

**THE ENFORCEMENT MECHANISM OF THE COMPARISON OF UGANDA AND
SOUTH AFRICA ON THE RIGHT TO A CLEAN AND HEALTHY
ENVIRONMENT: A TWO-DIMENSIONAL ANALYSIS BASED ON THE
CONSTITUTIONAL AND OTHER LEGAL NORMS**

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**A DISSERTATION SUBMITTED TO THE SCHOOL OF LAW IN PARTIAL FULFILLMENT OF
THE REQUIREMENTS FOR THE AWARD OF THE DEGREE OF BACHELOR OF LAWS OF
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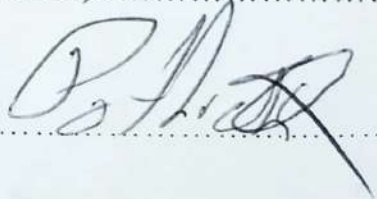
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Declaration

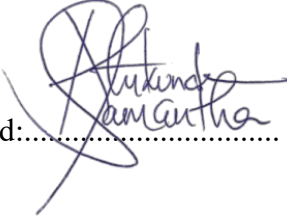
I, Patrick Chuki, declare that this dissertation is my own work and has not been submitted for a degree or diploma at any other university or institution. Where the work of other men has been utilized, or other men's papers have been referred to, they are so referred to."

Dated: 12th / 06 / 2025

Signed: 

APPROVAL

This is to certify that this research titled “The Enforcement Mechanism of the Comparison of Uganda and South Africa on the Right to a Clean and Healthy Environment: A Two-Dimensional Analysis Based on the Constitutional and Other Legal Norms by Chuki Patrick has been under your supervision and is ready for submission to the Faculty for examination.

Signed:.....


Dated: 12th June 2025

DEDICATION

I would also like to express special devotion to my dear mother, Nabwire Demetria for keeping my spirit high and endless support has been my cornerstone in the academic pursuit. Thanks to her old-fashioned good sense I have found a new well of strength.

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I am grateful to Samantha Atukunda Kakuru Mwesigwa for her persistent encouragement, moral support during the entire process and for the “Letter of service”.

I am also grateful to my dearest mother, a beautiful example of love and prayer for us to lean on in these moments. Thanks to my mom, who, through her great example with love and prayer, makes such a difference in times of crisis.

Many thanks also to Ms. Aninguza Doreen for having faith in me and for her relentless prayer and support. What she says and her presence inspire me to aim and dream higher

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TABLE OF CONTENTS

DECLARATION	ii
APPROVAL.....	iii
DEDICATION.....	iv
ACKNOWLEDGMENT.....	v
TABLE OF CONTENTS	vi
ABSTRACT	ix
CHAPTER ONE	1
1.0 GENERAL BACKGROUND	1
1.1 Introduction.....	1
1.2 Background.....	2
1.3 The problem statement	3
1.4 Aims of the Study.....	3
1.5 Research Questions	4
1.6 Significance of the Study.....	4
1.7 Scope of the Study	5
1.8 Literature Review	5
1.9 Methodology.....	8
CHAPTER TWO.....	13
2.0 Extra-judicial measures of remedying the right to a clean and healthy environment in Uganda and South Africa.	13

2.1	Introduction.....	13
2.2	Socio-Economic Context.....	13
2.3	Institutions and Capacity Establishment and Aid Coordination	14
2.4	Political Will and Governance	15
2.5	Public Participation and Civil Society	16
2.6	Socio-cultural and Socio-historical Situation	16
2.7	Agreements and Treaties	17
2.8	Recent developments.....	20
2.9	Conclusion.....	20
CHAPTER THREE		21
3.0	Enforcement mechanisms of the right to a clean and healthy environment in Uganda and South Africa.	21
3.1	Introduction.....	21
3.2	Uganda’s Mechanisms for Enforcement	21
3.3	Mechanism for Enforcement in South Africa.....	23
3.4	Comparative Evaluation	25
3.5	Lessons for Uganda.....	26
3.6	Conclusion.....	27
CHAPTER FOUR.....		28
4.0	FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS FOR ACTION	28
4.1	Summary of Findings.....	28

