trees Case Reconsidered
3.13 Unreported and Emerging Jurisprudence: A Note of Caution and Opportunity

CHAPTER FOUR — JURISPRUDENTIAL THEMES AND DOCTRINAL PILLARS
4.1 Introduction: From Isolated Holdings to Coherent Doctrine
4.2 Constitutional Environmentalism: The First Pillar
4.3 The Public Trust Doctrine: The Second Pillar

4.4 Human Rights Integration: The Third Pillar
4.5 Intergenerational Equity: The Fourth Pillar
4.6 The Precautionary and Polluter Pays Principles: The Fifth Pillar
4.7 Ubuntu Environmental Ethics: The Emerging Sixth Pillar
4.8 The Interaction Between the Six Pillars: A Unified Doctrinal Architecture
4.9 Towards a General Theory of Ugandan Environmental Adjudication
4.10 Critiques and Counter-Arguments
4.11 Environmental Constitutionalism and the Separation of Powers Revisited
4.12 The Concept of Environmental Rule of Law

PART TWO: PRACTICE, CHALLENGES, AND COMPARATIVE MODELS

CHAPTER FIVE — SECTORAL APPLICATION OF ENVIRONMENTAL JUSTICE IN UGANDA

5.1 Introduction: Environmental Justice as a Lived Reality
5.2 Oil and Gas: The Albertine Graben
5.3 Urban Development: Kampala and the Nakivubo Channel
5.4 Mining: The Karamoja Region
5.5 Forestry and Wetlands
5.6 Waste Management
5.7 Cross-Sectoral Patterns: What the Five Sectors Reveal
5.8 The Climate Change Dimension Across Sectors
5.9 Gender Dimensions of Sectoral Environmental Injustice
5.10 Indigenous and Customary Land Rights in Environmental Decision-Making
5.11 The Role of Traditional and Cultural Institutions in Environmental Stewardship
5.12 The Specific Case of Lake Victoria: A Shared Resource Under Compound Pressure
5.13 Renewable Energy Development: An Emerging Sixth Sector
5.14 Industrial Pollution in Uganda's Manufacturing Sector
5.15 Plastic Pollution and the Circular Economy Transition

CHAPTER SIX — CHALLENGES TO ENVIRONMENTAL JUSTICE IN UGANDA

6.1 Introduction: Why the Gap Persists
6.2 The Enforcement Gap
6.3 Judicial Reluctance and Minimalism
6.4 Corruption and Elite Capture
6.5 Power Imbalances in Extractive Industry Relations
6.6 Transboundary Environmental Justice Gaps
6.7 Access to Justice
6.8 Public Awareness Deficit

6.9 The Six Challenges as an Integrated Problem
6.10 The Political Economy of Environmental Enforcement Failure
6.11 Civil Society and Media as Accountability Mechanisms
6.12 Climate Change as a Distinct and Compounding Challenge
6.13 Synthesising the Challenges: A Diagnostic Framework
6.14 Comparative Enforcement Statistics: Benchmarking Uganda's Performance

CHAPTER SEVEN — COMPARATIVE ENVIRONMENTAL JUSTICE: GLOBAL MODELS AND LESSONS FOR UGANDA

7.1 Introduction: Learning Across Jurisdictions
7.2 The United States: The Originator Model
7.3 India: The Judicial Activism Model
7.4 South Africa: The Socio-Economic Rights Model
7.5 Kenya: The Specialised Court Model — Most Directly Applicable
7.6 Brazil: The Participatory Democracy and Independent Prosecutor Model
7.7 Comparative Summary
7.8 Lessons Not to Import: Comparative Caution
7.9 Regional African Comparative Models Beyond Kenya and South Africa
7.10 International Environmental Justice Networks and Uganda's Participation
7.11 The European Union Model: A Brief Comparative Note
7.12 Synthesis: A Hybrid Model for Uganda

CHAPTER EIGHT — TOWARDS AN INTEGRATED MODEL OF ENVIRONMENTAL JUSTICE: THE REFORM AGENDA

8.1 Introduction: From Diagnosis to Prescription
8.2 Institutional Reforms
8.2.1 A Specialised Environmental Justice Division in the High Court
8.2.2 Fully Resourcing NEMA and the Environment Protection Force
8.2.3 An Environmental Justice Office within NEMA
8.2.4 An Independent Environmental Prosecutor
8.3 Doctrinal Reforms
8.3.1 Operationalising Intergenerational Equity: The Mbabazi Imperative
8.3.2 Constitutionalising the Ubuntu Environmental Ethic
8.4 Procedural and Access-to-Justice Reforms
8.5 The Ubuntu Model of Community-Driven Environmental Constitutionalism
8.6 Sequencing the Reform Agenda: A Realistic Implementation Pathway
8.6.1 Short-Term Reforms (0–2 Years)
8.6.2 Medium-Term Reforms (2–5 Years)
8.6.3 Long-Term Reforms (5+ Years, Requiring Constitutional Amendment)
8.7 Financing the Reform Agenda
8.8 Monitoring and Evaluating Reform Implementation
8.9 A Closing Word on Constitutional Aspiration and Practical Realisation

PART THREE: ENVIRONMENTAL JUSTICE IN THE UGANDAN COURTROOM

CHAPTER NINE — ENVIRONMENTAL JUSTICE IN THE UGANDAN COURTROOM: A PRACTICAL GUIDE FOR ADVOCATES AND JUDICIAL OFFICERS

9.1 Introduction: The Gap Between Law and Practice

9.2 Establishing the Right to Bring an Environmental Claim: Standing in Ugandan Law

9.2.1 The Constitutional Foundation of Environmental Standing

9.2.2 The Three Key Standing Authorities

9.2.3 Practical Standing Checklist

9.3 Types of Environmental Claim: What Cause of Action to Bring

9.3.1 Constitutional Petition Under Articles 50 and 39

9.3.2 Judicial Review of Environmental Decisions

9.3.3 Civil Action for Environmental Tort

9.3.4 Criminal Prosecution Under the NEA 2019

9.3.5 Direct Application for a NEMA Restoration Order

9.4 The Essential Elements: What Must Be Proved

9.4.1 Elements of a Constitutional Environmental Petition (Articles 50/39)

9.4.2 Elements of Judicial Review of Environmental Decisions

9.4.3 Elements of Civil Environmental Tort

9.4.4 Elements of Criminal Environmental Offences Under the NEA 2019

9.5 Burden and Standard of Proof in Environmental Cases

9.5.1 The General Rule

9.5.2 The Precautionary Principle and Burden Reversal

9.5.3 Expert Evidence and Scientific Proof

9.6 Remedies Available in Environmental Cases

9.6.1 Declaration

9.6.2 Injunction — The Most Powerful Interim Tool

9.6.3 Restoration Orders — The Primary Corrective Tool

9.6.4 Compensation and Damages

9.6.5 Mandamus and Supervisory Orders

9.7 Environmental Prosecution: A Practical Guide for Prosecuting Counsel

9.7.1 Pre-Trial: Building the Environmental Prosecution

9.7.2 Proving the Offence at Trial

9.7.3 Expert Evidence in Environmental Prosecutions

9.7.4 Satellite and GIS Evidence in Environmental Prosecutions

9.7.5 Chain of Custody in Environmental Evidence

9.8 Environmental Defence: A Practical Guide for Defence Counsel

9.8.1 Threshold Challenges

9.8.2 Substantive Defences

9.8.3 The EIA Documentation Defence

9.8.4 Challenging Scientific Evidence and Chain of Custody

9.8.5 Mitigation and Environmental Good Faith

9.9 What Judicial Officers Must Look For in Environmental Cases

9.9.1 The Constitutional Obligation on the Environmental Judicial Officer

9.9.2 Threshold Checklist at Filing

9.9.3 Managing Environmental Evidence at Trial

9.9.4 The "Meaningful Involvement" Standard in EIA Challenges

9.9.5 The Application of the Polluter Pays and Precautionary Principles
9.9.6 Crafting Effective Environmental Remedies — The Judicial Officer's Duty
9.10 Environmental Public Interest Litigation: A Step-by-Step Practical Guide
9.11 Using International Environmental Law in Ugandan Courts
9.11.1 Three Routes for International Environmental Law in Ugandan Proceedings
9.11.2 Key International Principles: Status and Practical Use
9.12 Landmark Cases as Practical Tools: A Critical Analysis for Practitioners
9.12.1 Nyakaana v NEMA (2015) — The Environmental Law Bible
9.12.2 ACODE v AG (Butamira, 2004) — The Public Trust Locus Classicus
9.12.3 Greenwatch v AG and NEMA (2002) — Standing and the Lesson of Minimalism
9.12.4 M.C. Mehta v Union of India (1987) — Comparative Locus Classicus
9.12.5 Future Generations v Colombia (2018) and Urgenda v Netherlands (2019)
9.13 Environmental Justice and the Criminal Justice System: The Offence Catalogue
9.14 Summary Practitioner's Toolkit
9.15–9.43 Extended Practitioner Guidance and Case Studies

CHAPTER TEN — FREQUENTLY ENCOUNTERED QUESTIONS: A QUICK-REFERENCE COMPANION
10.1 Standing and Forum Questions
10.2 Evidence Questions
10.3 Remedies Questions
10.4 Criminal Prosecution Questions
10.5 Procedural and Practice Management Questions
10.6 Quick-Reference Decision Chart: Choosing the Right Cause of Action

CHAPTER ELEVEN — INSTITUTIONAL DIRECTORY, PROCEDURAL FORMS, AND PRACTICAL RESOURCES
11.1 Key Institutions in Uganda's Environmental Governance Architecture
11.2 Key Civil Society and Professional Resources
11.3 Standard Procedural Timelines for Reference
11.4 Template: Letter of Demand / Pre-Action Notice to NEMA
11.5 Template: NEMA Restoration Order Application
11.6 Glossary of Key Technical and Legal Terms

BIBLIOGRAPHY
A. Books and Monographs
B. Journal Articles
C. Reports and Institutional Documents

INDEX

APPENDICES
Appendix A: Key Constitutional Provisions

Appendix B: Key Provisions of the National Environment Act 2019
Appendix C: Template Constitutional Petition — Environmental Rights (Articles 50/39)
Appendix D: Meaningful Involvement Checklist for EIA Challenges
Appendix E: NEA 2019 Environmental Offences — Quick Reference

TABLE OF CASES

All cases cited in this book are listed below. Cases that are the subject of extended analysis are marked with an asterisk (*). Principle headings indicate the court or jurisdiction to which each group of cases belongs.

Part A: Ugandan Cases

Supreme Court of Uganda

Nyakaana v National Environment Management Authority, Civil Appeal No. 13 of 2015, Supreme Court of Uganda * — *Cornerstone authority: Polluter Pays Principle; Precautionary Principle; primacy of collective environmental right over individual property right; validity of Restoration Orders*

Constitutional Court of Uganda

Uganda Wildlife Society v Attorney General, Constitutional Petition No. 12 of 2005 * — *Environmental protection as constitutional state obligation; strengthened public interest litigation standing*

High Court of Uganda

Advocates Coalition for Development and Environment (ACODE) v Attorney General, Miscellaneous Cause No. 0100 of 2004 (Butamira Forest Reserve case) * — *Public Trust Doctrine; community consent requirement for alienation of public environmental resources; ultra vires government excision of forest reserve*

British American Tobacco Uganda Limited v Environmental Action Network Limited, Miscellaneous Application No. 39 of 2001 (decided 2003) * — *NGO locus standi in environmental public interest litigation cemented; Constitution "allows actions of public interest groups to be brought on behalf of the needy and oppressed"*

Greenwatch v Attorney General and National Environment Management Authority, Miscellaneous Cause No. 140 of 2002 * — *Locus classicus on environmental NGO standing; Article 39 justiciable; judicial minimalism identified; plastic packaging ("kaveera") violates right to clean environment*

Jinja City Council Environmental Enforcement Case, High Court of Uganda (2024) — *Urgent injunction halting felling of protected Mivule trees; constitutional right to clean environment applies to urban development decisions*

Mbabazi & Ors v Attorney General, Miscellaneous Cause No. 0033 of 2012 (pending) * — *Climate change litigation by four minors; intergenerational equity; government fiduciary duty regarding greenhouse gas emissions; most important pending environmental case in Uganda*

East African Court of Justice

Ambassadore of Hope Limited v Attorney General, EACJ Reference (2025) — *Tension between NEMA Restoration Orders and constitutional property rights; compensation versus restoration*

Association Congolaise pour l'Environnement et le Développement Humain (ACEDH) v Republic of Uganda, EACJ Reference (2025) * — *Transboundary environmental justice; Uganda's obligations regarding Tilenga and Kingfisher oil projects vis-à-vis DRC communities; principle of transboundary harm prevention in EAC Treaty framework*

Community Action (Non-Judicial)

Kitubulu Forest Reserve Community Action (2026) — *Model of community-driven environmental constitutionalism; successful reversal of illegal land allocation without formal litigation*

Part B: Comparative Cases — India

M.C. Mehta v Union of India (1987) AIR 1086 SC * — *Article 21 (right to life) includes right to live in pollution-free environment; foundational Indian PIL environmental case; absolute liability for hazardous industrial operations*

M.C. Mehta v Union of India (Oleum Gas Leak case) (1987) 1 SCC 395 * — *Absolute liability for escape of hazardous substances — no exceptions, including natural use; stricter than Rylands v Fletcher*

Subhash Kumar v State of Bihar (1991) AIR SC 420 — *Right to life encompasses right to pollution-free water and air; PIL standing confirmed*

Vellore Citizens Welfare Forum v Union of India (1996) 5 SCC 647 — *Precautionary Principle and Polluter Pays Principle as part of Indian environmental law; judicial reliance on international environmental norms*

Part C: Comparative Cases — South Africa

Fuel Retailers Association of Southern Africa v Director-General: Environmental Management 2007 (5) SA 69 (CC) * — *Balancing environmental rights and socio-economic rights; sustainable development as constitutional requirement; environmental authorisations must consider broader socio-economic consequences*

Government of the Republic of South Africa v Grootboom 2001 (1) SA 46 (CC) — *Enforcement of socio-economic rights; judicially manageable remedies; comparative authority on incremental constitutional compliance orders*

S v Makwanyane 1995 (3) SA 391 (CC) — *Ubuntu as a constitutional value informing rights interpretation; foundational authority on Ubuntu jurisprudence in constitutional adjudication*

Part D: Comparative Cases — United Kingdom / Commonwealth

American Cyanamid Co v Ethicon Ltd [1975] AC 396 (HL) * — *Test for interlocutory injunctions: serious question to be tried; adequacy of damages; balance of convenience*

— applied consistently in Uganda

Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223 — *Wednesbury unreasonableness standard in judicial review — applied in Ugandan administrative law*

Gammon (Hong Kong) Ltd v Attorney General of Hong Kong [1985] AC 1 (PC) — *Strict liability in regulatory criminal offences; relevance to NEA 2019 environmental offences*

Rylands v Fletcher (1868) LR 3 HL 330 — *Strict liability for escape of dangerous substances (with "natural use" exception — distinguished from the Uganda Polluter Pays absolute liability principle)*

Vedanta Resources plc v Lungowe [2019] UKSC 20 — *Parent company liability for environmental harm caused by subsidiary; cross-border environmental claims; persuasive authority for transboundary Ugandan litigation*

Part E: Comparative Cases — International Courts and Other Jurisdictions

CEMIRIDE v Kenya, ACHPR Communication 276/2003 (2010) — *Free, Prior and Informed Consent (FPIC) as obligation under the African Charter on Human and Peoples' Rights*

Future Generations v Colombia, Colombian Supreme Court, Expedition No. 11001-22-03 -000-2018-00319-01 (2018) * — *Amazon Region as "subject of rights"; intergenerational equity enforceable by courts; government ordered to submit deforestation action plan; directly applicable to Mbabazi proceedings*

Leghari v Federation of Pakistan, W.P. No. 25501/2015, Lahore High Court (2015) * — *Climate inaction violates right to life and healthy environment; court ordered government to implement climate policy; comparative authority for intergenerational equity in Mbabazi*

Massachusetts v EPA, 549 US 497 (2007) — *Greenhouse gases are "pollutants" within environmental regulatory jurisdiction; standing of states to challenge EPA inaction on climate change*

Neubauer et al v Germany (Bundesverfassungsgericht, 2021) — *Germany's Climate Protection Act found constitutionally inadequate; comparator for climate-related constitutional litigation obligations*

SERAC v Nigeria (Social and Economic Rights Action Center v Nigeria), ACHPR Communication 155/96 (2001) (Ogoni case) * — *Nigeria violated African Charter Article 24 by permitting oil operations in Ogoni region without adequate environmental safeguards; positive and negative obligations under Article 24; binding on all African Charter state parties including Uganda*

Trail Smelter Arbitration (USA v Canada) 3 RIAA 1905 (1938 and 1941) * — *No state may use its territory to cause environmental harm in neighbouring states — foundational principle of transboundary harm prevention in customary international law; basis for ACEDH v Uganda*

Urgenda Foundation v State of the Netherlands, ECLI:NL:HR:2019:2006 (2019) * — *Government ordered to reduce greenhouse gas emissions; climate duty enforceable through courts; directly applicable comparative authority for Mbabazi proceedings*

TABLE OF STATUTES AND LEGAL INSTRUMENTS

Uganda

Civil Procedure Act, Cap. 71

Civil Procedure Rules, SI 71-1, Order 11A (Expert Evidence), Order 41 (Injunctions)

Climate Change Act, 2021

Constitution of the Republic of Uganda, 1995 — Arts. 17(j), 22, 24, 26, 39, 45, 50, 137, 237, 245, Objective XXVII

Evidence Act, Cap. 6, ss. 48–51

Human Rights Enforcement Act, Cap. 20

Judicature Act, Cap. 13, s. 14

Judicature (Fundamental Rights and Freedoms) (Practice Directions) Direction 2009

Land Act, Cap. 227

Leadership Code Act, Cap. 167

Limitation Act, Cap. 80

Magistrates Courts Act, Cap. 16

Mining and Minerals Act, 2022

National Environment Act (Act No. 5 of 2019), ss. 3, 8–25, 40–52, 100–155, 107–120, 108–112, 117, 126, 131, 146, 153

National Environment Act, Cap. 153 (1995, repealed)

National Environment (EIA) Regulations, SI 2021 No. 46, rr. 20–32

National Forestry and Tree Planting Act, 2003

Penal Code Act, Cap. 120

Physical Planning Act, 2010

Water Act, Cap. 152

Wetlands (Conservation and Management) Regulations, SI 2000 No. 3

International Instruments

African Charter on Human and Peoples' Rights (1981), Art. 24

Aarhus Convention on Access to Information, Public Participation and Access to Justice in Environmental Matters (1998)

Convention on Biological Diversity (1992)

EAC Treaty (1999) and Protocol on Environment and Natural Resources Management

Paris Agreement on Climate Change (2015)

Rio Declaration on Environment and Development (1992), Principles 2, 3, 10, 15, 16

Stockholm Declaration on the Human Environment (1972), Principle 21

UNECE Convention on EIA in a Transboundary Context (Espoo Convention, 1991)

United Nations Framework Convention on Climate Change (1992)

UNDRIP — UN Declaration on the Rights of Indigenous Peoples (2007)

Comparative Statutes

Brazil: Constitution of the Federative Republic of Brazil, 1988, Art. 225; Environmental Crimes Law (Law 9.605/1998)

India: Environment Protection Act, 1986; National Green Tribunal Act, 2010

Kenya: Constitution of Kenya, 2010, Art. 42; Environment and Land Court Act, 2011

South Africa: Constitution of RSA, 1996, s. 24; National Environmental Management Act, 1998; Promotion of Administrative Justice Act, 2000

United States: National Environmental Policy Act, 1969; Civil Rights Act, 1964, Title VI; Executive Order 12898 (1994)

LIST OF ABBREVIATIONS

Abbreviation	Meaning
ACODE	Advocates Coalition for Development and Environment
ACEDH	Association Congolaise pour l'Environnement et le Développement Humain
CDA	Community Development Agreement
DPP	Director of Public Prosecutions
EACJ	East African Court of Justice
EACOP	East African Crude Oil Pipeline
EIA	Environmental Impact Assessment
EJ	Environmental Justice
ELC	Environment and Land Court (Kenya)
EPF	Environment Protection Force (Uganda)
FPIC	Free, Prior and Informed Consent
GIS	Geographic Information System
KCCA	Kampala Capital City Authority
LASPNET	Legal Aid Service Providers' Network
LUCI	Lubogo–Ubuntu Constitutionalism Index
NEA	National Environment Act 2019
NEMA	National Environment Management Authority (Uganda)
NFA	National Forestry Authority
NGO	Non-Governmental Organisation
NGT	National Green Tribunal (India)
PAJA	Promotion of Administrative Justice Act (South Africa)
PIL	Public Interest Litigation
PPP	Polluter Pays Principle
ULI	Ubuntu Legal Index
USEPA	United States Environmental Protection Agency

PART ONE

CONCEPTUAL AND CONSTITUTIONAL FOUNDATIONS

CHAPTER ONE
THE CONCEPTUAL FOUNDATIONS OF ENVIRONMENTAL JUSTICE

1.1 Introduction: Why Environmental Justice Matters

Justice, it has been said, is the first virtue of social institutions. Yet for much of the history of law, the natural environment remained conspicuously absent from the vocabulary of justice. Rivers were resources. Forests were timber. Wetlands were wastelands awaiting development. The earth itself was object, not subject — available for exploitation by whoever held the legal title to exploit it. It was only in the latter half of the twentieth century, as the costs of industrialisation and extractive capitalism began to fall most heavily on those least able to resist them, that environmental justice emerged as a coherent legal, political, and philosophical response to this dispossession.[1]

In Uganda, the environmental justice problem is not an abstraction. It is the Nakivubo Channel flooding a slum community because drainage was sold to developers. It is the oil drilling on Lake Albert proceeding without meaningful consultation with fishing communities whose livelihoods it will permanently transform. It is the wetland restoration order demolishing the home of a poor family while the large-scale developer who cleared ten times as much wetland faces no sanction. It is the Karamoja miner who leaves behind a landscape of craters and acid tailings without ever having paid a meaningful restoration bond.[2]

1.2 The Three Core Questions of Environmental Justice

Environmental justice is built on three foundational interrogations. The first is distributive: who gets the pollution, and who gets the amenities? The second is procedural: who decides, and under what conditions of transparency, participation, and accountability? The third is corrective: when environmental harm occurs, who can seek redress, through what mechanisms, and with what

[1] Isaac Christopher Lubogo, Environmental Justice: Constitutionalism, Equity, Development and Environmental Governance in Uganda (Suigeneris Publications, Kampala, 2026) p. 3.

[2] The factual scenarios described here are drawn from actual cases and community reports discussed in subsequent chapters. See NEMA, State of Compliance Monitoring Report (2022); ActionAid Uganda, "Land Grabbing and Environmental Justice in Uganda" (Policy Brief, 2024).

reasonable prospect of success? These three questions expose the structural character of environmental injustice: it is not random. The communities that bear disproportionate environmental burdens are, with remarkable consistency across jurisdictions, the communities that are poor, politically marginalised, racially or ethnically minoritised, and geographically remote.[3]

1.3 Defining Environmental Justice: From USEPA to the Global South

The concept of environmental justice received its most widely cited formal definition from the United States Environmental Protection Agency (USEPA), which defined environmental justice as the fair treatment and meaningful involvement of all people regardless of race, colour, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. The definition emerged in the context of Executive Order 12898, signed by President Clinton on 11 February 1994.[4]

"Fair treatment" means no group should bear a disproportionate share of negative environmental consequences. "Meaningful involvement" requires that: (1) affected residents have a genuine opportunity to participate; (2) the public's contribution can actually influence the regulatory decision; (3) the concerns of all participants will be considered; and (4) decision-makers actively facilitate the participation of all potentially affected groups. Each of these four elements is a standard against which Ugandan courts can measure the adequacy of public consultation in EIA and other regulatory processes.

In the European and Global South contexts, the focus shifts towards social inequality and the principle that deprived communities should not bear a disproportionate burden of negative environmental impacts. In Africa, environmental justice carries additional weight because it intersects with histories of colonialism, structural land dispossession, and the commodification

[3]Robert Bullard, Dumping in Dixie: Race, Class and Environmental Quality (Westview Press, Boulder, 1990); David Schlosberg, Defining Environmental Justice: Theories, Movements, and Nature (Oxford University Press, Oxford, 2007).

[4]USEPA, "Environmental Justice" (1994); Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (1994).

of natural resources for the benefit of external actors.[5]

1.4 The Tripartite Framework for Legal Analysis

1.4.1 Distributive Justice

Distributive justice asks: who receives the benefits and who bears the burdens of environmental decisions? In Uganda, distributive injustice manifests in the pattern by which environmental hazards — oil spills, mining waste, wetland destruction, industrial pollution — concentrate in areas inhabited by the poor and politically powerless, while economic benefits of those activities flow disproportionately to urban elites, foreign investors, and government officials. The Albertine Graben oil developments present the clearest current illustration: oil revenue projections run into billions of dollars, while the communities living alongside the extraction infrastructure face displacement, ecosystem destruction, and the loss of subsistence livelihoods.[6]

1.4.2 Procedural Justice

Procedural justice asks: how are environmental decisions made, and who participates? This dimension is concerned with the transparency, inclusiveness, and accessibility of decision-making procedures. The Environmental Impact Assessment process is the most important procedural justice mechanism in Ugandan law. Procedural justice requires not merely that a public hearing was held but that the hearing enabled genuine community influence over the outcome — the "meaningful involvement" standard drawn from the USEPA four-part test and now embedded in Uganda's EIA Regulations 2021 (rr. 20–32).[7]

1.4.3 Corrective Justice

Corrective justice asks: when environmental harm occurs, are there adequate mechanisms for remediation, compensation, and accountability? This

[5]Julian Agyeman, Sustainable Communities and the Challenge of Environmental Justice (New York University Press, New York, 2005); Gordon Walker, Environmental Justice: Concepts, Evidence and Politics (Routledge, London, 2012); Nnimmo Bassey, To Cook a Continent: Destructive Extraction and the Climate Crisis in Africa (Pambazuka Press, Oxford, 2012).

[6]African Centre for Biodiversity, Oil/Gas Development and Environmental Justice in Uganda's Albertine Graben (ACB, Johannesburg, 2023); Platform for Labour Action (PLA), "Oil, Land and Justice in Uganda's Albertine Region" (2023).

[7]Rio Declaration on Environment and Development (1992), Principle 10; National Environment (EIA) Regulations 2021, SI 2021 No. 46, rr. 20–32; Aarhus Convention (1998).

dimension encompasses both civil remedies (injunctions, damages, restoration orders) and criminal sanctions. In Ugandan law, the primary corrective justice mechanisms are the Restoration Order under the National Environment Act 2019 (s. 108) and the public interest litigation framework under Article 50 of the Constitution. The corrective justice dimension is the weakest in Uganda's environmental framework: even when the judiciary declares rights violated, the practical enforcement of remedies — actual restoration of wetlands, actual payment of compensation, actual demolition of illegal structures — remains deeply problematic.[8]

1.5 Ubuntu and Environmental Justice: An African Philosophical Foundation

The analysis of environmental justice in this book is grounded in Ubuntu philosophy — rendered in Ugandan Luganda as obuntu bulamu — which holds that a person is a person through other persons: umuntu ngumuntu ngabantu. This communitarian ontology has profound implications for environmental justice. An Ubuntu-grounded environmental justice does not merely extend legal rights to individual persons harmed by environmental degradation; it recognises the relational character of human existence and the irreducible connection between human communities and the natural ecosystems in which they are embedded. From this perspective, the destruction of a wetland is not merely a violation of property rights; it is a rupture in the web of ecological relationships that sustains human community life.[9]

The recognition of nature's inherent rights in Section 3 of the National Environment Act 2019 — granting nature "fundamental rights to be, to habitat, to evolve and regenerate" — represents a legal expression of this Ubuntu-aligned philosophical position. It echoes the rights-of-nature movements in Ecuador (Pachamama provisions, 2008 Constitution, Arts. 71–74) and New Zealand (Te

[8] National Environment Act 2019, ss. 108–112 (Restoration Orders); Constitution of Uganda 1995, Art. 50; NEMA, State of Compliance Monitoring Report (2022) — compliance rates with EIA conditions below 35% for 2019–2022.

[9] Thaddeus Metz, "Ubuntu as a Moral Theory and Human Rights in South Africa" (2011) 11 AHRLJ 532; Isaac Christopher Lubogo, UBU-NTU: Being, Humanity, and Law (Suigeneris Publishers, Kampala, 2024); Isaac Christopher Lubogo, Ubuntu and the Law in Uganda: Towards a New Constitutional Dispensation (Suigeneris Publishers, Kampala, 2024).

Awa Tupua (Whanganui River Claims Settlement) Act 2017).[10]

1.6 The Ugandan Context: Development, Ecology, and Constitutional Promise

Uganda occupies a position of extraordinary ecological significance: the montane forests of the Rwenzori Mountains, the papyrus wetlands of the Victoria Nile, the savannah ecosystems of the Albertine Rift, and the highland forests containing over half of the world's remaining mountain gorilla population. It is also a rapidly developing economy with significant oil, mineral, and timber endowments, and a government committed to achieving middle-income country status by 2040 under Uganda Vision 2040.[11]

The tension between development and ecological sustainability is the central constitutional challenge of environmental governance in Uganda. It is the reason that wetlands are drained for real estate development in Kampala even as the law prohibits such drainage. The 1995 Constitution made deliberate choices: Article 39 establishes a justiciable constitutional right to a clean and healthy environment; Article 245 mandates Parliament to enact environmental legislation; and the National Objectives commit the State to sustainable development. These provisions reflect a constitutional moment that sought to place environmental stewardship at the heart of Uganda's new constitutional order.[12]

And yet, between the constitutional promise and the environmental reality, there lies a chasm that this book attempts to map, understand, and provide the tools to bridge. The chapters that follow trace the legal framework, the jurisprudential evolution, the sectoral realities, the structural challenges, the comparative models, the reform agenda, and — in Chapter Nine — the practical manual for every advocate and judicial officer who must navigate environmental justice in the Ugandan courtroom.

[10] NEA 2019, s. 3; Cormac Cullinan, Wild Law: A Manifesto for Earth Justice (2nd edn, Green Books, 2011); Christopher Stone, "Should Trees Have Standing? — Toward Legal Rights for Natural Objects" (1972) 45 Southern California Law Review 450.

[11] National Planning Authority, Uganda Vision 2040 (2013); NEMA, State of Environment Report (2022); NFA, Uganda Forest Resources Assessment (2023).

[12] Uganda Constitutional Commission, Report of the Uganda Constitutional Commission: Analysis and Recommendations (Government of Uganda, Kampala, 1992); Justice Benjamin Odoki, The Search for a National Consensus: The Making of the 1995 Uganda Constitution (Fountain Publishers, Kampala, 2005).

1.7 The Philosophical Genealogy of Environmental Rights

The recognition of environmental quality as a legal right rather than a mere policy aspiration has a relatively short philosophical history. Classical liberal rights theory, as articulated by Locke and refined through the eighteenth and nineteenth centuries, conceived of rights primarily as protections against state interference with individual liberty and property. The environment, in this framework, was simply the backdrop against which individual rights were exercised — not itself a holder or object of rights. It was only with the rise of the modern administrative state, and the recognition that unregulated industrial activity could itself constitute a form of harm requiring legal redress, that the conceptual space for environmental rights began to open.[13]

Hayward identifies three distinct theoretical justifications for constitutional environmental rights: first, an instrumental justification — environmental rights protect other, more fundamental rights such as life and health, which are threatened by environmental degradation; second, an intrinsic justification — the environment has value independent of its utility to human beings, and this value warrants direct legal protection; and third, a democratic justification — environmental rights enable citizens to participate meaningfully in decisions that affect the shared conditions of their collective life. Uganda's Article 39, on its face, encompasses all three justifications: it protects "every Ugandan citizen" (instrumental, given Article 39's placement alongside other human rights), it is framed in terms of the environment's own qualities of "clean and healthy" (gesturing toward intrinsic value), and it operates alongside the participatory provisions of the National Environment Act's EIA framework (democratic).[14]

1.8 Environmental Justice and the Anthropocene: A Contemporary Framing

Contemporary environmental philosophy increasingly frames environmental justice within the conceptual horizon of the "Anthropocene" — the

[13]John Locke, Two Treatises of Government (1689); for the historical development of environmental rights theory, see Tim Hayward, Constitutional Environmental Rights (Oxford University Press, Oxford, 2005).
[14]Tim Hayward, Constitutional Environmental Rights (Oxford University Press, 2005), Chapter 2.

proposed geological epoch defined by the decisive impact of human activity on Earth's systems. This framing matters for environmental justice because it underscores that environmental harm is no longer merely local or even national in scope; it is planetary, cumulative, and intergenerational. Climate change is the paradigmatic Anthropocene harm: it is caused by the aggregate emissions of billions of individual and corporate actors across more than a century, and its effects fall disproportionately on populations — including Ugandan agricultural and pastoral communities — who contributed least to its causation.[15]

For Uganda, the Anthropocene framing reinforces two themes already developed in this chapter. First, the climate vulnerability of Uganda's economy — heavily dependent on rain-fed agriculture, fisheries, and increasingly oil revenue — means that the country bears disproportionate climate risk despite its minimal historical contribution to global emissions, a textbook case of distributive environmental injustice operating at the planetary scale. Second, the Anthropocene framing strengthens the doctrinal case for treating intergenerational equity (discussed at section 1.6 and developed further in Chapter Four) not as an aspirational add-on to environmental law but as its central organising principle: in an epoch where human action determines planetary conditions for centuries to come, the rights of future generations cannot remain a peripheral legal concern.

1.9 Methodology and Scope of This Book

This book combines doctrinal legal analysis, comparative jurisprudence, and normative argument grounded in Ubuntu philosophy. The doctrinal analysis (Chapters Two through Four) proceeds through close reading of constitutional text, statutory provisions, and judicial decisions, supplemented by secondary legal scholarship. The sectoral and structural analysis (Chapters Five and Six) draws on institutional reports, civil society documentation, and empirical studies of environmental governance outcomes in Uganda. The comparative analysis (Chapter Seven) examines five jurisdictions selected for their relevance to

[15] Will Steffen et al., "The Anthropocene: Conceptual and Historical Perspectives" (2011) 369 Philosophical Transactions of the Royal Society A 842; Louis J. Kotzé, Global Environmental Constitutionalism in the Anthropocene (Hart Publishing, Oxford, 2016).

Uganda's specific challenges and their representativeness of distinct environmental justice models. The reform agenda (Chapter Eight) synthesises the preceding analysis into concrete institutional and doctrinal proposals. And the practitioner's chapter (Chapter Nine) translates the entire analytical apparatus of the book into directly usable professional guidance for advocates, judicial officers, prosecutors, and defence counsel.

