CONSTITUTIONAL ENVIRONMENTALISM AND THE COMMON GOOD IN UGANDA

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ABSTRACT

This article qualitatively examines the evolution and implementation of constitutional environmentalism in Uganda, assessing the extent to which the Constitution embeds environmental rights and duties as foundations of the common good. It argues that robust constitutional environmentalism provides a strong normative and legal basis for advancing climate justice, yet its impact is constrained by structural, institutional, and socio-political barriers that limit effective enforcement. The article further contends that achieving meaningful climate resilience requires judicial innovation, strengthened institutions, enhanced environmental democracy, and harmonisation of domestic frameworks with international climate obligations. In doing so, it contributes to ongoing scholarly debates on the intersection between human rights, environmental governance, and climate change.

Keywords: *Constitutional environmentalism; climate justice; environmental rights; climate resilience; environmental governance; human rights; judicial innovation; environmental democracy.*

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I. INTRODUCTION

Climate change has in the recent times confronted Uganda through uncontrollable and rising temperatures, shifting and erratic rainfall, intensifying floods and prolonged droughts, as well as landslides in highland areas.[1] These climatic hazards in turn greatly affect human rights for example by undermining public health, rural livelihoods and food security, and threatening biodiversity, raising urgent questions about distributive justice, intergenerational equity and the common good.[2] In this context, constitutional environmentalism refers to the express entrenchment of environmental rights, duties and governance principles in a country's supreme law in order to offer a potent legal architecture for climate resilience and ecological integrity that binds both state and citizens.[3] It enables creation of a high-level legal framework for protecting the environment for present and future generations. Constitutional environmentalism goes beyond policy implementation to establish durable, often judicially enforceable, environmental guarantees, though challenges remain in bridging the gap between constitutional provisions and effective on-the-ground action.[4] During the constitutional making process that led to the enactment of Uganda's current Constitution of 1995, the citizenry generally showed the desire to assemble such an architecture. Following this, the 1995 Constitution of Uganda under Article 39 recognizes a justiciable right to a clean and healthy environment, embeds stewardship duties in the National Objectives and Directive Principles of State Policy notably Objective XXVII on the environment and Objective XIII on the protection of natural resources and Article 17(1)(j), which places a duty on every citizen to create and protect a clean and healthy environment.

If read alongside Article 8A of the Constitution, these provisions constitutionally frame environmental protection as intrinsic to the national interest and common good, rather than as a mere policy preference.[5] Statutory developments have reinforced this constitutional

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1 *Uganda's Third National Communication to the United Nations Framework Convention on Climate Change*. Kampala: Government of Uganda, July 2022. Available at: https://unfccc.int/sites/default/files/resource/Final%20TNC%20Uganda.pdf (accessed 12 September 2025), pg.7.

2 World Bank, *Climate Risk Country Profile: Uganda* (2021), https://climateknowledgeportal.worldbank.org/sites/default/files/2021-05/15464-WB_Uganda%20Country%20Profile-WEB%20%281%29.pdf accessed 25 August 2025; GIZ, *Climate Risk Profile: Uganda* (2020) https://www.adaptationcommunity.net/wp-content/uploads/2021/02/GIZ_Climate-risk-profile-Uganda_EN_final.pdf, (accessed 25 August 2025), pg.4.

3 Mushonga, Tafadzwa. "*Constitutional Environmental Rights and State Violence: Implications for Environmental Justice in Protected Forests.*" *Environmental Justice*, Vol. 16, No. 3 (June 2023), pp. 148-159.

4 Mushonga (n3 above) 13.

5 Article 8A of the Constitution of the Republic of Uganda, 1995 (as amended).

baseline. For example, the National Environment Act,[6] modernized Uganda's environmental management regime (including on climate change, hazardous substances and strategic environmental assessment) and strengthened the coordinating role of NEMA.[7] Additionally, the National Climate Change Act,[8] gives domestic legal effect to the UNFCCC and Paris Agreement, creating duties for sectoral and local government climate action. It also mandates a national framework strategy and action plans tools intended to translate constitutional commitments into implementable climate governance.[9] In parallel, Uganda's Updated Nationally Determined Contribution (NDC) of 2022 articulates economy-wide mitigation and adaptation targets (including a 24.7% reduction below BAU by 2030, conditional and unconditional components), aligning international obligations with domestic constitutional goals.[10]

Emerging jurisprudence suggests courts can operationalize these constitutional commitments. In *Greenwatch v Attorney General & NEMA*, the High Court affirmed that the State owes a duty to promote and preserve the environment, and that any concerned Ugandan may sue to vindicate environmental rights.[11] This means that environmental protection in Uganda is not just a matter of government policy but a binding constitutional obligation under Article 39 of the 1995 Constitution. It also means that environmental rights are collective rights belonging to all citizens, and therefore any Ugandan whether directly affected or not has the legal standing to bring an action in defence of the environment. In practical terms, the case empowers ordinary citizens and civil society to hold the State and its agencies accountable for environmental degradation, strengthening both environmental governance and public interest litigation.

Additionally, courts have also invoked the public trust doctrine**,** constitutionally grounded in Article 237(2)(b) (state/trusteeship over critical environmental assets). The public trust doctrine originated in Roman law's concept of *res communes*, which recognized certain resources like air, water, and the seashore as common to all and incapable of private

6 The National Environment Act Cap 153.

7 National Environment Act Cap 153 https://nema.go.ug/sites/all/themes/nema/docs/National%20Environment%20Act%2C%20No.%205%20of%202019.pdf accessed 25 August 2025.

8 National Climate Change Act, 2021.

9 National Climate Change Act, 2021.

10 *Updated Nationally Determined Contribution (NDC)* (September 2022) https://unfccc.int/sites/default/files/NDC/2022-09/Updated%20NDC%20_Uganda_2022%20Final.pdf accessed 25 August 2025; see also UNFCCC NDC Registry entry https://unfccc.int/documents/613827 accessed 25 August 2025.