4.2	Conclusions.....	30
4.3	Recommendations.....	30
4.4	Future Work.....	33
4.5	Final Remark	33
	BIBLIOGRAPHY.....	34

ABSTRACT

This is a comparative legal study on the enforcement of the right to a clean and healthy environment in Ugandan and South African law: that is the focus of this thesis. Given that both countries affirm this right in their respective constitutions under Article 39 of Uganda's 1995 Constitution and Section 24 of South Africa's 1996 Constitution the study focuses on why it has not been enforced uniformly. The research surveys the applicable international and regional legal instruments, takes a critical look at statutory frameworks, and scrutinizes the most prominent case law and recent policy developments in both jurisdictions.

It is based on a doctrinal and comparative methodology drawing on secondary materials mainly, statutes, court decisions, academic writings and official reports. Results indicate that despite progressive statutory arrangements, enforcement of the environmental law is hampered by institutional redundancy, lack of resources, political meddling with the law and limited public participation. On the other hand, in South Africa judicial activism has been more pronounced, there are specialized enforcement agencies and compliance levels are high, although problems remain at the level of local government.

The research suggests that effectiveness of the enforcement of environmental rights cannot be achieved just by providing a legal recognition, but it requires adequate enforcement mechanisms and institutional capacity, and involvement of the public. Recommendations include building enforcement institutions in Uganda, increasing public participation, and taking lessons learned from South Africa such as creation of an Environmental Enforcement Courts and Prosecutors. Influence: This research has implications for the operationalization of environmental justice and sustainable development in Africa and provides a heuristic tool for policy makers and legal practitioners.

CHAPTER ONE

1.0 GENERAL BACKGROUND

1.1 Introduction

The right to a healthy and clean environment has been recognized as a basic human right, not only at the international level but also in national constitutions. This right is based on the recognition that the degradation of the environment endangers not only ecosystems but also the health, dignity, and even survival of human beings. ¹The Stockholm Declaration (1972) and the Rio Declaration (1992) codified the norm of environmental quality as a human right, with the former echoed in the UN Human Rights Council Resolution 48/13 (2021), which clearly affirms the right to a clean, healthy, safe, and sustainable environment.

Under the 1995 Constitution of Uganda, this right has been constitutionalized, and South Africa's 1996 Constitution enshrines this right in Section 24². But though there is a legal claim to it, the enforceability of this right remains a grey area. In Uganda, enforcement processes are commonly stymied by overlapping institutions, a dearth of resources, and political interference. South Africa has hosted a stronger enforcement process using judicial activism and specialized agencies, but challenges exist at the local government level. This thesis is a comparative legal study of the enforcement of the right to a healthy and clean environment in Uganda and South Africa in order to draw practical lessons for Uganda.³

¹ <https://iucn.org>.

² The constitution of the republic of South Africa 1996, section 24.

³ The constitution of the republic of Uganda 1995 as amended, art.39.

1.2 Background

Both Uganda and South Africa face serious problems with environmental degradation that contribute to poor public health, retarded economic growth, and reduced social cohesion. Uganda's rapidly approaching population boom, urbanization, and dependence on natural resources have caused deforestation, water pollution, and declining biodiversity⁴. Weak enforcement: Although the legal framework in the country is fairly progressive on paper, enforcement remains weak due to overlapping mandates between institutions such as the National Environment Management Authority (NEMA), under capacity in terms of both technical expertise and resources, and political interference. A complete removal of all their rights is not effective if they cannot access a justice system because they are victims of environmental injustice.

South Africa, meanwhile, has its own environmental problems, such as industrial pollution, the impacts of mining, and water shortages. But the judiciary in South Africa has been proactive in interpreting and enforcing environmental rights,⁵ as evidenced in case law such as **Fuel Retailers Association of South Africa v Director-General**⁶: Environmental Management (2007). Specialist institutions and a relatively well-developed civil society mean that enforcement is better 'on paper' but uneven in local practice.