This methodological combination — doctrinal analysis integrated with comparative jurisprudence and grounded in an indigenous African philosophical framework — reflects this author's broader scholarly commitment to developing legal methodologies appropriate to the African constitutional context, rather than uncritically importing Western legal theory. See Isaac Christopher Lubogo, Ubuntu and the Law in Uganda: Towards a New Constitutional Dispensation (Suigeneris Publishers, Kampala, 2024), Introduction, for an extended methodological discussion.[16]

1.10 Environmental Justice and Economic Development: False Dichotomy or Real Tension?

A recurring objection to robust environmental justice enforcement, voiced frequently in Ugandan policy debate, is that it impedes the economic development that Uganda urgently needs to reduce poverty and improve living standards. This book takes the position, consistent with the sustainable development principle articulated in the Brundtland Report and embedded in National Objective XXVII, that the dichotomy between environmental protection and economic development is substantially false when properly analysed, though the tension between them in specific cases is real and must be honestly confronted rather than dissolved by rhetoric. The falseness of the general dichotomy is evident in the long-term economic costs of environmental degradation: the 2025 Kampala floods discussed in Chapter Five caused economic losses that NEMA and KCCA assessments suggest substantially exceeded the economic value that was generated by the wetland encroachment that caused them; environmental health impacts from pollution generate

[16]Lubogo, Ubuntu and the Law in Uganda (2024), Introduction.

substantial public health costs; and climate change threatens to undermine the agricultural productivity on which a large share of Uganda's economy depends. Properly measured, environmental protection is frequently a precondition for, not an obstacle to, sustainable economic development.[17]

At the same time, this book does not deny that genuine tensions exist in specific cases — a mining project may offer genuine employment and revenue benefits that must be weighed against specific environmental costs, and reasonable people may disagree about where the balance should be struck in particular instances. The contribution of environmental justice analysis, properly applied, is not to deny this tension but to ensure that the weighing of costs and benefits occurs through a fair, transparent, and participatory process (the procedural justice dimension), that the resulting distribution of benefits and burdens does not fall disproportionately on the same vulnerable communities across repeated decisions (the distributive justice dimension), and that mechanisms exist to correct the balance where it proves, in retrospect, to have been wrongly struck (the corrective justice dimension).

1.11 The Role of Traditional Knowledge Systems in Contemporary Environmental Science

Contemporary environmental science increasingly recognises the value of traditional ecological knowledge (TEK) — the accumulated environmental observations and management practices developed by indigenous and local communities over generations — as a complement to, rather than a primitive precursor of, formal scientific environmental assessment. In the Ugandan context, pastoral communities in Karamoja possess detailed traditional knowledge of seasonal water availability, grazing patterns, and drought indicators that has been documented by researchers as providing predictive value for climate adaptation planning that complements formal meteorological data. Fishing communities on Lake Victoria and Lake Albert possess detailed traditional knowledge of fish breeding grounds, seasonal migration patterns, and

[17] World Commission on Environment and Development, Our Common Future (1987); KCCA, Post-Flood Assessment Report (2025) — economic loss assessment; National Objective XXVII, Constitution of Uganda 1995.

water quality indicators that is directly relevant to environmental impact assessment for activities affecting those water bodies, yet is frequently absent from EIA processes that rely exclusively on formal scientific survey methods. The "meaningful involvement" standard discussed throughout this book, and particularly at section 9.9.4, should be understood to require not merely procedural consultation with communities but the substantive integration of this traditional ecological knowledge into the technical content of environmental assessment, not merely the recording of community sentiment about a decision made on other evidentiary grounds.[18]

[18]Fikret Berkes, Sacred Ecology: Traditional Ecological Knowledge and Resource Management (3rd edn, Routledge, New York, 2012); for Karamoja-specific TEK documentation, see Government of Uganda and FAO, Indigenous Knowledge and Climate Adaptation in Karamoja (2021).

CHAPTER TWO
THE CONSTITUTIONAL AND STATUTORY FRAMEWORK FOR ENVIRONMENTAL JUSTICE IN UGANDA

2.1 Introduction: Reading a State's Environmental Commitments

A state's commitment to environmental justice can be read in the architecture of its constitutional and statutory framework. Uganda's 1995 Constitution stands among the most environmentally progressive constitutions in Africa — a claim this chapter substantiates through detailed analysis of the constitutional text, the National Environment Act 2019, the supporting statutory architecture, and the international law influences that collectively constitute Uganda's environmental governance framework.

2.2 The Constitutional Foundation: The Normative Peak

2.2.1 Article 39: The Substantive Environmental Right

Article 39 of the 1995 Constitution provides with admirable brevity and force: "Every Ugandan citizen has a right to a clean and healthy environment." This single sentence accomplishes several important legal tasks simultaneously. It establishes the right as a fundamental right, placing it in the same constitutional register as the rights to life, dignity, and equality. By framing the right as belonging to "every Ugandan citizen," it makes it universal in domestic scope. The conjunction of "clean" and "healthy" suggests both a negative dimension (freedom from pollution and environmental degradation) and a positive dimension (access to an environment that actively supports health and wellbeing). The justiciability of Article 39 was confirmed in Greenwatch v Attorney General and NEMA (2002) and has been reaffirmed in every subsequent environmental case.[19]

[19]Greenwatch v AG and NEMA, HCT Misc. Cause No. 140/2002; Frederick Jjuuko, "The Environment and the Constitution" in J. Oloka-Onyango (ed), Constitutionalism in Africa: Creating Opportunities, Facing Challenges (Fountain Publishers, Kampala, 2001).

2.2.2 The Public Trust Doctrine: Article 237 and the National Objectives

Article 237(1) provides that "land in Uganda belongs to the citizens of Uganda." Read together with National Objective XXVII — which mandates that "the utilisation of the natural resources of Uganda shall be managed in such a way as to meet the development and environmental needs of present and future generations of Ugandans" — and the Butamira Forest Reserve decision (ACODE v AG, 2004), this provision establishes a public trust relationship: the state holds natural resources in trust for the citizenry and cannot alienate or misuse them without lawful authority and community consent.[20]

2.2.3 Citizen Duties and Legislative Mandates

Article 17(j) imposes a duty on every citizen to "create and protect a clean and healthy environment." Article 245 mandates Parliament to provide measures to protect and preserve the environment from abuse, pollution and degradation; to manage it for sustainable development; and to promote environmental awareness. These provisions make environmental stewardship a constitutional obligation, not a policy choice.[21]

2.2.4 Article 50: The Procedural Gateway

Article 50 provides that any person who claims a fundamental or other right has been infringed or threatened is entitled to apply to a competent court for redress, including compensation. Article 50 is the procedural gateway through which environmental rights become enforceable in court. Combined with Article 39, it creates a self-executing environmental constitutional framework: no further legislation is required for a person to bring a constitutional petition for violation of the right to a clean environment.[22]

2.3 The National Environment Act 2019: The Core Environmental Justice Statute

[20]Constitution of Uganda 1995, Arts. 237, 245, National Objective XXVII; ACODE v AG, HCT Misc. Cause No. 0100/2004, per Egonda-Ntende J at [23].
[21]Constitution of Uganda 1995, Arts. 17(j), 245; Isaac Christopher Lubogo, The Constitution on the Streets of Uganda (Suigeneris Publishers, Kampala, 2024), Chapter 5.
[22]Constitution of Uganda 1995, Art. 50; Judicature (Fundamental Rights and Freedoms) (Practice Directions) Direction 2009.

2.3.1 Governance Architecture: NEMA and the Environment Protection Force

The National Environment Act 2019 (Act No. 5 of 2019) — Uganda's primary environmental statute, repealing the National Environment Act Cap. 153 (1995) — establishes the National Environment Management Authority (NEMA) as the principal environmental governance body, and creates an Environment Protection Force with enforcement powers including investigation, inspection, arrest, and prosecution. NEMA's mandate includes EIA review and approval, environmental standards, compliance monitoring, and restoration order enforcement.[23]

2.3.2 Environmental Impact Assessments as Procedural Justice Mechanisms

Sections 107–120 and the National Environment (EIA) Regulations 2021 (SI 2021 No. 46) require that no person undertake any project likely to significantly affect the environment without an EIA certificate from NEMA. The EIA process mandates identification of likely environmental impacts, consideration of alternatives, proposal of mitigation measures, and — critically for procedural justice — public consultation with affected communities (rr. 20–32). The Regulations require community notification at least 21 days before a public hearing; hearing in the affected area, not only in the district capital; production of a non-technical summary in local languages; formal recording of community submissions; and specific response to those submissions in the NEMA decision.[24]

2.3.3 Restoration Orders Under the NEA 2019

Section 108 empowers NEMA to issue Restoration Orders requiring a person who has caused environmental damage to restore the environment to its original condition, or as close to its original condition as is reasonably practicable. Section 112 provides that a person who causes environmental damage is liable for the full costs of restoration and compensation to affected persons, in

[23]NEA 2019, ss. 8–25 (establishment and functions of NEMA); ss. 40–52 (Environment Protection Force). For assessment of NEMA's institutional performance, see NEMA, Annual Performance Report 2022/23 (NEMA, Kampala, 2023).

[24]NEA 2019, ss. 107–120; National Environment (EIA) Regulations 2021, rr. 20–32. For analysis of EIA adequacy in the Ugandan context, see Chapter Nine of this book at section 9.9.4.

accordance with the Polluter Pays Principle. The Supreme Court in Nyakaana v NEMA (2015) confirmed the constitutional validity and enforceability of Restoration Orders, and held that compliance can be compelled even where it causes significant financial hardship to the respondent.[25]

2.3.4 Nature's Rights: A Constitutional Innovation

Section 3 of the NEA 2019 provides that "nature has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution." This positions Uganda among a small group of jurisdictions — including Ecuador (2008 Constitution, Arts. 71–74), New Zealand (Te Awa Tupua Act 2017), and Colombia (Supreme Court, Future Generations v Colombia, 2018) — that have recognised legal rights for natural entities. The practical legal implication: environmental harm affecting no identifiable human being is nonetheless legally cognisable as a violation of nature's statutory rights.[26]

2.4 The Supporting Statutory Framework

The NEA 2019 operates within a wider statutory architecture. The Land Act (Cap. 227) governs land rights and environmental use restrictions, protecting customary land rights and restricting use of environmentally sensitive areas. The Water Act (Cap. 152) regulates water resource access and pollution control. The Mining and Minerals Act 2022 establishes environmental bond requirements and community development agreement provisions. The Climate Change Act 2021 creates Uganda's climate governance framework. The National Forestry and Tree Planting Act 2003 protects central forest reserves from excision or lease without parliamentary authority — the provision violated in the Butamira case.[27]

2.5 International Law Influences

Uganda's environmental framework is shaped by several binding and

[25]NEA 2019, ss. 108–112; Nyakaana v NEMA, SC Civil Appeal No. 13/2015 at [45].
[26]NEA 2019, s. 3; Christopher Stone, "Should Trees Have Standing?" (1972) 45 SCLR 450; Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (New Zealand); Future Generations v Colombia (2018).
[27]Land Act (Cap. 227); Water Act (Cap. 152); Mining and Minerals Act 2022; Climate Change Act 2021; National Forestry and Tree Planting Act 2003; ACODE v AG (2004).

persuasive international instruments. The Rio Declaration on Environment and Development (1992) — particularly Principles 3 (intergenerational equity), 10 (participation and access to justice), and 15 (precautionary approach) — is directly reflected in Uganda's constitutional and statutory provisions. Article 24 of the African Charter on Human and Peoples' Rights (1981) — "all peoples shall have the right to a general satisfactory environment favourable to their development" — is binding on Uganda as a state party. The SERAC v Nigeria case (African Commission, 2001) interpreted Article 24 to impose both negative obligations (not to destroy the environment) and positive obligations (to take protective measures) on states parties.[28]

2.6 The "Paper Tiger" Diagnosis: World-Class Law, Subpar Enforcement

The constitutional and statutory framework examined in this chapter is, on its face, remarkable — progressive, comprehensive, and constitutionally entrenched. Article 39 gives Uganda a constitutional advantage over the United States, which lacks a federal constitutional environmental right. Section 3 of the NEA 2019 gives Uganda a statutory ecological philosophy that anticipates global jurisprudential trends. And yet Uganda's problem is not inadequate law; it is the systematic failure to implement, enforce, and resource the law it already has. This "paper tiger" diagnosis — world-class normative framework, subpar operational reality — is the organising premise of the chapters that follow.[29]

2.7 The Relationship Between Article 39 and Other Constitutional Rights

Article 39 does not operate in isolation. It exists within a constitutional architecture that includes Article 20 (fundamental rights are inherent and not granted by the state), Article 21 (equality and freedom from discrimination), Article 24 (respect for human dignity and protection from inhuman treatment),

[28]Rio Declaration (1992); African Charter, Art. 24 (1981); SERAC v Nigeria, ACHPR Comm. No. 155/96 (2001) (Ogoni case) — the Commission found Nigeria violated Art. 24 by permitting oil operations in the Ogoni region without adequate environmental safeguards.
[29]Brian Tamanaha, On the Rule of Law: History, Politics, Theory (Cambridge University Press, Cambridge, 2004); NEMA, State of Compliance Monitoring Report (2022) — compliance rates with EIA conditions below 35% for 2019–2022.

Article 26 (protection from deprivation of property), and Article 45 (the rights, duties, declarations and guarantees set out in the Constitution shall not be regarded as excluding others not specifically mentioned). This last provision — the residual rights clause — is significant for environmental litigation because it permits courts to recognise environmental dimensions of rights not explicitly enumerated, drawing on the interpretive technique used by the Indian Supreme Court in expanding Article 21 to encompass environmental quality.[30]

2.8 The Constitutional Court's Interpretive Approach to Environmental Provisions

Uganda's Constitutional Court, exercising its jurisdiction under Article 137 to determine questions regarding the interpretation of the Constitution, has developed an interpretive approach to environmental provisions that emphasises purposive construction. In Uganda Wildlife Society v Attorney General (2005), the court rejected a narrow, literalist reading of Article 39 in favour of an approach that considers the provision's purpose within the broader constitutional scheme — namely, to establish environmental protection as a constitutional value informing the interpretation of the entire Bill of Rights and the National Objectives. This purposive approach has been consistently applied in subsequent litigation and represents settled Ugandan constitutional method for environmental cases.[31]

2.9 Devolution and Environmental Governance: The Role of Local Government

The Local Governments Act (Cap. 138) devolves significant environmental management functions to district and lower local governments, including the power to enact bye-laws on environmental matters, to participate in EIA review processes for projects within their jurisdiction, and to enforce environmental standards at the local level through Environment Officers appointed under the NEA 2019. In practice, the capacity of local governments to exercise these functions varies enormously: well-resourced urban authorities such as KCCA

[30]Constitution of Uganda 1995, Arts. 20, 21, 24, 26, 45; cf. M.C. Mehta v Union of India (1987) AIR 1086 SC (expansive reading of Art. 21 of the Indian Constitution).
[31]Uganda Wildlife Society v AG, CP No. 12/2005; for purposive constitutional interpretation generally in Uganda, see Tinyefuza v Attorney General, Constitutional Petition No. 1 of 1996.

have dedicated environmental departments, while many rural district local governments lack even a single qualified Environment Officer. This capacity disparity is itself a distributive environmental justice issue: rural and economically disadvantaged districts — precisely those most likely to host extractive industries and to suffer disproportionate environmental burdens — are least equipped to enforce environmental standards against well-resourced developers.[32]

2.10 The National Environment Act 2019 in Comparative Statutory Context

The NEA 2019 represents a significant statutory advance over its 1995 predecessor in several respects beyond the nature's rights provision discussed at section 2.3.4. It introduces strategic environmental assessment (SEA) requirements for government policies, plans, and programmes — not merely individual projects — bringing Uganda into closer alignment with European Union SEA Directive standards and addressing the long-standing criticism that project-by-project EIA review fails to capture the cumulative environmental impact of sectoral or national development policy. It also introduces environmental audit requirements for ongoing operations (not merely pre-construction assessment), and strengthens the financial assurance (bonding) requirements for extractive and high-risk industrial activities.[33]

2.11 Constitutional Amendment and the Permanence of Environmental Provisions

Article 39 and the associated environmental provisions are not entrenched in the sense of requiring a supermajority or referendum for amendment — they are subject to the ordinary constitutional amendment procedure under Article 259, which requires a two-thirds majority of all members of Parliament for most provisions, though some provisions (not including Article 39) require a national referendum. This relative ease of amendment, compared to the entrenched

[32] Local Governments Act (Cap. 138), Second Schedule (devolved functions); NEMA, District Environment Officer Capacity Assessment (2022).

[33] NEA 2019, ss. 19–24 (Strategic Environmental Assessment); ss. 121–125 (Environmental Audit); s. 88 (financial assurance for extractive operations); EU Directive 2001/42/EC on Strategic Environmental Assessment (comparative reference).

provisions concerning democratic government and the Bill of Rights' "non-derogable" core (Article 44), means that the environmental constitutional framework, while currently robust, is not invulnerable to political pressure for dilution should extractive industry interests acquire sufficient parliamentary influence. This vulnerability reinforces the case, developed in Chapter Eight, for entrenching Ubuntu environmental principles more deeply within the constitutional order.[34]

2.12 The Doctrine of Legitimate Expectation in Environmental Permitting

A further administrative law doctrine relevant to environmental permitting disputes is legitimate expectation — the principle that where a public authority has, through its conduct, representations, or established practice, created a reasonable expectation that a particular procedure will be followed or a particular outcome reached, fairness requires that expectation to be honoured unless there is a sufficient public interest justification for departing from it. In the environmental context, this doctrine may be invoked, for example, where NEMA has established a consistent practice of conducting public hearings for a particular category of project, and then departs from that practice for a specific project without adequate justification — the affected community may have a legitimate expectation, grounded in NEMA's own established practice, that the same procedural standard will be applied to their case.[35]

2.13 Strategic Litigation versus Strategic Legislative Advocacy: Complementary Pathways

This book has emphasised litigation as a primary mechanism for advancing environmental justice, consistent with its focus on equipping advocates and judicial officers (Chapter Nine). However, litigation should be understood as one component of a broader strategic toolkit that also includes

[34]Constitution of Uganda 1995, Art. 259 (amendment procedure); Art. 44 (non-derogable rights, not including Art. 39).

[35]Council of Civil Service Unions v Minister for the Civil Service [1985] AC 374 (UK) — foundational authority on legitimate expectation, applied in Commonwealth administrative law including Uganda; for application in environmental permitting contexts, see R (Bibi) v Newham London Borough Council [2002] 1 WLR 237 (UK), persuasive authority.

legislative advocacy — engagement with the parliamentary process to secure the statutory reforms proposed in Chapter Eight — and administrative advocacy, including engagement with NEMA's policy-making and standard-setting processes under the NEA 2019, which provide for public consultation on proposed environmental standards and regulations. Civil society organisations and communities are well advised to pursue these pathways in combination: litigation can establish legal principles and provide remedies in specific cases, while legislative and administrative advocacy can address systemic gaps (such as the absence of FPIC requirements in the Mining and Minerals Act 2022, discussed in Chapter Five) that no individual case, however well litigated, can fully resolve.

2.14 The Doctrine of Severability in Environmental Statutory Interpretation

Where a provision of an environmental statute or regulation is found to be constitutionally infirm — for example, if a specific procedural shortcut in the EIA Regulations were found to violate the meaningful involvement standard discussed in this book — Ugandan courts apply the doctrine of severability, under which the offending provision may be struck down while preserving the remainder of the statutory or regulatory scheme, provided the offending provision is not so integral to the scheme that its removal would render the remainder unworkable or contrary to legislative intent. This doctrine is significant for environmental practitioners because it means that a successful constitutional challenge to a specific defective procedure need not result in the wholesale invalidation of the broader EIA framework, allowing for surgical correction of specific defects while preserving the overall regulatory architecture.[36]

[36]For the severability doctrine generally in Ugandan constitutional law, see Attorney General v Salvatori Abuki, Constitutional Appeal No. 1 of 1998 (Supreme Court of Uganda).

CHAPTER THREE
CASE LAW AND JURISPRUDENCE: HOW UGANDAN COURTS HAVE SHAPED ENVIRONMENTAL JUSTICE

3.1 Introduction: From Constitutional Text to Judicial Doctrine

Constitutional text is, in a legal system that functions, only a beginning. The history of environmental jurisprudence in Uganda is the history of a judiciary progressively discovering the implications of the constitutional commitments made in 1995, testing those commitments against the facts of particular cases, and — with the inevitable unevenness of any living legal system — sometimes falling short of the full promise of the constitutional text. This chapter surveys the key cases in Ugandan environmental jurisprudence, organised around the three dimensions of the tripartite framework.

3.2 Procedural Justice and Standing: Opening the Courtroom Door

3.2.1 Greenwatch v Attorney General and NEMA (2002) — The Locus Classicus on Standing

Facts: Greenwatch Uganda, an environmental NGO, challenged the manufacture and use of thin polythene packaging ("kaveera") as violating the constitutional right to a clean environment. The High Court (Byamugisha J) confirmed NGO standing under Article 50 and found that the widespread use of kaveera — which clogged drainage channels, polluted waterways, and created significant soil and water pollution — violated Article 39 of the Constitution. Significance for standing: the court held that Greenwatch, whose objects included environmental protection, had sufficient legal interest to bring proceedings under Article 50 without needing to demonstrate personal injury. This is the locus classicus on environmental NGO standing in Uganda.[37]

The critical limitation of Greenwatch: while the court found a violation, it declined to issue the injunction sought — which would have prohibited the

[37]Greenwatch v AG and NEMA, HCT Misc. Cause No. 140/2002, per Byamugisha J.

continued manufacture and use of kaveera. The court reasoned that banning kaveera was a legislative function; the court could declare but not legislate. This pattern — declaration without effective remedy — has been identified in this book (Chapter Six, section 6.3) as "judicial minimalism" and represents one of the most significant structural challenges to environmental justice in Uganda. It was effectively repudiated by the Supreme Court in Nyakaana (2015).[38]

3.2.2 British American Tobacco Ltd v Environmental Action Network Ltd (2003) — NGO Standing Cemented

BAT Uganda Ltd applied to strike out EAN's environmental claim for want of standing, arguing that as an NGO EAN lacked the personal legal interest required for civil proceedings. Musoke-Kibuuka J rejected this application, holding at [8] that the Constitution "allows actions of public interest groups to be brought on behalf of the needy and oppressed" and that Articles 39 and 50 together created broad environmental public interest standing. The decision confirmed what Greenwatch had suggested: environmental public interest litigation is constitutionally mandated, not merely tolerated. After BAT v EAN, any challenge to NGO environmental standing in Uganda is without legal foundation.[39]

3.2.3 Uganda Wildlife Society v Attorney General (Constitutional Petition No. 12 of 2005)

The Uganda Wildlife Society constitutional petition affirmed that environmental protection is a constitutional obligation of the state under Articles 39 and 245, and that civil society organisations have a constitutionally grounded role in holding the state accountable for its environmental obligations. The Constitutional Court recognised environmental constitutional obligations and strengthened the framework for public interest environmental litigation.[40]

3.3 Corrective Justice and Legal Principles: The Landmark Nyakaana Case

3.3.1 Nyakaana v National Environment Management Authority (2015) —

[38]Greenwatch v AG (2002); Cass Sunstein, One Case at a Time: Judicial Minimalism on the Supreme Court (Harvard University Press, 1999); Nyakaana v NEMA (2015).
[39]BAT v EAN, HCT Misc. Application No. 39/2001, per Musoke-Kibuuka J at [8].
[40]Uganda Wildlife Society v AG, CP No. 12/2005, Constitutional Court of Uganda.

The Cornerstone of Ugandan Environmental Jurisprudence

Facts: NEMA issued a Restoration Order under the National Environment Act (1995) requiring the appellant, Nyakaana, to demolish a residential house he had constructed in a protected wetland and to restore the wetland to its natural state. The appellant challenged the order, arguing that his constitutional property right under Article 26 had been violated without compensation, and that the order was disproportionate to any public benefit achieved.[41]

Holding: The Supreme Court dismissed the appeal and upheld the Restoration Order in full. The court made three major legal findings of enduring importance: First, the Polluter Pays Principle forms part of Ugandan law. Katureebe CJ stated at [45]: "The Polluter Pays Principle is now well established in Ugandan environmental law. It places the responsibility for environmental harm squarely on the person who caused that harm, and it requires that person to bear the full costs of restoration, regardless of the financial hardship that may entail." Second, the Precautionary Principle forms part of Ugandan law. Where there is scientific uncertainty about environmental harm, the absence of conclusive scientific evidence is not a justification for failing to take protective action. Third, and most constitutionally significant: where an individual's use of property creates a public environmental threat, the collective right to a clean and healthy environment under Article 39 takes precedence over the individual property right under Article 26.[42]

Nyakaana is the environmental law practitioner's most important authority. It is the final word of the Ugandan Supreme Court on: strict environmental liability (Polluter Pays); the constitutional ranking of environmental rights over individual property rights where a public threat exists; and the validity of Restoration Orders even where compliance causes financial hardship. It must be cited in every environmental case involving restoration, enforcement, or the relationship between property rights and environmental rights.

---

[41] Nyakaana v NEMA, SC Civil Appeal No. 13/2015, per Katureebe CJ. This is the most significant environmental law decision ever handed down by the Ugandan Supreme Court.

[42] Nyakaana v NEMA (2015) per Katureebe CJ at [45] (PPP), [52] (Precautionary Principle), [58]–[65] (primacy of Art. 39 over Art. 26).

3.4 Public Trust and Community Consent

3.4.1 ACODE v Attorney General (2004) — The Butamira Forest Reserve Case

Facts: The government decided to excise approximately 7,100 hectares of the Butamira Central Forest Reserve — a gazetted forest reserve under the National Forestry Authority — and lease that land to Kakira Sugar Works for sugar cane cultivation. ACODE brought proceedings challenging the legality of the excision and lease. Egonda-Ntende J found the government's action ultra vires on two independent grounds.[43]

First ground (statutory illegality): The excision had not been authorised by Parliament as required by the National Forestry and Tree Planting Act — a central forest reserve could only be de-gazetted by statutory instrument approved by Parliament. Second ground (constitutional illegality — the public trust holding): The court held at [23] that "the government of Uganda holds the national forests in trust for the people of Uganda, present and future. It cannot alienate those forests, or parts of them, except with the authority of Parliament and with the consent of the communities whose lives and livelihoods depend upon them. The absence of either form of consent renders the alienation unlawful." This second ground introduced into Ugandan law the most robust version of the public trust doctrine in East Africa.[44]

3.5 Contemporary Applications (2024–2026)

3.5.1 Transboundary Environmental Justice: ACEDH v Uganda (EACJ, 2025)

In 2025, the Association Congolaise pour l'Environnement et le Développement Humain (ACEDH), a Congolese NGO, filed proceedings before the East African Court of Justice alleging that Uganda violated EAC Treaty obligations by implementing the Tilenga and Kingfisher Oil Projects without early notification of the DRC, without joint transboundary environmental assessments,

[43] ACODE v AG, HCT Misc. Cause No. 0100/2004, per Egonda-Ntende J (as he then was).
[44] ACODE v AG (2004) at [23]. This holding has been described as the East African equivalent of the foundational US public trust cases: Illinois Central Railroad v Illinois, 146 US 387 (1892); and National Audubon Society v Superior Court of Alpine County, 658 P.2d 709 (Cal. 1983).

and without consultation with Congolese communities likely to be affected. This case extends environmental justice beyond the domestic legal system to the regional treaty framework, invokes the principle of transboundary harm prevention established in the Trail Smelter Arbitration (USA v Canada, 1941), and brings into focus the rights of communities in neighbouring states affected by Ugandan development decisions.[45]

3.5.2 Kitubulu Forest Reserve Community Action (2026) — Community-Driven Constitutionalism

Communities adjacent to the Kitubulu Forest Reserve on the shores of Lake Victoria in Wakiso District organised to challenge a government decision to allocate portions of the reserve for private development. Without formal court proceedings, they succeeded — through formal EIA objections, constitutional petition filings, media engagement, and community demonstrations — in reversing the allocation decision. The Kitubulu episode is the most compelling recent evidence for community-driven environmental constitutionalism: the mobilisation of constitutional environmental rights by communities themselves, using a combination of legal and extra-legal strategies.[46]

3.5.3 Urban Environmental Enforcement: Jinja City Council (2024)

A 2024 High Court case involving the threatened felling of endangered Mivule trees (Milicia excelsa — a protected species under the National Forestry and Tree Planting Act 2003, Schedule 1) within the Jinja City jurisdiction arose from a Jinja City Council decision to authorise their felling in the course of urban road construction. Environmental advocates obtained an urgent court order halting the felling, and the High Court affirmed the constitutional right to a clean and wholesome environment as a basis for judicial intervention in urban environmental management decisions — confirming that urban development activities, including municipal infrastructure projects, are subject to

[45]ACEDH v Uganda, EACJ Reference (2025); Trail Smelter Arbitration (1941) 3 RIAA 1905; Stockholm Declaration, Principle 21 (1972); Rio Declaration, Principle 2 (1992); EAC Protocol on Environment and Natural Resources Management.

[46]NAPE, "Kitubulu Forest Reserve: Community Report" (2026); Greenwatch Uganda, "Statement on Kitubulu" (January 2026); Isaac Christopher Lubogo, Environmental Justice: Constitutionalism, Equity, Development and Environmental Governance in Uganda (Suigeneris Publications, 2026), Chapter 8.

environmental justice scrutiny.[47]

3.6 The Pending Watershed: Mbabazi & Ors v Attorney General (2012–Present)

Four Ugandan minors brought proceedings in 2012 arguing that the Ugandan government's failure to take adequate action on climate change violated their constitutional rights under Articles 22 (right to life), 39 (right to a clean environment), and 45 (general human rights clause). The case has been pending before the High Court since 2012 — over a decade — without a judgment. It represents Uganda's most ambitious attempt yet to use courts to hold the government accountable for climate change obligations.[48]

If the High Court rules in favour of the petitioners, it will establish: (1) the government owes a constitutionally enforceable fiduciary duty to future generations regarding climate action; (2) failure to take adequate climate action can violate the constitutional rights to life and a clean environment; and (3) courts have the competence and authority to order the government to implement more ambitious climate action plans. This would make Uganda the first African country to produce such a ruling, comparable to Urgenda Foundation v Netherlands (Hoge Raad, 2019), Future Generations v Colombia (2018), Leghari v Pakistan (Lahore HC, 2015), and Neubauer et al v Germany (BVerfG, 2021).[49]

3.7 Doctrinal Analysis: Reconciling Greenwatch and Nyakaana

A central interpretive puzzle for Ugandan environmental jurisprudence is reconciling the apparently inconsistent judicial postures in Greenwatch (2002) and Nyakaana (2015). In Greenwatch, the High Court found a constitutional violation but declined to order an effective remedy, citing separation of powers concerns. In Nyakaana, the Supreme Court not only found a violation but ordered a specific, far-reaching remedy (demolition of a residential structure) notwithstanding significant hardship to the respondent. How should this

[47] Jinja City Council Environmental Case (2024), High Court of Uganda; National Forestry and Tree Planting Act 2003, Schedule 1 (protected species).

[48] Mbabazi & Ors v AG, HCT Misc. Cause No. 0033/2012.

[49] Urgenda Foundation v State of the Netherlands, ECLI:NL:HR:2019:2006 (2019); Future Generations v Colombia (2018); Leghari v Pakistan (2015); Neubauer et al v Germany (BVerfG, 2021).

apparent inconsistency be understood?[50]

Three explanations merit consideration. First, an institutional explanation: Greenwatch sought a remedy (banning kaveera nationally) that was genuinely legislative in character — applicable to an entire industry and requiring the weighing of competing economic and environmental considerations of a kind ordinarily committed to the legislature. Nyakaana, by contrast, sought a remedy (restoring a specific wetland) that was adjudicative in character — applying an existing legal standard (the wetland protection regime) to a specific set of facts. On this view, the cases are not inconsistent: they reflect a coherent judicial philosophy that distinguishes between policy-making (for which courts should defer to Parliament) and law application (for which courts should act decisively). Second, a temporal explanation: by 2015, the Ugandan judiciary had developed thirteen years of experience with environmental public interest litigation since Greenwatch, and judicial confidence in handling complex environmental questions had grown correspondingly. Third, an institutional-capacity explanation: the specific remedy in Nyakaana (demolition of a single structure, monitored by NEMA) was more readily enforceable through ordinary government machinery than the remedy sought in Greenwatch (an industry-wide ban requiring extensive regulatory infrastructure that did not yet exist in 2002).

This book's position, elaborated in Chapter Six (section 6.3) and Chapter Nine (section 9.9.1), is that while the institutional explanation has genuine force, it should not be read as licensing continued judicial minimalism in cases — like the ongoing Mbabazi litigation — where specific, adjudicative remedies (a declaration of fiduciary duty plus a specific order to revise climate policy commitments within a defined period) are readily available and enforceable through existing government machinery (the Ministry of Water and Environment's existing NDC revision process). The lesson of Nyakaana is that Ugandan courts can and should act decisively wherever an adjudicative remedy, properly understood, is available — and the scope of what counts as "adjudicative" rather than "legislative" should expand as judicial environmental expertise and

[50]Greenwatch v AG and NEMA (2002); Nyakaana v NEMA (2015).

confidence grow.[51]

3.8 The Doctrine of Standing Expanded: Representative and Class Actions

Beyond the individual and NGO standing confirmed in Greenwatch and BAT v EAN, Ugandan civil procedure permits representative actions under Order 1 Rule 8 of the Civil Procedure Rules, where one or more persons may sue on behalf of all persons having the same interest in a suit, with the leave of the court. This procedural mechanism has not yet been extensively tested in Ugandan environmental litigation but holds significant potential for community-wide environmental claims — for example, where an entire fishing community on Lake Albert has suffered a common injury from oil-related water pollution, a representative action could allow a small number of named plaintiffs to litigate on behalf of the entire affected community, with any judgment binding (and any compensation distributable to) the whole represented class.[52]

3.9 Interim and Interlocutory Jurisprudence in Environmental Cases

Beyond the substantive decisions discussed above, Ugandan courts have developed a body of interlocutory jurisprudence specifically addressing interim relief in environmental matters. In several unreported High Court rulings arising from wetland and forest reserve disputes in the period 2018–2024, courts have granted interim injunctions restraining construction activity pending determination of the substantive environmental claim, applying a modified version of the American Cyanamid test that gives particular weight to the irreversibility of environmental harm. This body of interlocutory practice — while less doctrinally prominent than the landmark substantive decisions — is of immense practical importance to environmental practitioners, since the timely grant of interim relief frequently determines whether the substantive litigation will have any practical value at all: a wetland drained or a forest cleared during the

[51] See Chapter Six, section 6.3 and Chapter Nine, section 9.9.1 of this book.

[52] Civil Procedure Rules (SI 71-1), Order 1, Rule 8 (representative suits); for comparative use of representative environmental actions, see Indian collective action jurisprudence under Order 1 Rule 8 of the Indian Code of Civil Procedure 1908, from which the Ugandan provision is derived.

pendency of litigation cannot meaningfully be restored by a final judgment months or years later.[53]

3.10 The Limits of Current Jurisprudence: Unresolved Questions

Despite the rich jurisprudential development traced in this chapter, several important questions remain unresolved in Ugandan environmental law. First, the precise content of the "meaningful involvement" standard for EIA public participation (discussed further in Chapter Nine, section 9.9.4) has not yet received definitive appellate treatment — it remains, for now, primarily an analytical framework developed in this book rather than a fully settled judicial doctrine, though its foundations in the EIA Regulations and comparative jurisprudence are robust. Second, the question of whether and how the Nyakaana primacy of collective environmental rights over individual property rights extends to cases involving large-scale commercial developers (as opposed to the individual homeowner in Nyakaana itself) has not been tested at the appellate level. Third, the practical content of the Public Trust Doctrine's "community consent" requirement — how much consultation, with whom, and through what process, constitutes valid "consent" as opposed to mere "consultation" — remains undertheorized in Ugandan case law and is a fertile area for future litigation and scholarly development.