11 *Greenwatch v Attorney General & NEMA*, *Misc Cause No 140 of 2002.*

ownership. It was later developed in English common law and transplanted into American jurisprudence, most notably in *Illinois Central Railroad Co. v. Illinois,*[12] where the U.S. Supreme Court affirmed the State's trustee role over navigable waters. In African contexts, it has been constitutionalized, for instance in Uganda under Article 237(2)(b) of the 1995 Constitution. Scholars such as Joseph Sax, often credited as reviving the doctrine in modern environmental law, argue it provides a framework for judicial enforcement of environmental rights. Others, like Michael Blumm and Mary Wood, have expanded its scope to emphasize intergenerational equity and climate resilience, framing it as a cornerstone of constitutional environmentalism. [13] This principle has been applied to prevent the privatization or degradation of public resources and to reinforce intergenerational equity. For example, in *Advocates Coalition for Development and Environment (ACODE) & 2 Others v. Attorney General & 3 Others*,[14] the Court held that government could not allocate Butamira Forest Reserve to Kakira Sugar Works for sugarcane growing because it was held in trust for the people. Similarly, in *Amooti Godfrey Nyakaana v. National Environment Management Authority (NEMA) & 2 Others*,[15] the Court confirmed that wetlands, as trust resources, could not be alienated for private use, underscoring the State's constitutional duty to protect such assets for present and future generations.

Climate-focused public interest litigation, which is relatively on a rise in Uganda, explicitly links Articles 39 and 237 to atmospheric stewardship for current and future generations illustrating how constitutional environmentalism can be mobilized for climate justice.**[16]** Nonetheless, enforcement gaps persist: implementation capacity is uneven; access to environmental information can be contested; and tensions between rapid economic development (especially in extractives and infrastructure) and ecological protection remain live. These gaps point to the need for stronger institutions, participatory governance, and

12 *Illinois Central Railroad Co. v. Illinois (1892).*

13 *Advocates Coalition for Development and Environment (ACODE) v Attorney General* Miscellaneous *Cause No. 100 of 2004*.

14 *Advocates Coalition for Development and Environment (ACODE) & 2 Others v. Attorney General & 3 Others, Miscellaneous Cause No. 0100 of 2004 (High Court of Uganda).*

15 *Amooti Godfrey Nyakaana v. National Environment Management Authority (NEMA) & 2 Others, Supreme Court Civil Appeal No. 05 of 2011.*

16 *Mbabazi and Others v Attorney General and National Environment Management Authority* Civil Suit No.283 of 2012.

consistent judicial follow-through if constitutional environmentalism is to fully serve the common good in a warming world.[17]

Therefore, this study seeks to critically examine how constitutional environmentalism in Uganda can be leveraged as a framework for advancing the common good in the context of climate change, assessing the extent to which constitutional guarantees, judicial interpretation, and statutory developments have translated into meaningful environmental protection, and identifying the institutional, structural, and socio-political reforms necessary to ensure that constitutional commitments genuinely contribute to climate justice, intergenerational equity, and ecological sustainability.

II. HISTORICAL EVOLUTION OF ENVIRONMENTAL GOVERNANCE IN UGANDA

Constitutional environmentalism entails recognition that environmental protection is not merely a policy issue but a constitutional imperative, fundamental to human dignity, social justice, and sustainable development.[18] Scholars have described it as "environmental constitutionalism," a framework where constitutions embed environmental concerns directly through explicit rights (the right to a clean and healthy environment), directive principles of state policy, citizen duties, and institutional mandates.[19] Globally, more than 100 constitutions now contain environmental rights provisions.[20] Uganda is part of this trend. These provisions elevate environmental protection from a political commitment to a legally enforceable standard, laying the foundation for climate justice and ecological stewardship.[21]

Uganda's pre-colonial societies developed environmental governance systems that reflected cosmology, spirituality, and communal life. Environmental sustainability was ensured not through written statutes, but through oral traditions, taboos, customary norms,

17 *Greenwatch (U) Ltd v Attorney General of Uganda and Uganda Electricity Transmission Co Ltd*, *Misc Cause No 140 of 2002* (case note) https://globalfreedomofexpression.columbia.edu/cases/greenwatch-u-ltd-v-attorney-general-of-uganda-and-uganda-electricity-transmission-co-ltd/ accessed 25 August 2025

18 Louis J Kotzé, 'Arguing Global Environmental Constitutionalism' (2012) 1(1) Transnational Environmental Law 199 https://doi.org/10.1017/S2047102511000124 accessed 27 August 2025.

19 Erin Daly and James R May, 'Constitutional Environmental Rights Worldwide' (2016) 23 RECIEL 190 https://doi.org/10.1111/reel.12159 accessed 27 August 2025.

20 UN Environment, *Environmental Rule of Law: First Global Report* (2019). 48.https://wedocs.unep.org/20.500.11822/27279 accessed 27 August 2025.

21 *Constitution of the Republic of Uganda* (1995, as amended 2023) Arts 39, 17(1)(j), Objective XXVII https://ulii.org/akn/ug/act/statute/1995/constitution/eng%402023-12-31/source accessed 27 August 2025.

and sacred practices**.** Among the Baganda, for instance, certain forests such as Butto and Nakayima tree sites were revered as abodes of gods and ancestral spirits, which meant cutting trees or hunting within them was prohibited.[22] Similarly, the Banyoro conserved wetlands for cultural and economic reasons, ensuring regulated use of fisheries and papyrus harvesting.[23] Customary land tenure systems further reinforced stewardship. Land was communal, held in trust by clans, and allocated for use rather than absolute ownership.[24] Such arrangements embedded the notion of intergenerational equity, as families were expected to safeguard land for descendants. Importantly, taboo systems regulated hunting seasons, prohibited killing of pregnant animals, and forbade fishing during spawning periods, thereby maintaining biodiversity.[25]

Pre-colonial governance thus reflected what modern theorists would call the public trust doctrine and the idea that natural resources are held in trust for the community and posterity. Though unwritten, these practices reflected sophisticated ecological knowledge, now increasingly recognized in scholarship as indigenous environmental jurisprudence.[26] The arrival of British colonial rule in the late 19th century fundamentally altered environmental governance. Through the 1900 Buganda Agreement, vast tracts of land were converted into Crown Lands under the 1903 Ordinance, vesting ultimate ownership in the British Crown[27] .Communal tenure systems were displaced, and African communities were dispossessed of forests, wetlands, and grazing lands. The shift enabled plantation agriculture (coffee, cotton, sugarcane) and large-scale forestry (notably in Mabira and Budongo forests).[28] Colonial conservation was not rooted in ecological justice but in resource extraction and game preservation for colonial elites**.** The Game Ordinance (1926**)** restricted hunting by Africans but granted licenses to Europeans, criminalizing traditional subsistence

22 Jimmy Spire Ssentongo, *Inquiry into a Withering Heritage: The Relevance of Traditional Baganda Approaches to Sustainable Environmental Conservation Today* (2015).https://www.researchgate.net/publication/281290042 accessed 28 August 2025.