⁴ <https://www.fess-global.org.m>

⁵ <https://ccac.concourtrust.org.za.m>

⁶ CCT677/06(2007) ZACC 13

1.3 The problem statement

Notwithstanding constitutional provisions, the guarantee of the right to a clean and healthy environment in Uganda is largely literary and symbolic. The laws and the institutions are held back by overlapping mandates, inadequate resources, and a lack of meaningful public engagement. The environment is still being destroyed, and affected communities frequently have no access to effective remedies. The South African legal system, by contrast, exhibits stronger enforcement, though challenges persist, especially in local government. This paper seeks to fill the discrepancy between the legal acknowledgment and the practical implementation of environmental rights in Uganda using South Africa's experience.

1.4 Aims of the Study

1.4.1 General Objective

To undertake a critical analysis and comparison of the enforcement mechanisms of the rights to a clean and healthy environment in Uganda and South Africa, and to draw lessons and make recommendations for practical application in Uganda.

1.4.2 Operational Objectives

- a) To distinguish and evaluate the international, regional, and national legal frameworks that acknowledge the right to a clean and healthy environment in Uganda and South Africa.
- b) To assess the institutional and judicial remedies for the protection of environmental rights existing in each country.
- c) To evaluate the adequacy of these enforcement tools in promoting environmental justice.

- d) To highlight challenges to the implementation of environmental rights in Uganda and make recommendations for the way forward inspired by South African examples.

1.5 Research Questions

- a) What international and national legal benchmarks are available to uphold the right to a clean and healthy environment in Uganda and South Africa?
- b) How are laws protecting the environment enforced in both countries?
- c) What are the bodies and instruments for enforcement, and how effective are they?
- d) What are the major enforcement challenges in Uganda?
- e) What could Uganda learn from South Africa?

1.6 Significance of the Study

The reason this study is necessary is the apparent disconnection between the constitutional entrenchment of environmental rights and the realities of enforcing the same in Uganda. While legal structures have been relatively well covered by the existing literature, the enforcement process and its effectiveness have not been subject to detailed comparative analysis. This study bridges this gap by systematically analysing Uganda and South Africa and providing new insights and practical recommendations. Failure to undertake such research risks overlooking opportunities for legal and institutional reform and continuing environmental degradation.

1.7 Scope of the Study

1.7.1 Temporal Scope

The attention concentrates on events since 1995 (the year that ushered in Uganda's prevailing Constitution), and its legal discourse will draw support from legal trends in Uganda⁷ and South Africa, where appropriate.

1.7.2 Geographical Scope

The study is based in Uganda and South Africa and examines the two countries' national legal and enforcement systems.

1.7.3 Subject scope/domain/topics covered

The research paper analyses the implementation of the right to a clean and healthy environment through legal, institutional, and judicial arrangements and practices, as well as challenges and good practices.

1.8 Literature Review

1.8.1 International and regional perspectives

Philippe Sands' "Principles of International Environmental Law" (2018) is a good exploration of the development of environmental rights in international law. Sands is widely appreciated for retracing the history of these rights to important declarations and treaties, but is also criticized for not offering a more comprehensive analysis of the influences that hinder the enforcement of cases in developing states. John Knox has underlined the relevance of procedural rights namely, access to information, participation, and access to justice for the full implementation of environmental protection, as UN Special Rapporteur on Human Rights and the Environment. "But many

⁷ The constitution of the republic of Uganda 1995 as amended, art,39

of the things he's talked about on the procedural side don't always mean it's easy or a formula for real improvement, especially in countries with weak institutions.”⁸

The African Charter on Human and Peoples' Rights (ACPHR), specifically Article 24, has been read by the African Commission on Human and Peoples' Rights to place negative and positive duties on member states. The case has been referred to as a "landmark" in regional environmental rights jurisprudence⁹, including by **SERAC v Nigeria** (2001).¹⁰ However, as Olufemi Amao (2019) points out, the absence of enforcement mechanisms at the regional level renders the Charter ineffective.

1.8.2 National Viewpoints

May and Daly (2015), "Global Environmental Constitutionalism," assess the spread of constitutional protection of environmental rights (using Uganda and South Africa as primary examples). They praised these constitutional provisions as progressive but warn that legal recognition alone is not enough without strong enforcement. While their examination is exhaustive, it has a predilection for textual provisions rather than the practical side.