3.11 The Judiciary's Institutional Development: Specialised Training and Capacity

The quality of environmental adjudication in Uganda has been materially assisted by judicial training initiatives, including programmes delivered by the Judicial Training Institute in collaboration with NEMA and international partners, covering environmental law fundamentals, scientific evidence evaluation, and comparative environmental jurisprudence. These initiatives, while valuable, remain limited in scale and are not a substitute for the specialised Environmental Justice Division proposed in Chapter Eight — general judicial training cannot

[53] See generally the discussion of interim relief practice in Chapter Nine, section 9.6.2 and section 9.10 (Step 5) of this book; American Cyanamid Co v Ethicon Ltd [1975] AC 396 (HL).

replicate the depth of subject-matter expertise that a dedicated environmental bench, sitting exclusively on environmental and land matters over an extended judicial career, would develop.[54]

3.12 The Doctrinal Significance of the Jinja Mivule Trees Case Reconsidered

While the Jinja City Council case (2024) has been treated in this book primarily as an example of effective interim injunctive relief (section 9.6.2), its doctrinal significance extends further. The case affirmed that municipal and local government infrastructure decisions — frequently treated, in practice, as routine administrative matters exempt from the rigorous environmental scrutiny applied to large private developments — are equally subject to the constitutional environmental framework. This is a doctrinally important extension because municipal infrastructure projects (road construction, drainage works, public building construction) collectively account for a substantial share of urban environmental impact in Uganda, particularly given the urban wetland encroachment patterns documented in relation to the Nakivubo Channel (section 5.3), yet have historically received less environmental scrutiny than comparably sized private commercial developments, partly because local governments are themselves nominally responsible for environmental compliance oversight within their jurisdictions, creating an inherent conflict of interest that the Jinja case implicitly addressed by confirming judicial oversight of municipal environmental decision-making.[55]

3.13 Unreported and Emerging Jurisprudence: A Note of Caution and Opportunity

This book has necessarily focused on the landmark reported decisions that constitute the settled core of Ugandan environmental jurisprudence. Practitioners should be aware, however, that a substantial body of unreported or

---

[54] Judicial Training Institute (Uganda), Environmental Law Training Curriculum (2022); cf. the specialised judicial training models of India's National Green Tribunal and Kenya's Environment and Land Court discussed in Chapter Seven.

[55] Jinja City Council Environmental Case (2024); for the general problem of local government conflicts of interest in environmental self-regulation, see Local Governments Act (Cap. 138), Second Schedule.

only locally reported environmental decisions exists at the High Court level — particularly arising from wetland, forest reserve, and local land use disputes that do not reach the law reports but nonetheless generate persuasive precedent within their respective judicial circuits. Practitioners are encouraged to maintain and contribute to informal practitioner networks and case-sharing initiatives (such as those coordinated by Greenwatch Uganda and the Uganda Law Society's Environmental Law Committee, where active) to ensure that this body of unreported jurisprudence is not lost to future practitioners and continues to inform the development of Ugandan environmental law, pending more systematic law reporting in this specialist area.

CHAPTER FOUR
JURISPRUDENTIAL THEMES AND DOCTRINAL PILLARS OF UGANDAN ENVIRONMENTAL JUSTICE

4.1 Introduction: From Isolated Holdings to Coherent Doctrine

From the constitutional provisions and case law examined in the preceding two chapters, a set of recurring jurisprudential themes emerges. These themes constitute the intellectual backbone of environmental justice law in Uganda. This chapter articulates, analyses, and critically evaluates six doctrinal pillars that give coherence to the Ugandan environmental justice framework.

4.2 Constitutional Environmentalism: The First Pillar

Constitutional environmentalism — the principle that environmental protection is a constitutional obligation, not a policy discretion — is the most fundamental theme in Ugandan environmental justice law. It means: (1) the government cannot choose, as a matter of policy, to sacrifice environmental protection in favour of short-term economic development goals; (2) NEMA's enforcement functions are constitutional in character, not merely administrative, and the government's failure to resource NEMA adequately is itself a potential constitutional violation; and (3) courts have not merely the authority but the constitutional duty to review, and where necessary override, government decisions that fall short of the constitutional environmental standard.[56]

4.3 The Public Trust Doctrine: The Second Pillar

The public trust doctrine — confirmed in the Butamira Forest Reserve case (2004) — holds that the state holds natural resources in trust for the citizenry and cannot alienate or misuse them without lawful authority and community consent. The doctrine takes on a specifically Ugandan character when read through the Ubuntu philosophy of communitarian resource management: natural resources

[56] James R. May and Erin Daly, Global Environmental Constitutionalism (Cambridge University Press, Cambridge, 2014); Greenwatch v AG (2002); Uganda Wildlife Society v AG (2005); Nyakaana v NEMA (2015).

belong to the community of persons, present and future, not to the state or to private developers. The government's role is that of trustee — with the duties of loyalty, prudence, and accountability to beneficiaries that trusteeship entails.[57]

4.4 Human Rights Integration: The Third Pillar

Ugandan courts have increasingly treated environmental harm not merely as a violation of Article 39 but as a violation of the broader constellation of constitutional rights: the right to life (Article 22), the right to dignity (Article 24), the right to health (Article 45), and even the right to property (Article 26). In Nyakaana, the court treated wetland destruction as a threat to the health, livelihoods, and wellbeing of downstream communities. In Mbabazi, the petitioners argue climate change threatens their right to life. This integrative approach echoes M.C. Mehta v Union of India (1987) where the Indian Supreme Court read the right to life to include the right to a pollution-free environment — a holding that is directly persuasive authority for Ugandan courts interpreting Article 22.[58]

4.5 Intergenerational Equity: The Fourth Pillar

National Objective XXVII of the Constitution provides that "the utilisation of the natural resources of Uganda shall be managed in such a way as to meet the development and environmental needs of present and future generations of Ugandans." The Mbabazi case tests whether this constitutional mandate is judicially enforceable. Comparative jurisprudence confirms that courts in developing countries are capable of ordering specific climate actions to protect intergenerational rights: Future Generations v Colombia (Colombian Supreme Court, 2018) ordered the government to submit an action plan to address deforestation in the Amazon; Leghari v Pakistan (Lahore HC, 2015) directed the government to implement its national climate policy; and Urgenda v Netherlands (Hoge Raad, 2019) required the Dutch government to reduce emissions to 25%

[57]ACODE v AG (2004); Isaac Christopher Lubogo, Ubuntu and the Blue Economy in Uganda (Suigeneris Publishers, Kampala, 2024), Chapter 3.
[58]M.C. Mehta v Union of India (1987) AIR 1086 SC; Subhash Kumar v State of Bihar (1991) AIR SC 420; Nyakaana v NEMA (2015).

below 1990 levels by 2020.[59]

4.6 The Precautionary and Polluter Pays Principles: The Fifth Pillar

Two environmental law principles of international origin — confirmed as part of Ugandan law by the Supreme Court in Nyakaana (2015) — function as operational doctrinal tools in environmental adjudication. The Precautionary Principle (Rio Declaration, Principle 15): where there is scientific uncertainty about the potential environmental harm of an activity, the absence of conclusive scientific evidence is not a justification for failing to take protective action; and — as elaborated in Chapter Nine — the burden of proof shifts to the proponent of potentially harmful activities to demonstrate safety. The Polluter Pays Principle (Rio Declaration, Principle 16): the person responsible for environmental harm must bear the full costs of preventing, controlling, or remedying that harm — constituting a form of strict environmental liability without fault.[60]

4.7 Ubuntu Environmental Ethics: The Emerging Sixth Pillar

Ubuntu — obuntu bulamu in Luganda — has not yet been explicitly invoked by Ugandan courts in environmental cases, but its presence is felt in the public trust doctrine (the state as trustee for the communal whole), the community consent requirement in Butamira (communal veto over alienation of shared resources), and the integrative treatment of individual and collective rights in Nyakaana (individual property right subordinated to collective environmental right). Drawing on the Lubogo Framework for Ubuntu Constitutionalism, five Ubuntu environmental principles can be articulated: (1) relational personhood — human flourishing is inseparable from ecosystem health; (2) communitarian stewardship — natural resources are held in common trust; (3) intergenerational obligation — the living hold the environment for the unborn; (4) community consent — decisions affecting communal resources require genuine consent; and

[59]Edith Brown Weiss, In Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity (Transnational Publishers, New York, 1989); Future Generations v Colombia (2018); Leghari v Pakistan (2015); Urgenda v Netherlands (2019); Neubauer v Germany (BVerfG, 2021).

[60]Nyakaana v NEMA (2015) at [45] (PPP), [52] (Precautionary Principle); Rio Declaration (1992), Principles 15–16; NEA 2019, s. 112.

(5) restorative justice — environmental harm ruptures relationships and corrective justice must be restorative.[61]

The development of a fully articulated Ubuntu environmental jurisprudence for Uganda remains a project for the future — one that will require the engagement of lawyers, judges, philosophers, and communities. But the doctrinal foundations are already visible in the existing case law, and this book argues that the explicit theorisation of Ubuntu environmental ethics as a jurisprudential pillar would strengthen, deepen, and Africanise the environmental justice project in Uganda.

4.8 The Interaction Between the Six Pillars: A Unified Doctrinal Architecture

The six jurisprudential pillars articulated in this chapter — constitutional environmentalism, the public trust doctrine, human rights integration, intergenerational equity, the precautionary and polluter pays principles, and Ubuntu environmental ethics — do not operate as isolated doctrines but as an interlocking architecture that mutually reinforces and elaborates each component. Constitutional environmentalism provides the foundational premise that environmental protection is a constitutional, not merely a regulatory, matter. The public trust doctrine specifies the particular relationship — trustee and beneficiary — through which the state's constitutional environmental obligations are operationalised with respect to specific natural resources. Human rights integration extends the practical reach of environmental claims by connecting them to the fuller apparatus of constitutional rights enforcement. Intergenerational equity extends the temporal scope of environmental obligations beyond the present generation. The precautionary and polluter pays principles supply the operative legal standards — burden allocation and liability rules — through which the foregoing principles are translated into decidable legal questions. And Ubuntu environmental ethics supplies the underlying

[61] Isaac Christopher Lubogo, UBU-NTU: Being, Humanity, and Law (Suigeneris Publishers, 2024); Lubogo, Ubuntu and the Law in Uganda (2024); Nico Ferreira, "Ubuntu and Environmental Justice: Towards an African Theory of Environmental Rights" (2018) 34 South African Journal on Human Rights 1; Drucilla Cornell and Nyoko Muvangua (eds), Ubuntu and the Law (Fordham University Press, New York, 2012).

philosophical justification that unifies and explains why Ugandan law has developed in this particular, communitarian direction rather than along the more individualistic lines of some comparative jurisdictions.

4.9 Towards a General Theory of Ugandan Environmental Adjudication

Drawing on the doctrinal analysis of this chapter, a general theory of Ugandan environmental adjudication can be articulated in five propositions. First, environmental claims engage constitutional, not merely statutory or common law, standards, and should be adjudicated with the interpretive seriousness that constitutional adjudication demands. Second, the state's relationship to natural resources is fiduciary, not proprietary — NEMA, the Ministry of Water and Environment, and other government bodies act as trustees, not owners, and are accountable to the beneficiaries of that trust (present and future Ugandan citizens) for their stewardship decisions. Third, environmental harm should be assessed not merely against the individual claimant's injury but against the systemic distributive pattern of environmental burden and benefit that the challenged conduct instantiates. Fourth, scientific uncertainty about environmental harm should be resolved in favour of protective action, not against it, wherever the potential harm is serious or irreversible. Fifth, environmental remedies should be specific, time-bound, and subject to ongoing judicial supervision wherever the underlying violation is established — declaratory relief alone is constitutionally insufficient redress for proven environmental rights violations.[62]

4.10 Critiques and Counter-Arguments

No legal framework should be presented as beyond critique, and several counter-arguments to the doctrinal architecture developed in this chapter merit acknowledgement. Critics of an expansive public trust doctrine argue that it risks creating excessive judicial interference with legitimate government development decisions, undermining the separation of powers and democratic accountability

[62]This five-proposition synthesis is the author's own analytical contribution to Ugandan environmental jurisprudence, drawing on the doctrinal pillars established at sections 4.2–4.7 of this chapter.

for resource allocation choices that are properly the province of elected officials. Critics of the precautionary principle's burden-shifting effect argue that it may impose excessive costs on legitimate development activity by requiring proof of a negative (the absence of harm) that is often scientifically difficult or impossible to establish with certainty, potentially chilling beneficial economic activity. And critics of Ubuntu-grounded environmental jurisprudence might argue that invoking an indigenous philosophical framework risks introducing indeterminacy into legal reasoning, since Ubuntu's content is contested and its application to specific legal questions is not always self-evident.[63]

This book's response to these critiques, developed throughout the remaining chapters, is threefold. First, regarding separation of powers concerns: the public trust doctrine as applied in Butamira did not substitute judicial preference for legislative or executive policy choice; it merely required that the existing legal requirements for parliamentary authorisation and community consent — requirements established by the political branches themselves — actually be followed. Second, regarding the costs of precautionary burden-shifting: the principle applies only where there is a credible threat of serious or irreversible harm, a threshold that appropriately limits its scope to genuinely high-stakes environmental decisions rather than all development activity whatsoever. Third, regarding the indeterminacy critique of Ubuntu jurisprudence: this book has attempted, at sections 4.7 and throughout, to specify Ubuntu environmental ethics with sufficient precision — five operationalisable principles — to render it a workable interpretive resource rather than an open-ended invocation of cultural sentiment.

4.11 Environmental Constitutionalism and the Separation of Powers Revisited

The doctrinal architecture developed in this chapter necessarily implicates the separation of powers — the constitutional distribution of authority among the

[63] For a sceptical view of expansive judicial environmental review, see generally the law and economics critique of environmental regulation, e.g., Richard Posner, Economic Analysis of Law (9th edn, Wolters Kluwer, New York, 2014), Chapter 13; for critiques of the precautionary principle, see Cass Sunstein, Laws of Fear: Beyond the Precautionary Principle (Cambridge University Press, Cambridge, 2005).

legislature, executive, and judiciary. Environmental constitutionalism, properly understood, does not collapse this separation but redefines its operation within the environmental domain. The legislature retains primary responsibility for establishing the substantive content of environmental standards (the specific pollution limits, EIA categories, and protected area boundaries that Parliament and its delegated regulatory bodies establish through the NEA 2019 and subsidiary legislation). The executive, through NEMA and other implementing agencies, retains primary responsibility for the day-to-day administration and enforcement of those standards. The judiciary's role, as developed through the case law discussed in Chapter Three, is to ensure that the legislature's and executive's exercise of their respective constitutional functions remains within constitutional bounds — neither legislating environmental standards in the legislature's place, nor administering environmental enforcement in the executive's place, but ensuring that both branches discharge their constitutional environmental obligations with the seriousness that Article 39's status as a fundamental right demands.[64]

4.12 The Concept of Environmental Rule of Law

UNEP and the broader international environmental law community have increasingly employed the concept of "environmental rule of law" to capture the cluster of governance attributes — including but not limited to the specific doctrinal pillars discussed in this chapter — that collectively determine whether a legal system's environmental commitments translate into environmental justice in practice. UNEP's First Global Report on the Environmental Rule of Law (2019) identifies seven key attributes: fair, clear, and implementable environmental laws; public access to environmental information; meaningful public participation in environmental decision-making; access to justice for environmental harm; accountable and transparent environmental institutions; coordinated implementation and avoidance of jurisdictional gaps; and the rule of law's general attributes (legal certainty, non-retroactivity, equal application) as applied to the environmental domain. This book's tripartite framework (distributive, procedural,

[64]For general separation of powers theory applied to environmental constitutionalism, see James R. May and Erin Daly, Global Environmental Constitutionalism (Cambridge University Press, 2014), Chapter 4.

corrective justice) and six-pillar doctrinal architecture map substantially onto these UNEP attributes, while the Ubuntu dimension developed at section 4.7 supplies an additional, specifically African philosophical grounding that UNEP's more general framework does not provide.[65]

[65]UNEP, Environmental Rule of Law: First Global Report (UNEP, Nairobi, 2019).

PART TWO

PRACTICE, CHALLENGES, AND COMPARATIVE MODELS

CHAPTER FIVE
SECTORAL APPLICATION OF ENVIRONMENTAL JUSTICE IN UGANDA

5.1 Introduction: Environmental Justice as a Lived Reality

Environmental justice is not an abstract principle; it is a lived reality — or a lived denial — in specific sectors, specific communities, and specific places. The legal and jurisprudential frameworks examined in the preceding chapters must ultimately be evaluated against the evidence of how they operate across the major sectors where environmental justice is most urgently at stake in Uganda.

5.2 Oil and Gas: The Albertine Graben

Uganda's oil and gas sector — centred on the Albertine Graben, one of the most ecologically rich and sensitive areas in sub-Saharan Africa — presents the most complex and high-stakes environmental justice challenge in the country. The Tilenga and Kingfisher oil developments (operated by TotalEnergies EP Uganda and CNOOC Uganda Limited respectively) are expected to produce up to 230,000 barrels of crude oil per day at peak production. The associated East African Crude Oil Pipeline (EACOP) will transport crude approximately 1,443 km to the Tanzanian port of Tanga.[66]

The environmental justice dimensions operate on all three levels of the tripartite framework. Distributive injustice: the African Centre for Biodiversity (2023) found that 67% of Graben households reported polluted water sources near oil exploration sites; 89% of community members surveyed were not consulted before oil exploration approval in their areas; and community compensation payments averaged 40% below fair market value. Procedural injustice: the adequacy of community consultation in the EIA processes for the oil projects has been widely questioned by civil society — and is the subject of the ACEDH v Uganda litigation before the EACJ (2025). Corrective injustice: no oil company has been held criminally liable for environmental violations in Uganda

[66] TotalEnergies Uganda, Tilenga Project Environmental and Social Impact Assessment (2020); CNOOC Uganda Limited, Kingfisher Project ESIA (2020); NEMA, Tilenga ESIA Technical Review (2020).

under the NEA 2019.[67]

5.3 Urban Development: Kampala and the Nakivubo Channel

The Nakivubo Channel and its associated wetland historically served as the primary drainage infrastructure for much of central Kampala, providing natural flood buffering and water quality treatment. Between the 1990s and 2000s, approximately 50% of the Nakivubo wetland was drained or encroached upon through a combination of illegal construction and legally questionable permit issuances. The consequences became catastrophically apparent in the flooding events of 2025: heavy seasonal rains produced floods that inundated large areas of central Kampala, killed dozens, displaced thousands, and caused enormous economic losses — yet the laws prohibiting construction on drainage channels and wetlands had existed throughout the encroachment period.[68]

The Nakivubo case illustrates the enforcement gap in the starkest possible terms: the law existed; NEMA had the mandate; the courts had declared environmental rights; yet the drainage channels were built upon, the wetlands drained, and the floods came. Environmental justice for urban communities in Kampala requires not new law but the enforcement of existing law — with the structural reforms proposed in Chapter Eight.

5.4 Mining: The Karamoja Region

The Karamoja region of northeastern Uganda contains significant deposits of gold, marble, limestone, and other minerals. It is also one of Uganda's most marginalised regions — historically underserved in infrastructure, education, and public services, with high poverty rates and a largely pastoralist livelihood system critically dependent on access to land and water resources. Global Rights Alert (2023) found that most mining companies have not posted adequate environmental bonds, community development agreements are either absent or

[67]African Centre for Biodiversity, Oil/Gas Development and Environmental Justice in Uganda's Albertine Graben (ACB, Johannesburg, 2023); Oxfam International, "Unequal Risks and Benefits: Oil in Uganda" (2021); ActionAid Uganda, "Voices from the Graben" (2024); ACEDH v Uganda (EACJ, 2025).

[68]KCCA, Post-Flood Assessment Report (2025); NEMA, Wetlands Status Report (2021) — records wetland coverage reduction from 15.6% of Uganda's land surface in 1994 to 8.9% in 2020.

inadequately implemented, and communities have received minimal benefit from extraction. The Uganda Human Rights Commission (2022) documented water sources contaminated by mining activities with no available community recourse.[69]

The Mining and Minerals Act 2022 lacks explicit Free, Prior, and Informed Consent (FPIC) requirements — a significant gap given that the African Commission on Human and Peoples' Rights has held in CEMIRIDE v Kenya (2010) that the principle of FPIC applies as a matter of African Charter obligations. The combination of absent FPIC, weak bond requirements, inadequate CDA implementation, and absent independent environmental monitoring creates a situation of nearly complete environmental justice failure in the Karamoja mining context.[70]

5.5 Forestry and Wetlands

Uganda's forests and wetlands are both ecologically critical and legally contested. Forest cover has declined from approximately 24% of land area at independence to below 9% today. Wetlands have fallen from approximately 16% of land area to below 9%. The Butamira Forest Reserve case (2004) remains the central legal authority on the illegality of government excision of forest reserves without parliamentary authority and community consent. The Kitubulu community action (2026) demonstrates that communities can successfully resist illegal excisions even without formal litigation. Restoration orders — legally valid tools under the NEA 2019 — can be unjust in application if they demolish the homes of the poor while leaving untouched the illegal developments of the politically connected.[71]

5.6 Waste Management

The Greenwatch case (2002) established Uganda's leading judicial

[69]Global Rights Alert, "Mining and Environmental Justice in Karamoja" (2023); UHRC, "Report on Human Rights Situation in Karamoja" (2022); Mining and Minerals Act 2022.

[70]Mining and Minerals Act 2022; CEMIRIDE v Kenya, ACHPR Communication 276/2003 (2010); ILO Convention No. 169 (1989); UNDRIP (2007).

[71]NFA, Uganda Forest Resources Assessment (2023); NEMA, Wetlands Status Report (2021); Frank Tumwebaze, "Environmental Enforcement and the Urban Poor in Kampala" (2023) 18 Journal of Eastern African Studies 67; ACODE v AG (2004).

precedent on waste-related environmental justice, demonstrating both the constitutional framework's potential and the limitations of judicial intervention. The kaveera problem persisted for nearly two decades after Greenwatch because the court declared a violation but declined to issue a ban — deferring to Parliament. Meaningful legislative response did not materialise until the National Environment (Plastics Management) Regulations (2021). The pattern — judicial declaration without effective remedy, years of legislative inaction, eventual statutory regulation — characterises Ugandan environmental governance in the waste sector and reinforces the case for the judicial and legislative reforms proposed in Chapter Eight.[72]

5.7 Cross-Sectoral Patterns: What the Five Sectors Reveal

Examining the five sectors surveyed in this chapter together reveals patterns that would not be visible from any single sectoral analysis in isolation. First, every sector exhibits the same fundamental distributive pattern: economic benefits concentrate among a small set of actors (government revenue, corporate profit, urban property value) while environmental costs concentrate among a different, generally poorer and more marginalised, set of actors (rural and peri-urban communities, pastoralist populations, urban slum residents). Second, every sector exhibits a procedural justice deficit of broadly similar character: formal consultation requirements exist on paper but are inconsistently and often inadequately implemented in practice. Third, every sector exhibits a corrective justice deficit: enforcement mechanisms exist in statute but are under-resourced, inconsistently applied, and vulnerable to capture by powerful interests.

5.8 The Climate Change Dimension Across Sectors

Each of the five sectors examined in this chapter intersects with climate change in distinct ways that compound existing environmental justice concerns. The oil and gas sector contributes directly to Uganda's and the world's greenhouse gas emissions, even as Uganda itself faces severe climate

[72]Greenwatch v AG and NEMA (2002); National Environment (Plastics Management) Regulations 2021; Francis Butagira, "Plastic Pollution and Environmental Justice in Uganda: A Legal Analysis" (2022) 5 Uganda Law Review 34.

vulnerability through changing rainfall patterns affecting agriculture. Urban development patterns — particularly the loss of wetland flood-buffering capacity discussed in relation to the Nakivubo Channel — directly increase climate vulnerability to extreme rainfall events, which climate science indicates are increasing in frequency and intensity in East Africa. Mining activities in Karamoja occur in a region already experiencing severe climate-related stress on pastoral livelihoods, compounding existing vulnerability. Forest loss reduces carbon sequestration capacity precisely when increased sequestration is most needed, while also reducing the resilience of ecosystems and communities to climate-related stress. And waste management failures, including methane emissions from poorly managed landfills such as Kiteezi, contribute disproportionately to greenhouse gas emissions relative to the economic value generated.[73]

5.9 Gender Dimensions of Sectoral Environmental Injustice

Environmental injustice in Uganda is not gender-neutral. Women bear disproportionate burdens across each sector examined in this chapter: in the oil and gas sector, women are frequently excluded from compensation negotiations (which are typically conducted with male household heads under customary practice) despite bearing primary responsibility for water collection, which becomes more burdensome as water sources are polluted or restricted; in urban development, women and children are disproportionately represented among flood casualties in informal settlements, reflecting gendered patterns of time spent in the home during daytime flooding events; in mining communities, women face increased burden of unpaid care work as men migrate for mining labour, alongside exposure to mining-related water and soil contamination affecting subsistence agriculture, which is predominantly women's labour; in forestry, women's traditional roles in firewood and non-timber forest product collection are disrupted by forest reserve restrictions enforced without regard to gendered livelihood impacts; and in waste management, women informal waste pickers face occupational health risks with minimal protective equipment or

[73]Uganda National Meteorological Authority, Climate Change Projections for Uganda (2021); IPCC, Sixth Assessment Report, Working Group II: Impacts, Adaptation and Vulnerability, Chapter 9 (Africa) (2022); Climate Change Act 2021 (Uganda).

formal recognition.[74]

5.10 Indigenous and Customary Land Rights in Environmental Decision-Making

A further cross-sectoral theme concerns the relationship between statutory environmental governance and customary land tenure systems that govern the majority of rural land in Uganda. The Land Act (Cap. 227) recognises customary tenure as a valid form of land ownership, but the interface between customary tenure and statutory environmental restrictions (wetland buffer zones, forest reserve boundaries, mining licence areas) frequently generates conflict, particularly where customary land rights pre-date the statutory environmental restriction but are not formally documented in a manner that statutory decision-makers readily recognise. The Constitutional Court's jurisprudence on customary land rights, while not specifically environmental in focus, establishes that customary tenure is constitutionally protected under Article 237 and cannot be extinguished without due process — a principle directly relevant to environmental decisions that affect customarily held land, including the Butamira and Kitubulu disputes discussed in Chapter Three.[75]

5.11 The Role of Traditional and Cultural Institutions in Environmental Stewardship

Beyond the formal legal framework, traditional cultural institutions in Uganda have historically played a significant role in environmental stewardship that pre-dates and operates alongside statutory regulation. Among the Basoga, sacred groves and wetlands have traditionally been protected through cultural taboo systems administered by clan elders, predating and in some respects more effective than statutory protection mechanisms in the areas where such institutions remain active. Similar traditional ecological governance systems exist among the Banyankole (sacred wetlands), the Bagisu (sacred forest groves associated with Imbalu circumcision ceremonies), and pastoral communities in

[74] UN Women, Gender and Environment in Uganda: A Situational Analysis (2022); FIDA Uganda, Environmental Rights and Access to Justice: A Study of Women's Experiences (2023).
[75] Land Act (Cap. 227), s. 3 (customary tenure); Constitution of Uganda 1995, Art. 237; for judicial treatment of customary land rights, see Kampala District Land Board v Venansio Babweyaka, Civil Appeal No. 2 of 2007 (Supreme Court of Uganda).

Karamoja (traditional grazing rotation systems that prevented overgrazing before they were disrupted by colonial and post-colonial land alienation). These traditional institutions exemplify, in concrete historical practice, the Ubuntu environmental ethic articulated in Chapter Four — and their progressive erosion through colonial land policy, post-colonial development pressure, and the individualisation of land tenure represents a historical loss of environmental governance capacity that the reform agenda in Chapter Eight seeks, in part, to recover through the proposed integration of community-based environmental stewardship structures.[76]

5.12 The Specific Case of Lake Victoria: A Shared Resource Under Compound Pressure

Lake Victoria — Africa's largest lake, shared among Uganda, Kenya, and Tanzania — exemplifies the compound environmental justice pressures that arise where a critical natural resource is subject to multiple sectoral pressures simultaneously and where governance authority is fragmented across both domestic sectoral regulators and international/regional bodies. The lake faces simultaneous pressure from: industrial and municipal pollution from the rapidly urbanising lakeshore (including Kampala's own contribution through the Nakivubo and other drainage channels discussed at section 5.3); overfishing driven by both subsistence pressure from a growing population and commercial fishing interests; water hyacinth infestation linked to nutrient pollution from agricultural runoff and inadequately treated sewage; and declining water quality linked to the cumulative effect of all the foregoing pressures. The Lake Victoria Basin Commission, established under the East African Community framework, provides a regional governance mechanism, but its enforcement powers remain limited relative to the scale of the environmental pressures it is tasked with managing, and its effectiveness depends substantially on the domestic enforcement capacity of each member state's environmental authority — capacity that, as Chapter Six demonstrates, remains significantly constrained in

[76] Y.K. Lubogo, A History of Busoga (East African Literature Bureau, Nairobi, 1960), Chapter 7 (on Busoga clan land and sacred site management); Aidan Southall, Alur Society: A Study in Processes and Types of Domination (Heffer, Cambridge, 1956) — for comparative traditional ecological governance in Uganda; Isaac Christopher Lubogo, Ubuntu and the Law in Uganda (Suigeneris Publishers, 2024), Chapter 6.

Uganda's case.[77]

5.13 Renewable Energy Development: An Emerging Sixth Sector

While this chapter has focused on the five sectors traditionally associated with Ugandan environmental justice concerns, the rapidly growing renewable energy sector — particularly hydropower development (including major projects such as the Bujagali, Karuma, and Isimba dams) and emerging solar and geothermal development — presents emerging environmental justice considerations that warrant brief attention. Large hydropower projects, while contributing to Uganda's clean energy transition and reducing reliance on biomass fuel sources (itself an environmental and public health benefit, particularly for women who bear the primary burden of fuel collection), have generated their own distinct environmental justice concerns: displacement of riverside and lakeside communities, alteration of downstream river flow patterns affecting fishing and agricultural communities, and — in the case of Bujagali specifically — submersion of culturally and spiritually significant sites, raising questions analogous to the Ubuntu-grounded cultural and spiritual dimensions of environmental harm discussed in Chapter One's treatment of the relationship between human communities and natural ecosystems.[78]

5.14 Industrial Pollution in Uganda's Manufacturing Sector

Beyond the five sectors given extended treatment in this chapter, Uganda's growing manufacturing sector — particularly textile, food processing, and cement production — generates industrial pollution concerns that intersect with environmental justice in ways meriting brief but specific attention. Industrial zones in and around Kampala, Jinja, and other urban centres frequently abut residential areas, including informal settlements, where land use planning has historically been weak or poorly enforced. Workers and nearby residents face exposure to industrial air and water pollution with limited monitoring or

[77] Lake Victoria Basin Commission, State of the Lake Victoria Basin Report (2022); EAC Treaty (1999), Protocol for Sustainable Development of Lake Victoria Basin (2003).

[78] Uganda Electricity Generation Company Limited, Karuma Hydropower Project Resettlement Action Plan (2018); International Rivers, "The Bujagali Dam: A Case Study in Hydropower Development and Displacement" (2012).

enforcement of applicable emission and effluent standards under the NEA 2019. The Jinja industrial corridor, historically Uganda's primary industrial centre, illustrates the pattern: decades of industrial activity, much of it predating the current statutory environmental framework, have left a legacy of soil and water contamination that current regulatory mechanisms are only beginning to address through the environmental audit provisions discussed at section 2.10.[79]

5.15 Plastic Pollution and the Circular Economy Transition

The Greenwatch kaveera litigation, discussed extensively in Chapters Three and Nine, addressed only the leading edge of what has become a much broader plastic pollution challenge. Uganda's National Environment (Plastics Management) Regulations 2021, enacted nearly two decades after Greenwatch first identified the constitutional problem, introduce extended producer responsibility obligations requiring plastic manufacturers and importers to take responsibility for the end-of-life management of their products — a regulatory innovation broadly consistent with the Polluter Pays Principle confirmed in Nyakaana, extended from individual pollution incidents to systemic product lifecycle responsibility. Implementation of these Regulations remains in early stages, and environmental justice advocates should monitor their practical enforcement closely, given the pattern — documented throughout Chapter Six — of strong regulatory text followed by weak practical implementation.[80]

[79]NEMA, Industrial Pollution Status Report for Major Urban Centres (2022); NEA 2019, ss. 121–125 (environmental audit).

[80]National Environment (Plastics Management) Regulations 2021; Greenwatch v AG and NEMA (2002).

CHAPTER SIX
CHALLENGES TO ENVIRONMENTAL JUSTICE IN UGANDA: A SYSTEMATIC ANALYSIS

6.1 Introduction: Why the Gap Persists

The case for Uganda as a normatively progressive jurisdiction in environmental law is easily made by pointing to its constitutional text, its statutory framework, and its landmark judicial decisions. The harder, and ultimately more important, case examines why, despite these achievements, Uganda continues to face severe environmental injustice in practice. Seven structural challenges are identified.

6.2 The Enforcement Gap

The most pervasive and consequential challenge is the enforcement gap — the profound distance between the legal prohibitions established by the constitutional and statutory framework and their actual enforcement. NEMA's State of Compliance Monitoring Report (2022) records compliance rates with EIA conditions below 35% for the period 2019–2022. Structural causes: chronic under-resourcing (NEMA's budget below 0.02% of GDP for the past decade; the Environment Protection Force has fewer than 500 personnel nationally — approximately one enforcement officer per 1,000 square kilometres); procedural complexity creating delay opportunities; absence of specialised courts with environmental expertise; and political vulnerability of enforcement officers to pressure from powerful developers.[81]

6.3 Judicial Reluctance and Minimalism

Courts declare environmental rights violated but decline to issue specific, effective orders. The Greenwatch paradigm (2002): violation of Article 39 found, but the court declined to issue the injunction sought — deferring to Parliament. Three structural causes of judicial reluctance: (1) separation of powers concerns

[81]NEMA, State of Compliance Monitoring Report (2022); MoFPED, National Budget Performance Report (2023) — NEMA budget as proportion of GDP below 0.02%; Uganda National Audit Office, Environmental Enforcement Performance Audit (2022).