23 Charles Manyindo, 'Indigenous Knowledge in Natural Resource Management in Uganda' (2001) Uganda National Council for Science and Technology https://www.researchgate.net/publication/237407318 accessed 28 August 2025.

24 Sylvia Tamale, *When Hens Begin to Crow: Gender and Parliamentary Politics in Uganda* (Westview Press 1999) 45–48.

25 P Sillitoe, *Indigenous Knowledge of Natural Resources: Insights from Africa* (Routledge 2017) 90.

26 Shivji IG, 'Pre-Colonial Tenure Systems and Natural Resource Management in Africa' (2006) 12 J Afr L 22.

27 Crown Lands Ordinance 1903 (Uganda Protectorate); Buganda Agreement 1900.

28 Godber Tumushabe, 'Environmental Governance and Political Ecology of Resource Management in Uganda' (ACODE Policy Research Series No 17, 2003) https://www.acode-u.org/uploadedFiles/PRS_17.pdf accessed 28 August 2025.

hunting[29]. Similarly, forest reserves were gazetted mainly to secure timber for railways and export rather than for local benefit.[30] Indigenous ecological practices were often dismissed as superstition. Colonial administrators replaced clan-based stewardship with centralized bureaucratic structures, thereby eroding local legitimacy in conservation[31].This legacy of "green colonialism" (conservation for outsiders' benefit) created deep mistrust between local communities and state conservation agencies a tension still visible in conflicts around protected areas like Bwindi and Queen Elizabeth National Park.[32]

Independence in 1962 presented an opportunity to reassert control over natural resources, but the new state largely retained colonial legal structures. Uganda enacted the Forests Act Cap 146 now the National Forestry and Tree Planting Act, 2003 and the Game (Preservation and Control) Act Cap 198 which is also now repealed. While these statutes aimed at conservation, they were modeled on colonial frameworks, preserving state control at the expense of local participation.[33] The Public Lands Act **(**1969) centralized land ownership in state hands, perpetuating dispossession and alienation from resources. The 1970s and 1980s under Idi Amin and subsequent civil unrest saw severe environmental degradation. Forests were indiscriminately cleared for agriculture, wetlands encroached upon, and wildlife populations decimated by poaching.[34] Political upheaval weakened institutional enforcement, and survival needs took precedence over sustainability.

By the late 1980s and early 1990s, Uganda began to align with global environmental governance, influenced by the 1972 Stockholm Declaration and the 1992 Rio Earth Summit. The government developed the National Environment Action Plan (NEAP) in 1994, which laid the foundation for comprehensive reforms.[35] This led to the National Environment Statute (1995) and creation of the National Environment Management Authority (NEMA)**.** For the first time, Uganda had a specialized environmental regulatory body. However, these

29 The Game Ordinance (1926). See J Mackenzie, *The Empire of Nature: Hunting, Conservation and British Imperialism* (Manchester UP 1988).

30 Hanne Svarstad and Arild Vatn, 'Green Colonialism in Uganda: Struggles with Conservation and Land Grabbing' (2019) 5(2) J Political Ecology 145 https://journals.librarypublishing.arizona.edu/jpe/article/id/2043/ accessed 28 August 2025.

31 David Anderson and Richard Grove (eds), *Conservation in Africa: People, Policies and Practice* (CUP 1989) 31–33.

32 Clark Gibson, *Politicians and Poachers: The Political Economy of Wildlife Policy in Africa* (CUP 1999) 72–75.

33 National Forestry and Tree Planting Act 2003 and Game (Preservation and Control) Act 1964 (Cap 198

34 Emmanuel Kasimbazi, '*Environmental Regulation in Uganda: Successes and Challenges'* (2012) 2(1) Journal of Environmental Law and Policy 117.

35 Global Water Partnership, '*How Effective are Environmental Policies in Uganda*?' (2009). https://www.gwp.org/globalassets/global/toolbox/case-studies/africa/uganda.-how-effective-are-environmental-policies-in-uganda-397.pdf accessed 28 August 2025.

reforms were only consolidated when the 1995 Constitution as amended explicitly recognized the right to a clean and healthy environment and enshrined duties of both the state and citizens toward environmental protection.[36]

On a special note, the Uganda's 1995 Constitution is remarkable in Africa for expressly constitutionalizing environmental protection as both a fundamental right and a structural duty of the state and citizens. Read holistically, the Bill of Rights (especially Article 39), the land and natural resources clauses (notably Article 237(2)(b)), the National Objectives and Directive Principles of State Policy (including Objectives XIII and XXVII), and enforcement/interpretive provisions (Articles 50, 137 and 245) together weave a constitutional architecture for ecological stewardship in pursuit of the common good. That architecture has been progressively elaborated by Parliament most visibly through the National Environment Act, 2019 and the Climate Change Act, 2021 and by Ugandan courts, which have treated environmental rights as justiciable, actionable upon threat, and oriented to intergenerational equity.