In Uganda, the constraints of agencies such as NEMA, whose mandates overlap and¹¹ their limited capacity (see **Godber Tumushabe [2018]** and **Emmanuel Kasimbazi [2020]**) and the influence of political interference are criticized. Valid as such criticisms may be, they

⁸ Philippe Sands' "Principles of International Environmental Law" (2018)

⁹ Charter on Human and Peoples' Rights (ACPHR), Article 24,

¹⁰ <https://www.refworld.org/jurisprudence/case-law/achpr/2001/en/149449>

¹¹ (<https://africafacility.org/content/creating-ecological-space-confront-degradation-uganda>)

can discount the wider economic and structural difficulties confronting environmental authorities in the countries of the developing world.¹²

In South Africa, Michael Kidd (2011) and Loretta Feris (2012) chronicle the activist role of the courts in the realization of environmental rights. Kidd's examination of cases like **Fuel Retailers Association v. Director-General: Environmental Management 2007**¹³ shows how the courts have operationalized constitutionally enshrined rights. However, Feris adds, "Although there is a very good level of judicial activism, at the municipal level things are not always as effective." Both share worthwhile lessons, but both may overemphasize how easily South Africa's judicial model can be transplanted elsewhere.¹⁴

1.8.3 The Process of Theorising

Robert Bullard's environmental justice theory, as explained in "Dumping in Dixie" (1990), foregrounds how marginalized communities experience a disproportionate level of environmental harm. Despite its significance, Bullard's US-oriented framework has been criticized by David Schlosberg (2013) as not adequately addressing the particular forms taken by environmental injustice in the Global¹⁵South.¹⁶ The human rights frame, understood, developed, and pursued by John Knox (2018) and Dinah Shelton (2020), serves as a lens to address the enforcement of the environment. Still, Ushas Natarajan (2021) contends that this way of reasoning tends to give procedural rights priority, without

¹² (<https://africafacility.org/content/ensuring-and-rewards-benefit-environment>)

¹³ CCT677/06(2007)ZACC 13

¹⁴ Artificial intelligence (Ai)

¹⁵ <https://scholar.google.com>.

¹⁶ Southern environmental law center. (<https://www.selc.org>)

enough empirical proof that environmental outcomes will be better in developing countries¹⁷.

As the first of UN Special Rapporteur on Human Rights and the Environment, **John Knox**, he has contributed to furthering through connecting environmental conservation to the rights like health, life and dignity. Knox's ¹⁸article is itself both applauded and criticized as advancing procedural rights; however, as a work that is normative for much of the time, it is constrained by a deficiency of empirical evidence in the context of developing countries.¹⁹

1.8.4 Research Gap

Though several studies have examined environmental rights and their constitutional entrenchment, there is little literature focusing on a comparison of enforcement mechanisms in Uganda and South Africa in a systematic way. Most existing comparative work pays attention to legal provisions but not the law in action. This analysis seeks to fill this void by investigating the legal, organizational, political, and social determinants of effectiveness in both countries.²⁰

1.9 Methodology

The study follows a doctrinal and comparative legal approach. Primary materials consist of the laws (constitutions, statutes, regulations, and case law) of Uganda and South Africa. Secondary sources refer to professional journal articles, books, and official reports. The

¹⁷Ushas Natarajan (2021) page 306

¹⁸ The UNdoc A/HRC/37/59,2018

¹⁹ Knox, John H, 'report of the special rapporteur on the issue of human rights obligation relating to the safe and enjoyments', clean, safe, healthy and sustainable environment .2018

²⁰ <https://libanswers.snhu.edu>

research has employed qualitative analysis in order to assess the impact of enforcement instruments and to draw lessons for Uganda.

1.9.1 Research Design.

The study is mainly structured in a legal analysis which is best taken and suited for examining the similarities, differences and the best legal framework and the enforcement mechanism in different jurisdiction. This is done by making a comparison between the Ugandan legal framework and that of South Africa since the research is aimed at going on to highlight the strengths, weaknesses and transferable lessons on the environment.

