



Navigating the Legal Architecture of Environmental Litigation

CONSTITUTIONAL PILLARS AND
STATUTORY FRAMEWORKS FOR
ENVIRONMENTAL LITIGATION IN
UGANDA

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17TH JUNE 2026

Presentation Outline

- ❑ The context of environmental litigation in Uganda
- ❑ Constitutional architecture
- ❑ Public Interest Litigation (PIL) and standing
- ❑ Statutory framework
- ❑ Rights of Nature
- ❑ Emerging litigation areas
- ❑ Practical litigation checklist
- ❑ Challenges
- ❑ Litigation as a governance tool
- ❑ Key takeaways
- ❑ Q & A

Why does Environmental Litigation Matter?

Uganda's environmental reality reveals notable drivers of environmental disputes including but not limited to the following:

Wetland encroachment

Mining

Pollution

Infrastructure development

Deforestation

Climate change impacts

Oil and Gas development

Constitutional Architecture of Environmental Protection

Constitutional Pillars

❑ **Article 39-** Right to a clean and healthy environment

❑ **Article 50-** Enforcement of human rights

❑ **Article 245-** Protection and Preservation of the Environment

National Objectives and Directive Principles of State Policy

❑ **Objective XIII-** Sustainable Development

❑ **Objective XXVII-** Environment

Article 39- The Right to a Clean and Healthy Environment

□ Ugandan courts have interpreted Article 39 of the 1995 Constitution (guaranteeing every citizen the right to a clean and healthy environment) as a fundamental, justiciable human right. The judiciary has actively operationalized this provision by relaxing traditional legal standing through **Public Interest Litigation (PIL)**, enforcing **sustainable development**, and integrating the **precautionary principle** into environmental litigation. The Article has broadly been interpreted to encompass environmental quality and human well being.

The interpretation and application of Article 39 is characterized by several **core judicial doctrines**:

❖ Expanded Locus Standi (Public Interest Litigation)

Courts have ruled that Article 39, when read alongside Article 50 (which allows individuals or organizations to seek redress for others), does away with the traditional requirement that a litigant must be directly injured to file a lawsuit.

Landmark Precedent: In the TEAN v. Attorney General & NEMA case, the High Court established that civil society organizations and spirited individuals can sue on behalf of vulnerable groups (such as children and the poor) to protect the public from environmental degradation, such as the dangers of public smoking.

Application: In suits like *Greenwatch v. Attorney General & NEMA (Misc. Application No. 140 of 2002)*, courts have readily entertained applications addressing broad environmental concerns, such as the indiscriminate disposal of plastic bags, as matters touching upon the collective Article 39 rights of all Ugandans.

Judicial Doctrines (Cont'd):

❖ Precautionary Principle and the Polluter Pays Principle

Ugandan courts utilize international environmental law principles to give teeth to Article 39.

The Precautionary Principle: The judiciary has signaled that a lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation.

The Polluter Pays Principle: Judges enforce the premise that those who cause environmental damage must bear the financial burden of cleaning it up and compensating affected communities.

Landmark Cases

PRECAUTIONARY PRINCIPLE

- ❖ *Amooti Godfrey Nyakaana v. NEMA (Supreme Court, 2011)*: The Supreme Court solidified the principle by affirming that developers must undertake Environmental Impact Assessments (EIA) as a key precautionary and due diligence measure before undertaking any potentially destructive activities.
- ❖ *Mbabazi & Ors v. Attorney General (High Court)*: Brought by Ugandan youth, this landmark, rights-based climate change lawsuit relied upon the precautionary principle and the Public Trust Doctrine to challenge the government's failure to mitigate climate harms. It asserted the state has a fiduciary duty to preserve natural resources for current and future generations.

POLLUTER PAYS PRINCIPLE

- ❖ *Amooti Godfrey Nyakaana v. National Environment Management Authority (Supreme Court, 2011)*: The court reaffirmed the importance of the PPP. The Supreme Court ruled that NEMA is legally empowered to stop environmental degradation in fragile areas (such as wetlands) and that the offending party must personally bear the costs of restoring the degraded environment.
- ❖ *Mbabazi & Ors v. Attorney General*: Brought on behalf of Ugandan minors, this case tested the courts on rights-based environmental claims. It broadly invoked the PPP, establishing that polluters (both private and state-authorized) are accountable for present and intergenerational damages.