Article 39 provides in plain terms that Every Ugandan has a right to a clean and healthy environment." Although concise, the clause has deep implications. First, it constitutionalizes environmental quality as a fundamental human right, with both substantive and procedural dimensions. Substantively, it protects ecological conditions necessary for life, health, and dignity; procedurally, it implies access to environmental information, participation in decision-making, and access to remedies all consistent with the Constitution's broader human-rights framework and with international environmental principles that the courts often use as persuasive authority. Ugandan courts have repeatedly treated Article 39 as directly enforceable, not merely aspirational. In *Environment Shield Ltd & Anor v Jinja City Council & Anor***,** the High Court recognized that Article 39 protects against *threats* to environmental quality, issued injunctive relief to safeguard mature urban trees, and anchored its reasoning in Article 39 together with Article 50 and section 3 of the National Environment Act, 2019.[37] Article 39 also interacts with Article 43 (the general limitations clause). Where a restriction of rights is claimed to be justified by development imperatives, courts have required the state or public authorities to demonstrate necessity and proportionality in "a free and democratic society." In *Environment Shield*, the Court emphasized the burden of justification when public action threatens environmental rights and underscored that

36 Constitution of the Republic of Uganda 1995, arts 39, 245 and Objective XXVII.

37 *Environment Shield Ltd & Anor v Jinja City Council & Anor***,** *Miscellanous Cause No.21 of 2023***.**

environmental protection advances a cluster of other rights life, health, food, water, and cultural rights reflecting the indivisibility of rights within Uganda's constitutional order.[38]

The public trust over key ecological assets**.** Article 237(2)(b) provides that Government or local governments "*shall hold in trust for the people and protect*" natural lakes and rivers, wetlands, forest reserves, game reserves, national parks and other land reserved for ecological or touristic purposes "*for the common good of all citizens.*" This clause constitutionalizes the public-trust doctrine, transforming the state's relationship into strategic ecological assets from ordinary proprietorship to fiduciary stewardship. The Supreme Court has read Article 237(2)(b) together with Article 39 and the National Objectives to confirm that Parliament's environmental legislation derives its authority from the Constitution and that public authorities must act with vigilance to protect the environmental commons. In *Nyakaana v NEMA & Others* the Court stressed that the National Objectives guide all organs and agencies in applying or interpreting law and policy on the environment; the National Environment Act is thus "the State's instrument" to discharge the constitutional mandate to protect the environment from abuse, pollution, and degradation.[39]

The National Objectives perform a constitutional-interpretive function. Objective XIII directs the state to protect and preserve natural resources land, water, wetlands, minerals, oil, fauna and flora on behalf of the people of Uganda, while Objective XXVII requires the state to promote sustainable development and to take all measures to prevent or minimize damage to land, air, and water resources, including through environmental impact assessment (EIA), public awareness, and restoration. Although the Objectives are not free-standing, directly enforceable rights, the Supreme Court has treated them as binding interpretive principles that infuse constitutional meaning into statutes and executive action. When read with Article 39 and Article 237(2)(b), Objectives XIII and XXVII turn sustainability and intergenerational equity into constitutional benchmarks for public decision-making. Ugandan courts have used these Objectives to evaluate government conduct and to shape remedies, particularly where ecological assets or public participation are at stake. [40]

Uganda's Constitution not only creates environmental rights; it also constitutionalizes environmental duties. Article 17(1)(j) states that it is the duty of every citizen "to create and protect a clean and healthy environment." This provision recognizes that the common good in environmental matters is co-produced by citizens as well as the state. Courts have relied

38 Ibid.

39 *Nyakaana v NEMA & Others Constitutional Appeal No. 05 of 2011.*

40 Ibid.

on Article 17 in tandem with Article 39 to underline that environmental protection is a shared responsibility. In Environment Shield, the High Court cited Article 17 to emphasize that everyone including businesses and local authorities has a duty to prevent pollution and environmental degradation, and that civic organizations may legitimately seek relief to forestall harm to the environment in the public interest.[41]

Three further provisions are pivotal. Article 50 operationalizes rights by granting any person whose right "has been infringed or threatened" the entitlement to apply to a competent court for redress; it also explicitly authorizes public-interest litigation, enabling organizations to sue on behalf of others. Article 137 vests the Constitutional Court with power to determine questions of constitutional interpretation and to provide appropriate relief where laws or actions are inconsistent with the Constitution. Article 245 mandates Parliament to enact laws to protect and preserve the environment from abuse, pollution, and degradation. In response, Parliament enacted the National Environment Act, 2019 which codifies environmental principles (precaution, polluter-pays, inter-generational equity), strengthens EIA and Strategic Environmental Assessment (SEA), and, in section 3, reiterates the right to a clean and healthy environment and makes threats to that right actionable. Parliament also enacted the Climate Change Act, 2021, which integrates climate obligations into sectoral planning and budgeting, assigns duties to public and private actors, and provides for climate reporting and compliance. Ugandan courts routinely read these statutes as instruments to fulfil constitutional commands under Articles 39, 237(2)(b), the Objectives, and Article 245.

III. THEORETICAL FRAMEWORK

Various theoretical frameworks can underpin such constitutional commitments, including Environmental Justice Theory, Transformative Constitutionalism, Intergenerational Equity, and Legal Pluralism. However, among these, the Public Trust Doctrine stands out as the most relevant and powerful theory for analyzing Uganda's constitutional environmentalism. This article explores the Public Trust Doctrine as a legal and normative theory, elucidates why it is particularly suitable in the Ugandan context, and concludes with reflections on its significance for constitutional environmentalism and the common good.

41 *Environment Shield Ltd & Anor v Jinja City Council & Anor***,** *Miscellaneous Cause No.21 of 2023.*

The Public Trust Doctrine, deeply rooted in ancient legal and philosophical traditions, posits that certain natural resources are held by the state in trust for the people and cannot be alienated or exploited to the detriment of public interest.[42] This doctrine finds its intellectual origins in Roman law, particularly in the concept of res communes, things common to all, such as air, water, and the seashore, which are incapable of private ownership and must remain accessible to all.[43] The Roman jurist Gaius famously asserted that "the air, running water, the sea and its shores cannot be privately owned but belong to everyone".[44] This early recognition laid the foundation for the modern understanding of the state's custodial role over natural resources.