The approach is justified by the constitutionalizing of the environmental rights ²¹in both countries (article 39 of the Ugandan constitution 1995 and section 4 of South Africa's constitution of 1996. This goes on with also their experience in the way they enforce the policy in their different institutions.

²¹ Section 4 of the national environmental act 2019 as amended

1.9.2 Data collection.

Study relies and basically on secondary data and primary data. In line with the stated limitations. The data was collected from the following:

1. Statutes and Constitutions: like the Constitution of Uganda²², Constitution of South Africa²³ National Environment Act, and National Environmental Management Act.²⁴
2. Case Laws: judicial decisions both Uganda and South Africa, like Fuel Retailers Association v. Director-General ²⁵and Green watch v. Golf Course Holdings Ltd ²⁶
3. Academic Literature: journal articles, books, and reports by leading scholars in environmental law, human rights, and comparative legal studies (like the Bullard, Katz, and Sands).
4. International and Regional Instruments: the African Charter on Human and Peoples' Rights. Stockholm Declaration Rio ²⁷Declaration²⁸ , the UNHRC Resolution.
5. Policy Documents and Reports: Publications from government agencies like NEMA Uganda and South Africa's Department of Environmental Affairs), non-governmental organizations & international bodies in relation to the environmental enforcement mechanism.²⁹

²² Ugandan constitution 1995 as mended

²³ 1996

²⁴ 2019 as amended

²⁵ CCT677/06(2007) ZACC 13

²⁶ 2022

²⁷ (1972),

²⁸ (1992),

²⁹ uli

The above sources were identified through academic databases, institutional repositories and many more websites in regards to environmental issues.

1.9.3 Data analysis.

This research is based on a doctrinal and documentary method, which involved a systematic review of legal texts, judicial decisions, and policy documents to obtain,

1. To Identify challenges, and factors influencing enforcement out comes.
2. To examine the statutory, judicial, and institutional mechanisms established for enforcement
3. To clarify the recognition and scope of the right to a clean and healthy environment in Uganda and South Africa

The comparative method further enables the identification of best practices and areas where Uganda can draw lessons from South Africa's more robust enforcement mechanisms and jurisprudence.³⁰

1.9.4 Ethical Considerations

The research is based on secondary sources and did not involve human participants³¹, so the minimal ethical risks. Academic integrity is maintained through proper citation and acknowledgment of all sources used from the beginning to the end³²

³⁰ <https://www.britannica.com>

³¹ <https://www.qualtrics.com>.

³² <https://www.scribbr.com>

1.9.5 Summary

In summary, the methodology goes on to provide a comparative, critical and structured approach to understanding of the enforcement of environmental rights in both Uganda and South Africa. ³³The comparative method further enables the identification of best practices and areas where Uganda can draw lessons from South Africa's more robust enforcement mechanisms and jurisprudence.³⁴

³³ Uganda constitution 1995 as amended, art,39.

³⁴ The 1995 Ugandan constitution as amended.

CHAPTER TWO

2.0 Extra-judicial measures of remedying the right to a clean and healthy environment in Uganda and South Africa.

2.1 Introduction

While legal mechanisms are essential in protecting and enforcing environmental rights, non-legal variables are also significant factors in determining the effectiveness of these mechanisms. This chapter investigates extra-legal forces on the implementation of the right to a clean and healthy environment in Uganda and South Africa. The socio-economic environment, institutional setups, level of commitment, and public participation or non-participation in law enforcement will be examined in both countries.

2.2 Socio-Economic Context

2.2.1 Uganda

Uganda is predominantly a hinterland with agriculture being an established means of livelihood, and natural resource management is ingrained in the day-to-day socio-economic lifestyle. Population growth, urbanization, and poverty rates are rising rapidly, putting growing pressure on forests, wetlands, and water resources. Wood is the main energy source for a number of communities, which makes the community vulnerable to deforestation and land degradation. Failure to find alternative living from unsustainable resource consumption will make it impossible to adhere to the laws of ecology. It is the poorest who pay the greatest price for environmental degradation and who lack the means to access the legal system.