— courts fear usurping legislative functions when they would effectively be ordering policy changes; (2) institutional capacity concerns — courts lack the power of continuing supervision over compliance with environmental orders, and are reluctant to issue orders they cannot monitor; (3) political concern — environmental enforcement confronts powerful interests. Nyakaana (2015) represents the Supreme Court's repudiation of minimalism in the environmental context: the court issued a specific Restoration Order requiring demolition of a permanent structure.[82]

6.4 Corruption and Elite Capture

The Butamira Forest Reserve case provides the paradigm of elite capture: forest land excised through processes found ultra vires by the court, yet the sugar company continued operating for years post-judgment without meaningful enforcement action. Transparency International Uganda (2023) documents systematic corruption in the land and environmental regulatory sector, including payments to NEMA officers for expedited or favourable EIA approvals, and political interference in enforcement actions against large developers. The result is a two-tier environmental law system: one law for the politically connected, another for ordinary Ugandans.[83]

6.5 Power Imbalances in Extractive Industry Relations

Communities negotiating with oil companies and mining corporations face severe information asymmetry: companies have legal expertise, technical knowledge, and financial resources that communities entirely lack. ActionAid Uganda (2024) documents that communities negotiating with oil companies frequently do not know their statutory entitlements, what environmental standards apply, or what legal rights they hold. This asymmetry is exploited to shift environmental and social costs onto communities through inadequate compensation, weak CDAs, and suppressed community objections to EIA

[82] Greenwatch v AG (2002) — declaration without effective remedy; Nyakaana v NEMA (2015) — specific restoration order; Cass Sunstein, One Case at a Time (Harvard University Press, 1999); Sandra Fredman, Human Rights Transformed (Oxford University Press, 2008).

[83] ACODE v AG (2004); Tumushabe, "Between Law and Power: The Butamira Case" (2006); TI Uganda, "Corruption in the Land and Environmental Sector" (2023); ACCU, "Report on Environmental Permit Corruption" (2022).

applications.[84]

6.6 Transboundary Environmental Justice Gaps

Uganda has not ratified the UNECE Espoo Convention on Environmental Impact Assessment in a Transboundary Context (1991). Communities in the DRC and Tanzania affected by the EACOP and Tilenga projects have no formal role in Ugandan EIA processes, no right to consultation under Ugandan law, and no access to Ugandan courts. The ACEDH v Uganda case (EACJ, 2025) attempts to fill this gap using EAC treaty law — but the treaty mechanisms are weak, the EACJ lacks enforcement powers comparable to a domestic court, and regional environmental justice mechanisms need substantial strengthening.[85]

6.7 Access to Justice

Environmental justice is meaningless without practical access to courts. Access deficits in Uganda include: high litigation costs (a constitutional petition can cost UGX 10–50 million in advocate fees alone — beyond the practical reach of most rural communities); geographical concentration of courts in urban centres (a Karamoja community must travel hundreds of kilometres to the High Court); limited environmental legal aid (LASPNET documents fewer than 10% of legal aid providers offering environmental services, concentrated in Kampala); and low environmental legal literacy (many Ugandans are unaware of their Article 39 constitutional rights).[86]

6.8 Public Awareness Deficit

The final challenge is the absence of public environmental legal literacy. Most Ugandans — including the communities most exposed to environmental harm — are unaware that Article 39 of the Constitution guarantees them a right to a clean and healthy environment; that they can bring constitutional petitions under Article 50; that NEMA has the power to issue Restoration Orders; and that

[84]ActionAid Uganda, "Voices from the Graben" (2024); Oxfam International, "Power, Voice and Environment in Uganda's Oil Sector" (2022).
[85]UNECE, Espoo Convention (1991); ACEDH v Uganda (EACJ, 2025); EAC Protocol on Environment and Natural Resources Management; Trail Smelter Arbitration (1941).
[86]LASPNET, "Mapping Environmental Legal Aid in Uganda" (2022); FIDA Uganda, "Environmental Rights and Access to Justice" (2023).

environmental NGOs can bring public interest litigation on their behalf. Without this awareness, rights remain theoretical.[87]

6.9 The Six Challenges as an Integrated Problem

The enforcement gap means laws are not enforced. Judicial reluctance means courts do not issue effective remedies. Corruption means enforcement is selective and captured by elites. Power imbalances mean communities cannot compete with extractive industries. Transboundary gaps mean environmental harm crosses borders without accountability. Access deficits mean communities cannot use the legal system even with valid claims. Public awareness deficits mean communities do not know they have claims. These seven challenges are mutually reinforcing dimensions of a single integrated governance failure — Uganda's inability to translate its normatively progressive environmental framework into practical environmental justice for the communities that need it most.

6.10 The Political Economy of Environmental Enforcement Failure

Beyond the proximate causes of enforcement failure identified in sections 6.2 through 6.8, a deeper political economy analysis is warranted. Uganda's economic development strategy, as articulated in Vision 2040, places substantial weight on extractive resource exploitation (oil, minerals) and infrastructure-led growth (including large-scale urban development) as engines of national economic transformation. This development strategy creates structural incentives for the political executive to favour expedited project approval over rigorous environmental scrutiny, since project delays carry direct political and economic costs (foregone revenue, investor confidence concerns, employment creation delays) that are immediately visible, while environmental harms are frequently diffuse, delayed, and disproportionately borne by politically less influential rural and marginalised communities. This structural incentive misalignment — not merely individual corruption or institutional incapacity —

[87]Uganda Human Rights Commission, Annual Report (2023) on environmental rights awareness; Greenwatch Uganda, Handbook on Environmental Law in Uganda (Vols I & II, 2009).

helps explain the persistence of the enforcement gap even in the absence of any single identifiable act of wrongdoing.[88]

6.11 Civil Society and Media as Accountability Mechanisms

Notwithstanding the structural challenges identified in this chapter, Ugandan civil society organisations and investigative media have played an indispensable role in maintaining environmental accountability pressure even where formal state enforcement has failed. Organisations including Greenwatch Uganda, ACODE, the National Association of Professional Environmentalists (NAPE), the Africa Institute for Energy Governance (AFIEGO), and Global Rights Alert have consistently documented environmental violations, supported affected communities in litigation and advocacy, and generated the empirical evidence base — much of it cited throughout this book — without which the scale of Uganda's environmental justice deficit would be far less visible. Investigative journalism, particularly through outlets such as the Daily Monitor, The Observer, and international outlets reporting on the Albertine Graben oil developments, has similarly exposed environmental and social harms that might otherwise have escaped public scrutiny. This civil society and media accountability function, while no substitute for the structural reforms proposed in Chapter Eight, represents an important — and currently under-resourced — pillar of Uganda's environmental justice ecosystem that warrants strengthening through, among other measures, the Environmental Legal Aid Fund proposed in section 8.4.[89]

6.12 Climate Change as a Distinct and Compounding Challenge

While climate change has been discussed in relation to specific sectors (section 5.8) and as a jurisprudential theme (section 4.5 and section 3.6 on the Mbabazi case), it warrants treatment here as a distinct structural challenge to environmental justice in its own right. Climate change compounds every other challenge identified in this chapter: it increases the frequency and severity of

[88] National Planning Authority, Uganda Vision 2040 (2013); for the general political economy analysis of environmental enforcement in resource-dependent developing economies, see Paul Collier, The Plundered Planet: Why We Must, and How We Can, Manage Nature for Global Prosperity (Oxford University Press, Oxford, 2010).
[89] NAPE, Annual Report (2023); AFIEGO, Oil and Environmental Governance in Uganda: A Five-Year Review (2024); Global Rights Alert (2023).

environmental harms (flooding, drought, crop failure) that the enforcement gap already leaves inadequately addressed; it increases the stakes of judicial reluctance, since delayed judicial action on climate-related claims forecloses an ever-narrowing window for effective mitigation; it provides new opportunities for corruption and elite capture in the rapidly growing climate finance and carbon credit sectors, where verification and benefit-distribution mechanisms remain immature; it exacerbates power imbalances between communities and the international financial institutions and corporations driving climate adaptation and mitigation projects; and it is inherently transboundary, given that Uganda's climate vulnerability is driven overwhelmingly by global emissions over which it has no control, even as its own emissions trajectory (rising with oil development) compounds the problem.[90]

6.13 Synthesising the Challenges: A Diagnostic Framework

Challenge	Primary Mechanism of Failure	Cross-Reference
Enforcement Gap	Under-resourcing of NEMA and EPF; institutional incapacity	Section 6.2; Chapter 8, s. 8.2.2
Judicial Reluctance	Separation of powers caution; absence of supervisory jurisdiction practice	Section 6.3; Chapter 9, s. 9.9
Corruption/Elite Capture	Political economy incentives favouring rapid project approval	Section 6.4, 6.10; Chapter 8, s. 8.2.4
Power Imbalances	Information and resource asymmetry between communities and developers	Section 6.5; Chapter 8, s. 8.4
Transboundary Gaps	Absence of ratified transboundary EIA framework	Section 6.6; Chapter 3, s. 3.5.1
Access to Justice	Cost, geography, legal aid scarcity, literacy deficits	Section 6.7; Chapter 8, s. 8.4
Climate Change	Compounds all preceding challenges; inherently transboundary and intergenerational	Section 6.12; Chapter 3, s. 3.6; Chapter 4, s. 4.5

6.14 Comparative Enforcement Statistics: Benchmarking Uganda's Performance

[90]IPCC, Sixth Assessment Report (2022); Climate Change Act 2021 (Uganda); Ministry of Water and Environment, Uganda's Updated Nationally Determined Contribution (2022).

Quantitative comparison of environmental enforcement intensity across the comparator jurisdictions discussed in Chapter Seven illuminates the scale of Uganda's enforcement gap. India's National Green Tribunal disposes of several thousand environmental cases annually across its specialised benches; South Africa's National Prosecuting Authority environmental crimes units secure several hundred environmental convictions annually; Kenya's Environment and Land Court, despite a smaller population and economy than several of the other comparators, has built a substantial caseload and body of jurisprudence within little more than a decade of its establishment. By contrast, Ugandan environmental prosecutions under the NEA 2019 (and its 1995 predecessor) remain comparatively rare, with NEMA's own enforcement reporting indicating that formal prosecutions represent only a small fraction of documented compliance violations, the overwhelming majority of which are addressed, if at all, through administrative warning notices that frequently generate no further enforcement action. This quantitative benchmarking reinforces the qualitative "paper tiger" diagnosis developed throughout this book and underscores the urgency of the institutional reforms proposed in Chapter Eight.[91]

[91]National Green Tribunal (India), Annual Report (2023); South Africa National Prosecuting Authority, Environmental Crimes Unit Annual Report (2023); Kenya Environment and Land Court, Annual Caseload Statistics (2023); NEMA, State of Compliance Monitoring Report (2022).

CHAPTER SEVEN
COMPARATIVE ENVIRONMENTAL JUSTICE: GLOBAL MODELS AND LESSONS FOR UGANDA

7.1 Introduction: Learning Across Jurisdictions

Uganda's environmental justice challenges and aspirations are not unique. Five jurisdictions — the United States, India, South Africa, Kenya, and Brazil — each offer distinctive models of environmental justice law and practice holding specific lessons for Uganda's trajectory.

7.2 The United States: The Originator Model

The EJ movement emerged in the 1970s–1980s from the convergence of civil rights and environmental activism, catalysed by empirical studies documenting that hazardous waste sites and toxic facilities were disproportionately located in communities of colour and low-income communities. Executive Order 12898 (1994) directed all federal agencies to identify and address disproportionate environmental impacts on minority and low -income populations. Key mechanisms: Civil Rights Act Title VI litigation; EPA Office of Environmental Justice; cumulative impact assessment methodologies. Critical contrast with Uganda: the US lacks a federal constitutional right to a healthy environment (Uganda's Article 39 is superior), but the US has stronger anti-discrimination enforcement mechanisms and more developed cumulative impact methodologies.[92]

Specific lessons for Uganda: (1) establish an environmental justice office within NEMA with a specific mandate to identify and address cumulative environmental burdens on vulnerable communities; (2) develop cumulative impact assessment methodologies to reveal distributional patterns of environmental harm that single-project EIAs obscure; (3) create EJ community grants to fund community-level environmental monitoring.

[92]Executive Order 12898 (1994); Robert Bullard, Dumping in Dixie (1990); David Boyd, The Environmental Rights Revolution (UBC Press, Vancouver, 2012); Luke Cole and Sheila Foster, From the Ground Up (New York University Press, 2001).

7.3 India: The Judicial Activism Model

M.C. Mehta v Union of India (1987) AIR 1086 SC is the foundational case: the Indian Supreme Court read Article 21 (right to life) to include the right to live in a pollution-free environment, transforming Indian environmental law from a statutory framework into a constitutionally grounded human rights regime. The "absolute liability" rule established in the companion Oleum Gas Leak case (1987) — strict liability for escape of hazardous substances with no exceptions, including the "natural use" exception in Rylands v Fletcher — is more protective than the English common law rule and is directly applicable in Uganda.[93]

The National Green Tribunal Act 2010 created a specialised environmental tribunal staffed by both judicial and technical members, with exclusive environmental jurisdiction, fast-track procedures, and the power to issue binding remedial orders against government agencies and private parties. The NGT has handled over 20,000 environmental cases since its establishment. Specific lesson for Uganda: a specialised environmental court or division, staffed with both legal and scientific expertise and insulated from the political pressures that constrain ordinary High Court environmental enforcement, is the most impactful single institutional reform available.[94]

7.4 South Africa: The Socio-Economic Rights Model

Section 24 of the South African Constitution guarantees the right to an environment not harmful to health or wellbeing. Fuel Retailers Association of Southern Africa v Director-General: Environmental Management (2007) established that environmental rights and socio-economic rights must be balanced in a constitutionally mandated exercise, requiring courts to engage with empirical evidence about the real-world consequences of environmental and development decisions. South Africa developed: (a) specialised environmental prosecutors within the National Prosecuting Authority with investigative powers; (b) environmental courts within the Magistrates' Court system; and (c) the

[93]M.C. Mehta v Union of India (1987) AIR 1086 SC; Oleum Gas Leak case (1987) 1 SCC 395; Subhash Kumar v State of Bihar (1991) AIR SC 420; Vellore Citizens Welfare Forum v Union of India (1996) 5 SCC 647.

[94]National Green Tribunal Act 2010 (India); Geetanjoy Sahu, "Implementation of Environmental Judgments in Context" (2014) 21 APJEL 45.

Promotion of Administrative Justice Act (PAJA) requiring government agencies to give reasons for environmental decisions and follow fair procedures. Key lesson: environmental prosecutors and an administrative justice framework forcing reasons-giving for NEMA decisions.[95]

7.5 Kenya: The Specialised Court Model — Most Directly Applicable

Article 42 of the Constitution of Kenya (2010) provides that every person has the right to a clean and healthy environment, including the right to have the environment protected for the benefit of present and future generations. The Environment and Land Court Act 2011 established a dedicated Environment and Land Court (ELC) — a superior court of record with High Court status, staffed by judges with specific environmental and land law expertise, operating across multiple counties in Kenya, and empowered to grant injunctions, declarations, compensation orders, and restoration orders. The ELC has proven significantly more accessible and effective than general civil courts in environmental justice cases. Kariuki Muigua (2019) documents the ELC's development of a substantial and coherent body of environmental jurisprudence within eight years of its establishment.[96]

This is the single most directly applicable institutional model for Uganda. A constitutional amendment to Article 139 of the Ugandan Constitution, adding "environment and land matters" as a specific jurisdiction, followed by an Environment and Land Division Act modelled on the Kenyan ELC Act, would represent the most transformative environmental justice institutional reform available.

7.6 Brazil: The Participatory Democracy and Independent Prosecutor Model

Article 225 of the Brazilian Constitution (1988) grants everyone the right to

---

[95] South African Constitution, s. 24; Fuel Retailers 2007 (5) SA 69 (CC); PAJA, Act 3 of 2000 (South Africa); National Environmental Management Act 1998 (South Africa).

[96] Constitution of Kenya 2010, Art. 42; Environment and Land Court Act 2011 (Kenya); Kariuki Muigua, "Environment and Land Court: A Catalyst for Environmental Justice in Kenya" (2019) 1 JSDLP 1.

an ecologically balanced environment. The Ministério Público (Public Prosecutor's Office) has constitutional independence from the executive branch and is empowered to bring civil public actions (ação civil pública) on behalf of diffuse or collective interests, including environmental interests — with investigative and subpoena powers that NGOs entirely lack. The Brazilian model suggests the value of an independent environmental prosecutor for Uganda: consider establishing a specialised environmental enforcement unit within the DPP, with enhanced independence, resources, and the power to investigate environmental crimes without waiting for police referrals.[97]

7.7 Comparative Summary

Jurisdiction	Primary Focus	Key Mechanisms	Constitutional Right?	Key Lesson for Uganda
United States	Race & class; toxic siting	EJ Office; EO 12898; cumulative impact assessment; Title VI litigation	No federal right (state constitutions vary)	EJ Office in NEMA; cumulative impact methodology
India	Judicial activism; PIL revolution	NGT (specialised tribunal); absolute liability; liberal standing; PIL	Art. 21 (right to life) extended to environment	Specialised environmental tribunal; absolute liability rule
South Africa	Socio-economic rights; transformation	s.24 CoSA; PAJA; env. prosecutors; environmental magistrates courts	Explicit s.24	Environmental prosecutors; administrative justice Act
Kenya	Constitutional environmentalism; specialised courts	Environment and Land Court (nationwide, specialist)	Explicit Art. 42	ELC model — most directly applicable; adopt urgently
Brazil	Participatory democracy; land rights	Ministério Público; ação civil pública; independent env. prosecution	Explicit Art. 225	Independent environmental prosecutor with subpoena power

7.8 Lessons Not to Import: Comparative Caution

[97] Brazilian Constitution 1988, Art. 225; Environmental Crimes Law (Law 9.605/1998) (Brazil); Ação civil pública framework.

Comparative legal study requires not only identifying transferable lessons but also recognising which features of comparator jurisdictions are unsuitable for transplantation into the Ugandan context. Three cautionary lessons merit attention. First, the United States' heavy reliance on private litigation and class actions as the primary environmental justice enforcement mechanism presupposes a contingency-fee legal services market and a litigation culture that does not currently exist at scale in Uganda — wholesale adoption of this model without the supporting legal aid infrastructure proposed in Chapter Eight would simply replicate the access-to-justice deficit already diagnosed in Chapter Six. Second, India's National Green Tribunal, while an important institutional model, has itself faced significant criticism for case backlogs and resource constraints in recent years — Uganda should design its proposed Environmental Justice Division with adequate resourcing from inception, rather than replicating the under-resourcing that has constrained the NGT's full potential. Third, Brazil's Ministério Público model presupposes a constitutional and institutional independence for the prosecutorial function that would require significant adaptation to fit within Uganda's existing DPP structure under Article 120 of the Constitution — direct transplantation would require careful constitutional and institutional redesign rather than simple imitation.[98]

7.9 Regional African Comparative Models Beyond Kenya and South Africa

Beyond Kenya and South Africa, other African jurisdictions offer additional comparative insight, even where they do not warrant the extended treatment given to the five primary comparator jurisdictions in this chapter. Tanzania's Environmental Management Act 2004 establishes a National Environment Management Council with investigative and enforcement powers broadly similar to Uganda's NEMA, but with a notable additional feature: a statutory Environmental Tribunal (distinct from the regular court system) with jurisdiction over environmental disputes, offering a less resource-intensive intermediate model between Uganda's current reliance on the regular High Court and the fully

[98]For criticism of the NGT's resource constraints, see Geetanjoy Sahu (2014), discussed at section 7.3; Constitution of Uganda 1995, Art. 120 (Office of the DPP).

judicialised Environment and Land Court model of Kenya. Rwanda's environmental governance framework, administered through the Rwanda Environment Management Authority, is notable for its integration of environmental considerations into broader spatial planning and land use decisions through a unified National Land Use and Development Master Plan — a model of policy integration that contrasts with Uganda's more fragmented sectoral approach to environmental and land governance.[99]

7.10 International Environmental Justice Networks and Uganda's Participation

Uganda's environmental justice development does not occur in isolation from international networks of environmental law practitioners, judges, and scholars. The Judges' Programme on International Environmental Law, coordinated through UNEP, has provided training opportunities for Ugandan judicial officers. The East African Judicial Environmental Network facilitates exchange of jurisprudence and judicial practice among East African judiciaries, including the cross-fertilisation of doctrines such as the Kenyan ELC's approach to public interest standing, which has influenced subsequent Ugandan judicial practice even without formal precedential authority. Continued and deepened engagement with these international and regional networks, including potential formal judicial exchange programmes with Kenya's Environment and Land Court, is recommended as a low-cost, high-value component of the institutional reform agenda developed in Chapter Eight.[100]

7.11 The European Union Model: A Brief Comparative Note

Although not selected as one of the five primary comparator jurisdictions for the detailed treatment in this chapter, the European Union's environmental governance framework merits brief comparative note for two specific innovations with potential relevance to Uganda's reform agenda. First, the EU's Strategic Environmental Assessment Directive (2001/42/EC), requiring

[99] Tanzania, Environmental Management Act 2004, Part VIII (Environmental Tribunal); Rwanda Environment Management Authority, National Land Use and Development Master Plan (2020).
[100] UNEP, Judges' Programme on International Environmental Law (ongoing); East African Judicial Environmental Network, Annual Report (2023).

environmental assessment of government plans and programmes (not merely individual projects), provided the model referenced in this book's discussion of the NEA 2019's own strategic environmental assessment provisions (section 2.10) — an innovation Uganda has already partially adopted but whose practical implementation remains underdeveloped. Second, the EU's Environmental Liability Directive (2004/35/EC) establishes a harmonised framework for environmental liability based on the Polluter Pays Principle across all EU member states, providing a useful comparative reference point for the further development of Uganda's own Polluter Pays jurisprudence following Nyakaana, particularly regarding the quantification of environmental damage and the methodology for assessing "equivalent" restoration where exact restoration of the original environmental condition is not technically feasible.[101]

7.12 Synthesis: A Hybrid Model for Uganda

Drawing together the comparative lessons developed throughout this chapter, this book's recommendation is not for Uganda to adopt any single comparator jurisdiction's model wholesale, but to construct a hybrid model drawing the most contextually appropriate elements from each: Kenya's specialised Environment and Land Court structure (section 7.5) as the primary institutional reform; India's liberal standing rules and absolute liability principle (section 7.3) as doctrinal reinforcements building on Uganda's already-liberal standing jurisprudence; South Africa's administrative justice framework and specialised environmental prosecutors (section 7.4) as procedural and prosecutorial reinforcements; Brazil's independent prosecutorial model (section 7.6) as a longer-term aspiration for environmental crime enforcement; and the United States' cumulative impact assessment methodology and environmental justice office model (section 7.2) as tools for systematically identifying and addressing the distributive justice patterns documented throughout Chapter Five. This hybrid approach, combined with the indigenous Ubuntu philosophical foundation developed in Chapter Four that distinguishes Uganda's environmental justice framework from any of its comparators, constitutes this book's central

[101] EU Directive 2001/42/EC (Strategic Environmental Assessment); EU Directive 2004/35/EC (Environmental Liability); NEA 2019, ss. 19–24.

comparative law contribution.

CHAPTER EIGHT
TOWARDS AN INTEGRATED MODEL OF ENVIRONMENTAL JUSTICE: THE REFORM AGENDA AND CONCLUSION

8.1 Introduction: From Diagnosis to Prescription

The analysis across the preceding seven chapters leads to a clear diagnostic conclusion: Uganda is a "paper tiger" jurisdiction — world-class normative framework, profound implementation failure. It possesses a constitutional environmental framework of genuine ambition. It has a judiciary willing, in landmark cases, to affirm core environmental justice principles. It has a civil society with the will and capacity to advance environmental justice through litigation and advocacy. And yet the gap between normative achievement and environmental justice reality is profound and continues to widen. This chapter proposes the Integrated Constitutional-Communitarian Environmental Justice Model — designed to translate Uganda's normative environmental commitments into lived environmental justice reality.[102]

8.2 Institutional Reforms

8.2.1 A Specialised Environmental Justice Division in the High Court

The single most impactful institutional reform is a specialised Environmental Justice Division within the High Court, modelled on Kenya's Environment and Land Court (ELC Act 2011). The reform should be constitutionally anchored — amendment to Article 139 adding "environment and land matters" as a specific jurisdiction. The Division should be: (a) staffed by judges selected on the basis of specific environmental and land law expertise, plus technical assessors (ecology, hydrology, soil science, climate science); (b) empowered to issue ongoing supervisory orders (environmental mandamus) — retaining jurisdiction over compliance with its orders; (c) constituted with fast-track environmental procedures; and (d) required to sit regularly outside Kampala

[102] Brian Tamanaha, On the Rule of Law (Cambridge University Press, 2004); NEMA, State of Compliance Monitoring Report (2022).

in Gulu, Mbarara, Mbale, Fort Portal, and Arua.[103]

8.2.2 Fully Resourcing NEMA and the Environment Protection Force

A statutory minimum environmental enforcement budget — expressed as a fixed percentage of GDP (minimum 0.05%) rather than annual appropriations vulnerable to fiscal pressures — should be enacted. The Environment Protection Force should be expanded from 500 to at least 2,500 personnel, with regional deployment across all districts. This follows South Africa's NEMA model requiring tabling of annual environmental management plans with specific enforcement targets and resource requirements before Parliament.[104]

8.2.3 An Environmental Justice Office within NEMA

Modelled on the USEPA's Office of Environmental Justice: specific mandate to monitor distributional impacts of environmental decisions; identify communities bearing disproportionate environmental burdens; develop cumulative impact assessment methodologies; provide technical assistance to communities participating in EIA processes; and report annually to Parliament on environmental justice outcomes.

8.2.4 An Independent Environmental Prosecutor

Following the Brazilian Ministério Público model: establish a specialised environmental enforcement unit within the DPP's office, with dedicated environmental prosecutors, investigators with technical environmental expertise, and the power to initiate environmental criminal investigations independently of police referral. Consider whether a dedicated Environmental Crimes Unit within the CID is the most achievable short-term option.

8.3 Doctrinal Reforms

8.3.1 Operationalising Intergenerational Equity: The Mbabazi Imperative

The High Court should rule in favour of the petitioners in Mbabazi & Ors v Attorney General (HCT Misc. Cause No. 0033/2012), establishing that the

[103] Constitution of Kenya 2010, Art. 162(2)(b); ELC Act 2011 (Kenya); Judicature Act (Cap. 13) (Uganda); Kariuki Muigua (2019).
[104] South Africa NEMA, s. 43; MoFPED, National Budget Performance Report (2023).

government owes a constitutionally enforceable fiduciary duty to future generations to take adequate action on climate change. Drawing on Urgenda (2019), Neubauer (2021), Future Generations v Colombia (2018), and Leghari (2015), a favourable ruling should direct: (1) revision of Uganda's Nationally Determined Contribution to align with the Paris Agreement 1.5°C temperature limit; (2) a legislative framework for progressive reduction of Uganda's greenhouse gas emissions; and (3) mandatory climate vulnerability assessments in all public infrastructure planning.[105]

8.3.2 Constitutionalising the Ubuntu Environmental Ethic

A constitutional amendment to the National Objectives should direct that the constitutional environmental framework shall be interpreted in a manner reflecting the Ubuntu philosophy of communitarian environmental stewardship — obuntu bulamu — and the principle that the living hold the environment in trust for those yet to come. This provides a constitutional anchor for Ubuntu environmental jurisprudence without requiring the creation of new substantive rights.

8.4 Procedural and Access-to-Justice Reforms

1. Environmental Legal Aid Fund: financed by a 1% levy on oil revenue and 0.5% of mining royalties; administered by an independent board; providing legal representation and technical assistance to communities and individuals unable to afford environmental litigation costs.
2. Community Development Agreements as EIA Prerequisites: no EIA certificate shall be issued for projects with significant community impact (oil, gas, mining, forestry, large-scale urban development) without a prior CDA negotiated with independent legal and technical support for the affected community, funded from the Environmental Legal Aid Fund.
3. Simplified and Codified Standing Rules: codify liberal environmental standing in legislation; extend to community-based organisations, LC councils, subcounty environmental committees, and any registered representative body; rule — any person whose environmental interests are affected has standing regardless of whether they have suffered direct personal injury.
4. Environmental Legal Literacy: integrate constitutional environmental rights (Article 39, NEA 2019) into school curriculum (primary and secondary); deliver through radio programmes in all major Ugandan languages,

[105]Mbabazi & Ors v AG (2012); Urgenda Foundation v Netherlands (2019); Neubauer et al v Germany (BVerfG, 2021); Future Generations v Colombia (2018); Leghari v Pakistan (2015).

community meetings, and Parish Development Model sessions.

5. Mobile Environmental Court Sittings: the proposed Environmental Justice Division should conduct quarterly sittings in regional centres — Gulu (Northern), Mbarara (Western), Mbale (Eastern), Fort Portal (Rwenzori), and Arua (West Nile) — bringing the court to environmental justice rather than requiring communities to travel to the court.

8.5 The Ubuntu Model of Community-Driven Environmental Constitutionalism

Beyond institutional and doctrinal reform, this book argues for what it calls the "Ubuntu Model of Community-Driven Environmental Constitutionalism" — placing community agency, communal environmental stewardship, and the active mobilisation of constitutional environmental rights by communities themselves at the centre of the environmental justice project. The Kitubulu case (2026) provides the empirical foundation: a community without resources for formal litigation succeeded — through constitutional knowledge, community organisation, media engagement, and targeted advocacy — in reversing an illegal government decision. Five operational components: (1) constitutional environmental literacy; (2) community environmental stewardship structures (LC1–LC5 environmental committees); (3) access to the Environmental Legal Aid Fund; (4) strategic environmental litigation; and (5) Ubuntu environmental governance requiring genuine community consent in all development decisions affecting communal resources.[106]

8.6 Conclusion: The Road Ahead

Environmental justice in Uganda is, ultimately, a constitutional struggle. It is a struggle over the meaning of the commitment made by the framers of the 1995 Constitution when they inscribed Article 39: that every Ugandan citizen has a right to a clean and healthy environment. It is a struggle over whether the public trust obligations that the Constitution places on the state will be enforced against those in power. It is a struggle over whether the intergenerational equity mandate of the National Objectives will constrain today's development decisions.

The Mbabazi case, if decided in favour of the petitioners, will be a turning

[106] Kitubulu Community Action (2026); Isaac Christopher Lubogo, Lubogo Framework for Ubuntu Constitutionalism (Suigeneris Publishers, 2024).

point. The establishment of a specialised Environmental Justice Division will be a structural transformation. The constitutionalisation of the Ubuntu environmental ethic will be a philosophical deepening. The creation of community-driven environmental constitutionalism will be a democratic empowerment. Together, these reforms can transform Uganda from a paper tiger into a genuine environmental justice jurisdiction. The law is there. The Constitution is there. The jurisprudence is there. The Ubuntu philosophy is there. What remains is the will to act — and this book is offered as both the analysis of why that will has so far been insufficient, and the argument for why it must now become adequate to the constitutional task.[107]

8.6 Sequencing the Reform Agenda: A Realistic Implementation Pathway

The reform proposals developed in sections 8.2 through 8.5 of this chapter vary considerably in their political feasibility, resource requirements, and implementation timeline. A realistic implementation pathway should distinguish between reforms achievable in the short term (within the current parliamentary term, requiring no constitutional amendment), the medium term (requiring legislative amendment but not constitutional change), and the long term (requiring constitutional amendment or fundamental institutional restructuring).

8.6.1 Short-Term Reforms (0–2 Years)

- Establishment of an Environmental Justice Office within NEMA through administrative restructuring, requiring no new legislation (section 8.2.3)
- Issuance of Chief Justice practice directions requiring environmental cases to be fast-tracked and directing judicial officers to consider supervisory orders in appropriate cases (responsive to section 8.2.1 pending fuller institutional reform)
- Increased budgetary allocation to NEMA and the Environment Protection Force through the ordinary national budget process (section 8.2.2)
- Pilot mobile environmental court sittings in two regional centres, evaluated for expansion (section 8.4, proposal 5)
- Launch of an environmental legal literacy pilot programme in partnership with civil society organisations (section 8.4, proposal 4)

[107] Isaac Christopher Lubogo, Environmental Justice: Constitutionalism, Equity, Development and Environmental Governance in Uganda (Suigeneris Publications, Kampala, 2026), Chapter Eight, Conclusion.

8.6.2 Medium-Term Reforms (2–5 Years)

- Legislative amendment establishing the Environmental Legal Aid Fund with a defined revenue stream from oil and mining royalties (section 8.4, proposal 1)
- Amendment to the NEA 2019 and Mining and Minerals Act 2022 to introduce explicit FPIC requirements and mandatory Community Development Agreements as EIA prerequisites (section 8.4, proposal 2)
- Establishment of a dedicated environmental enforcement unit within the DPP's office (section 8.2.4)
- Ratification and domestication of the UNECE Espoo Convention on transboundary EIA (responsive to Chapter Six, section 6.6)
- Codification of liberal environmental standing rules in legislation, removing residual uncertainty (section 8.4, proposal 3)

8.6.3 Long-Term Reforms (5+ Years, Requiring Constitutional Amendment)

- Constitutional amendment to Article 139 establishing the specialised Environmental Justice Division with High Court status (section 8.2.1)
- Constitutional entrenchment of the Ubuntu environmental interpretive principle within the National Objectives (section 8.3.2)
- Constitutional clarification of the judicially enforceable content of intergenerational equity obligations, informed by the eventual Mbabazi judgment (section 8.3.1)

8.7 Financing the Reform Agenda

The institutional reforms proposed in this chapter carry significant resource implications that must be addressed for the reform agenda to be more than aspirational. This book proposes a diversified financing strategy: first, a statutory minimum environmental enforcement budget (section 8.2.2) ensures baseline NEMA and EPF funding insulated from annual budget volatility; second, the Environmental Legal Aid Fund (section 8.4) is specifically designed to be self-financing through a levy on the extractive industries whose activities generate the greatest environmental justice need, ensuring that the sectors creating environmental risk also fund the legal infrastructure needed to hold them accountable; third, the specialised Environmental Justice Division, while requiring upfront investment in judicial training and infrastructure, should generate efficiency savings over time through faster case resolution and reduced re-litigation; and fourth, international development partner support — already significant in Uganda's environmental governance sector through World Bank,

UNDP, and bilateral partner programming — should be directed where possible toward institutional capacity-building rather than only project-specific environmental compliance monitoring.[108]

8.8 Monitoring and Evaluating Reform Implementation

No reform agenda is complete without a mechanism for monitoring its own implementation and effectiveness. This book proposes that NEMA's proposed Environmental Justice Office (section 8.2.3) be tasked with annual public reporting against a defined set of environmental justice indicators, including: EIA compliance monitoring rates; the number and outcome of environmental public interest litigation cases; the geographic and demographic distribution of environmental enforcement actions (to track whether enforcement remains concentrated in particular regions or against particular categories of violator); Environmental Legal Aid Fund utilisation and outcomes; and community satisfaction surveys regarding the adequacy of EIA public participation processes. Such systematic monitoring would, for the first time, generate the longitudinal data needed to assess whether Uganda is making genuine progress from "paper tiger" status toward substantive environmental justice, or whether reforms remain themselves merely aspirational.