Judicial Doctrines (Cont'd):

❖ Balancing Development with Environmental Rights

Courts are tasked with balancing the constitutional right to a clean environment against the state's mandate to pursue economic development.

Landmark Precedent: In *Africa Institute for Energy Governance (AFIEGO) v. Attorney General*, the Constitutional Court explored this balance. It interpreted pollution control licenses and the National Environment Act in a way that preserved the state's developmental mandate while requiring that such actions comply with constitutional environmental rights. The courts strictly scrutinize whether the National Environment Management Authority (NEMA) properly enforces Environmental and Social Impact Assessments (ESIAs) to ensure the right to a clean environment is not compromised by unchecked industrial activity.

Judicial Doctrines (Cont'd):

❖ The Public Trust Doctrine

Courts are tasked with balancing the constitutional right to a clean environment against the state's mandate to pursue economic development.

Though Article 39 itself is framed as an individual or group right, courts actively interpret it alongside the National Objectives and Directive Principles of State Policy. The courts have interpreted the Constitution as imposing a Public Trust on the state, requiring the government to hold and protect natural resources (like wetlands, lakes, and forests) in trust for the common good of all citizens. This prevents the arbitrary, unchecked alienation of vital ecological spaces.

Article 50 specific to Environment Rights

- ❑ Ugandan courts interpret Article 50 of the 1995 Constitution as a foundational tool for public interest litigation and the enforcement of environmental rights. The judiciary has expansively construed this article to abolish restrictive traditional rules of *locus standi*, allowing civil society, community representatives, public interest advocates and citizens to sue on behalf of groups or the general public seeking redress for violations of constitutional rights
- ❑ Courts have embraced PIL in matters regarding environmental degradation, pollution, and climate change, recognizing that environmental rights—like the right to a clean and healthy environment (Article 39)—are collective group rights requiring broad enforcement.
- ❑ The Constitutional Court has affirmed that citizens do not need to wait for Parliament to pass specific enforcement laws under Article 50(4) to bring forward constitutional petitions or redress.

Article 50 specific to Environment Rights (Landmark Cases)

❑ *The Environmental Action Network (TEAN) v. Attorney General & NEMA*: The High Court ruled that a civil society organization had the standing to file a public interest application challenging public smoking. The court cemented that public health and environmental hazards can be legally challenged in the interest of the public without showing personal damage.

❑ *Mbabazi and Others v. Attorney General (Civil Suit No. 283 of 2012)*: This pending climate litigation was brought by four young Ugandans (supported by an NGO) invoking Article 50 to compel the government to uphold the public trust doctrine and address climate change impacts to safeguard the fundamental rights of present and future generations.

❑ *AFIEGO v. Attorney General (Constitutional Petition 15 of 2020)*: The Constitutional Court interpreted the intersection of constitutional rights and the National Environment Act. The Court ruled that statutory pollution control licensing regimes do not inherently violate the constitutional right to a clean environment, provided the regulatory mechanisms are adhered to.

Public Interest Litigation

This is litigation brought to:

- ❖ Protect public rights
- ❖ Defend environmental interests
- ❖ Advance constitutional values

Typical environmental public interest litigation cases include:

- ❖ Wetlands protection
- ❖ Forest reserves protection
- ❖ Mining projects
- ❖ Oil and Gas developments
- ❖ Pollution
- ❖ Wildlife Conservation

A KEY ADVANTAGE OF PUBLIC INTEREST LITIGATION IS THAT IT ALLOWS FOR BROADER ACCESS TO COURTS COMPARED TO TRADITIONAL PRIVATE LITIGATION

Environmental Principles Used in Litigation

THESE PRINCIPLES ARE GLEANED FROM CONSIDERATION OF THE NATIONAL ENVIRONMENT ACT

- Environmental Stewardship
- Intergenerational Equity
- Precautionary Principle
- Sustainable Development
- Polluter Pays Principle
- Public Participation

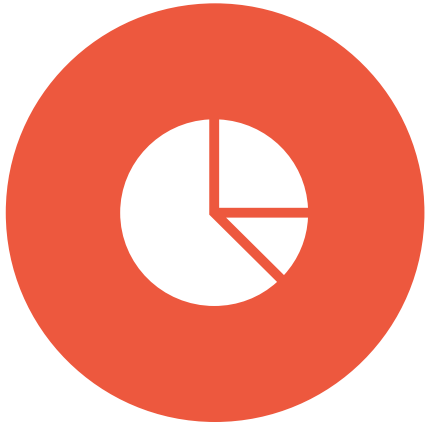
THEY ARE INCREASINGLY SHAPING JUDICIAL REASONING AND REGULATORY DECISIONS

Key Statutes Supporting Environmental Litigation

- National Environment Act, 2019
- Water Act
- National Forestry and Tree Planting Act
- The Petroleum (Oil and Gas sector) Acts
- Mining and Minerals Act, 2022
- Wildlife Act
- Physical Planning Act
- Land Act