2.2.2 South Africa

In South Africa, the country has its own problems of poverty, inequality, and socio-economic deprivation. Residuals of apartheid spatial and economic divides remain to this day. Industrialization and mining have also fuel led environmental degradation, especially

in historically disadvantaged communities. Yet an improved literate and civically active society has facilitated citizen framing of demands and participation in environmental governance much more effectively than in Uganda. ³⁵

2.3 Institutions and Capacity Establishment and Aid Coordination

In Japan, with regard to policy coordination on humanitarian and emergency assistance, the MOFA and the JDR are the main institutions for implementation.

2.3.1 Uganda

The institutional framework for environmental management in Uganda features an overlap of mandates, resource poverty, and a deficit in coordination. NEMA is coordinating but is crippled by a lack of capacity, absence of funding, and political meddlesomeness. There is no body or group within local government that has the authority to apply national environmental legislation, and there is generally poor understanding of environmental issues (for example, in agriculture, energy, or infrastructure) within sector-specific policies.³⁶

2.3.2 South Africa

A stronger institutional arrangement involving the Department of Forestry, Fisheries, and the Environment (DFFE) as the central actor has been established in South Africa. Enforcement has been strengthened through the existence of dedicated environmental courts and public prosecutors. However, at the city level, there are still challenges, with much less capacity and resources. The role of government in environmental management

³⁵ <https://databankfiles.worldbank.org>

³⁶ Through an interview at campus

is further complicated by the rather ambiguous sectoral responsibility of various government agencies.

2.4 Political Will and Governance

Great pledge, however, to commit any member state thereby committed it to situations of conflict, disaster, etc.; but several individuals argued it was workability and the necessity of making the line between good intentions and large-scale actions pursued appeared. The need for these mechanisms to be developed is probably a fundamental issue.

2.4.1 Uganda

Supply and demand. Such environmental challenges are often sidelined by the developmental needs of Uganda. Regulatory agencies can be captured through political intervention, and enforcement actions are capricious. Corruption and lack of transparency are exacerbating existing weak governance, and it is difficult for affected communities to hold polluters to account.

2.4.2 South Africa

South Africa's ruling elites have occasionally expressed interest in the environment, particularly when external and internal pressure has intensified, or media attention on a high-profile issue has directed focus on a specific threat. The courts have been leading the charge to hold government and corporate wrongdoers to account. However, political and economic lobbies have sometimes prioritized other considerations over environmental standards³⁷, which have been compromised for political expediency, such as job creation and economic growth.

³⁷ Law reports in regards to environmental concerns

2.5 Public Participation and Civil Society

2.5.1 Uganda

The majority of the people in Uganda, particularly in rural areas, have insufficient knowledge regarding environmental rights and laws. Civil society organizations (CSOs) have similarly played a central role in generating awareness, pushing for stronger enforcement action, and providing support to communities impacted by the risks at hand. However, CSOs are often resource-poor, and the government does not always support their work only occasionally. Although input is built into the law, they are not always clearly operationalized.

2.5.2 South Africa

There is a stronger heritage of public participation in environmental management in South Africa. The right to know, public participation in decision-making, and access to justice are expressly recognized in the Constitution and other environmental legislation. Civil society groups in the country are also strong and engage in litigation and advocacy for the environment with varying levels of success. They have achieved an outstanding degree of accountability and responsiveness from government and private entities.

2.6 Socio-cultural and Socio-historical Situation

2.6.1 Uganda

Traditional values and attitudes could be either good or bad for the environment. Communities exist where customary norms work well in ensuring that resources are managed sustainably, but in others, the collapse of indigenous authority is leading to unsustainable use of resources. Outdated systems of land ownership and conflict over land rights also hinder enforcement.

2.6.2 South Africa

South Africa's apartheid legacy leaves a legacy of environmental injustice, with poor communities typically bearing the brunt of pollution and resource degradation. Portrayals of these historical wrongs and attempts to right them are uneven.

2.7 Agreements and Treaties

2.7.1 Stockholm Declaration (1972)

A memorable event that succeeded in raising awareness of environmental issues is the Stockholm Conference, 1972.