8.9 A Closing Word on Constitutional Aspiration and Practical Realisation

This book has traced, across eight chapters, the distance between Uganda's constitutional environmental aspiration and its practical environmental reality, and has proposed a comprehensive reform agenda — institutional, doctrinal, procedural, and communitarian — to close that distance. It is appropriate, in concluding this chapter, to acknowledge that constitutional aspiration and practical realisation exist always in productive tension in any functioning constitutional democracy: the gap between them is not a sign of constitutional failure but the ordinary condition of constitutionalism as an ongoing project rather than a completed achievement. The 1995 Constitution's

[108] World Bank, Uganda Environmental Governance Support Programme (ongoing); UNDP Uganda, Environmental Governance and Climate Resilience Programme (2023).

drafters could not have anticipated every environmental challenge Uganda would face three decades later — the scale of oil development in the Albertine Graben, the specific dynamics of urban wetland encroachment in a rapidly growing Kampala, or the now-undeniable reality of climate change's impact on Uganda's agricultural economy. What they provided, in Article 39 and its surrounding constitutional architecture, was not a complete answer to these challenges but a durable framework and a set of enforceable commitments capable of growing, through judicial interpretation and legislative elaboration, to meet challenges not yet foreseen. This book's reform agenda is offered in that same spirit: not as a final or complete answer, but as the next necessary stage in an ongoing constitutional project of environmental justice that will continue to develop long after this book's publication.[109]

[109]For the general theory of constitutionalism as an ongoing rather than completed project, see Karl Klare, "Legal Culture and Transformative Constitutionalism" (1998) 14 South African Journal on Human Rights 146.

PART THREE

ENVIRONMENTAL JUSTICE IN THE UGANDAN COURTROOM

A Practical Guide for Advocates and Judicial Officers

CHAPTER NINE
ENVIRONMENTAL JUSTICE IN THE UGANDAN COURTROOM: A PRACTICAL GUIDE FOR ADVOCATES AND JUDICIAL OFFICERS

9.1 Introduction: The Gap Between Law and Practice

Uganda's environmental law framework provides an impressive normative arsenal: Article 39 of the Constitution, the National Environment Act 2019, the Polluter Pays and Precautionary Principles confirmed in Nyakaana (2015), the Public Trust Doctrine from Butamira (2004), and the landmark decisions from Greenwatch to Kitubulu. Yet the daily experience of practitioners and judicial officers reveals a profound gap: environmental law is rarely practised well in Ugandan courts. Cases are under-argued by advocates who do not know the constitutional framework. They are under-adjudicated by judicial officers who do not know the applicable principles. Environmental crimes go unprosecuted or are poorly prosecuted. This chapter exists to close that gap.[110]

This chapter is structured as follows: section 9.2 covers standing; 9.3 covers types of environmental claims and causes of action; 9.4 covers what must be proved; 9.5 covers the burden and standard of proof; 9.6 covers remedies; 9.7 is a guide for prosecuting counsel; 9.8 is a guide for defence counsel; 9.9 is specifically for judicial officers; 9.10 is a step-by-step guide to environmental public interest litigation; 9.11 covers the use of international environmental law in domestic proceedings; 9.12 analyses the landmark cases as practical tools; 9.13 covers the criminal environmental offence catalogue; and 9.14 provides the practitioner's summary toolkit. Appendices C, D, and E provide templates, checklists, and tables for immediate use.

9.2 Establishing the Right to Bring an Environmental Claim: Standing in Ugandan Law

[110] Greenwatch Uganda, Handbook on Environmental Law in Uganda (Vols I & II, Greenwatch, Kampala, 2009); ACODE, Environmental Justice in West Nile and Karamoja (ACODE, Kampala, 2023).

9.2.1 The Constitutional Foundation of Environmental Standing

Article 50 of the Constitution provides that "any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened is entitled to apply to a competent court for redress." Read with Article 39 (right to a clean and healthy environment), Article 50 creates a broad standing right for environmental claims. The phrase "any person" — confirmed in Greenwatch (2002) and BAT v EAN (2003) to extend to corporate bodies, NGOs, and community groups — is the broadest environmental standing provision in Uganda's legal architecture. The right is self-executing: no further legislation is required for any person to bring a constitutional petition for violation of Article 39.[111]

9.2.2 The Three Key Standing Authorities

Three decisions define the environmental standing landscape and must be known by every environmental practitioner. First: Greenwatch v AG and NEMA (2002) — locus classicus. An environmental NGO has standing under Arts. 50/39 without demonstrated personal injury. The NGO's objects must include environmental protection (confirm from its constitution/memorandum of association). Second: BAT v EAN (2003) — constitution "allows actions of public interest groups to be brought on behalf of the needy and oppressed" (per Musoke -Kibuuka J at [8]). After BAT v EAN, any challenge to NGO or public interest environmental standing in Uganda is without legal foundation. Third: Uganda Wildlife Society v AG (Constitutional Petition No. 12 of 2005) — civil society organisations have a constitutionally grounded role, not a judicially conceded tolerance, in holding the state accountable for environmental obligations. Collectively these three cases establish: (a) individuals; (b) NGOs; (c) community groups; (d) CBOs; (e) any registered representative body — ALL have standing in environmental public interest claims.[112]

9.2.3 Practical Standing Checklist

Before filing, confirm:

[111]Constitution of Uganda 1995, Art. 50; Greenwatch v AG and NEMA (2002); BAT v EAN (2003); Uganda Wildlife Society v AG (2005).

[112]Greenwatch v AG and NEMA, HCT Misc. Cause No. 140/2002; BAT v EAN, HCT Misc. Application No. 39/2001 at [8]; Uganda Wildlife Society v AG, CP No. 12/2005.

- Claimant is a "person" within Art. 50 — individual, NGO, community group, CBO, LC council, or corporate body
- A fundamental right under Art. 39 (environment), Art. 22 (life), Art. 24 (dignity), or Art. 45 (general rights) has been infringed or is threatened
- If the claimant is an NGO — its objects include environmental protection (attach certificate of registration and constitution)
- If the claimant is a community group — it can be identified as representing persons with an environmental interest in the matter
- The claim is not moot — the environmental harm is ongoing or its consequences persist
- Constitutional petitions under Art. 50 have no fixed limitation period — but unreasonable delay may be a ground for refusal of equitable relief
- The appropriate forum has been identified: High Court (constitutional petition/judicial review); Chief Magistrate (minor NEA offences); Criminal Division (major environmental crimes)

9.3 Types of Environmental Claim: What Cause of Action to Bring

9.3.1 Constitutional Petition Under Articles 50 and 39

A constitutional petition under Article 50, alleging violation of Article 39 (or connected constitutional rights), is the most powerful vehicle for environmental public interest litigation in Uganda. It requires no demonstrated personal injury, can be brought by any person or group, and the relief available is unlimited: declaration, injunction, compensation, restoration order, mandamus, supervisory order. Governed by the Judicature (Fundamental Rights and Freedoms) (Practice Directions) Direction 2009 and the Civil Procedure Rules (SI 71-1). This is the form of proceeding that produced Greenwatch (2002), Uganda Wildlife Society (2005), and the pending Mbabazi case.[113]

9.3.2 Judicial Review of Environmental Decisions

Where NEMA, local governments, or other regulatory bodies make decisions affecting the environment — EIA approvals, permit issuances, exemptions, or refusals to act — those decisions can be challenged by judicial review. Grounds: (1) Illegality — acting ultra vires or without authority, as in Butamira where the Minister lacked authority to excise forest reserve land

[113]Constitution of Uganda 1995, Arts. 50, 39; Judicature (Fundamental Rights and Freedoms) (Practice Directions) Direction 2009; Civil Procedure Rules (SI 71-1).

without parliamentary approval; (2) Irrationality — Wednesbury unreasonableness (Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223, applied in Ugandan administrative law): a decision no reasonable decision-maker could make; (3) Procedural impropriety — failure to follow required procedures, including mandatory public consultation under NEA 2019 EIA Regulations rr. 20–32; and (4) Proportionality (emerging ground) — where a decision imposes a disproportionate burden on environmental or constitutional rights relative to any legitimate aim pursued.[114]

9.3.3 Civil Action for Environmental Tort

Where environmental harm causes damage to identifiable persons, a civil action lies in tort. Three heads: (1) Negligence — duty of care (established once environmental harm to neighbouring persons is foreseeable); breach; causation; damage; (2) Public or private nuisance — unreasonable interference with the use and enjoyment of land or with public rights; (3) Strict liability under the Polluter Pays Principle (Nyakaana, 2015) — the person who causes environmental damage is liable for full restoration costs regardless of fault. The Polluter Pays Principle in Ugandan law goes further than the English rule in Rylands v Fletcher (1868) LR 3 HL 330, which has a "natural use" exception — the Ugandan principle admits no such exception. Limitation: six years under the Limitation Act (Cap. 80) from accrual of cause of action.[115]

9.3.4 Criminal Prosecution Under the NEA 2019

Part XIII of the National Environment Act 2019 creates a comprehensive scheme of environmental offences. Key offences: s. 102 (discharge of waste into the environment contrary to standards — maximum UGX 480 million or 8 years or both); s. 108(6) (failure to comply with Restoration Order — UGX 240 million or 4 years); s. 117 (undertaking project without EIA certificate — UGX 480 million or 8 years); s. 126 (pollution of water resources); s. 131 (unlawful disposal of hazardous waste); s. 146 (obstruction of Environment Protection Force officers —

[114] ACODE v AG (2004) — illegality and procedural impropriety; Civil Procedure Act (Cap. 71), s. 33; Judicature Act (Cap. 13), s. 14; Associated Provincial Picture Houses v Wednesbury [1948] 1 KB 223.

[115] Nyakaana v NEMA (2015) at [45] — PPP established as part of Ugandan law; Rylands v Fletcher (1868) LR 3 HL 330; Limitation Act (Cap. 80), s. 3.

UGX 120 million or 2 years); s. 153 (corporate liability — directors and officers who consented to, connived in, or neglected to prevent the offence are personally liable as if they were the primary offender).[116]

9.3.5 Direct Application for a NEMA Restoration Order

Under Section 108 of the NEA 2019, any person can report environmental damage to NEMA and request the issuance of a Restoration Order. This is a non-litigious route to corrective environmental justice that is available to communities without the resources for court proceedings. NEMA has the power to issue the Order on its own investigation; where NEMA refuses or fails to act, that refusal is itself susceptible to judicial review as a failure to perform a statutory duty. Advocates should always consider whether a NEMA Restoration Order application is the fastest and most cost-effective route to remedy before proceeding to court.

9.4 The Essential Elements: What Must Be Proved

9.4.1 Elements of a Constitutional Environmental Petition (Articles 50/39)

The claimant must establish:

6. Standing — claimant is a "person" within Art. 50 with a relevant environmental interest (see section 9.2)
7. The constitutional right under Art. 39 (or connected articles) exists — established by the Constitution itself, no further proof required
8. Infringement or threat — proof of: (a) an act or omission by the respondent; (b) the act/omission caused or is likely to cause environmental harm; (c) the harm falls within the scope of "clean and healthy environment"
9. The infringement was not authorised by a valid law — or if authorised, the authorising law itself fails constitutional scrutiny
10. The court should grant the specific relief sought

9.4.2 Elements of Judicial Review of Environmental Decisions

Illegality: the decision-maker had no authority; or acted for an improper purpose; or ignored relevant considerations; or took irrelevant ones into account. Procedural impropriety: required procedure was not followed — mandatory public consultation not held (EIA Regulations rr. 20–32); community consent absent

[116] National Environment Act 2019, Part XIII, ss. 100–155.

where required (Butamira principle). Irrationality: no reasonable decision-maker could have reached this decision. Proportionality (emerging): the decision imposes a disproportionate burden on environmental or constitutional rights. The applicant bears the burden on the balance of probabilities.

9.4.3 Elements of Civil Environmental Tort

Negligence: duty of care (foreseeable harm to neighbour); breach (failure to take reasonable care); factual causation (but-for test); proximate causation; damage (proved loss). Nuisance: unreasonable interference with use/enjoyment of land or public right; damage. Polluter Pays strict liability (Nyakaana principle): (1) defendant caused environmental damage; (2) damage was caused to the environment (wetland, waterway, soil, air, biodiversity); (3) restoration costs incurred or will be incurred. Proof of fault not required under the Polluter Pays Principle.

9.4.4 Elements of Criminal Environmental Offences Under the NEA 2019

For each NEA 2019 offence, the prosecution must prove beyond reasonable doubt: (1) the identity of the accused; (2) the specific prohibited act or omission — identified by the exact section of the NEA 2019 charged; (3) the act or omission caused or contributed to the alleged environmental harm; (4) absence of lawful authority — if the accused claims a valid EIA certificate or permit, the prosecution must challenge its validity or show its conditions were violated; (5) corporate liability under s. 153 — that the accused was a director or officer who consented to, connived in, or neglected to prevent the offence. The mental element: for most NEA 2019 offences the act itself is sufficient (regulatory strict liability), following Gammon (Hong Kong) Ltd v Attorney General of Hong Kong [1985] AC 1 (PC).[117]

9.5 Burden and Standard of Proof in Environmental Cases

9.5.1 The General Rule

The general rule — he who asserts must prove — applies in environmental

[117]NEA 2019, ss. 100–155; Gammon (HK) Ltd v AG [1985] AC 1 (PC) — strict liability in regulatory environmental offences; Evidence Act (Cap. 6).

cases subject to important modifications. In criminal prosecutions under the NEA 2019: the DPP must prove beyond reasonable doubt. In civil environmental claims: the claimant proves on the balance of probabilities. In constitutional petitions: the petitioner establishes the violation on the balance of probabilities, after which the burden shifts to the respondent to justify any limitation on the right (a burden that is very difficult to discharge in cases of serious environmental harm).[118]

9.5.2 The Precautionary Principle and Burden Reversal — The Most Important Modification

The most important modification of the standard burden is the shift effected by the Precautionary Principle, confirmed by the Supreme Court in Nyakaana v NEMA (2015) at [52]. Where a claimant demonstrates: (a) a threat of serious or irreversible environmental damage; and (b) scientific uncertainty about the nature or extent of that damage — the burden shifts to the respondent to demonstrate that the proposed activity is safe and will not cause the threatened harm. This burden reversal is of fundamental practical importance: in cases involving potentially irreversible environmental harm (oil development, mining in sensitive areas, wetland drainage), the developer bears the burden of proving safety, not the community the burden of proving harm. Advocates should explicitly invoke this shift in every case involving threatened irreversible environmental damage.[119]

9.5.3 Expert Evidence and Scientific Proof

Environmental claims almost invariably require expert evidence. Governed by Evidence Act (Cap. 6), ss. 48–51, and Civil Procedure Rules, Order 11A (Expert Evidence). Key principles: (1) an expert must have recognised qualifications and practical experience in the relevant field — ecology, hydrology, soil science, toxicology, climate science, as appropriate; (2) expert opinion is admissible to explain technical matters beyond ordinary judicial knowledge; (3) courts are not bound by expert evidence and must evaluate it against all the evidence; (4) where experts disagree materially, the court must give reasons for preferring one

[118] Constitution of Uganda 1995, Art. 50; Evidence Act (Cap. 6); Civil Procedure Rules (SI 71-1).
[119] Nyakaana v NEMA (2015) at [52]; Rio Declaration, Principle 15 (1992); NEA 2019, s. 3.

opinion over another. Courts should be directed to issue early expert exchange orders in environmental cases to ensure expert reports are served well before trial.[120]

9.6 Remedies Available in Environmental Cases

9.6.1 Declaration

A declaration that a constitutional right under Article 39 has been violated, or that a government decision is ultra vires. A declaration alone is often insufficient — it creates no directly enforceable obligation and leaves the violator free to continue the harm. Advocates must combine declarations with specific relief. The lesson of Greenwatch (2002) — where a declaration without effective remedy produced nearly two decades of continued harm — must inform every environmental claim: always seek specific injunctive or restoration relief alongside any declaration.[121]

9.6.2 Injunction — The Most Powerful Interim Tool

Available as: (a) an interlocutory (interim) injunction — restraining the harmful activity pending full hearing; or (b) a final injunction — after full trial. The test for interlocutory injunctions under American Cyanamid Co v Ethicon Ltd [1975] AC 396 (HL), applied consistently in Uganda: (1) is there a serious question to be tried? (2) would damages be an adequate remedy? (3) does the balance of convenience favour the order? In cases of irreversible environmental harm, apply the Precautionary Principle: the threat of irreversible harm — wetland destruction, forest clearance, oil spill contamination — displaces the need to prove balance of convenience; the court should grant the injunction to preserve the environmental status quo pending full hearing. The Jinja City Council case (2024) demonstrates the successful use of urgent interim injunctions to halt ongoing environmental harm.[122]

---

[120]Evidence Act (Cap. 6), ss. 48–51; Civil Procedure Rules (SI 71-1), Order 11A; Folkes v Chadd (1782) 3 Doug KB 157 — foundational common law authority on expert evidence, applied in Uganda.
[121]Greenwatch v AG (2002); Judicature Act (Cap. 13), s. 14.
[122]American Cyanamid Co v Ethicon Ltd [1975] AC 396 (HL); Judicature Act (Cap. 13), s. 14(2); Jinja City Council Environmental Case (2024); Nyakaana v NEMA (2015) at [52] (Precautionary Principle supports urgent relief).

9.6.3 Restoration Orders — The Primary Corrective Tool

Under Section 108 of the NEA 2019, NEMA may issue Restoration Orders requiring a person who caused environmental damage to restore the environment to its original state, or as close to original as reasonably practicable. Courts can also directly order environmental restoration as part of civil or constitutional judgment. Nyakaana establishes: (1) Restoration Orders can require demolition of permanent structures; (2) financial hardship is not a defence — the Polluter Pays Principle is not subject to a poverty exception; (3) where the person responsible lacks means, the court can consider whether NEMA should carry out restoration at public expense, with the cost recoverable from the responsible person as a civil debt.[123]

9.6.4 Compensation and Damages

Available in both civil and constitutional proceedings. In civil cases: the measure is the cost of environmental restoration plus consequential losses (lost livelihoods, health costs, property damage). In constitutional petitions: compensation under Article 50 for the constitutional violation. Uganda lacks a standard methodology for valuing environmental damage — advocates should commission expert evidence including: ecosystem services valuation (the monetary value of the environmental services lost — water purification, flood buffering, carbon sequestration, biodiversity); cost of physical restoration; market value of affected natural resources; and community health and livelihood losses. This is an area where the Indian NGT's practice of appointing environmental compensation committees provides a useful model.[124]

9.6.5 Mandamus and Supervisory Orders

Mandamus — a mandatory court order requiring a public body to perform a duty it has refused or failed to perform — is available against NEMA where it has failed to enforce environmental law, issue Restoration Orders, or take required enforcement action. In environmental public interest cases, courts should be willing to issue ongoing supervisory mandamus — retaining jurisdiction to

[123]NEA 2019, s. 108; Nyakaana v NEMA (2015) at [45]–[50].
[124]Constitution of Uganda 1995, Art. 50; Civil Procedure Act (Cap. 71); NEA 2019, s. 112; for ecosystem services valuation methodology see NEMA, Natural Capital Accounting Framework for Uganda (2021).

monitor compliance with their orders, requiring progress reports from respondents at fixed intervals, and specifying consequences for non-compliance. This directly addresses the judicial reluctance identified in Chapter Six: courts are more willing to issue specific orders when they have the institutional capacity to monitor and enforce compliance.[125]

9.7 Environmental Prosecution: A Practical Guide for Prosecuting Counsel

9.7.1 Pre-Trial: Building the Environmental Prosecution

Before charging, prosecuting counsel must:

11. Identify the specific NEA 2019 offence(s) to be charged — ss. 100–155 catalogue; confirm jurisdiction (Chief Magistrate for penalties up to 2 years/UGX 240M; High Court for higher penalties)
12. Ensure investigators have gathered: (a) NEMA inspection report (admissible under s. 148 NEA 2019 as a certified public document); (b) physical evidence of harm — samples (water, soil, air), with intact chain of custody documentation; (c) photographs and video of the harm, with authentication by the person who took them; (d) documentary evidence — permits, EIA certificates, correspondence, NEMA enforcement notices; (e) community witness statements on health and livelihood impacts; (f) expert scientific evidence on the nature, extent, and causation of harm
13. Consider corporate liability under s. 153 — identify all directors and officers of any corporate respondent; gather evidence of their consent, connivance, or neglect
14. Apply for preservation orders where evidence may be destroyed or the environmental harm may be remedied to conceal it
15. Liaise with NEMA scientific officers for expert evidence; ensure NEMA inspection reports are properly certified under s. 148 for admissibility

9.7.2 Proving the Offence at Trial

For an NEA 2019 offence, the prosecution proves beyond reasonable doubt: (1) identity of the accused; (2) the specific prohibited act or omission — specify the exact section charged and prove each element; (3) causation — the accused's act or omission caused or contributed to the environmental harm; (4) absence of lawful authority — challenge the validity of any EIA certificate or permit claimed by the accused, or show its conditions were violated; (5) where s.

[125]Civil Procedure Act (Cap. 71); Judicature Act (Cap. 13), s. 14; Nyakaana v NEMA (2015) — model for specific, time-bound restoration orders; Indian Supreme Court environmental mandamus cases as comparative model.

153 corporate liability alleged — the corporate body committed the primary offence AND the accused was a director/officer who consented, connived, or neglected to prevent.[126]

9.7.3 Expert Evidence in Environmental Prosecutions

The single most important evidence in environmental prosecutions is scientific expert evidence. Prosecution should secure: (a) an NEMA environmental inspector who conducted the site inspection — tender their certified report under s. 148 NEA 2019; (b) an independent environmental scientist to give evidence on the nature, extent, and significance of the environmental harm; (c) specialists specific to the harm type — toxicologist for chemical pollution; hydrologist for water course damage; ecologist for biodiversity loss; air quality specialist for atmospheric pollution. NEMA inspection reports should be tendered at the earliest opportunity. Community lay witnesses (reports of polluted water, crop failure, livestock deaths, health effects) can supplement and contextualise expert evidence.

9.7.4 Satellite and GIS Evidence in Environmental Prosecutions

Satellite imagery and geographic information system (GIS) data are increasingly important in environmental prosecutions. They can prove: the spatial extent of wetland drainage or forest clearance over time; the location of illegal structures within protected areas; the temporal sequence of environmental damage in relation to the accused's activities. Such evidence should be authenticated by a GIS specialist or remote sensing expert. Courts in Uganda and the region are increasingly familiar with this type of evidence and should be invited to receive it as expert evidence under Evidence Act (Cap. 6), ss. 48–51.

9.7.5 Chain of Custody in Environmental Evidence

Chain of custody is critical for all scientific environmental evidence. Prosecutors must be able to demonstrate: who collected each sample (name, designation, date, time, location with GPS coordinates); how samples were stored and transported (temperature, sealed containers, tamper-evident packaging);

[126] NEA 2019, ss. 100–155, 148 (admissibility of NEMA reports), 153 (corporate liability); Evidence Act (Cap. 6); Magistrates Courts Act (Cap. 16).

which laboratory conducted analysis (accredited laboratory — UNBS accreditation preferred); and that the laboratory received the same samples that were collected. Any gap in chain of custody creates reasonable doubt about sample integrity and can be exploited by defence counsel.

9.8 Environmental Defence: A Practical Guide for Defence Counsel

9.8.1 Threshold Challenges

After Greenwatch (2002), BAT v EAN (2003), and Uganda Wildlife Society (2005), challenges to NGO or public interest environmental standing are legally hopeless and should not be pursued — they waste time, attract adverse costs, and signal weakness on the merits. More productive threshold challenges: (1) jurisdiction — ensure the claim is in the correct court; (2) joinder — argue that necessary parties (NEMA, other government bodies, other affected persons) have not been joined; (3) prematurity/ripeness — argue the environmental harm has not yet materialised or is too speculative; (4) mootness — argue the harm has been remedied and the claim is academic.[127]

9.8.2 Substantive Defences

Key substantive defences in environmental cases: (1) Lawful authority — the development was authorised by a valid EIA certificate or permit duly issued by NEMA; challenge the claimant to prove any invalidity of the authorisation; (2) Full compliance — the accused has complied with all applicable environmental standards and conditions of any EIA certificate; (3) Third-party causation — the environmental harm was caused by a third party, not the accused; break the causation chain; (4) Scientific dispute — challenge the claimant's expert evidence on the nature or causation of environmental harm; commission competing expert evidence; (5) Proportionality — in Restoration Order cases, argue that the specific order sought is disproportionate to the environmental harm caused, particularly where harm is minor and restoration is technically complex; (6) Compensation as adequate remedy — particularly in cases where full environmental restoration is

[127]Greenwatch v AG (2002); BAT v EAN (2003); Uganda Wildlife Society v AG (2005) — standing now settled.

not practically achievable, argue monetary compensation is adequate and proportionate.[128]

9.8.3 The EIA Documentation Defence

The most important documentary defence for corporate and developer defendants is a valid, procedurally proper EIA certificate with evidence of full compliance with all conditions. Defence counsel should at the earliest opportunity: obtain and review the complete NEMA EIA file; identify all conditions and confirm compliance; obtain expert evidence on actual environmental impact versus what was predicted in the EIA; and identify any procedural irregularities in the EIA process itself that might undermine NEMA's credibility as a regulatory authority. If the EIA was issued following procedurally defective public consultation, this is a double-edged argument — it can be used by the defence to attack NEMA's regulatory integrity, but may ultimately assist the claimant in a judicial review challenge.

9.8.4 Challenging Scientific Evidence and Chain of Custody

Defence counsel should rigorously examine: who collected samples (training, methodology, authorisation); how samples were stored and transported (any breach of cold chain or contamination risk); laboratory accreditation status; analytical methodology (is it scientifically accepted for this type of environmental matrix); whether the analytical results are consistent with the alleged harm; and whether there are alternative explanations for the results (pre-existing pollution, natural variation, contamination in sampling equipment). Any material gap in chain of custody documentation creates reasonable doubt about the reliability of laboratory evidence.

9.8.5 Mitigation and Environmental Good Faith

Even where liability is established, defence counsel should present evidence of: environmental mitigation steps already taken voluntarily; investment in environmental restoration or pollution control; community compensation payments already made; and genuine good faith attempts to comply with

[128]Note on proportionality: Nyakaana (2015) rejected the proportionality/hardship argument in the context of serious wetland destruction — courts will scrutinise proportionality arguments carefully and are unlikely to accept them where the harm is significant and irreversible.

environmental standards. These are relevant to remedy in civil cases (courts may impose less burdensome restoration timelines where genuine remediation is underway) and to sentence in criminal cases (relevant to fine quantum and probation conditions).

9.9 What Judicial Officers Must Look For in Environmental Cases

9.9.1 The Constitutional Obligation on the Environmental Judicial Officer

The judicial officer in an environmental case carries obligations beyond those in an ordinary civil or criminal case. Article 39 creates a constitutional right that is meaningless if courts merely declare violations without remedying them. The Supreme Court in Nyakaana (2015) recognised this by upholding a Restoration Order even where compliance imposed significant financial hardship — confirming that environmental rights have substantive constitutional weight, not merely symbolic value. Judicial officers must consciously resist "judicial minimalism" — the pattern identified in Greenwatch of declaring rights violated without ordering effective relief. The constitutional mandate is for "redress" — that word in Article 50 means effective remedy, not merely symbolic vindication.[129]

9.9.2 Threshold Checklist at Filing

At the threshold, the judicial officer should direct verification of:

- Standing — does the claimant have locus standi under Art. 50 and the case law? Issue a direction requiring the claimant to file a supporting affidavit identifying the basis of its environmental interest if not obvious
- Forum — is this the correct court for this type of claim? (constitutional petition to High Court; NEA offences to appropriate criminal court)
- Joinder — have all necessary parties been joined? (NEMA as the primary regulatory body should be a respondent in most constitutional environmental petitions; the relevant Minister should be joined in public trust cases)
- Urgency — does the case require immediate interim relief? If environmental harm is ongoing or imminent and potentially irreversible, the

[129]Nyakaana v NEMA (2015); Constitution of Uganda 1995, Art. 50 ("redress"); Greenwatch v AG (2002) — identified as the model to depart from; Sandra Fredman, Human Rights Transformed (Oxford University Press, 2008).

judicial officer should be prepared to grant an urgent interim order ex parte in appropriate cases
- Expert evidence — issue a direction at the first scheduling conference for exchange of expert reports and for the parties' experts to meet and narrow issues in dispute

9.9.3 Managing Environmental Evidence at Trial

Environmental cases raise unique evidentiary challenges. Judicial officers should: (1) issue early case management directions requiring service of all expert reports at least 28 days before trial, with a pre-trial expert meeting to narrow disputed technical issues; (2) be willing to appoint a court expert under Order 11A Civil Procedure Rules where the parties' experts are significantly in conflict on technical matters; (3) approach community lay evidence — reports of polluted water, crop failures, livestock deaths, respiratory illness — as probative evidence even without scientific corroboration, particularly where affected communities lack resources to commission independent scientific studies; (4) be alert to manipulation of EIA documentation — EIAs prepared post-hoc, or conditions included for appearance rather than genuine compliance, should be scrutinised with scepticism; (5) in cases involving irreversible harm, apply the Precautionary Principle at the interim relief stage — the burden is on the respondent to demonstrate safety, not on the community to prove harm.[130]

9.9.4 The "Meaningful Involvement" Standard in EIA Challenges

Where the adequacy of public participation in an EIA process is in issue, the judicial officer should apply the four-part meaningful involvement standard drawn from the USEPA definition and embedded in Uganda's EIA Regulations 2021 (rr. 20–32): (1) Was there genuine opportunity to participate? — notice of at least 21 days; hearing in the affected community, not only the district capital; EIA report available in local language; (2) Could participation influence the outcome? — were submissions considered before the NEMA decision, not after? (3) Were concerns specifically considered? — does the NEMA decision specifically address each category of community objection? (4) Did decision-makers actively facilitate involvement? — were interpreters provided; was technical assistance

[130]Civil Procedure Rules (SI 71-1), Order 11A (Expert Evidence); Evidence Act (Cap. 6), ss. 48–51; Nyakaana v NEMA (2015) at [52] — Precautionary Principle applies.

offered to help communities understand the EIA? A box-ticking exercise that satisfies the form but not the substance of these four elements is not "meaningful involvement" and should render the EIA certificate vulnerable to challenge on procedural impropriety grounds.[131]

9.9.5 The Application of the Polluter Pays and Precautionary Principles

Every judicial officer hearing an environmental case must be familiar with these two principles as confirmed in Nyakaana (2015): (1) The Polluter Pays Principle — strict liability for environmental harm; the person who causes environmental damage bears the full cost of restoration regardless of fault, good faith, or financial hardship; no "natural use" exception; no "reasonable care" defence; no "poverty" exception. This is the most significant departure from ordinary tort law in Ugandan environmental adjudication. (2) The Precautionary Principle — where there is scientific uncertainty about environmental harm, the burden shifts to the proponent of the potentially harmful activity to demonstrate safety; uncertainty is not a reason to delay protective action. In practice: where a developer argues "the science is not settled" about environmental harm, the Precautionary Principle requires the court to resolve the uncertainty against the developer, not against the environment.[132]

9.9.6 Crafting Effective Environmental Remedies — The Judicial Officer's Duty

The judicial officer should resist the Greenwatch pattern of declaring a violation without ordering effective relief. Nyakaana (2015) is the correct model: a specific Restoration Order with a defined timeline and consequence of EPF enforcement. Principles for effective environmental remedies: (1) Be specific — not "restore the wetland" but "demolish all structures within coordinates X, Y, Z and restore to natural vegetation cover within 12 months"; (2) Set timelines — all restoration orders should specify the period for compliance; (3) Retain supervisory jurisdiction — direct that parties report to the court on compliance at

[131] NEA (EIA) Regulations 2021, rr. 20–32; USEPA, "Environmental Justice: Meaningful Involvement" (2000); ACODE v AG (2004) — community consent requirement; Lubogo, Environmental Justice (2026), Chapter Nine.

[132] Nyakaana v NEMA (2015) at [45] (PPP) and [52] (Precautionary Principle); Rio Declaration, Principles 15–16 (1992); NEA 2019, ss. 3, 112.

3-month intervals; (4) Appoint an environmental monitor — in complex cases, appoint a technical expert as "Environmental Compliance Monitor" to report to the court on restoration progress; (5) Award costs — where respondents have caused serious environmental harm, order costs on the indemnity basis; (6) In criminal cases — order both a financial penalty and a restoration obligation; financial penalties alone do not address environmental harm.[133]

9.10 Environmental Public Interest Litigation: A Step-by-Step Practical Guide

Step 1: Assess the Environmental Problem and Legal Theory

Identify: what environmental harm has occurred or is threatened? What is the legal basis (constitutional petition, judicial review, civil tort, criminal prosecution, NEMA Restoration Order application, or combination)? Who is responsible? What evidence is available? What is the most effective remedy sought — declaration, injunction, restoration, compensation, mandamus, criminal conviction?

Step 2: Select the Forum

Constitutional petition (High Court Civil Division or Environmental Division when established): appropriate where Art. 39 or other fundamental rights have been violated; where the respondent is a public body; where declaratory, injunctive, or compensation relief is sought. Judicial review (High Court): appropriate where a specific government decision is challenged. Civil suit: where identifiable persons have suffered quantifiable damage. Criminal prosecution: report to police/EPF/DPP. Direct NEMA Restoration Order application: fastest and cheapest corrective remedy for identifiable environmental damage.[134]

Step 3: Gather Evidence Before Filing

Before filing: site inspection report; photographic and video evidence (authenticated by photographer); community affidavits/witness statements;

[133]Nyakaana v NEMA (2015) — model of specific, enforceable restoration order; Greenwatch v AG (2002) — model to depart from; Indian Supreme Court environmental mandamus and monitoring orders as comparative model.
[134]Civil Procedure Act (Cap. 71); Judicature Act (Cap. 13); NEA 2019, s. 108.

documentary evidence of respondent's activities; scientific evidence (water/soil/air testing with proper chain of custody); NEMA inspection or enforcement records; and evidence of absence of meaningful community consultation in EIA process.

Step 4: Draft Pleadings

Constitutional petition: identify the constitutional right violated (Art. 39 plus any connected rights); describe specific acts/omissions of each respondent; describe harm caused or threatened; specify the exact relief sought. Judicial review: identify the specific decision challenged; specify grounds; identify relief. Both must be supported by a comprehensive affidavit exhibiting key evidence. See Appendix C for a template constitutional petition.

Step 5: Apply for Interim Relief

In cases of urgent or threatened irreversible environmental harm, apply immediately for interim relief: interlocutory injunction under Order 41 Civil Procedure Rules (restraining the harmful activity); preservation order (preserving evidence or environmental status quo); or emergency environmental preservation order (requiring environmental status quo to be maintained pending full hearing). Invoke the Precautionary Principle explicitly: where harm would be irreversible, the standard balance of convenience test gives way — the court should preserve the environment pending full hearing.[135]

Step 6: Trial and Evidence Management

Lead expert evidence first; follow with lay community witness evidence; tender documentary evidence through appropriate witnesses; make the Precautionary Principle and Polluter Pays arguments explicitly in closing submissions citing Nyakaana; specifically request in closing submissions that the court retain supervisory jurisdiction over implementation; request specific, time-bound orders rather than broad declarations.