N.B. ENVIRONMENTAL DISPUTES RARELY ARISE UNDER A SINGLE STATUTE SO, MOST CASES REQUIRE MULTI-STATUTORY ANALYSIS

The National Environment Act, 2019



STRENGTHENED ENVIRONMENTAL
ENFORCEMENT & EXPANDED
ACCESS TO ENVIRONMENTAL
JUSTICE



INTRODUCED
RIGHTS OF NATURE



ADDRESSED EMERGING
ISSUES SUCH AS CLIMATE
CHANGE

Rights of Nature- A Continental Innovation

□ Uganda made history as the first African nation to formally recognize the **rights of nature** in its National Environment Act of 2019. Under Section 4 of the Act, nature is explicitly recognized as having the “right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution”. Furthermore, Section 4(2) grants any person or indigenous custodian community the legal standing to bring an action before a competent court for the infringement of these rights.

Current status: The legal provision has not yet been significantly tested by the courts/a definitive body of Rights of Nature case law has not been established. To date, environmental jurisprudence in Uganda has primarily relied on Public Interest Litigation (PIL) brought on behalf of human rights—such as the constitutionally protected right to a clean and healthy environment.

Rights of Nature- A Future Outlook

The transition from human-centered environmental rights to the independent rights of nature remains a developing frontier. The lack of direct case law is currently being addressed by indigenous groups (such as the *Bagungu people* in Buliisa district) who are working alongside legal organizations to draft local ordinances enforcing these rights at the community level. Additionally, the Ugandan judiciary is actively working to expand specialized forums, such as the *Environmental, Infrastructure, and Utilities Division of the High Court*, paving the way for future Rights of Nature rulings.

Emerging Litigation Areas

Environmental Litigation in the Extractives Sector (Oil, Gas & Mining)

Emerging litigation areas:

- ❖ Mining licenses
- ❖ Community Development Agreements management
- ❖ Displacement and Resettlement
- ❖ Environmental restoration
- ❖ Tailings and Waste Management

Climate Change and Future Litigation

Emerging Litigation Areas:

- ❖ Climate adaptation failures
- ❖ Carbon-sinking agreements/projects
- ❖ Biodiversity loss
- ❖ Future generations' rights

Practical Litigation Checklist for Lawyers

BEFORE FILING, LAWYERS NEED TO TAKE NOTE OF THE FOLLOWING;

- Standing
- Evidence
- Environmental assessments
- Constitutional provisions
- Statutory breaches
- Cause of action
- Jurisdiction
- Expert witnesses
- Remedies sought

Challenges Facing Environmental Litigation

INSTITUTIONAL

- ❑ Delays
- ❑ Costs
- ❑ Enforcement gaps

EVIDENTIARY

- ❑ Scientific complexity
- ❑ Expert testimony

GOVERNANCE

- ❑ Political economy considerations
- ❑ Regulatory capture
- ❑ Community participation deficits

Strategic Opportunities for Lawyers

ENVIRONMENTAL LAWYERS CAN DRIVE

- ❖ Public Interest Litigation
- ❖ Climate Litigation
- ❖ Extractives Accountability
- ❖ Rights of Nature cases
- ❖ Community rights protection
- ❖ Environmental constitutionalism

THE FUTURE: ENVIRONMENTAL LITIGATION IS MOVING FROM PERIPHERAL PRACTICE TO A CENTRAL FIELD OF CONSTITUTIONAL LAW

Litigation as a Governance Tool

Environment litigation
serves to:



Key Takeaways

- ❑ Article 39 is the constitutional cornerstone
- ❑ Article 50 transformed environmental standing
- ❑ NEA 2019 significantly expanded environmental justice
- ❑ Rights of Nature provisions in the Environment Act places Uganda among global innovators
- ❑ Environmental litigation increasingly intersects with mining, energy, climate and human rights
- ❑ Lawyers play a critical role in shaping Uganda's environmental governance future

THANK YOU!

ANY QUESTIONS?