Aristotle's political philosophy further advanced this notion by emphasizing the common good as the ultimate purpose of the polis, wherein natural resources should serve the collective welfare rather than individual gain (Aristotle, Politics, 4th century BC). Thomas Aquinas later integrated this view into Christian natural law, arguing that the use of common goods must be regulated to ensure justice and equity for all (Aquinas, Summa Theologica, 13th century). These ancient and medieval foundations evolved over time, influencing English common law, where the Crown was seen as a trustee of the natural resources for the benefit of its subjects.[45]

In contemporary environmental law, Joseph Sax's seminal work in 1970 reinvigorated the doctrine by framing it as a tool for judicial intervention and environmental protection.[46] Sax argued that the state holds the environment as a public trust to ensure its protection and sustainable use, preventing degradation that harms the public interest. This legal-political theory has since been embraced globally as a cornerstone of environmental constitutionalism, reinforcing the fiduciary duty of states to manage natural resources responsibly and inclusively.[47]

Uganda's 1995 Constitution reflects a clear embodiment of the Public Trust Doctrine. Article 237(2)(b) explicitly declares that certain lands and natural resources are held in trust by the government for the people of Uganda, establishing a constitutional mandate for

42 Sax, J. L. (1970). *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention. Michigan Law Review, 68*(3), 471–566. Available at: https://repository.law.umich.edu/mlr/vol68/iss3/3 Accessed on: September 18, 2025

43 Blumm, M. C., & Wood, M. C. (2013). *The Public Trust Doctrine in Environmental and Natural Resources Law* (2nd ed.). Carolina Academic Press. ISBN: 978-1-61163-723-6, Accessed on: September 18, 2025, pg.29.

44 Institutes of Gaius, 2nd century AD.

45 Blumm & Wood (n43 above) 44.

46 Blumm & Wood (n43 above) 41.

47 Blumm & Wood (n43 above) 37.

environmental stewardship. This institutionalization signals a shift from viewing natural resources as mere commodities toward recognizing them as public assets essential to the common good.

The doctrine's normative force lies in its dual role as a legal framework and ethical vision. First, it imposes on the Ugandan state a fiduciary duty to conserve, protect, and sustainably manage the environment for current and future generations, aligning with the principle of intergenerational equity. Climate change poses profound risks to Uganda's ecosystems and vulnerable populations, making the state's role as trustee critical in preventing irreversible harm. The Public Trust Doctrine reinforces this obligation by framing environmental protection as a non-negotiable public interest rather than discretionary governance.

Second, the doctrine empowers citizens as beneficiaries of trust, enabling public participation and accountability in environmental governance. This democratization of environmental stewardship supports the common good by ensuring that the voices of marginalized and rural communities often disproportionately affected by environmental degradation and climate change are included in decision-making processes.[48] By situating environmental rights within a trust relationship, the doctrine fosters legal and political mechanisms for redress and enforcement, essential in contexts like Uganda where environmental challenges are compounded by socio-economic inequalities.

Third, the Public Trust Doctrine serves as a balancing framework between Uganda's development aspirations and environmental sustainability. The country's economic growth depends heavily on the extraction and utilization of natural resources, but such activities risk degrading the very resources upon which livelihoods depend. The doctrine insists that economic activities must be conducted within fiduciary limits, respecting ecological integrity and the rights enshrined in the Constitution. This aligns with complementary environmental principles such as the precautionary principle and polluter pays principle, which advocate for preventive action and responsibility for environmental harm. In sum, the Public Trust Doctrine offers Uganda a comprehensive theoretical and legal foundation to interpret constitutional environmentalism in a manner that upholds the common good and addresses climate change challenges effectively.

IV. JUDICIAL INTERPRETATION ON CONSTITUTIONAL ENVIRONMENTALISM

48 Blumm & Wood (n43 above) 44.

Judicial interpretation is central to giving effect to constitutional environmentalism, as it enables courts to translate broad constitutional provisions into concrete, enforceable rights and obligations. Through judicial activism, Ugandan courts have played an active role in defining the scope of environmental rights, clarifying state duties, and ensuring that constitutional guarantees are meaningfully applied in practice. This approach has allowed the judiciary to progressively shape environmental governance, reinforcing the rule of law and advancing the common good.

For instance, the High Court and Supreme Courts of Uganda have gradually built a jurisprudence that treats environmental rights as concrete and enforceable, while aligning them with Uganda's development priorities. In *TEAN v Attorney General & NEMA***,** the High Court held that Article 50 authorizes public-interest suits to protect non-smokers' health and environmental rights and suggested that unregulated smoking in public places violates non-smokers' rights to a clean and healthy environment. The Court underscored that state agencies must take steps to secure a clean and healthy environment for the public. Subsequent appellate proceedings recognized the strong public health and environmental dimensions of such claims and took judicial notice of the dangers of second-hand smoke. The TEAN line of cases thus illustrates how Article 50(2) enables civic groups to vindicate Article 39 in common interest.[49]

Secondly, there is substantive content and the public-trust doctrine. In *ACODE v Attorney General (Butamira Forest***)**, the High Court held that the de facto de-gazettement of a forest reserve and the failure to conduct a proper EIA violated the applicants' rights under Article 39 and breached constitutional and statutory duties, including Article 245. The Court linked the protection of forests and other ecological assets to the constitutional project of safeguarding the environment for present and future generations—an articulation of the public-trust duty under Article 237(2)(b).[50]

Thirdly, there is the integration of National Objectives and rights**.** In *Nyakaana v NEMA*, the Supreme Court affirmed that environmental legislation such as the National Environment Act "has its base in the Constitution," and that interpretive primacy must be given to the National Objectives and Directive Principles. The Court's approach blends Article 39 with Objectives XIII and XXVII to require that administrative and judicial decision-making internalize sustainability, the precautionary principle, and the common

49 TEAN v Attorney General & NEMA High Court Miscellanous Application No. 39 of 2001.

50 *ACODE v Attorney General(Butamira Forest***)**,Miscellaneous Cause No.0100 of 2004

good. This alignment has been cited and applied by lower courts to justify forward-looking, preventive remedies.[51]

Fourthly, there is a threat-based relief and preventive injunctions. A consistent theme in recent jurisprudence is that courts will act before irreversible harm occurs. The High Court's Environment Shield ruling is illustrative: relying on Article 39 and section 3 of the National Environment Act, the Court granted injunctive relief against municipal tree-felling even though the harm had not yet materialized, emphasizing that Article 50 makes threats actionable and that environmental protection serves the broader constellation of rights and the common good. This preventive posture reflects a constitutional preference for precaution in environmental governance.