9.11 Using International Environmental Law in Ugandan Courts

[135] Civil Procedure Rules (SI 71-1), Order 41 (Injunctions); American Cyanamid [1975] AC 396; Nyakaana (2015) at [52] — Precautionary Principle and irreversible harm.

9.11.1 Three Routes for International Environmental Law in Ugandan Proceedings

International environmental law enters Ugandan domestic proceedings through three routes: (1) Directly applicable treaty law — where Uganda has ratified a treaty and it has been domesticated (the African Charter is domesticated through the Human Rights Enforcement Act Cap. 20; UNFCCC through the Climate Change Act 2021); (2) Customary international law — principles such as the duty not to cause transboundary environmental harm (Trail Smelter, 1941) and the common heritage of mankind doctrine are part of Ugandan law through Article 287 of the Constitution affirming international law, and as part of the received common law; (3) Persuasive comparative and international authority — Ugandan courts, as common law courts, can and do look to international decisions and instruments as persuasive authority.[136]

9.11.2 Key International Principles: Status and Practical Use

Principle	Ugandan Law Status and Practical Use for Advocates
Precautionary Principle	PART OF UGANDAN LAW: Nyakaana v NEMA (2015). Use: shifts burden of proof to proponent of potentially harmful activity to demonstrate safety; supports interim injunctions against irreversible harm. Cite: Rio Declaration, Principle 15; NEA 2019, s. 3; Nyakaana at [52].
Polluter Pays Principle	PART OF UGANDAN LAW: Nyakaana v NEMA (2015). Use: establishes strict liability for environmental harm regardless of fault; foundations for restoration orders without compensation to wrongdoer. Cite: Rio Declaration, Principle 16; NEA 2019, s. 112; Nyakaana at [45].
Public Trust Doctrine	PART OF UGANDAN LAW: ACODE v AG (Butamira, 2004). Use: state cannot alienate public environmental resources without community consent; any such alienation without consent is ultra vires. Cite: Constitution, Arts. 237, 245, National Objective XXVII; ACODE v AG at [23].
Intergenerational Equity	CONSTITUTIONAL BASIS: National Objective XXVII. Use: government must manage resources for future generations; climate inaction violates intergenerational constitutional obligation. Cite: Brown Weiss (1989); Future Generations v Colombia (2018); Urgenda (2019); Mbabazi v AG (pending).
Duty of Non-Transboundary Harm	CUSTOMARY INTERNATIONAL LAW: Trail Smelter Arbitration (1941); Stockholm Declaration, Principle 21 (1972). Use: where Ugandan activities harm communities in neighbouring states. Invoke in EACJ proceedings; in Ugandan proceedings, as persuasive customary

[136] Constitution of Uganda 1995, Art. 287; Human Rights Enforcement Act (Cap. 20); Climate Change Act 2021; Trail Smelter Arbitration (1941); SERAC v Nigeria (2001).

Principle	Ugandan Law Status and Practical Use for Advocates
	international law.
Right to Participate (Aarhus Principle)	REFLECTED IN UGANDAN STATUTE: NEA 2019 EIA Regulations 2021, rr. 20–32. Use: challenge inadequate public consultation as procedural impropriety in EIA approvals. Cite: Rio Declaration, Principle 10; Aarhus Convention (1998) as persuasive authority.
Nature's Rights	UGANDAN STATUTORY LAW: NEA 2019, s. 3 — unique in the region. Use: environmental harm affecting no identified human being is still legally cognisable as violation of nature's statutory right to exist, persist, and regenerate. Novel argument — well grounded in statute.
Absolute Liability (India)	PERSUASIVE COMPARATIVE AUTHORITY: M.C. Mehta v Union of India (1987); Oleum Gas Leak case (1987). Use: argue for strict liability without the "natural use" exception in Rylands v Fletcher; particularly relevant for industrial and extractive operations causing environmental harm.

9.12 Landmark Cases as Practical Tools: A Critical Analysis for Practitioners

9.12.1 Nyakaana v NEMA (2015) — The Environmental Law Bible

What it decided: (1) Polluter Pays Principle and Precautionary Principle are part of Ugandan law; (2) NEMA Restoration Orders are constitutionally valid and enforceable, including requiring demolition of permanent structures; (3) collective environmental rights (Art. 39) override individual property rights (Art. 26) where a public environmental threat exists; (4) financial hardship is not a defence to a Restoration Order. For advocates: cite as the primary authority in every environmental enforcement case; use to establish strict liability without fault, burden reversal via Precautionary Principle, and the primacy of collective environmental rights. For judicial officers: use as the model for specific, enforceable restoration orders and the rejection of the minimalist "declaration-only" approach. Limitation: decided under the 1995 National Environment Act — its principles are fully applicable under the NEA 2019 (which goes further in recognising nature's rights under s. 3).[137]

9.12.2 ACODE v AG (Butamira, 2004) — The Public Trust Locus Classicus

What it decided: (1) the government holds forest reserves and public

[137] Nyakaana v NEMA, SC Civil Appeal No. 13/2015, per Katureebe CJ. Discussed at Chapters Three, Four, and Nine of this book.

environmental resources in public trust for present and future generations; (2) the government cannot alienate public environmental resources without parliamentary authority and community consent; (3) the Butamira excision was ultra vires on grounds of both statutory illegality and constitutional public trust violation. For advocates: cite in any case challenging government alienation of environmental resources (forests, wetlands, game reserves, national parks, river banks) without community consultation. In EIA challenges: argue that NEMA EIA approvals without genuine community consent fail the Butamira standard of the Public Trust Doctrine. For judicial officers: where the evidence shows community consultations were absent or purely cosmetic, the Butamira authority supports invalidating the decision regardless of ministerial or parliamentary approval.[138]

9.12.3 Greenwatch v AG and NEMA (2002) — Standing and the Lesson of Minimalism

What it decided positively: (1) environmental NGOs have standing under Arts. 50/39 without personal injury; (2) kaveera manufacturing violated Art. 39; (3) Article 39 is justiciable and self-executing. What it decided negatively (the lesson to depart from): the court declined to issue a ban, deferring to Parliament on the ground that banning kaveera was a legislative function. The kaveera problem persisted for nearly two decades. For advocates: cite the standing holding as unchallengeable authority; distinguish the limitation in later cases by arguing that Nyakaana (2015) repudiated minimalism; the NEA 2019 (post-Greenwatch) provides specific statutory authority for specific court orders; and continued judicial minimalism after 2015 is constitutionally unsupportable. For judicial officers: use this case as the paradigm example of what judicial restraint costs in real terms — and commit, citing Nyakaana, to ordering effective specific relief in every environmental case where a violation is established.[139]

9.12.4 M.C. Mehta v Union of India (1987) — Comparative Locus Classicus on Environmental Right to Life

What it decided: the Indian Supreme Court read Article 21 (right to life) to

[138]ACODE v AG, HCT Misc. Cause No. 0100/2004, per Egonda-Ntende J at [23]. Discussed at Chapters Three and Four of this book.

[139]Greenwatch v AG and NEMA, HCT Misc. Cause No. 140/2002; see critique in Chapter Six, section 6.3; Nyakaana (2015) as the corrective authority.

include the right to live in a pollution-free environment — directly applicable in Uganda by analogy with Article 22 (right to life). The companion Oleum Gas Leak case (1987) established absolute liability for escape of hazardous substances — no "natural use" exception, no "act of God" defence, no "stranger's act" defence — stricter than Rylands v Fletcher and directly applicable in Uganda as persuasive common law authority. How to use it — for advocates: cite in any case arguing for expansive interpretation of Article 22 to encompass environmental quality as an essential component of the right to life; cite Oleum Gas Leak case for absolute strict liability in industrial environmental harm cases. For judicial officers: the Indian Supreme Court's practice of issuing ongoing mandamus orders against polluting industries — requiring plant closures, technology upgrades, and monitored remediation — provides the strongest comparative authority for ambitious, supervised environmental remedies.[140]

9.12.5 Future Generations v Colombia (2018) and Urgenda v Netherlands (2019) — Climate Change and Intergenerational Rights

Future Generations v Colombia: the Colombian Supreme Court held that the Amazon Region is a "subject of rights" — paralleling Uganda's NEA 2019, s. 3 (nature's rights). The court ordered the government to submit an action plan to reduce deforestation in the Amazon and to guarantee the fundamental rights of future generations. Urgenda v Netherlands: the Hoge Raad held that the Dutch government's failure to reduce greenhouse gas emissions adequately violated its duty of care to Dutch citizens under the European Convention on Human Rights, and ordered the government to ensure emissions were reduced by 25% below 1990 levels by 2020. Both cases are directly applicable in Mbabazi & Ors v AG (pending): they demonstrate that courts in multiple legal systems have held governments liable for climate inaction, and that specific emissions-reduction orders are within judicial competence.[141]

9.13 Environmental Justice and the Criminal Justice System:

[140] M.C. Mehta v Union of India (1987) AIR 1086 SC; MC Mehta v Union of India (Oleum Gas Leak case) (1987) 1 SCC 395; Rylands v Fletcher (1868) LR 3 HL 330.

[141] Future Generations v Colombia, Colombian Supreme Court (2018) Expedition No. 11001-22-03-000-2018-00319-01; Urgenda Foundation v State of the Netherlands, ECLI:NL:HR:2019:2006 (2019).

The Offence Catalogue

NEA 2019 Section	Offence	Maximum Penalty	Trial Court	Key Proof Points
s. 102	Discharge of waste/pollutant into environment contrary to standards	UGX 480M or 8 years or both	High Court	Scientific evidence of discharge; standards violated; causal link to harm
s. 108(6)	Failure to comply with NEMA Restoration Order	UGX 240M or 4 years or both	Chief Magistrate	Valid served Restoration Order; continued non-compliance within compliance period
s. 117	Undertaking project requiring EIA without valid EIA certificate	UGX 480M or 8 years or both	High Court	Project category requiring EIA; absence of valid EIA certificate; project commenced
s. 126	Pollution of water resources	UGX 480M or 8 years or both	High Court	Scientific water quality evidence; standards comparison; causal link to accused
s. 131	Unlawful disposal of hazardous waste	UGX 480M or 8 years or both	High Court	Classification of waste as hazardous; disposal method prohibited; accused's control
s. 141	Damage to protected ecosystems (wetlands, forests, national parks)	UGX 480M or 8 years or both	High Court	Protected status of ecosystem; nature and extent of damage; causal link
s. 146	Obstruction of Environment Protection Force officers	UGX 120M or 2 years or both	Chief Magistrate	Officer's identity and authority; act of

NEA 2019 Section	Offence	Maximum Penalty	Trial Court	Key Proof Points
				obstruction; intent or recklessness
s. 153	Corporate liability — directors and officers personally liable	As for primary offence	As for primary offence	Primary offence by body corporate; accused was director/officer; consent, connivance, or neglect to prevent

9.14 Summary Practitioner's Toolkit

For Advocates — Essential References

- Constitutional foundation: Arts. 17(j), 22, 24, 26, 39, 45, 50, 237, 245; National Objective XXVII
- Primary statute: NEA 2019 — ss. 3 (nature's rights); 100–155 (offences); 107–120 (EIA); 108–112 (Restoration Orders); 112 (Polluter Pays liability); 153 (corporate liability)
- Standing authorities: Greenwatch v AG (2002); BAT v EAN (2003); Uganda Wildlife Society v AG (2005) — these are unassailable
- Key substantive Ugandan authorities: Nyakaana v NEMA (2015) — PPP, Precautionary Principle, primacy of Art. 39 over Art. 26, validity of restoration orders; ACODE v AG (Butamira, 2004) — public trust doctrine, community consent requirement; Mbabazi v AG (2012, pending) — intergenerational equity and climate duty
- Persuasive comparative authorities: M.C. Mehta v India (1987) — environmental right to life; Oleum Gas Leak (1987) — absolute liability; Urgenda v Netherlands (2019) — climate duty; Future Generations v Colombia (2018) — intergenerational rights and nature's rights; Fuel Retailers v DG SA (2007) — balancing environmental and socio-economic rights
- International instruments: Rio Declaration (1992), Principles 10, 15, 16; African Charter, Art. 24; NEA 2019, s. 3; Trail Smelter Arbitration (1941)

For Judicial Officers — Essential Checklist

- At filing: verify standing (Greenwatch; BAT v EAN; Uganda Wildlife Society); verify forum; order joinder of necessary parties; assess urgency of interim relief

- Case management: early expert witness exchange; order expert meeting to narrow disputed technical issues; consider court-appointed expert under Order 11A CPR
- At interim relief: apply Precautionary Principle for irreversible harm — burden on respondent to demonstrate safety
- EIA adequacy: apply four-part "meaningful involvement" standard (notice; genuine influence; concerns specifically addressed; active facilitation) — box-ticking is insufficient
- In judgment: apply Polluter Pays Principle (strict liability, no fault required, no hardship exception); issue specific time-bound restoration orders; retain supervisory jurisdiction; order compliance reports at 3-month intervals
- Do not: issue declarations without accompanying effective specific relief (Greenwatch is the error, not the model)
- Criminal cases: order both fine and restoration obligation; fines alone do not address environmental harm
- Remember: "Every Ugandan citizen has a right to a clean and healthy environment" (Art. 39) — this is a constitutional command, and you are its guardian

9.15 Conclusion: The Advocate and Judicial Officer as Constitutional Guardians of the Environment

The environmental justice project in Uganda will not be advanced by constitutional text alone, or by landmark judgments alone, or by civil society advocacy alone. It will be advanced when advocates know how to frame and argue environmental claims effectively using the full power of Articles 39 and 50, the NEA 2019, and the Nyakaana and Butamira jurisprudence. It will be advanced when judicial officers know how to evaluate environmental evidence, apply the Precautionary and Polluter Pays Principles, and issue specific enforceable remedies that actually restore the environment rather than merely declaring it violated. It will be advanced when prosecutors are equipped to build compelling environmental criminal prosecutions under the NEA 2019. And it will be advanced when defence counsel can challenge environmental cases on grounds that sharpen, rather than subvert, the development of a robust environmental law. This chapter has attempted to provide each of these actors with the practical tools they need.[142]

[142]Isaac Christopher Lubogo, Environmental Justice: Constitutionalism, Equity, Development and Environmental Governance in Uganda (Suigeneris Publications, Kampala, 2026), Chapter Nine,

The law is there. The Constitution is there. The jurisprudence is there. The international principles are there. What remains is practitioners and judicial officers willing and equipped to use them. Every advocate who rises in court and argues Article 39 effectively, every judicial officer who issues a specific restoration order rather than a hollow declaration, every prosecutor who builds a proper environmental criminal case — each of them advances the constitutional promise that every Ugandan citizen has a right to a clean and healthy environment.

9.16 Drafting Effective Expert Witness Instructions in Environmental Cases

The quality of expert evidence in environmental litigation depends substantially on the quality of instructions given to the expert by instructing counsel. Effective expert instructions in environmental matters should: (1) clearly define the specific factual and technical questions on which the expert's opinion is sought, avoiding vague or open-ended instructions that produce unfocused reports; (2) provide the expert with all relevant documentary materials, including any prior EIA reports, NEMA correspondence, and competing expert reports, to ensure the expert's opinion is formed on a complete evidentiary basis; (3) specifically direct the expert to address the legal standard applicable to the case — for example, where the Precautionary Principle is engaged, instructing the expert to address the question of scientific uncertainty explicitly, not merely to opine on the balance of probabilities regarding causation; (4) request that the expert identify any limitations on their opinion, including areas of genuine scientific disagreement within their field; and (5) remind the expert of their overriding duty to the court, not to the instructing party, consistent with the expert evidence rules under Order 11A of the Civil Procedure Rules.[143]

9.17 Negotiating Community Development Agreements: A Practical Guide

Conclusion.

[143]Civil Procedure Rules (SI 71-1), Order 11A; for general principles on expert witness instruction, see The Ikarian Reefer [1993] 2 Lloyd's Rep 68 (UK) — persuasive authority on the duties of expert witnesses, applied in Commonwealth common law jurisdictions including Uganda.

While Chapter Eight (section 8.4) proposes that CDAs be made a mandatory EIA prerequisite as a matter of law reform, practitioners advising communities in CDA negotiations under the current voluntary framework should be aware of several practical considerations. First, communities should insist on independent legal and technical representation throughout the negotiation, not merely at the point of signing — developers frequently present a CDA in near-final form, leaving communities with effectively only the choice to accept or reject rather than to negotiate substantive terms. Second, CDAs should include specific, measurable, and time-bound community benefit commitments (not vague undertakings to "support community development"), together with a defined enforcement and dispute resolution mechanism — ideally referencing the proposed Environmental Justice Division once established, or in the interim, a clearly specified arbitration mechanism. Third, CDAs should explicitly address environmental monitoring rights for the community, including the right to commission independent environmental testing at the developer's expense where there is credible evidence of contamination. Fourth, CDAs should include a renegotiation clause triggered by materially changed circumstances (for example, where actual project scale or environmental impact substantially exceeds that disclosed in the EIA).[144]

9.18 Sentencing Considerations in Environmental Criminal Cases

Where an environmental criminal conviction is secured under the NEA 2019, sentencing judicial officers should have regard to several factors beyond the statutory maximum penalty. Aggravating factors should include: the scale and irreversibility of environmental harm caused; whether the offence was committed for commercial gain; whether the accused had prior knowledge of the environmental risk (for example, through a prior NEMA warning or compliance notice); whether the offence involved a protected ecosystem or endangered species; and whether the accused obstructed or evaded enforcement efforts. Mitigating factors should include: genuine and prompt remedial action taken by

[144] For comparative CDA practice and community negotiation guidance, see International Finance Corporation, Shared Value, Shared Risk: Community Development Agreements in the Extractive Sector (IFC, Washington DC, 2017); Global Rights Alert (2023) on CDA practice in Karamoja.

the accused; full cooperation with the investigation; absence of prior environmental offences; and the accused's capacity to pay (relevant to fine quantum, though not, per Nyakaana, to the existence of a restoration obligation). Judicial officers should resist the temptation to impose token fines that are economically immaterial to corporate defendants — sentencing should reflect the principle, established in Nyakaana, that environmental offences causing serious harm warrant penalties proportionate to that harm, including the cost the accused has avoided by failing to comply with environmental standards in the first instance.[145]

9.19 Appeals in Environmental Cases

Appeals from High Court decisions in environmental constitutional petitions and civil cases lie to the Court of Appeal under Article 134 of the Constitution and the Judicature Act, with further appeal to the Supreme Court (as occurred in Nyakaana, which reached the Supreme Court on appeal from the High Court) under Article 132. Appeals from Chief Magistrate environmental criminal convictions lie to the High Court, and thereafter to the Court of Appeal. Practitioners should note that the appellate courts in Nyakaana and other environmental cases have shown a marked tendency to defer to the trial court's findings of fact on technical and scientific matters (applying the ordinary appellate principle that findings of fact will not be disturbed absent clear error), while engaging more searchingly with the trial court's legal characterisation of environmental principles (such as the legal status of the Polluter Pays and Precautionary Principles) — a distinction with significant practical implications for how environmental appeals should be framed and argued.[146]

9.20 Alternative Dispute Resolution in Environmental Matters

Not every environmental dispute requires litigation. The Arbitration and Conciliation Act (Cap. 4) and the Judicature (Mediation) Rules 2013 provide for mediation and arbitration as alternative dispute resolution mechanisms that may

[145] Nyakaana v NEMA (2015); NEA 2019, ss. 100–155 (penalty provisions); Penal Code Act (Cap. 120), s. 25 (general sentencing principles, applied by analogy).
[146] Constitution of Uganda 1995, Arts. 132, 134; Judicature Act (Cap. 13); Nyakaana v NEMA (2015) — appellate history from High Court through to Supreme Court.

be appropriate for certain categories of environmental dispute — particularly disputes between commercial parties (for example, contractual disputes concerning environmental compliance obligations between a developer and contractor) or disputes amenable to negotiated compensation outcomes (for example, individual property damage claims arising from pollution incidents, where the underlying liability is not seriously contested). However, this book cautions against the use of mediation or arbitration as a substitute for litigation in environmental public interest cases involving systemic harm, significant power imbalances between the parties, or matters of broad public importance — such disputes benefit from the public scrutiny, precedential value, and judicial supervisory capacity that only court adjudication provides, and the confidential, individualised nature of most ADR processes risks entrenching exactly the power imbalances and access-to-justice deficits identified in Chapter Six.[147]

9.21 Working with the Media in Environmental Public Interest Litigation

Environmental public interest litigation frequently benefits from coordinated public communication alongside formal legal proceedings, given the public interest character of the underlying claims and the accountability function that media scrutiny can serve in compensating for weak formal enforcement. Practitioners should, however, observe professional conduct boundaries: avoid commenting on matters sub judice in a manner that could prejudice ongoing proceedings; ensure factual accuracy in public statements to avoid defamation exposure; and be mindful that media engagement, while valuable for public accountability and community mobilisation (as demonstrated in the Kitubulu case), should support rather than substitute for the rigour of the formal legal process.

9.22 Cross-Border Environmental Litigation and Forum Considerations

Where environmental harm has cross-border dimensions — as in the

[147]Arbitration and Conciliation Act (Cap. 4); Judicature (Mediation) Rules 2013 (Uganda); for caution regarding ADR in public interest environmental matters, see generally Owen Fiss, "Against Settlement" (1984) 93 Yale Law Journal 1073.

Tilenga and EACOP projects affecting communities in the DRC and Tanzania — practitioners must carefully consider forum selection. Options include: domestic litigation in Uganda (available to Ugandan-based claimants, and to foreign claimants where Ugandan courts accept jurisdiction over harm originating in Uganda, an unsettled question in Ugandan private international law); proceedings before the East African Court of Justice under the EAC Treaty (as in ACEDH v Uganda); proceedings in the home jurisdiction of a multinational developer (an increasingly significant avenue internationally, following cases such as Vedanta Resources plc v Lungowe [2019] UKSC 20, in which the UK Supreme Court held that a Zambian community could sue a UK-domiciled parent company in English courts for environmental harm caused by its Zambian subsidiary); and international human rights mechanisms, including communications to the African Commission on Human and Peoples' Rights under the model of SERAC v Nigeria. Each forum carries distinct advantages, evidentiary requirements, and enforcement prospects that must be assessed on the specific facts of the transboundary harm in question.[148]

9.23 Practitioner Self-Care and the Demands of Environmental Public Interest Work

A final, often overlooked, practical consideration: environmental public interest litigation is frequently protracted (the Mbabazi case has now been pending for over a decade), emotionally demanding (advocates and judicial officers regularly engage with communities experiencing serious health, livelihood, and displacement harms), and professionally under-remunerated relative to commercial practice. Sustainable engagement with environmental justice work — for advocates, for civil society organisations, and for the judicial officers who must maintain the patience and rigour these cases demand over many years — requires institutional support structures, including the Environmental Legal Aid Fund's capacity to provide sustainable funding for practitioners (not merely one-off case support), peer support networks among environmental advocates, and recognition within the legal profession (including

[148] EAC Treaty (1999); ACEDH v Uganda (EACJ, 2025); Vedanta Resources plc v Lungowe [2019] UKSC 20 (persuasive comparative authority on parent company liability for subsidiary environmental harm); SERAC v Nigeria, ACHPR Comm. No. 155/96 (2001).

through continuing legal education credit and professional recognition mechanisms administered by the Uganda Law Society) of the particular demands of this practice area.

9.24 Detailed Worked Example: Applying the Framework to a Hypothetical Wetland Encroachment Case

To consolidate the practical guidance provided in this chapter, consider a worked hypothetical that illustrates the application of the legal framework developed above. A real estate developer has constructed a residential housing estate on land that includes a substantial portion of a gazetted wetland in a peri-urban area near Kampala. A community of subsistence farmers and fishers living downstream report declining water quality, reduced fish catches, and increased flooding since construction began. NEMA has not taken enforcement action despite community complaints made over an eighteen-month period.

9.24.1 Initial Assessment and Forum Selection

Applying the framework in section 9.10 (Step 1 and Step 2): the environmental harm is wetland destruction with downstream water quality and flooding impacts; the appropriate legal theory combines a constitutional petition (Arts. 50/39, for the systemic failure to protect the wetland and the community's environmental rights), judicial review (challenging NEMA's failure to issue a Restoration Order despite the eighteen-month complaint history, itself reviewable as an unlawful failure to perform a statutory duty), and potentially a civil claim in nuisance for the downstream community's specific property and livelihood damage. NEMA and the developer should both be joined as respondents.

9.24.2 Evidence Gathering

Following section 9.10 (Step 3): commission an independent wetland ecologist to assess the extent of wetland loss and its hydrological function; commission a water quality expert to test downstream water sources against NEMA standards and establish a causal link to the development; gather community affidavits documenting the timeline of declining fish catches and increased flooding incidents, cross-referenced where possible to rainfall data to isolate the development's contribution from natural variation; obtain satellite

imagery showing wetland cover before and after construction commenced; and request NEMA's complete file on the development, including any EIA certificate issued and the community's prior complaint correspondence.

9.24.3 Applying the Precautionary Principle and Burden Reversal

Following section 9.5.2: if the developer asserts that an EIA certificate was properly issued and that monitoring shows no exceedance of water quality standards, the community's evidence of a credible threat of serious harm (established through the ecologist's and water quality expert's evidence) should shift the burden to the developer and NEMA to demonstrate the safety and adequacy of the development's environmental safeguards — not merely to assert that a certificate was issued, but to demonstrate that its conditions are being met and are scientifically adequate to prevent the harm complained of.

9.24.4 Seeking Interim Relief

Following section 9.6.2 and section 9.10 (Step 5): given the ongoing and potentially worsening nature of the harm, an interlocutory injunction should be sought restraining further construction or wetland encroachment pending full hearing, supported by the urgency of preventing further irreversible wetland loss — invoking the Precautionary Principle to support the grant of interim relief notwithstanding the developer's likely argument that the balance of convenience favours allowing substantially complete construction to proceed.

9.24.5 Framing the Relief Sought at Trial

Following the Nyakaana model (section 9.9.6): rather than seeking only a declaration that the development violates Article 39, the petition should specifically seek: a mandatory order directing NEMA to issue a Restoration Order within a defined period; a specific restoration plan for the affected wetland area, developed with input from the community's independent ecologist; compensation for the downstream community's documented livelihood losses; and a supervisory order requiring NEMA and the developer to report to the court on restoration progress at defined intervals until full compliance is achieved.

This worked example illustrates how the doctrinal framework, evidentiary principles, and remedial approach developed throughout this chapter combine in

practice to construct an effective environmental justice claim — and equally, how a defending developer or NEMA might need to assemble a comprehensive evidentiary response addressing each of these elements to mount a credible defence.

9.25 Detailed Analysis: Drafting the Affidavit in Support of an Environmental Petition

The affidavit in support of a constitutional environmental petition is frequently the single most important document in the case, since Ugandan constitutional petition procedure proceeds substantially on the basis of affidavit evidence rather than oral testimony at the initial stages. An effective supporting affidavit should: (1) establish the deponent's personal knowledge of the facts deposed to, distinguishing clearly between matters within personal knowledge and matters believed on stated grounds (consistent with the requirements of the Evidence Act and Order 19 of the Civil Procedure Rules); (2) set out a clear chronological narrative of the environmental harm, including specific dates, locations (ideally with GPS coordinates or other precise geographic identification), and the parties involved; (3) exhibit all available documentary evidence — photographs, video, correspondence with NEMA or the developer, any available scientific testing results — as annexures properly identified and referred to in the body of the affidavit; (4) where the deponent is not personally an expert, avoid making technical assertions beyond the deponent's expertise, instead relying on a separate expert affidavit for technical and scientific matters; and (5) conclude with a clear statement connecting the facts deposed to the specific constitutional rights alleged to be violated.[149]

9.26 The Role of NEMA as a Party: Friend, Foe, or Both?

A recurring practical question for environmental practitioners concerns NEMA's appropriate role and posture in environmental litigation. NEMA occupies an unusual dual position: it is simultaneously the primary regulatory body responsible for environmental protection (and therefore potentially aligned with

[149] Civil Procedure Rules (SI 71-1), Order 19 (Affidavits); Evidence Act (Cap. 6), s. 58 (matters of which judicial notice may be taken, relevant to which facts require formal proof).

claimants seeking environmental enforcement) and a frequent respondent in litigation alleging its own enforcement failures (and therefore potentially defensive in posture). Practitioners should approach NEMA strategically rather than treating it uniformly as either ally or adversary: in cases challenging a third-party developer's conduct, NEMA may be joined as a respondent for relief purposes (to compel it to exercise its statutory enforcement powers) while its technical expertise and investigative findings may simultaneously provide crucial supporting evidence for the claimant's case against the developer; in cases directly challenging NEMA's own decision (for example, an EIA approval), NEMA's institutional interest in defending the validity of its own decision-making will generally align it with the developer-respondent, requiring more adversarial engagement.[150]

9.27 Practical Guidance on Interviewing and Preparing Community Witnesses

Effective community witness evidence in environmental cases requires careful preparation that respects both evidentiary requirements and the particular circumstances of rural and often non-literate witnesses. Practitioners should: conduct witness interviews in the witness's preferred language, using a qualified interpreter where the practitioner is not fluent, with the interpreter's role and qualifications recorded; focus witness statements on matters of direct personal observation and experience (changes the witness has personally seen, smelled, or experienced) rather than asking witnesses to speculate about technical causation, which should be left to expert evidence; corroborate individual witness accounts with multiple witnesses from the same community wherever possible, since corroborated lay testimony carries greater evidentiary weight; and ensure witnesses understand the public nature of court proceedings and are prepared for the possibility of cross-examination, including potential reprisals or social pressure where the respondent is an economically powerful local actor — a genuine practical concern in many rural Ugandan communities that practitioners must address through, where appropriate, witness protection considerations.

[150] For NEMA's statutory dual role, see NEA 2019, ss. 8–25 (regulatory functions) and the discussion of NEMA as respondent in Greenwatch (2002) and Nyakaana (2015), both of which proceeded with NEMA as a named party notwithstanding its regulatory mandate.

9.28 Costs in Environmental Public Interest Litigation

The ordinary rule that costs follow the event (the losing party pays the winning party's costs) under the Civil Procedure Act and Advocates (Remuneration and Taxation of Costs) Rules creates a significant disincentive to environmental public interest litigation, since claimants — frequently impoverished communities or under-resourced NGOs — risk substantial costs liability if their claim fails, even where the claim raises matters of genuine and serious public interest. Ugandan courts have a discretion to depart from the ordinary costs rule in appropriate cases, and this book argues that environmental public interest litigation, properly brought in good faith and raising substantial questions regarding constitutional environmental rights, is a paradigm case for the exercise of that discretion — courts should be slow to award costs against unsuccessful public interest claimants, and should consider, in successful cases, awarding costs on an indemnity basis against respondents who have caused serious proven environmental harm, reflecting both the corrective justice rationale discussed in Chapter One and the practical need to avoid a chilling effect on future public interest environmental litigation.[151]

9.29 The Precautionary Principle in Practice: A Decision Tree for Practitioners

To assist practitioners in applying the Precautionary Principle discussed at section 9.5.2, the following decision framework is offered. First question: does the activity in question pose a credible threat of environmental harm? If no credible threat is established (mere speculation without any supporting basis), the Precautionary Principle is not engaged and the ordinary burden of proof applies. If yes, proceed to the second question: is there scientific uncertainty about the nature, extent, or causal mechanism of the potential harm? If there is no genuine scientific uncertainty (the harm and its mechanism are well-established by existing scientific consensus), the matter should be resolved on ordinary evidentiary principles applying the established science, rather than

[151]Civil Procedure Act (Cap. 71), s. 27 (costs); Advocates (Remuneration and Taxation of Costs) Rules; for comparative judicial practice limiting costs exposure in public interest litigation, see the Kenyan Environment and Land Court's practice of awarding no costs against unsuccessful public interest litigants in environmentally significant cases, discussed in Muigua (2019).

through the Precautionary Principle's burden-shifting mechanism (which is specifically a tool for managing uncertainty, not a general substitute for adducing available scientific proof). If genuine uncertainty exists, proceed to the third question: is the potential harm serious or potentially irreversible? If the potential harm is genuinely serious or irreversible (irreversible wetland or forest loss, permanent water source contamination, extinction risk to a population of a protected species), the Precautionary Principle should operate at full strength, shifting the burden to the proponent of the activity to demonstrate safety. If the potential harm, while uncertain, is minor or readily reversible, a more calibrated approach may be appropriate, with the burden-shifting effect operating with reduced force proportionate to the magnitude of the potential harm at stake.

9.30 Distinguishing Environmental Public Nuisance from Private Nuisance Claims

Practitioners must carefully distinguish between public nuisance (an unreasonable interference with a right common to the public at large, such as pollution of a public waterway affecting an entire community) and private nuisance (an unreasonable interference with a specific individual's use and enjoyment of their own land, such as pollution affecting a single property owner's borehole). The distinction matters procedurally: a private individual generally has standing to sue in private nuisance only where their own property interest is affected, whereas public nuisance claims, properly characterised as engaging the broader public interest, are more naturally pursued through the constitutional public interest litigation framework discussed at section 9.2, or through Attorney General-led proceedings, or by private individuals who can demonstrate "special damage" over and above that suffered by the general public (a doctrine with deep common law roots that Ugandan courts have applied by reference to English authority). Many environmental harms — wetland destruction affecting an entire downstream community, air pollution affecting an entire neighbourhood — are most naturally characterised as public nuisance engaging the constitutional environmental rights framework, while individualised harms (a specific borehole contaminated by a specific upstream discharge) may sound in both public nuisance (the general pollution) and private nuisance (the specific individual

harm) simultaneously.[152]

9.31 Environmental Compliance Auditing as a Litigation and Advisory Tool

Beyond reactive litigation following environmental harm, advocates increasingly serve clients — both corporate developers seeking to ensure regulatory compliance and communities seeking proactive monitoring — through environmental compliance auditing services. For corporate clients, a properly conducted compliance audit, ideally conducted with the assistance of a qualified environmental consultant, can identify EIA condition non-compliance before it escalates into enforcement action or litigation, and can generate a defensible compliance record valuable in any subsequent dispute. For community clients, advocates can assist in commissioning independent environmental monitoring (water quality testing, air quality monitoring) on a periodic basis, creating an evidentiary record that can support future litigation if compliance deteriorates, while also potentially serving an early-warning function that enables community advocacy before harm becomes severe or irreversible.

9.32 Working with NEMA's Environmental Restoration Fund

Section 110 of the NEA 2019 establishes an Environmental Restoration Fund, financed through penalties, restoration cost recoveries, and budgetary allocation, intended to finance environmental restoration in cases where the responsible person cannot be identified or lacks the means to fund restoration directly. Practitioners representing communities affected by environmental harm where the responsible party is insolvent, has fled the jurisdiction, or cannot otherwise be made to bear restoration costs directly, should be aware of the possibility of applying to NEMA for Restoration Fund support, while separately pursuing recovery of those costs from the responsible person as a civil debt under section 112. This two-track approach — Fund-financed restoration paired with cost recovery litigation — can achieve more timely environmental

[152] For the public/private nuisance distinction generally, see Attorney General v PYA Quarries Ltd [1957] 2 QB 169 (UK) — persuasive Commonwealth authority on the special damage requirement for private nuisance standing in public nuisance matters, applied by analogy in Ugandan common law practice.

remediation than awaiting the conclusion of litigation against an uncooperative or impecunious defendant.[153]

9.33 The Special Position of State-Owned Enterprises and Government Projects

A distinct practical challenge arises where the alleged environmental violator is a government body or state-owned enterprise — for example, a government-led road construction project causing wetland encroachment, or a parastatal energy company's infrastructure causing pollution. In such cases, practitioners must navigate: the State Proceedings Act (Cap. 75), which governs the procedure for suing the government and provides certain procedural protections (including a requirement of prior notice of intention to sue in some circumstances) not applicable to private litigants; the practical reality that NEMA, as a government body, may face institutional reluctance to take enforcement action against another arm of government; and the potential availability of constitutional petition procedure (which is generally not subject to the same prior notice requirements as ordinary civil suits against the government) as a more direct route to relief than an ordinary civil claim. The Butamira case itself exemplifies successful environmental litigation against government action, demonstrating that government-sponsored environmental harm is not immune from judicial scrutiny under the constitutional framework.[154]

9.34 Special Considerations for Climate Litigation Following the Mbabazi Model

Practitioners contemplating climate-specific litigation, whether in the continued Mbabazi proceedings or in new climate claims, should draw on the now-substantial body of comparative climate litigation jurisprudence beyond the cases already discussed in this book. Key strategic lessons from comparative practice include: framing claims around specific, measurable government commitments (such as Nationally Determined Contributions under the Paris Agreement) rather than abstract claims about climate policy generally, since

[153]NEA 2019, s. 110 (Environmental Restoration Fund); s. 112 (cost recovery as civil debt).
[154]State Proceedings Act (Cap. 75); ACODE v AG (2004) — successful constitutional/judicial review challenge to government forest reserve excision.

courts are more comfortable enforcing specific, quantified obligations than fashioning open-ended climate policy; focusing remedial requests on process obligations (requiring government to develop and report on a compliant action plan) rather than demanding courts specify the substantive content of climate policy themselves, an approach that respects separation of powers concerns while still securing meaningful accountability; and marshalling robust scientific evidence on both the attribution of specific climate harms to global emissions trends and Uganda's specific climate vulnerability profile, given that climate causation evidence, while well-established at the level of global scientific consensus, requires careful presentation to translate that consensus into terms cognisable by domestic courts applying domestic constitutional and tort principles.[155]

9.35 Environmental Crimes Investigation: Working with the Police and EPF

Effective environmental criminal prosecution depends on effective investigation, which in turn depends on close coordination between the Environment Protection Force, the Uganda Police Force (particularly specialised units where they exist, such as any Criminal Investigations Directorate environmental desk), and NEMA's technical staff. Prosecuting counsel should, at the earliest stage of any prospective environmental prosecution, verify that: the scene of the alleged environmental offence was properly secured and documented before any remediation or alteration occurred; samples were collected by personnel with appropriate training and using validated sampling protocols; the suspect was properly cautioned and any statement taken in compliance with the Police Act and applicable Judges' Rules on the admissibility of confessions and statements; and search and seizure of any documentary evidence (EIA files, internal company records) was conducted under valid legal authority, whether through a search warrant or other lawful process, to avoid subsequent challenges to admissibility on grounds of unlawful search.

[155]For comparative climate litigation strategy, see Joana Setzer and Catherine Higham, Global Trends in Climate Change Litigation: 2023 Snapshot (Grantham Research Institute, LSE, 2023); Jacqueline Peel and Hari Osofsky, Climate Change Litigation: Regulatory Pathways to Cleaner Energy (Cambridge University Press, Cambridge, 2015).

9.36 Frequently Encountered Practical Obstacles and How to Address Them

Obstacle	Why It Arises	Practical Response
NEMA delays in providing case file/EIA documents	Administrative backlog; occasional reluctance to disclose materials that may reveal regulatory shortcomings	Formal written request citing statutory disclosure obligations; escalate to judicial review of failure to provide information if persistent; seek court order for disclosure once litigation commenced
Difficulty securing qualified expert witnesses in rural areas	Concentration of environmental science expertise in Kampala-based institutions and consultancies	Engage Kampala-based experts for site visits; utilise university environmental science departments (Makerere, Mbarara) for referrals; consider NEMA technical staff as a supplementary evidentiary source
Community witnesses reluctant to testify against powerful local respondent	Fear of social, economic, or physical reprisal; power imbalance within the community	Consider representative/class action framing to reduce individual witness exposure; engage community leadership for collective support; explore witness protection measures where genuine threat exists
Sample degradation before laboratory analysis	Limited cold-chain transport infrastructure in remote areas; distance to accredited laboratories	Use field test kits for preliminary results where available; document transport conditions meticulously; engage laboratories with established sample preservation protocols suited to the relevant analyte
Respondent disputes EIA was legally required for the project	Ambiguity in project categorisation under EIA Regulations Schedule	Obtain NEMA's formal categorisation determination; if NEMA has not made one, request it formally; argue for precautionary categorisation where project scale is ambiguous
Long delays in case disposal	General court backlog; absence of specialised fast-track environmental procedure	Apply for case management conference and expedited hearing directions citing irreversibility of ongoing harm; cite the Constitution's Art. 28(1) right to a fair hearing within a reasonable time

9.37 A Note on Professional Ethics in Environmental Practice

Advocates practising in the environmental field should be alert to several distinct ethical considerations beyond the ordinary professional conduct obligations applicable to all legal practice. First, conflicts of interest are common in a field where advocates may act for developers in one matter and communities in another — robust conflict-checking procedures are essential, particularly in a legal market as concentrated as Uganda's specialist environmental bar. Second, advocates acting for communities in public interest matters should be scrupulous about managing client expectations regarding timelines and prospects of success, given the protracted nature of much environmental litigation (exemplified by Mbabazi's decade-plus pendency) and the genuine uncertainty inherent in developing jurisprudence. Third, advocates should be mindful of the power dynamics inherent in representing communities, ensuring that community decision-making about litigation strategy and settlement remains genuinely with the community (through legitimate representative structures) rather than being effectively dictated by the advocate or by funding NGOs, consistent with the Ubuntu principle of community self-determination articulated in Chapter Four.

9.38 The Future of Environmental Legal Practice in Uganda

This chapter has surveyed the current state of environmental legal practice in Uganda as it exists today, grounded in the authentic case law, statutory framework, and procedural rules currently in force. But environmental legal practice in Uganda is a rapidly developing field, and practitioners should anticipate continued evolution: the eventual resolution of the Mbabazi case will likely generate a wave of follow-on climate-related litigation; the eventual establishment of the specialised Environmental Justice Division proposed in Chapter Eight, if implemented, will fundamentally reshape environmental litigation practice and procedure; growing scientific and public attention to climate change will likely increase the volume and sophistication of environmental claims across all the sectors discussed in Chapter Five; and the continued development of Ubuntu environmental jurisprudence, building on the foundations laid by this book and by the broader Lubogo Framework for Ubuntu Constitutionalism, will likely

provide Ugandan courts and practitioners with an increasingly sophisticated indigenous jurisprudential toolkit for environmental adjudication. Practitioners who master the current framework set out in this chapter will be well positioned to lead this ongoing development.[156]

9.39 Detailed Case Studies: Applying the Framework to Four Additional Scenarios

9.39.1 Scenario: Oil Spill Contamination of a Fishing Community's Waters

Facts: an oil exploration company's drilling operation results in a spill contaminating a section of Lake Albert used by an artisanal fishing community for their livelihood. Fish catches decline sharply; some community members report skin irritation after contact with contaminated water. Legal analysis: this scenario engages multiple causes of action simultaneously. First, a civil claim in nuisance and under the Polluter Pays Principle (Nyakaana) for the documented economic loss (declining fish catches, valued through expert fisheries economist evidence) and any proven health impacts (requiring medical expert evidence linking the skin irritation to the contamination, applying ordinary balance-of-probabilities causation principles). Second, a constitutional petition under Articles 39 and 45, given the systemic character of harm to an entire fishing community's environment and livelihood, particularly valuable where individual economic loss may be difficult to quantify precisely for each affected fisher but the community-wide environmental degradation is clearly established. Third, a request for NEMA to exercise its Restoration Order power under section 108 requiring remediation of the contaminated water body, with independent water quality testing establishing the contamination's extent and the appropriate remediation standard. Fourth, consideration of whether the spill resulted from a breach of EIA conditions or operational standards, potentially grounding a criminal prosecution under section 102 or 126 of the NEA 2019.[157]

[156]Isaac Christopher Lubogo, Lubogo Framework for Ubuntu Constitutionalism (Suigeneris Publishers, Kampala, 2024); Mbabazi & Ors v AG (pending).
[157]Nyakaana v NEMA (2015); NEA 2019, ss. 102, 108, 126; for oil spill liability comparative practice, see Bodo Community v Shell Petroleum Development Company [2014] EWHC 1973 (TCC) (UK) — persuasive authority on oil spill liability and remediation standards in a Nigerian Delta context analogous to Uganda's Albertine Graben.

9.39.2 Scenario: Illegal Charcoal Production Depleting a Community Forest

Facts: commercial charcoal producers, operating without licence, are clearing significant areas of a community-managed forest reserve, depleting firewood and non-timber forest product resources on which local women particularly depend. NEMA and the National Forestry Authority have taken no enforcement action despite community reports. Legal analysis: this scenario centres on the enforcement gap discussed in Chapter Six. The appropriate first step is a formal written complaint to NEMA and NFA, creating a documented record of the request for enforcement and starting the clock on any subsequent failure-to-act claim. Where enforcement remains absent after a reasonable period, judicial review lies against NEMA and/or NFA for unlawful failure to perform a statutory duty (the duty to enforce forest protection under the National Forestry and Tree Planting Act 2003 and the NEA 2019), seeking mandamus directing enforcement action within a specified period. A parallel constitutional petition under Article 39, framed around the community's loss of access to forest resources essential to subsistence livelihoods (particularly engaging the gendered dimension discussed at section 5.9, given women's disproportionate reliance on these resources), strengthens the claim by connecting the forestry enforcement failure to the broader constitutional environmental rights framework rather than treating it as a purely administrative law matter.[158]

9.39.3 Scenario: Quarry Operation Causing Dust Pollution and Structural Damage

Facts: a stone quarry operating near a residential area generates significant dust pollution affecting respiratory health of nearby residents, and blasting operations have caused structural cracking in nearby homes. Legal analysis: this scenario illustrates the interaction between environmental and property law claims. The dust pollution claim sounds in nuisance and potentially in a constitutional petition under Articles 39 and 45 (health impacts), supported by air quality monitoring evidence and medical evidence of respiratory impacts

[158] National Forestry and Tree Planting Act 2003; NEA 2019; for the gendered dimension of forest resource dependency, see section 5.9 of this book and UN Women, Gender and Environment in Uganda (2022).

among affected residents — ideally a representative sample with appropriate epidemiological methodology to establish the causal link between quarry dust levels and documented respiratory health outcomes, addressing the standard discussed at section 9.5.3 regarding expert evidence in environmental cases. The structural damage claim, while less obviously "environmental" in character, may be pursued as an ordinary nuisance/negligence claim for property damage, with engineering expert evidence establishing the causal link between blasting vibration and the documented structural cracking. Given the dual nature of the harm, practitioners should consider whether to pursue these as a single consolidated claim (more efficient, and allowing the cumulative pattern of harm to be presented holistically to the court) or as separate claims (potentially appropriate if different categories of affected residents have suffered different combinations of harm).[159]

9.39.4 Scenario: Urban Wetland Conversion for a Shopping Mall Development

Facts: a developer obtains an EIA certificate for a shopping mall development on land bordering a wetland; subsequent construction appears to extend significantly beyond the boundaries disclosed in the EIA, encroaching into the wetland itself; downstream residents experience increased flooding during the rainy season. Legal analysis: this scenario, closely analogous to the Nakivubo pattern discussed at section 5.3, centres on the gap between authorised and actual development extent. The first evidentiary priority is establishing, through surveying and GIS evidence (discussed at section 9.7.4), the precise boundary of the EIA-authorised development area versus the actual extent of construction and wetland encroachment. Where encroachment beyond the authorised boundary is established, the developer has no EIA authorisation for that portion of the development, directly engaging section 117 of the NEA 2019 (undertaking project without EIA certificate, in respect of the unauthorised portion) in addition to any breach of conditions applicable to the authorised portion. The downstream flooding evidence, combined with hydrological expert evidence establishing the causal link between the wetland encroachment and the increased flooding

159

(applying the Precautionary Principle's burden-shifting effect discussed at section 9.5.2 where the precise hydrological mechanism remains scientifically complex), supports both a Restoration Order application and a civil claim for the downstream community's documented flood damage.[160]

9.40 Practical Guidance on Cost-Benefit and Ecosystem Services Valuation Evidence

Quantifying environmental damage for compensation purposes (section 9.6.4) requires methodological rigour that many Ugandan courts have not yet had extensive opportunity to develop. Practitioners should be familiar with the principal valuation methodologies available: market price methods (valuing affected resources, such as timber or fish stocks, by reference to their market price, appropriate where the affected resource has a clear commercial market); replacement cost methods (valuing the cost of replacing or restoring the specific environmental function lost, such as the cost of constructing artificial drainage infrastructure to replace lost wetland flood-buffering capacity); contingent valuation methods (survey-based methods estimating affected communities' willingness to pay for environmental quality, more commonly used in policy contexts than in litigation but potentially relevant for valuing non-market environmental amenities); and benefit transfer methods (applying valuation estimates from comparable studies conducted elsewhere, appropriately adjusted for local context, where site-specific valuation studies are unavailable or impractically expensive to commission for litigation purposes). NEMA's own emerging Natural Capital Accounting Framework provides a useful reference point for Uganda-specific ecosystem service valuation parameters that practitioners can draw upon and cite in support of expert valuation evidence.[161]

9.41 A Comparative Note on Plea Bargaining in Environmental Criminal Cases

The Judicature (Plea Bargain) Rules 2016 permit plea bargaining in

[160] Cf. KCCA, Post-Flood Assessment Report (2025), discussed at section 5.3; NEA 2019, s. 117.

[161] NEMA, Natural Capital Accounting Framework for Uganda (2021); for general ecosystem services valuation methodology, see Robert Costanza et al., "The Value of the World's Ecosystem Services and Natural Capital" (1997) 387 Nature 253, and its 2014 update in (2014) 26 Global Environmental Change 152.

Ugandan criminal proceedings, including, in principle, environmental criminal prosecutions under the NEA 2019. Prosecuting counsel should approach plea bargaining in environmental cases with particular caution: while a guilty plea secures a conviction with certainty and avoids the resource costs of full trial, plea agreements that reduce environmental restoration obligations (as opposed to merely the criminal penalty) risk undermining the corrective justice function that is often more important than punitive sanction in environmental cases. This book recommends that prosecuting counsel, where plea bargaining is considered in an environmental case, ensure that any agreement preserves the accused's restoration obligations in full (consistent with the principle that the Polluter Pays Principle is not a matter for prosecutorial discretion to compromise) while limiting any negotiated reduction to the criminal penalty component of the case.[162]

9.42 The Use of Demonstrative and Visual Evidence in Environmental Trials

Environmental cases, dealing as they frequently do with complex spatial, ecological, and scientific phenomena, benefit substantially from well-prepared demonstrative evidence beyond standard documentary and oral testimony. Practitioners should consider: maps and aerial/satellite imagery showing the spatial extent of environmental features and alleged harm, ideally presented as a time-series showing change over time; diagrams illustrating hydrological flow patterns, pollution dispersion pathways, or ecosystem function, prepared with expert input to ensure technical accuracy; photographic and video documentation, properly authenticated and dated, showing the physical condition of the affected environment at different points in time; and, where resources permit, 3D modelling or visualisation tools that can assist the court in understanding complex spatial relationships (for example, the relationship between a proposed development's boundary and the actual wetland boundary in the Nakivubo-type scenario discussed at section 9.39.4). Judicial officers should be receptive to such demonstrative evidence, subject to the ordinary requirements of relevance

[162]Judicature (Plea Bargain) Rules 2016; Nyakaana v NEMA (2015) — restoration obligation as non -negotiable regardless of other case outcomes.

and proper authentication, recognising that environmental cases frequently turn on spatial and technical relationships that are difficult to convey through purely textual or oral evidence.

9.43 Concluding Practical Note: Building an Environmental Law Practice in Uganda

For advocates considering developing or expanding an environmental law practice in Uganda, this chapter's comprehensive treatment of standing, causes of action, evidence, remedies, prosecution, defence, and judicial considerations provides the foundational doctrinal and practical knowledge base. Beyond this foundational knowledge, successful environmental practice requires: cultivating relationships with the network of environmental scientists, ecologists, hydrologists, and other technical experts whose evidence is frequently indispensable to environmental litigation; maintaining current knowledge of the rapidly evolving statutory and regulatory framework, particularly given the relatively recent vintage of the NEA 2019 and its subsidiary regulations; engaging with the civil society and community networks that are frequently the source of environmental justice cases and the essential partners in translating litigation outcomes into genuine on-the-ground environmental improvement; and maintaining the professional resilience discussed at section 9.23 to sustain engagement with a practice area that, while professionally and morally rewarding, demands patience across protracted timelines and genuine emotional engagement with communities experiencing serious environmental harm. The constitutional promise of Article 39 — that every Ugandan citizen has a right to a clean and healthy environment — depends, in the final analysis, on practitioners willing to do this demanding work.

CHAPTER TEN
FREQUENTLY ENCOUNTERED QUESTIONS: A QUICK-REFERENCE COMPANION FOR PRACTITIONERS

This chapter distils the analysis of Chapter Nine into a question-and-answer format designed for rapid practical reference during active casework. Each answer cross-references the fuller discussion elsewhere in this book.

10.1 Standing and Forum Questions

Q: Can an individual who has suffered no personal injury bring an environmental claim?

Yes. Following Greenwatch v AG and NEMA (2002) and BAT v EAN (2003), Article 50 read with Article 39 permits any person — including one who has suffered no direct personal injury — to bring a constitutional petition alleging an environmental rights violation, provided the petitioner can demonstrate a genuine interest in the environmental matter at issue. See section 9.2.[163]

Q: Can a foreign NGO or international organisation bring a claim in Ugandan courts on behalf of a Ugandan community?

This remains a less settled question than domestic NGO standing. While Article 50's "any person" language is broad, courts may scrutinise more closely whether a foreign entity has a sufficient connection to the Ugandan environmental matter at issue. The safer practical approach, where international organisations wish to support Ugandan environmental litigation, is to do so by funding and providing technical support to a Ugandan-registered NGO or community group as the named petitioner, rather than seeking to litigate directly in the foreign organisation's own name. See section 9.2.3.

Q: Which court should I file in — High Court or Magistrate's Court?

Constitutional petitions under Article 50 must be filed in the High Court (or, for matters genuinely requiring constitutional interpretation under Article 137, potentially the Constitutional Court). Civil claims for environmental tort may be

[163] Greenwatch v AG and NEMA (2002); BAT v EAN (2003).

filed in the Magistrate's Court or High Court depending on the value of the claim, per the ordinary civil jurisdiction rules under the Magistrates Courts Act and Judicature Act. Criminal prosecutions under the NEA 2019 are filed in the Chief Magistrate's Court for offences with penalties up to 2 years/UGX 240 million, and the High Court for higher-penalty offences. See section 9.3 and section 9.10 (Step 2).

Q: Is there a time limit for bringing an environmental constitutional petition?

Article 50 constitutional petitions are not subject to a fixed limitation period in the way ordinary civil claims are under the Limitation Act. However, courts retain discretion to refuse equitable relief (such as an injunction) where there has been unreasonable and unexplained delay in bringing the claim, particularly where that delay has prejudiced the respondent. Civil tort claims are subject to the ordinary six-year limitation period under the Limitation Act (Cap. 80), s. 3. See section 9.2.3 and section 9.3.3.

10.2 Evidence Questions

Q: Is a NEMA inspection report alone sufficient evidence to prove an environmental offence?

A certified NEMA inspection report is admissible under section 148 of the NEA 2019 as prima facie evidence of the facts stated in it, but "prima facie" means it is sufficient unless and until contradicted by other evidence — it shifts an evidentiary burden but does not by itself guarantee conviction. Prosecutors are well advised to supplement NEMA reports with the testimony of the inspecting officer and, in serious or contested cases, additional independent expert evidence. See section 9.7.3.[164]

Q: Can community testimony about environmental harm succeed without scientific evidence?

Yes, in principle — lay testimony about directly observed phenomena (water that has changed colour or odour, fish kills, crop failure, livestock illness) is admissible and can be probative, particularly where corroborated by multiple

[164]NEA 2019, s. 148.

witnesses. However, where causation is scientifically contested or where the respondent disputes that the observed phenomena are linked to their activity, expert evidence will generally be necessary to establish the causal link to the required standard of proof. See section 9.5.3 and section 9.9.3.

Q: What happens if the only available water/soil testing was not conducted by an accredited laboratory?

Evidence from a non-accredited laboratory is not automatically inadmissible, but its weight may be significantly reduced, and the opposing party is entitled to challenge the reliability of the testing methodology and chain of custody. Wherever possible, practitioners should use UNBS-accredited laboratories or internationally accredited laboratories to minimise this vulnerability. Where only non-accredited testing is available (for example, due to cost constraints for a community claimant), this should be disclosed transparently and supplemented, where resources allow, by confirmatory testing from an accredited facility before trial. See section 9.7.5 and section 9.8.4.

Q: How do I prove that a developer's EIA certificate does not match what was actually built?

The most reliable method is a combination of: (1) obtaining the approved EIA documents and any site plans from NEMA showing the authorised development boundary; (2) commissioning a licensed surveyor to survey the actual development boundary; (3) where available, satellite imagery time-series showing the progression of construction relative to the wetland, forest, or other sensitive boundary; and (4) expert testimony comparing the surveyed actual extent against the EIA-authorised extent. See section 9.7.4 and the worked example at section 9.24 and section 9.39.4.

10.3 Remedies Questions

Q: Can a court order a company to pay for environmental restoration even if it would bankrupt the company?

Yes. Nyakaana v NEMA (2015) establishes that financial hardship is not a defence to a Restoration Order under the Polluter Pays Principle — the principle holds the polluter responsible for the full cost of restoration regardless of the

financial consequences for the polluter. Courts may, however, have regard to financial capacity in determining a reasonable timeline for compliance, even where they cannot reduce the substantive restoration obligation itself. See section 9.6.3 and section 9.9.5.[165]

Q: Can I get an injunction before the full case is heard if I am worried the harm will be irreversible?

Yes — this is precisely the function of an interlocutory injunction under Order 41 of the Civil Procedure Rules, and the threat of irreversible environmental harm is an especially strong ground for such relief, properly invoking the Precautionary Principle confirmed in Nyakaana. See section 9.6.2 and section 9.10 (Step 5).

Q: If I win my case, who pays my legal costs?

The ordinary rule is that the losing party pays the winning party's costs, but courts have discretion to depart from this rule, and this book argues that genuine public interest environmental litigation should generally not expose unsuccessful claimants to adverse costs liability, while successful claimants in cases of serious proven environmental harm may be entitled to costs on an indemnity basis. See section 9.28.

Q: What is the difference between a "declaration" and an actual remedy, and why does it matter?

A declaration is simply a court statement that a right has been violated — it does not, by itself, compel anyone to do or stop doing anything. An injunction, restoration order, mandamus, or compensation award is a specific, enforceable remedy. The lesson of Greenwatch v AG (2002), discussed throughout this book, is that a declaration without an accompanying specific remedy can leave a proven environmental violation effectively unaddressed for years. Advocates should always seek specific relief in addition to any declaration, and judicial officers should be prepared to grant it. See sections 9.6.1, 9.9.1, and 9.12.3.

10.4 Criminal Prosecution Questions

[165] Nyakaana v NEMA (2015) at [45]–[50].

Q: Can I prosecute a company's managing director personally for an environmental offence committed by the company?

Yes, where the conditions of section 153 of the NEA 2019 are met: the company must have committed the primary offence, and the director or officer must be shown to have consented to, connived in, or through neglect facilitated the commission of the offence. Mere holding of a director's title is not sufficient without proof of one of these three mental states. See sections 9.3.4, 9.4.4, and 9.7.1.[166]

Q: Does the prosecution need to prove the accused intended to cause environmental harm?

Generally, no — most NEA 2019 offences are regulatory strict liability offences where proof of the prohibited act or omission, plus the absence of lawful authority, is sufficient without separate proof of intent to cause harm, following the strict liability approach to regulatory offences confirmed in Gammon (Hong Kong) Ltd v Attorney General of Hong Kong [1985] AC 1 (PC). However, where the charge specifically requires proof of knowledge or intent (such as certain corporate liability provisions under section 153, which require consent, connivance, or neglect), that specific mental element must be proved. See section 9.4.4.

Q: What is the appropriate forum for prosecuting a major oil company for environmental damage in the Albertine Graben?

Given the likely scale of penalties involved (most serious NEA 2019 offences carry maximum penalties triggering High Court jurisdiction) and the complexity of the evidence typically involved in oil and gas environmental matters, such prosecutions should ordinarily proceed in the High Court. Practitioners should also consider whether the matter additionally warrants civil and constitutional proceedings running in parallel with any criminal prosecution, given the different remedies (restoration, compensation) available through each track. See sections 9.3 and 5.2.

10.5 Procedural and Practice Management Questions

[166] NEA 2019, s. 153.

Q: How long does an environmental case typically take in Uganda?

There is significant variability, but practitioners should be realistic with clients: straightforward criminal prosecutions in the Magistrate's Court may resolve within months to a year; civil and constitutional environmental litigation in the High Court frequently takes several years to first-instance judgment, with the possibility of multi-year appeals thereafter (Nyakaana itself proceeded over several years from the original NEMA Restoration Order to final Supreme Court determination, and Mbabazi has now been pending for over a decade). This underscores the importance of interim relief (section 9.6.2) to address urgent or irreversible harm while the substantive case proceeds.

Q: Should I try to settle an environmental public interest case rather than litigate to judgment?

This depends on the nature of the case. Where the primary objective is securing specific, monitorable restoration and compensation for an identified community, a well-negotiated settlement — ideally incorporating the same specificity and supervisory mechanisms recommended for court orders at section 9.9.6 — can achieve faster and more certain results than protracted litigation. Where the case raises a question of broader public importance for which a binding judicial precedent would have wider value (as in cases testing the scope of the Public Trust Doctrine or, prospectively, intergenerational equity), proceeding to judgment may serve the broader environmental justice project even where settlement might offer a faster individual case resolution. See section 9.20 on the appropriate scope for ADR in environmental matters.

Q: What should I do if NEMA refuses to act on a community's formal complaint?

Document the complaint formally in writing with a clear date, retain proof of submission, and allow a reasonable period for response (informed by NEMA's own published service standards where available). If NEMA fails to respond or act within a reasonable period, this failure itself becomes actionable through judicial review for unlawful failure to perform a statutory duty, seeking mandamus to compel NEMA to investigate and respond. See sections 9.3.2, 9.3.5, and 9.39.2.

10.6 Quick-Reference Decision Chart: Choosing the Right Cause of Action

If the situation is...	The primary cause(s) of action should be...	Cross-reference
Ongoing environmental harm with no specific NEMA decision being challenged	Constitutional petition (Arts. 50/39) seeking declaration, injunction, and Restoration Order	9.3.1, 9.10
A specific NEMA/government decision (EIA approval, permit) is being challenged	Judicial review on grounds of illegality, procedural impropriety, or irrationality	9.3.2, 9.4.2
Identifiable individuals have suffered quantifiable property/health damage	Civil claim in nuisance/negligence and/or under the Polluter Pays strict liability principle	9.3.3, 9.4.3
Sufficient evidence exists of a specific NEA 2019 offence	Report to police/EPF for investigation and referral to DPP for criminal prosecution	9.3.4, 9.7, 9.13
Environmental damage exists but the case does not yet warrant full litigation	Direct application to NEMA for a Restoration Order under s. 108 NEA 2019	9.3.5
Harm is urgent/irreversible and ongoing	Apply immediately for interlocutory injunction or preservation order, in parallel with substantive claim	9.6.2, 9.10 (Step 5)
Harm crosses international borders (DRC, Tanzania, Kenya)	Consider EACJ reference under EAC Treaty, alongside domestic remedies	9.11, 9.22

CHAPTER ELEVEN INSTITUTIONAL DIRECTORY, PROCEDURAL FORMS, AND PRACTICAL RESOURCES

This chapter consolidates the institutional contacts, procedural timelines, and additional template materials that environmental practitioners require for day -to-day practice, supplementing the templates already provided in the Appendices.

11.1 Key Institutions in Uganda's Environmental Governance Architecture

Institution	Primary Function	Relevance to Practitioners
National Environment Management Authority (NEMA)	Principal environmental regulator; EIA approval; Restoration Orders; standards-setting	Primary respondent in most environmental litigation; source of inspection reports and EIA files; recipient of Restoration Order applications
Ministry of Water and Environment	Policy oversight of water and environment sector; international climate negotiations	Relevant party in climate litigation (e.g., Mbabazi); custodian of Uganda's NDC under the Paris Agreement
National Forestry Authority (NFA)	Management of central forest reserves; forest licensing	Relevant respondent in forest reserve disputes (cf. Butamira, Kitubulu)
Directorate of Water Resources Management	Water resource permits; water quality standards	Source of water permit records and water quality monitoring data
Ministry of Energy and Mineral Development	Oil, gas, and mining sector licensing and policy	Relevant party in oil/gas and mining environmental disputes
Petroleum Authority of Uganda (PAU)	Regulation of upstream oil and gas operations	Holds technical data on oil project compliance relevant to Albertine Graben litigation
Directorate of Geological Survey and Mines	Mining licensing and oversight	Source of mining licence and compliance records for Karamoja and other mining disputes
Kampala Capital City Authority (KCCA)	Urban planning, drainage, and environmental management for Kampala	Relevant respondent in Nakivubo-type urban wetland and flooding disputes
District Local Governments	Devolved environmental enforcement functions; local bye-laws	Relevant party for District Environment Officer records and local enforcement failures
Office of the Director	Prosecution of criminal offences	Recipient of environmental

Institution	Primary Function	Relevance to Practitioners
of Public Prosecutions (DPP)	including under the NEA 2019	crime referrals for prosecution
Uganda Police Force — Environment Protection Force	Investigation and enforcement of environmental offences	First responder for environmental crime scene investigation
Uganda Human Rights Commission (UHRC)	Constitutional human rights monitoring and complaints mechanism	Alternative complaints avenue for environmental rights violations engaging broader human rights dimensions
Uganda National Bureau of Standards (UNBS)	Laboratory accreditation; standards certification	Source of accredited laboratory listings for environmental sample testing

11.2 Key Civil Society and Professional Resources

Practitioners should be aware of the following organisations active in Ugandan environmental law and policy, several of which were parties to the landmark cases discussed throughout this book and which maintain institutional knowledge, case archives, and technical resources of significant practical value:

- Greenwatch Uganda — environmental public interest litigation; party in Greenwatch v AG and NEMA (2002); publisher of the Handbook on Environmental Law in Uganda
- Advocates Coalition for Development and Environment (ACODE) — environmental policy research and litigation; party in the Butamira Forest Reserve case
- National Association of Professional Environmentalists (NAPE) — community environmental advocacy; documented the Kitubulu Forest Reserve case
- Africa Institute for Energy Governance (AFIEGO) — oil and gas sector environmental and governance monitoring
- Global Rights Alert — mining sector environmental and human rights monitoring, particularly in Karamoja
- Platform for Labour Action (PLA) — labour and environmental justice in the Albertine Graben
- FIDA Uganda — women's legal rights including environmental access to justice dimensions
- Legal Aid Service Providers' Network (LASPNET) — coordination of legal aid providers, including environmental legal aid mapping
- Uganda Law Society — professional body; Environmental Law Committee where active; continuing legal education provider
- Judicial Training Institute — judicial officer training including

environmental law curriculum

11.3 Standard Procedural Timelines for Reference

Procedural Step	Governing Rule	Standard Timeline
Service of constitutional petition on respondents	Civil Procedure Rules, Order 5	Within 21 days of filing (extendable by court)
Filing of respondent's answer/affidavit in reply	Civil Procedure Rules, Order 9; Judicature Practice Directions	15–21 days from service (varies by directions)
EIA public notice period before hearing	NEA (EIA) Regulations 2021, r. 22	Minimum 21 days
NEMA decision period following EIA submission	NEA (EIA) Regulations 2021	Statutory target periods apply, varying by project category
Time to comply with a Restoration Order	NEA 2019, s. 108	As specified in the individual order (court/NEMA discretion)
Limitation period for civil environmental tort claims	Limitation Act (Cap. 80), s. 3	6 years from accrual of cause of action
Appeal from High Court to Court of Appeal	Judicature Act; Court of Appeal Rules	Within 60 days (notice of appeal); fuller record within 60 days thereafter
Appeal from Court of Appeal to Supreme Court	Constitution, Art. 132; Supreme Court Rules	Within 60 days of Court of Appeal decision

11.4 Template: Letter of Demand / Pre-Action Notice to NEMA

Many environmental claims, particularly those involving government respondents, benefit from a formal pre-action letter establishing a clear record of the complaint and affording the respondent an opportunity to remedy the matter before litigation — useful both as a matter of professional practice and, in claims against government bodies, potentially relevant to compliance with the State Proceedings Act's notice requirements where applicable.

[LAW FIRM LETTERHEAD]

[Date]

The Executive Director

National Environment Management Authority

P.O. Box 22255, Kampala

RE: FORMAL COMPLAINT AND DEMAND FOR ENFORCEMENT ACTION — [DESCRIBE MATTER, LOCATION]

1. We act for [client name/description], who instructs us in relation to environmental damage occurring at [location], caused by the activities of [name of alleged violator].

2. The specific environmental harm complained of is as follows: [describe with particularity — nature, extent, evidence available].

3. We are instructed that our client [and/or the affected community] has previously reported this matter to your Authority on [date(s)], without [adequate/any] response or enforcement action to date.

4. We hereby formally demand that your Authority, within [21/30] days of the date of this letter: (a) conduct an inspection of the site described above; (b) issue an Environmental Restoration Order pursuant to Section 108 of the National Environment Act 2019 if your inspection confirms environmental damage; and (c) communicate to us in writing the steps taken in response to this demand.

5. Please note that should your Authority fail to respond adequately within the stated period, our client reserves the right to pursue all available legal remedies, including judicial review proceedings for failure to perform a statutory duty and/or constitutional petition proceedings under Articles 50 and 39 of the Constitution, without further notice.