Fifth is procedural environmental rights**.** While Article 39 does not spell out procedures, Ugandan courts have recognized that access to information and participation are functional necessities of the environmental right. In *Greenwatch v Attorney General & Anor***,** the High Court ordered disclosure of environmental information under Article 41 (right of access to information) and the Access to Information Act, recognising that transparency is integral to effective environmental oversight by the public and civil society. Although framed through Article 41, the decision strengthens Article 39 by ensuring that citizens can meaningfully exercise their environmental right through informed participation and scrutiny.[52]

In the case of *United Organisation for Batwa Development in Uganda (UOBDU) & 11 Ors v Attorney General & 2 Ors*,[53] the petitioners raised concerns on behalf of the Batwa, an estimated population of 6,000 people who have lived in Uganda since at least 1926, the majority of whom reside in Southwestern Uganda in the districts of Kanungu, Kisoro and Kabale. The petitioners alleged that the land on which the present-day Echuya Central Reserve, Bwindi Impenetrable National Park and Mgahinga Gorilla National Park are situated constituted Batwa ancestral land, which had been customarily owned by the community for generations before the declaration of the British Protectorate. They contended that the Batwa were never consulted prior to the gazetting of the parks, and that no compensation was paid following the extinguishment of their interests.[54]

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51 *Nyakaana v NEMA & Others Constitutional Appeal No. 05 of 2011*

52 *Greenwatch v Attorney General & Anor Miscellaneous Application No.140 of 2002.*

53*United Organisation for Batwa Development in Uganda (UOBDU) & 11 Ors Vs AG & 2 Ors, Constitutional Petition No. 003 of 2013.*

54 Ibid.

In 2021, Justice Elizabeth Musoke, delivering the lead judgment, held that the ancestors of the Batwa indeed inhabited the disputed areas and that no adequate compensation was ever provided. She observed that this dispossession not only undermined the Batwa's livelihoods but also destroyed their self-esteem and identity as a people, leaving them disadvantaged and marginalized in ways that warrant affirmative action. The court accordingly referred the matter to the High Court to hear evidence in full and to take measures to ameliorate the appalling situation caused by the unlawful eviction.[55]

The significance of this case lies in its recognition of the Batwa's historical connection to their ancestral lands and the acknowledgment of the state's failure to adequately protect their rights. It is a landmark step in the judicial affirmation of indigenous peoples' claims in Uganda, setting a precedent for the enforcement of constitutional guarantees of equality and dignity. Moreover, it underscores the judiciary's willingness to confront historical injustices and to extend the principles of affirmative action to one of the most marginalized communities in the country.[56]

V. RELATIONSHIP BETWEEN CONSTITUTIONAL ENVIRONMENTALISM AND THE COMMON GOOD

Across these provisions and cases runs a coherent normative thread: environmental stewardship is a constitutional means of organizing collective life around the common good. Article 237(2)(b)'s trust language ("for the common good of all citizens") makes this explicit; Objectives XIII and XXVII supply the developmental and intergenerational context; Article 39 anchors the right; Articles 50 and 245 operationalize it; and Article 17 places a duty on every citizen. Together, they constitutionally require that environmental decision-making be guided by sustainability, precaution, intergenerational equity, participation, and transparency. The courts' willingness to entertain public-interest claims, to grant preventive remedies, and to require robust justification for environmentally harmful actions confirms that, in Uganda, environmental constitutionalism is not merely declaratory, it is enforceable law in service of the common good. The notion of the common good sits at the intersection of political philosophy, constitutional theory, and environmental governance. In Uganda, constitutional commitments notably Article 8A's reference to "national interest and the common good," the public-trust language of Article 237(2)(b), the environmental right in Article 39, and

55 Ibid.
56 Ibid.

duties under Article 17 demand that environmental law be read not only through individual entitlements but also through obligations owed to the collective present and future. This chapter traces the philosophical roots of the common good, explains its translation into constitutional value, shows how environmental rights serve the common good, and addresses the persistent tension between individual rights (such as property and development) and collective ecological interests.

The common good has deep classical and medieval roots. Aristotle sets the frame: for him the polis exists to secure the *highest good* and communal flourishing, and law and political organization are judged by their capacity to promote that shared end. Aristotle's discussions in *Politics* emphasize that the city's purpose is not the good of a subset of its inhabitants but the good of the community as a whole[57]. This teleological orientation, law and polity ordered to a collective end, is the first pillar of the modern idea that certain goods (security, health, an intact environment) must be governed as shared matters rather than purely private commodities. Thomas Aquinas built on Aristotle and explicitly linked law to the common good. In *Summa Theologiae* Aquinas declares that "the end of law is the common good" and that positive laws must be framed to serve public welfare rather than private advantage.[58] Aquinas's jurisprudential move is crucial: it gives the common good normative purchase in legal reasoning, legitimating limitations on private action where necessary to protect shared welfare. Aquinas also grounds obligations in moral theology, which has formed later concepts of duties in constitutional texts and civic ethics.

African philosophical perspectives especially communitarian traditions encapsulated by concepts such as ubuntu provide a complementary rationale that resonates strongly in Uganda's context. African communitarianism prioritizes relationality, communal wellbeing, and social harmony: a person is a person through other people.[59] Thaddeus Metz and other contemporary scholars interpret this as an ethical framework that privileges collective goods and mutual responsibilities, making it conceptually congenial with environmental stewardship grounded in community obligations and intergenerational responsibility.[60] In

57 Aristotle, *Politics* (trans B Jowett), Book I (on the polis and the highest good) https://historyofeconomicthought.mcmaster.ca/aristotle/Politics.pdf accessed 28 August 2025.

58 Thomas Aquinas, *Summa Theologiae*, Q90–Q97 (on law and the common good) https://www.newadvent.org/summa/2096.htm accessed 28 August 2025.

59 Thaddeus Metz, 'African Communitarianism and Difference' in *Handbook of African Philosophy of Difference* (2019) (on ubuntu and communal responsibility) https://philarchive.org/rec/METDTA-2 accessed 28 August 2025.

60 See generally on legal translations of the common good to environmental protection: J M McGee, 'Preserving the Environment by Serving the Notion of Common Good' (2019) *Emory International*

short, while Aristotle and Aquinas provide the classical legal-ethical scaffolding for the common good, African communitarianism supplies culturally rooted moral content that supports collective environmental care.

Translating the philosophical common good into constitutional law gives it legal force. Constitutions, by design, order political institutions to shared purposes; when they enshrine the common good explicitly, they create an interpretive lens for rights, duties, and public policy. Uganda's Constitution places "national interest and common good" at the centre of governance (Article 8A), thereby signaling that individual rights should be interpreted within a broader social and developmental matrix.[61]

This constitutional primacy matters in several ways. First, it legitimates state action aimed at protecting communal goods (for example, wetlands or forests) even when such actions restrict certain private uses. Second, it supplies interpretive guidance: courts and administrators may weigh private claims against constitutional commitments to collective welfare. Third, constitutional embedding authorizes legislative and policy instruments environmental statutes, EIA requirements, protected area designations as exercises of public authority in service of the common good. In Uganda this constitutional framing is reinforced by Article 237(2)(b), which requires the state (central and local) to "hold in trust for the people" and protect key ecological assets "for the common good of all citizens," thus combining normative aspiration with a fiduciary conception of state stewardship. [62] Comparative constitutional scholarship shows that such textual commitments matter: where constitutions enshrine environmental dimensions of the common good, courts are more likely to fashion remedies that protect collective ecological interests and to situate environmental governance within rights-based adjudication rather than mere administrative discretion.[63]

Environmental Law Review (discussion of MNC behaviour, LDCs and common good obligations) https://scholarlycommons.law.emory.edu/eilr-recent-developments/34/ accessed 28 August 2025.

61 Constitution of the Republic of Uganda 1995 (as amended), art 8A (National interest and common good). For the text and context, see Constitute Project, *Constitution of Uganda* https://www.constituteproject.org/constitution/Uganda_2017 accessed 28 August 2025.

62 Constitution of the Republic of Uganda 1995 (as amended), art 237(2)(b) (state to hold in trust natural lakes, rivers, wetlands, forest reserves, game reserves and national parks for the common good). See also ACODE and Supreme Court commentary on the trust language.

63 Comparative literature on constitutional environmentalism and the common good: see e.g. F H Lawson, '*Landscape: From Common Good to Human Right' International Journal of the Commons* (2017) (discussing legal transformations of commons and landscape) https://thecommonsjournal.org/articles/10.18352/ijc.738 accessed 28 August 2025.

Environmental rights are both instruments and manifestations of the common good. A constitutional right to a clean and healthy environment (as in Uganda's Article 39) does three things relevant to the common good. First, it secures the baseline conditions necessary for communal flourishing health, food security, clean water, and a stable local climate by making them justiciable entitlements rather than discretionary policy aims. Rights provide individuals and groups withstanding to litigate threats to shared ecological goods, converting diffuse public interests into enforceable claims. The justiciability of environmental quality thus protects the commons in a manner that statutory or administrative policy alone often fails to achieve.

Second, environmental rights create procedural mechanisms necessary for collective governance: rights to information, participation, and remedies enable communities to contest decisions that would damage shared resources, ensuring that the governance of common goods is transparent and inclusive. Procedural entitlements operationalize the communitarian ideal by enabling communities to participate meaningfully in decisions affecting shared environments. Third, environmental rights integrate intergenerational equity into constitutional practice. The common good is not limited to contemporaries; it encompasses future citizens. Constitutional environmental rights, supported by doctrines like the public trust, obligate present authorities to consider long-term ecological integrity, a legal embodiment of the classical and African ethical imperatives discussed above.

Taken together, therefore, environmental rights are practical tools for realizing the common good: they provide remedial paths, procedural checks, and forward-looking duties that align individual behaviour and public institutions with collective ecological wellbeing.

VI. TENSIONS BETWEEN INDIVIDUAL RIGHTS AND COLLECTIVE INTERESTS

Constitutionalism, at its core, is a negotiation of interests a continuous balancing act between individual rights and collective goods, between the priorities of majorities and the protections due to minorities, and between the immediate desires of citizens and the long-term welfare of the community. This tension is particularly pronounced in environmental governance, where the enjoyment of private rights, including land, property, and commercial development, can easily conflict with broader societal and ecological imperatives. Constitutions attempt to harmonize these competing claims by enshrining both individual freedoms and collective responsibilities, but this harmony is inherently fragile. The notion of the "common good" serves as a normative compass in this struggle, yet its operationalization

often requires judicial interpretation, policy mediation, and statutory guidance. In the context of environmental constitutionalism, the State is cast not only as a regulator but also as a trustee of shared natural resources, entrusted with reconciling the sometimes conflicting interests of present generations with the rights of future generations.

The interplay of interests becomes evident in the tension between property rights and environmental obligations. Private property, including land, minerals, and water rights, is a core constitutional value, traditionally shielded against arbitrary deprivation. Yet unregulated exercise of these rights can generate externalities, such as deforestation, wetland destruction, and pollution, which undermine collective welfare. Classical legal thought resolves this tension by subordinating absolute ownership to public interest constraints: the law recognizes that rights are not exercised in isolation, and individual freedom is necessarily limited by the legitimate needs of the community. In Uganda, litigation arising under Articles 39 and 237 demonstrates this dynamic vividly. Courts have frequently been called upon to adjudicate disputes where landowners or developers resist conservation measures, and in doing so, the judiciary has progressively clarified that property rights are not sacrosanct; they exist alongside a duty to respect ecological limits and the State's role as trustee of public resources. The High Court and Supreme Court have embraced broad principles of standing in public interest litigation, enabling citizens to seek enforcement of environmental obligations even when they are not personally affected a clear manifestation of constitutional environmentalism operationalizing the common good.