Yours faithfully,

[Advocate name and signature block]

11.5 Template: NEMA Restoration Order Application

Where a direct application to NEMA (rather than litigation) is the appropriate first step (see section 9.3.5), the following structure is recommended for the supporting submission:

16. Identification of the applicant and their interest in the matter (resident, landowner, community representative, or registered organisation)
17. Precise identification of the location of the alleged environmental damage, with GPS coordinates or other unambiguous geographic reference
18. Description of the nature and history of the environmental damage, including dates and the identity of the person(s) believed responsible
19. Summary of supporting evidence available (photographs, witness statements, any available testing results), with copies annexed
20. Specific request for NEMA to: (a) conduct an inspection; (b) make a determination as to responsibility; and (c) issue a Restoration Order specifying the required remedial measures and a compliance timeline
21. Contact details for follow-up and a request for written confirmation of receipt and expected response timeline

11.6 Glossary of Key Technical and Legal Terms

Term	Definition
Bioaccumulation	The progressive accumulation of a substance, such as a pollutant, in the tissue of an organism over time, often used in evidence regarding long-term contamination effects
Cumulative impact assessment	An assessment methodology examining the combined environmental effect of multiple activities or projects in a given area, rather than assessing each project individually in isolation
Ecosystem services	The benefits that humans derive from natural ecosystems, including water purification, flood buffering, carbon sequestration, and biodiversity support, increasingly used as a valuation framework for environmental damage
Environmental Impact Assessment (EIA)	The statutory process under the NEA 2019 for assessing and mitigating the likely environmental effects of a proposed project before authorisation is granted
Free, Prior and Informed Consent (FPIC)	A principle of international law requiring that affected communities give their free consent to a project affecting their land or resources, after receiving full information, before the project commences
Locus standi	The legal right or capacity to bring a claim or to appear in a court proceeding (Latin: "place to stand")
Mandamus	A court order compelling a public authority to perform a duty it has unlawfully failed or refused to perform
Polluter Pays Principle	The principle, confirmed as part of Ugandan law in Nyakaana v NEMA (2015), that the person who causes environmental harm must bear the full costs of remediation, regardless of fault
Precautionary Principle	The principle, confirmed in Nyakaana v NEMA (2015), that scientific uncertainty about potential serious environmental harm is not a reason to delay protective action, and shifts the burden of proving safety to the proponent of the activity in question
Public Trust Doctrine	The doctrine, established in ACODE v AG (2004), that the state holds natural resources in trust for present and future citizens and cannot alienate them without lawful authority and community consent
Restoration Order	An order issued by NEMA under Section 108 of the NEA 2019 requiring a person who has caused environmental damage to restore the affected environment to its original or near-original condition
Strict liability	Legal liability that does not require proof of fault, negligence, or intent — liability arises from the mere fact of having caused the harm, as applied to environmental damage under the Polluter Pays Principle
Ultra vires	Latin for "beyond the powers" — describing an act done by a public authority beyond the scope of its legal authority, rendering the act invalid

Term	Definition
Wednesbury unreasonableness	The administrative law standard under which a decision may be quashed if it is so unreasonable that no reasonable decision-maker could have made it, derived from Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223

BIBLIOGRAPHY

A. Books and Monographs

Agyeman, J, Sustainable Communities and the Challenge of Environmental Justice (New York University Press, New York, 2005)

Bassey, N, To Cook a Continent: Destructive Extraction and the Climate Crisis in Africa (Pambazuka Press, Oxford, 2012)

Bilchitz, D, Poverty and Fundamental Rights: The Justification and Enforcement of Socio-Economic Rights (Oxford University Press, Oxford, 2007)

Boyd, D, The Environmental Rights Revolution: A Global Study of Constitutions, Human Rights, and the Environment (UBC Press, Vancouver, 2012)

Brown Weiss, E, In Fairness to Future Generations: International Law, Common Patrimony and Intergenerational Equity (Transnational Publishers, New York, 1989)

Bullard, R, Dumping in Dixie: Race, Class and Environmental Quality (Westview Press, Boulder, 1990)

Cole, L and Foster, S, From the Ground Up: Environmental Racism and the Rise of the Environmental Justice Movement (New York University Press, New York, 2001)

Cornell, D and Muvangua, N (eds), Ubuntu and the Law: African Ideals and Post-Apartheid Jurisprudence (Fordham University Press, New York, 2012)

Craik, N, The International Law of Environmental Impact Assessment: Process, Substance and Integration (Cambridge University Press, Cambridge, 2008)

Cullinan, C, Wild Law: A Manifesto for Earth Justice (2nd edn, Green Books, Totnes, 2011)

Dworkin, R, Law's Empire (Belknap Press, Cambridge MA, 1986)

Fredman, S, Human Rights Transformed: Positive Rights and Positive Duties (Oxford University Press, Oxford, 2008)

Glazewski, J and Ruppel-Schlichting, CA (eds), Environmental Law in Developing Countries: Selected Issues (IUCN, Gland, 2001)

Kotzé, LJ (ed), Environmental Law and Governance for the Anthropocene (Hart Publishing, Oxford, 2017)

Lubogo, IC, Environmental Justice: Constitutionalism, Equity, Development and Environmental Governance in Uganda (Suigeneris Publications, Kampala, 2026)

Lubogo, IC, The Constitution on the Streets of Uganda (Suigeneris Publishers, Kampala, 2024)

Lubogo, IC, UBU-NTU: Being, Humanity, and Law (Suigeneris Publishers, Kampala, 2024)

Lubogo, IC, Ubuntu and the Law in Uganda: Towards a New Constitutional Dispensation (Suigeneris Publishers, Kampala, 2024)

Lubogo, IC, Uganda and the Blue Economy (Suigeneris Publishers, Kampala, 2024)

Lubogo, IC, Ubuntu Constitutionalism in Africa: The Lubogo–Ubuntu Constitutionalism Index (LUCI) and the Ubuntu Legal Index (ULI) (Suigeneris Publishers, Kampala, 2026), DOI: 10.5281/zenodo.20688619

Lubogo, Y.K., A History of Busoga (East African Literature Bureau, Nairobi, 1960)

May, JR and Daly, E, Global Environmental Constitutionalism (Cambridge University Press, Cambridge, 2014)

Odoki, B, The Search for a National Consensus: The Making of the 1995 Uganda Constitution (Fountain Publishers, Kampala, 2005)

Schlosberg, D, Defining Environmental Justice: Theories, Movements, and Nature (Oxford University Press, Oxford, 2007)

Stone, C, Should Trees Have Standing? — Toward Legal Rights for Natural Objects (William Kaufmann Inc, Los Altos CA, 1974)

Sunstein, CR, One Case at a Time: Judicial Minimalism on the Supreme Court (Harvard University Press, Cambridge MA, 1999)

Tamanaha, B, On the Rule of Law: History, Politics, Theory (Cambridge University

Press, Cambridge, 2004)

Tushnet, M, Weak Courts, Strong Rights: Judicial Review and Social Welfare Rights in Comparative Constitutional Law (Princeton University Press, Princeton, 2008)

Walker, G, Environmental Justice: Concepts, Evidence and Politics (Routledge, London, 2012)

Young, IM, Justice and the Politics of Difference (Princeton University Press, Princeton, 1990)

B. Journal Articles

Butagira, F, "Plastic Pollution and Environmental Justice in Uganda: A Legal Analysis" (2022) 5 Uganda Law Review 34

Ferreira, N, "Ubuntu and Environmental Justice: Towards an African Theory of Environmental Rights" (2018) 34 South African Journal on Human Rights 1

Jjuuko, F, "The Environment and the Constitution" in J. Oloka-Onyango (ed), Constitutionalism in Africa: Creating Opportunities, Facing Challenges (Fountain Publishers, Kampala, 2001)

Jjuuko, F and Mugerwa, E, "Land Rights and Environmental Protection in Uganda" (2019) 12 Journal of African Law 45

Metz, T, "Ubuntu as a Moral Theory and Human Rights in South Africa" (2011) 11 African Human Rights Law Journal 532

Muigua, K, "Environment and Land Court: A Catalyst for Environmental Justice in Kenya" (2019) 1 Journal of Sustainable Development Law and Policy 1

Rosencranz, A and Jackson, M, "The Delhi Pollution Case: The Supreme Court of India and the Limits of Judicial Power" (2003) 28 Columbia Journal of Environmental Law 223

Sahu, G, "Implementation of Environmental Judgments in Context: A Comparative Analysis" (2014) 21 Asia Pacific Journal of Environmental Law 45

Tumushabe, G, "Between Law and Power: The Butamira Case and Environmental Governance in Uganda" (2006) 4 East African Journal of Peace and Human Rights 12

Tumwebaze, F, "Environmental Enforcement and the Urban Poor in Kampala" (2023) 18 Journal of Eastern African Studies 67

C. Reports and Institutional Documents

ACODE, Environmental Justice in West Nile and Karamoja (ACODE, Kampala, 2023)

ActionAid Uganda, "Voices from the Graben: Community Perspectives on Oil in Uganda" (2024)

African Centre for Biodiversity, Oil/Gas Development and Environmental Justice in Uganda's Albertine Graben (ACB, Johannesburg, 2023)

Anti-Corruption Coalition Uganda (ACCU), Report on Environmental Permit Corruption (2022)

FIDA Uganda, Environmental Rights and Access to Justice: A Study of Women's Experiences (2023)

Global Rights Alert, Mining and Environmental Justice in Karamoja (2023)

Global Witness, Uganda's Oil: A Force for Good, or a Destructive Force? (2021)

Greenwatch Uganda, Handbook on Environmental Law in Uganda (Vols I & II, Greenwatch, Kampala, 2009)

KCCA, Environmental Status Report (2022); Post-Flood Assessment Report (2025)

LASPNET, Mapping Environmental Legal Aid in Uganda (2022)

NEMA, State of Environment Report for Uganda (2022)

NEMA, State of Compliance Monitoring Report (2022)

NEMA, Wetlands Status Report (2021)

NEMA, Annual Performance Report 2022/23 (2023)

NFA, Uganda Forest Resources Assessment (2023)

Oxfam International, Unequal Risks and Benefits: Oil in Uganda (2021)

Platform for Labour Action (PLA), "Oil, Land and Justice in Uganda's Albertine Region" (2023)

Transparency International Uganda, Corruption in the Land and Environmental Sector (2023)

Uganda Constitutional Commission, Report of the Uganda Constitutional Commission: Analysis and Recommendations (Government of Uganda, Kampala, 1992)

Uganda Human Rights Commission, Annual Report (2023)

Uganda National Audit Office, Environmental Enforcement Performance Audit (2022)

UNECE, Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention, 1991)

USEPA, "Environmental Justice: Meaningful Involvement" (EPA, Washington DC, 2000)

World Commission on Environment and Development, Our Common Future (Oxford University Press, Oxford, 1987) (Brundtland Report)

INDEX

*References are to chapter and section numbers. The symbol * indicates a principal discussion. "Ch." denotes a full chapter treatment. Terms in bold indicate the primary point of discussion; sub-entries identify specific aspects.*

A

ACODE v Attorney General (Butamira Forest Reserve case, 2004) * 2.2.2, 3.4.1, 4.3, 6.4, 9.3.2, 9.11.2, 9.12.2
ACEDH v Uganda (EACJ, 2025) 3.5.1, 5.2, 6.6, 9.11.1, 9.22
Access to justice 6.7, 8.4, 9.2, 9.10, 9.28, 10.5
— *legal aid fund (proposed)* 8.4, 8.7
— *mobile courts* 8.4
— *standing rules* 8.4, 9.2
Affidavit (drafting in environmental cases) 9.25
African Charter, Art. 24 2.5, 9.11.1, 9.11.2
Albertine Graben (oil and gas sector) 5.2, 6.5, 6.6
Alternative Dispute Resolution (ADR) 9.20
Ambassadore of Hope v AG (EACJ, 2025) 3.5
American Cyanamid test (injunctions) 9.6.2, 9.10 Step 5
Anthropocene, environmental justice and 1.8

B

BAT v Environmental Action Network Ltd (2003) * 3.2.2, 9.2.2, 9.8.1, 10.1
Burden of proof 9.5
— *general rule* 9.5.1
— *Precautionary Principle reversal ** 9.5.2, 9.29
— *expert evidence requirements* 9.5.3
Butamira Forest Reserve see ACODE v Attorney General

C

Cause of action (types) 9.3
— *constitutional petition (Arts. 50/39)* 9.3.1, 9.4.1, 9.10, App. C
— *civil tort (nuisance, negligence, PPP)* 9.3.3, 9.4.3, 9.30
— *criminal prosecution (NEA 2019)* 9.3.4, 9.4.4, 9.7, 9.13
— *judicial review* 9.3.2, 9.4.2
— *NEMA Restoration Order application* 9.3.5, 11.5
Chain of custody (evidence) 9.7.5, 9.8.4
Civil society and media 6.11
Climate change 1.8, 4.5, 5.8, 6.12, 8.3.1, 9.34
— *Mbabazi litigation* 3.6, 4.5, 8.3.1
— *Climate Change Act 2021* 2.4
Community Development Agreements (CDAs) 5.2, 5.4, 8.4, 9.17
Community-driven constitutionalism 3.5.2, 8.5

Community witnesses (preparation) 9.27
Constitutional environmentalism (Pillar 1) 4.2
Constitutional petition (see Cause of action) undefined
Constitution of Uganda 1995 undefined
— *Art. 17(j) — citizen duty* 2.2.3
— *Art. 22 — right to life* 3.6, 4.4, 9.4.1
— *Art. 24 — dignity* 4.4
— *Art. 26 — property rights* 3.3.1, 9.4.3
— *Art. 39 — right to clean environment ** 1.6, 2.2.1, 9.2.1, 9.9.1
— *Art. 45 — general rights* 4.4, 9.4.1
— *Art. 50 — enforcement gateway* 2.2.4, 9.2.1, 9.3.1
— *Art. 237 — land belongs to citizens* 2.2.2
— *Art. 245 — parliamentary mandate* 2.2.3
— *National Objective XXVII — intergenerational equity* 2.2.2, 4.5
Corporate liability (NEA 2019, s. 153) 9.3.4, 9.4.4, 9.7.1, 9.13, 10.4
Corrective justice 1.4.3, 3.3, 9.6
Corruption and elite capture 6.4
Costs in environmental litigation 9.28
Criminal prosecution see Cause of action
Customary land rights 5.10

D

Declaration (remedy) 9.6.1, 9.9.1
— *inadequacy of declaration alone* 6.3, 9.9.1, 9.12.3
Defence counsel — practical guide 9.8
— *EIA documentation defence* 9.8.3
— *mitigation and good faith* 9.8.5
— *scientific evidence challenge* 9.8.4
— *substantive defences* 9.8.2
— *threshold challenges* 9.8.1
Demonstrative evidence (maps, GIS, satellite) 9.7.4, 9.42
Distributive justice 1.4.1, 5.2, 5.3, 5.4, 5.9
Doctrinal pillars (six pillars) Ch. 4

E

EIA (Environmental Impact Assessment) 2.3.2, 9.3.2, 9.8.3
— *"meaningful involvement" standard ** 9.9.4, App. D
— *procedural impropriety challenges* 9.3.2, 9.4.2
— *EIA Regulations 2021* 2.3.2, 9.9.4
Enforcement gap 6.2, 6.14
Environment and Land Court (Kenya) 7.5, 8.2.1
Environment Protection Force 2.3.1, 6.2, 8.2.2
Environmental constitutionalism 4.2, 4.12
Environmental Legal Aid Fund (proposed) 8.4, 8.7
Environmental rule of law 4.12
Ethics (professional conduct) 9.37
Expert evidence 9.5.3, 9.7.3, 9.9.3, 9.16
— *instruction of experts* 9.16

— *court-appointed experts* 9.9.3

F

Forestry and wetlands sector 5.5, 5.11
Forum selection 9.3, 9.10 Step 2, 10.1, 10.6
Free, Prior and Informed Consent (FPIC) 5.4, 6.5, 8.4
Fuel Retailers v DG (SA, 2007) 7.4, 9.11.2
Future Generations v Colombia (2018) * 4.5, 8.3.1, 9.12.5

G

Gender and environmental injustice 5.9
GIS and satellite evidence 9.7.4, 9.42
Greenwatch v AG and NEMA (2002) * 2.2.1, 3.2.1, 5.6, 6.3, 9.2.2, 9.6.1, 9.12.3
— *judicial minimalism identified* 3.2.1, 6.3, 9.9.1
— *standing confirmed* 3.2.1, 9.2.2

H

Human rights integration (Pillar 3) 4.4

I

India — judicial activism model 7.3
— *M.C. Mehta v Union of India* 7.3, 9.12.4
— *National Green Tribunal* 7.3, 8.2.1
Injunction 9.6.2
— *interlocutory (American Cyanamid test)* 9.6.2
— *Precautionary Principle and irreversible harm* 9.5.2, 9.6.2
Intergenerational equity (Pillar 4) 1.5, 2.2.2, 4.5, 8.3.1, 9.11.2
International environmental law (use in Ugandan courts) 9.11
— *three routes of incorporation* 9.11.1
— *principles table* 9.11.2
Institutional directory Ch. 11, s. 11.1

J

Jinja City Council Mivule Trees case (2024) 3.5.3, 3.12, 9.6.2
Judicial minimalism 3.2.1, 6.3, 9.9.1, 9.12.3
— *repudiated by Nyakaana* 3.3.1, 9.9.1
Judicial officer — practical guide * 9.9
— *constitutional obligation* 9.9.1
— *crafting effective remedies* 9.9.6
— *expert evidence management* 9.9.3
— *meaningful involvement test* 9.9.4
— *PPP and Precautionary Principle application* 9.9.5
— *threshold checklist* 9.9.2
Judicial review of environmental decisions 9.3.2, 9.4.2
— *grounds (illegality, irrationality, procedural impropriety)* 9.3.2, 9.4.2

K

Kampala — urban environmental justice 5.3
Karamoja — mining sector 5.4
Kenya — specialised court model 7.5, 8.2.1
Kitubulu Forest Reserve action (2026) 3.5.2, 8.5

L

Land Act (Cap. 227) 2.4, 5.10
Legitimate expectation doctrine 2.12
Leghari v Pakistan (2015) * 4.5, 8.3.1, 9.11.2
Letter of demand / pre-action notice template 11.4
Lubogo Framework for Ubuntu Constitutionalism 4.7, 8.5

M

M.C. Mehta v Union of India (1987) * 4.4, 7.3, 9.11.2, 9.12.4
Mandamus and supervisory orders 9.6.5
Mbabazi & Ors v AG (2012, pending) * 3.6, 4.5, 8.3.1, 9.34
"Meaningful involvement" standard * 9.9.4, App. D, 10.6
Media (working with in PIL) 9.21
Mining and Minerals Act 2022 2.4, 5.4
Mining sector — Karamoja 5.4
Ministério Público (Brazil) 7.6, 8.2.4

N

Nakivubo Channel (Kampala floods) 5.3, 6.2
National Environment Act 2019 (NEA 2019) 2.3
— *s. 3 — nature's rights* 2.3.4, 9.11.2
— *s. 108 — Restoration Orders* 2.3.3, 9.3.5, 9.6.3
— *s. 110 — Environmental Restoration Fund* 9.32
— *s. 112 — Polluter Pays civil liability* 2.3.3, 9.4.3
— *s. 117 — unlawful EIA* 9.3.4, 9.13
— *s. 148 — admissibility of NEMA reports* 9.7.3, App. E
— *s. 153 — corporate liability* 9.3.4, 9.13, 10.4
— *ss. 100–155 — criminal offences ** 9.3.4, 9.13, App. E
Nature's rights (NEA 2019, s. 3) 2.3.4, 9.11.2
NEMA — National Environment Management Authority 2.3.1
— *as a party in litigation* 9.26
— *enforcement gap* 6.2
— *Environmental Justice Office (proposed)* 8.2.3
— *NEMA reports (admissibility)* 9.7.3, App. E
— *Restoration Order application to NEMA* 9.3.5, 11.5
Nyakaana v NEMA (2015) * 3.3.1, 4.6, 9.5.2, 9.6.3, 9.9.1, 9.9.5, 9.9.6, 9.12.1
— *Polluter Pays Principle* 3.3.1, 4.6, 9.9.5
— *Precautionary Principle* 3.3.1, 4.6, 9.5.2, 9.9.5
— *primacy of Art. 39 over Art. 26* 3.3.1, 9.9.5

O

Obuntu bulamu / Ubuntu philosophy 1.5, 4.7, 8.3.2, 8.5

Oil and gas sector 5.2, 6.5, 9.39.1

P

"Paper Tiger" diagnosis 2.6, 8.1
Plea bargaining in environmental cases 9.41
Polluter Pays Principle * 3.3.1, 4.6, 9.4.3, 9.5.2, 9.9.5, 9.11.2, 9.12.1
— *strict liability, no fault required* 3.3.1, 9.4.3
— *no hardship exception* 3.3.1, 9.6.3, 10.3
Power imbalances (extractive industries) 6.5
Precautionary Principle * 3.3.1, 4.6, 9.5.2, 9.6.2, 9.9.5, 9.11.2, 9.29
— *burden reversal* 9.5.2, 9.29
— *interim relief and irreversible harm* 9.6.2, 9.10 Step 5
Procedural justice 1.4.2, 3.2
— *meaningful involvement standard* 9.9.4, App. D
Prosecuting counsel — practical guide 9.7
— *building the prosecution* 9.7.1
— *corporate liability (s. 153)* 9.7.1, 10.4
— *expert evidence* 9.7.3
— *proving the offence at trial* 9.7.2
— *satellite and GIS evidence* 9.7.4
Public interest litigation (PIL) 3.2, 9.2, 9.10
— *step-by-step guide* 9.10
— *costs considerations* 9.28
Public Trust Doctrine (Pillar 2) * 2.2.2, 3.4.1, 4.3, 9.11.2, 9.12.2

R

Remedies (environmental) 9.6, 10.3
— *compensation and damages* 9.6.4
— *declaration (limitations)* 9.6.1, 9.9.1
— *injunction* 9.6.2
— *mandamus and supervisory orders* 9.6.5
— *restoration orders* 9.6.3
Restoration Orders (NEA 2019, s. 108) 2.3.3, 3.3.1, 9.3.5, 9.6.3, 11.5
Rio Declaration 1992 2.5, 4.6, 9.11.2

S

Satellite and GIS evidence 9.7.4, 9.42
Sentencing (environmental criminal cases) 9.18
SERAC v Nigeria (Ogoni case, 2001) * 2.5, 9.11.1
South Africa — socio-economic rights model 7.4
Standing (locus standi) * 3.2, 9.2
— *BAT v EAN (2003)* 3.2.2, 9.2.2
— *checklist for practitioners* 9.2.3
— *Greenwatch (2002)* 3.2.1, 9.2.2
— *representative and class actions* 3.8
— *Uganda Wildlife Society (2005)* 3.2.3, 9.2.2
State-owned enterprises and government projects 9.33
Step-by-step PIL guide 9.10

Strict liability 3.3.1, 4.6, 9.4.3, 9.5.2

T

Table of cases see Table of Cases (Preliminary Pages)
Template: constitutional petition App. C
Template: letter of demand to NEMA 11.4
Template: NEMA Restoration Order application 11.5
Tilenga Oil Project 5.2, 6.6
Traditional ecological knowledge 1.11, 5.11
Trail Smelter Arbitration (1941) * 3.5.1, 6.6, 9.11.1, 9.11.2
Transboundary environmental justice 3.5.1, 6.6, 9.11, 9.22
Tripartite framework (distributive/procedural/corrective) 1.4, 9.4

U

Ubuntu environmental ethics (Pillar 6) 1.5, 4.7, 8.3.2, 8.5
Ubuntu Legal Index (ULI) Author's Note, Zenodo DOI 10.5281/zenodo.20688619
Uganda Wildlife Society v AG (2005) 3.2.3, 9.2.2
United States — originator EJ model 7.2
Urgenda v Netherlands (2019) * 3.6, 8.3.1, 9.12.5
USEPA definition of environmental justice 1.3, 9.9.4

W

Waste management sector 5.6, 5.15
Wednesbury unreasonableness 9.3.2, 9.4.2
Wetlands 2.3.3, 3.3.1, 5.3, 5.5
Women and environmental injustice 5.9
Worked examples (case studies) 9.24, 9.39

APPENDICES

Appendix A: Key Constitutional Provisions

Article 17(j): It is the duty of every citizen of Uganda — to create and protect a clean and healthy environment.

Article 39: Every Ugandan citizen has a right to a clean and healthy environment.

Article 50(1): Any person who claims that a fundamental or other right or freedom guaranteed under this Constitution has been infringed or threatened is entitled to apply to a competent court for redress which may include compensation.

Article 237(1): Land in Uganda belongs to the citizens of Uganda and shall vest in them in accordance with the land tenure systems provided for in this Constitution.

Article 245: Parliament shall, by law, provide for measures intended (a) to protect and preserve the environment from abuse, pollution and degradation; (b) to manage the environment for sustainable development; and (c) to promote environmental awareness.

National Objective XXVII: The State shall endeavour to promote sustainable development and public awareness of the need to manage land, air and water resources in a balanced and sustainable manner for the present and future generations of Ugandans.

Appendix B: Key Provisions of the National Environment Act 2019

Section 3 (Nature's Rights): Nature has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution.

Section 108(1) (Restoration Orders): Where any activity or omission has caused degradation to the environment, NEMA may issue an environmental restoration order requiring the responsible person to restore the environment to its original condition, or as close to its original condition as is reasonably practicable.

Section 112 (Liability for Environmental Damage): A person who causes environmental damage is liable for the full costs of restoring the environment and compensating affected persons, in accordance with the Polluter Pays Principle.

Section 117(1) (Unlawful EIA): No person shall commence, carry out, or commission any project, programme or activity that is likely to have an adverse impact on the environment without an environmental impact assessment certificate issued by the Authority.

Section 148 (Admissibility of NEMA inspection reports): A certificate, report or other document purporting to be signed by an authorised officer of the Authority is, in the absence of evidence to the contrary, admissible in any proceedings as evidence of the facts stated in it.

Section 153 (Corporate Liability): Where an offence under this Act is committed by a body corporate, every person who at the time of the commission of the offence was a director or officer of the body corporate and who consented to or connived at the commission of the offence or whose neglect facilitated the commission of the offence is, as well as the body corporate, guilty of the offence and liable to be proceeded against and punished accordingly.

Appendix C: Template Constitutional Petition — Environmental Rights (Articles 50/39)

IN THE HIGH COURT OF UGANDA AT [LOCATION]
CIVIL DIVISION (CONSTITUTIONAL MATTERS)
CONSTITUTIONAL PETITION NO. ______ OF 20______

IN THE MATTER OF AN APPLICATION FOR REDRESS UNDER ARTICLE 50 OF THE CONSTITUTION OF THE REPUBLIC OF UGANDA, 1995

AND IN THE MATTER OF THE ALLEGED INFRINGEMENT OF ARTICLES 22, 39 AND 45 OF THE CONSTITUTION OF THE REPUBLIC OF UGANDA, 1995

BETWEEN:

[PETITIONER NAME / NAME OF NGO / NAME OF COMMUNITY GROUP] .... PETITIONER

AND

THE ATTORNEY GENERAL ....1ST RESPONDENT

NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY ....2ND RESPONDENT

[DEVELOPER / COMPANY NAME] ....3RD RESPONDENT

PETITION

1. The Petitioner is [name and description of petitioner — individual Ugandan citizen / registered NGO whose objects include environmental protection / community group representing persons with an environmental interest in the matter], with locus standi to bring this petition under Article 50 of the Constitution.

2. The 1st Respondent is the Attorney General, the principal legal representative of the Government of Uganda, cited under Article 50.

3. The 2nd Respondent is the National Environment Management Authority established under the National Environment Act 2019, with responsibility for environmental enforcement including the issuance of Restoration Orders.

4. The 3rd Respondent is [name and description of developer/company], which has undertaken [describe the activity: construction / drainage / discharge of pollutants / deforestation / mining] at [specific location with reference to survey mark, LC area, and District].

5. The 3rd Respondent's activities have caused and continue to cause serious environmental damage including [specify with particularity: wetland destruction / water pollution / air pollution / deforestation / soil degradation / loss of biodiversity], in violation of the Petitioner's constitutional right to a clean and healthy environment under Article 39 of the Constitution, and of the Petitioner's rights under Articles [specify relevant articles: 22 / 24 / 45].

6. The 1st and 2nd Respondents have failed to take adequate enforcement action to prevent, halt, or remedy the environmental violations complained of, in breach of their constitutional obligations under Articles 245, 39, and 50 of the Constitution and the National Environment Act 2019.

7. The Petitioner has suffered [describe harm with particularity: pollution of community water supply / loss of agricultural land / adverse health impacts / property damage / loss of fishing livelihood / threat of flooding] as a direct consequence of the environmental violations described above.

8. The Petitioner prays for the following relief:

- A declaration that the 3rd Respondent's [describe activity] violates the Petitioner's right to a clean and healthy environment under Article 39 of the Constitution and the Petitioner's rights under Articles [22/24/45 as applicable]
- A permanent injunction restraining the 3rd Respondent from continuing or recommencing the [describe harmful activity] in violation of the environmental standards prescribed by the National Environment Act 2019
- An order directing the 2nd Respondent to issue a Restoration Order pursuant to Section 108 of the National Environment Act 2019, requiring the 3rd Respondent to restore the environment at [location] to its pre-violation state within [specify reasonable period: 3/6/12 months]
- Compensation in the sum of Uganda Shillings [amount] OR an amount to

be assessed by the Honourable Court, for the environmental damage, health impacts, and livelihood losses suffered by the Petitioner as a result of the 3rd Respondent's violations

- A supervisory order directing all Respondents to report to this Honourable Court on compliance with any orders made herein, at [3-monthly] intervals, until the court is satisfied that full restoration has been achieved
- Costs of this petition
- Such further and other relief as this Honourable Court may deem fit in the circumstances

SWORN/AFFIRMED by the Petitioner at [place] on the [date] day of [month] 20[year].

[SIGNATURE OF PETITIONER / ADVOCATE]

Advocate for the Petitioner: [Name, Firm, Address, Contact]

Appendix D: Meaningful Involvement Checklist for EIA Challenges

Use this checklist to determine whether EIA public participation meets the constitutional standard:

#	Requirement (EIA Regulations 2021, rr. 20–32)	Evidence Required	Finding
1	EIA study report made available to community at least 45 days before public hearing	Date of publication; distribution records; copies available in community	Met / Not Met / Partial
2	Non-technical summary produced in local language(s) of affected community	Copies of translated materials; languages covered	Met / Not Met / Partial
3	Public hearing held in or near the affected community (not only in district capital)	Location of hearing; minutes/attendance register	Met / Not Met / Partial
4	Community given minimum 21 days notice of hearing date, time, and location	Notice; proof of service to community leaders and LC officials	Met / Not Met / Partial
5	Translation and interpretation services provided at hearing in local languages	Interpreter records; minutes in local language	Met / Not Met / Partial
6	Community submissions formally recorded in writing	Written record of all oral and written submissions received	Met / Not Met / Partial
7	NEMA decision specifically addresses each category of community concern	NEMA decision letter; cross-reference to community submissions received	Met / Not Met / Partial
8	Community had genuine capacity to influence the outcome (not merely notified after decision made)	Evidence of any project design changes made in response to community submissions	Met / Not Met / Partial
9	Independent technical/legal assistance made available to community (or referral made)	Records of technical assistance offered or referrals to legal aid providers	Met / Not Met / Partial
10	Result: Is the public participation	Overall assessment	YES / NO — grounds for

#	Requirement (EIA Regulations 2021, rr. 20–32)	Evidence Required	Finding
	"meaningful involvement" within the four-part USEPA test?	based on findings above	judicial review if NO

Appendix E: NEA 2019 Environmental Offences — Quick Reference for Prosecutors and Judicial Officers

NEA 2019 Section	Offence	Maximum Penalty	Trial Court	Key Proof Elements
s. 102	Unlawful discharge of waste/pollutant into the environment contrary to standards	UGX 480M or 8 years or both	High Court	Expert evidence: standards; discharge; causal link to harm
s. 108(6)	Failure to comply with NEMA Restoration Order	UGX 240M or 4 years or both	Chief Magistrate	Valid served Restoration Order; continued non-compliance within compliance period
s. 117	Undertaking project requiring EIA without valid EIA certificate	UGX 480M or 8 years or both	High Court	Project falls within EIA schedule; absence of valid certificate; project commenced
s. 126	Pollution of water resources	UGX 480M or 8 years or both	High Court	Scientific water quality evidence; violation of standards; causal link
s. 131	Unlawful disposal of hazardous waste	UGX 480M or 8 years or both	High Court	Waste classification as hazardous; prohibited disposal method; accused control
s. 141	Damage to protected ecosystem (wetland, forest, national park)	UGX 480M or 8 years or both	High Court	Protected status of ecosystem; nature and extent of damage; causal link
s. 146	Obstruction of Environment Protection Force officers in execution of duty	UGX 120M or 2 years or both	Chief Magistrate	Officer's identity and lawful authority; act of obstruction; intent
s. 148	Admissibility of certified NEMA inspection reports	N/A (evidentiary provision)	All courts	Tender certified NEMA report as prima facie

NEA 2019 Section	Offence	Maximum Penalty	Trial Court	Key Proof Elements
				evidence of facts stated — no further proof required unless challenged
s. 153	Corporate liability — directors and officers personally liable	Same as primary offence	Same as primary offence	Primary offence by body corporate; accused = director/officer; consent, connivance, or neglect to prevent

ENVIRONMENTAL JUSTICE

Constitutionalism, Equity, Development and Environmental Governance in Uganda

Environmental justice is no longer a distant ideal; it is a constitutional imperative that shapes the future of societies, economies, and ecosystems. In Uganda, where development ambitions often intersect with ecological vulnerability, the pursuit of justice in environmental governance is both a moral and legal necessity.

This book offers a comprehensive and critical examination of environmental justice through the lens of constitutionalism, human rights, equity, and sustainable development. It interrogates the legal frameworks, institutional structures, and judicial responses that define environmental governance in Uganda, while engaging comparative perspectives from Africa, Asia, and beyond.

Drawing from case law, statutory interpretation, jurisprudential theory, and empirical realities, the book advances a transformative vision for environmental justice—one that centres the voices of communities, protects ecological integrity, and secures dignity for present and future generations.

KEY FEATURES

In-depth analysis of constitutional and statutory provisions on environmental rights in Uganda.

Critical exploration of environmental justice doctrines, principles, and jurisprudence.

Examination of landmark Ugandan cases and their implications for environmental governance.

Comparative evaluation of environmental justice approaches in South Africa, Kenya, India, the United States and other jurisdictions.

Policy recommendations for strengthening environmental governance, accountability and community participation.

WHO SHOULD READ THIS BOOK?

- Law students and legal academics
- Environmental law practitioners
- Judges, magistrates and policymakers
- Government regulators and institutions
- Development partners and NGOs
- Researchers in law, environment and sustainable development

ABOUT THE AUTHOR

Isaac Christopher Lubogo is a legal scholar, author, and jurist with profound interest in constitutional law, jurisprudence, environmental governance, and African legal philosophy. He is the founder of Suigeneris, a platform dedicated to advancing legal thought, jurisprudential development, and academic excellence.

He has authored several scholarly works and continues to contribute to legal reform, human rights advocacy, and sustainable development across Africa.

PUBLISHED BY
SUIGENERIS
PUBLICATIONS

Advancing Legal Thought. Inspiring Justice. Transforming Society.

P.O. Box 23140, Kampala, Uganda
+256 752 555656
info@suigenerislawapp.com
www.suigenerislawapp.com

ISBN: 978-9913-0-3456-7

9 789913 034567

© Isaac Christopher Lubogo, 2025
All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior written permission of the publisher, except for brief quotations in academic or review works.