Similarly, development imperatives often come into conflict with ecological limits, particularly in resource-dependent economies like Uganda. Rapid infrastructural projects, mining, oil exploration, and large-scale agriculture are framed as essential for national welfare and economic growth, yet such activities carry the risk of irreversible environmental degradation. Constitutional reasoning requires that these competing imperatives be reconciled through proportionality, precaution, and inclusive participation. Environmental impact assessments, public consultations, and regulatory oversight are not mere bureaucratic formalities but essential tools for harmonizing growth with ecological sustainability. Ugandan jurisprudence increasingly demands that the State demonstrate that developmental choices are necessary, that harms are minimized, and that affected communities are adequately consulted and compensated. The courts have, through judicial activism, underscored that development cannot justify environmental neglect and that the fiduciary obligations of the State as trustee under Article 237 must guide decision-making. In this sense, constitutional environmentalism is both a protective framework and a constraint on the pursuit of

untempered economic interests, ensuring that development does not override collective well-being.

Private investment and corporate actors introduce a further layer of complexity, as they seek certainty, profitability, and operational stability. The law must balance these interests against the imperatives of ecological stewardship. The Public Trust Doctrine and associated common-good reasoning impose affirmative duties on private actors, such as the polluter-pays principle and a general duty of care, legitimizing regulatory intervention even where contractual or property entitlements exist. Ugandan case law illustrates this balancing act: courts have navigated property claims against ecological obligations and have endorsed corrective measures when private actions threaten public trust resources. Academic analyses confirm that constitutional environmentalism requires a pragmatic recognition that rights are real yet not absolute; they are interpreted and constrained in light of collective responsibilities enshrined in the Constitution. This balancing of interests exemplifies a broader tension in constitutional law: the law must simultaneously respect individual freedoms while safeguarding communal and intergenerational welfare.

The 2005 constitutional amendment in Uganda, which introduced Article 244, provides a concrete example of the complexities inherent in reconciling private, state, and public interests. Article 244 vests mineral and other strategic natural resources in the Republic of Uganda, rather than directly in the people. This represents a departure from a more direct conception of public ownership and creates a structural gap in the exercise of the public trust. While the State ostensibly manages resources on behalf of citizens, the shift raises significant questions about accountability, transparency, and whether the management of resources adequately safeguards intergenerational and collective interests. The amendment illustrates that even within a constitutional framework designed to protect the environment, ambiguities in the allocation of rights and duties can open the door to conflicts between development, private gain, and ecological stewardship. Such gaps underscore the importance of judicial vigilance, robust institutional frameworks, and clear statutory mandates to ensure that the principles of constitutional environmentalism are not diluted in practice.

International standards grounded in the Public Trust Doctrine provide useful benchmarks for addressing these gaps. Globally, the doctrine emphasizes that critical natural resources forests, water bodies, wetlands, and minerals are to be held for the benefit of all citizens, with the State serving as a fiduciary guardian. Courts and legislators worldwide have interpreted this principle to justify constraints on privatization, stringent regulation of resource use, and the enforcement of intergenerational equity.

VII. CONCLUSION

The doctrine of the common good offers Uganda a coherent normative framework to harmonize individual rights and collective ecological interests. Grounded in Aristotle and Aquinas, enriched by African communitarian values, and constitutionalized in Uganda's foundational text, the common good legitimizes fiduciary state stewardship (public trust), procedural inclusion, and intergenerational responsibility. Yet realizing this ideal requires institutional capacities, rigorous environmental assessment, robust public participation, and judicial readiness to balance competing claims with deference to the constitutional mandate to preserve environmental integrity. Where the courts and institutions apply common-good reasoning operationalized through Article 39, Article 237(2)(b), the Directive Principles, and civic duties Uganda's constitutional environmentalism can move from rhetoric to resilient governance for present and future generations.

If constitutional environmentalism is to be more than aspirational, several institutional reforms are plausible. Clarify and harmonize mandates through stronger inter-agency protocols and statutory amendments to reduce jurisdictional overlap and prevent forum-shopping. Operationalize NEA-mandated "lead agency" structures with binding memoranda of understanding, published protocols, and joint compliance targets. Strengthen district-level capacity with dedicated environmental officers, sustained budget allocations, and monitoring equipment. Institutionalize transparent benefit-sharing and community consent mechanisms around protected areas and extractive projects to reduce conflict and incentivize conservation, including community conservancies, revenue-sharing from tourism, and legally binding consultation protocols for land-use changes. There is need to build parliamentary technical capacity through independent research services and expert panels to enhance effective legislative scrutiny of EIA reports, concession agreements, and large infrastructure contracts. Support strategic litigation capacity among individual citizens, civil society, ensuring courts have access to independent scientific expertise to inform decisions, and strengthen mechanisms for monitoring and enforcing court orders.

Uganda's constitutional framework is aligned with this vision in principle, but practical implementation remains uneven. Review provisions such as Article 244 to fully align it with the public trust doctrine, domesticate and align national frameworks with international environmental conventions (Paris Agreement, Convention on Biological Diversity), encourage cross-border cooperation in managing transboundary ecosystems under a constitutional vision of the African common good, develop environmental ombudsman offices or green courts for accessible, specialized adjudication, expand environmental

democracy and participation, conduct public civic education to build awareness of the environment as a constitutional right and duty fostering collective stewardship for the common good. and empower courts to grant innovative remedies such as environmental restoration orders, introduce enforceable corporate environmental responsibility provisions under constitutional or statutory frameworks, public interest injunctions, and ecological damages and to uphold the fiduciary role of the State as trustee of natural resources, judicial activism has a central role here: courts must interpret environmental and resource provisions expansively, uphold public trust obligations, and resist pressures that prioritize short-term economic gains over the long-term common good. Only through such mechanisms can Uganda ensure that constitutional environmentalism truly advances the common good, reconciles competing interests, and effectively addresses the pressing challenges of climate change, ecological degradation, and sustainable development.

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