Everyone has the right to the quality of life ³⁸that is favourable," so that propriety can and is autonomous. Equality and human dignity are "not maintained until these are secured." The Stockholm Declaration influenced the later development of other multilateral environmental agreements and national constitutional provisions. ³⁹Yet Kravchenko noted that being non-binding, it is hard to directly enforce, particularly in the Global South. ²and this has greatly led to proper enforcement of the right to a clean and safe environment through proper implementation.

2.7.2 Rio Declaration (1992)

The Rio Declaration contributed to the progress of law on the basis of the principles of sustainable development, the precautionary principle, public participation in decision making, and the like. Of particular relevance here was Principle 10 which called for "access to information, public participation in decision-making and access to justice in environmental matters." ⁴⁰Academic opinions on the Rio Declaration differ from one

³⁸ The constitution of the republic of Uganda 1995, article 39.

³⁹ Stockholm Declaration (1972)

⁴⁰ Stockholm Declaration (1972)

another: Sands hails it for its impact at home in domestic law, while Barboza and Sea emphasizes that the document is not binding and accepts selective compliance.⁴¹ and this has been put into consideration by the major bodies like the Rio declaration of 1992 and more other laws and treaties inclusive hence binding.

2.7.3 UNHRC Resolution 48/13 (2021) A UNHRC resolution 48/13 (2021)

UNHRC Resolution 48/13 was a turning point. Never had any international instrument so explicitly acknowledged that clean environment where human being can live is as a human right. Most countries have converted it from incorporation to positive law: however, it is not binding in status and, although has been influential in terms of legislative development in Uganda and South Africa, it has not surfaced in adjudication.⁴² But as Aquila and Fisher noted, the absence of enforceable mechanisms in international practice means that only when a country itself carries out such resolutions does this right become fact⁴³ hence failures and poor implementation.

2.7.4 Regional Legal Instruments.

2.7.4.1.1 African Charter on Human and Peoples' Rights (1981)

Pursuant to Article 24 of the African Charter All peoples shall have the right "To a general satisfactory environment favourable to their development."⁴⁴ **SERAC v Nigeria**⁴⁵ the African Commission also had added that the right has both substantive and procedural

⁴¹ Rio Declaration (1992)

⁴² unhrc resolution 48/13 (2021) a unhrc resolution 48/13 (2021)

⁴³ African Charter on Human and Peoples' Rights (1981)

⁴⁴ Article 24 of the African Charter

⁴⁵ 2017

obligations with a substantive obligation upon States to eradicate pollution and to allow people to take part in public life as well as a right to participate in development. ⁴⁶But those differences are not constant, and that is one reason why such differences influenced the Ugandan and South African constitutional provisions.

2.7.4.1.2 African Convention on the conservation of Nature and Natural Resources (2003)

This Convention obligates States to be progressive in enacting legislation and in the execution of that legislation to protect the environment and use natural resources without further harming the environment. It has had an impact on the legislative structures in Uganda and South Africa, but whether it will prove to be effective is a matter of political will and capacity in each individual country (Brunner and Toope)⁴⁷ Its principles have also been adopted by South Africa in its laws on toxic waste (section 20) and the environmental inspectorate, Brunner and Sinha claim⁴⁸.hence its implementation.

2.7.5 Influence on national law.

Both these elements have been reflected in the design of their constitutional and other law. How international and regional norms affect domestic environmental governance: Evidence from Uganda and South Africa Uganda's Article 39 and South Africa's Section 24 mirror the wording and tone of these international guarantees, providing one example of the way in which local environmental governance is shaped by international and regional norms.⁴⁹

⁴⁶ SERAC v Nigeria (2017).

⁴⁷ toxic waste (section 20)

⁴⁸ African Convention on the conservation of Nature and Natural Resources (2003)

⁴⁹ The constitution of the republic of Uganda 1995 as amended, art39 and section 24 of the South Africans constitution

2.8 Recent developments

Uganda: Inspired by these international obligations, it passed the 2019 National Environment Act which provides for more stringent punishment, and wider community involvement.⁵⁰

South Africa: South Africa's recent climate litigation and formation of new environmental enforcement units such as the "Green Scorpions" show the nation's commitment to upholding international environmental law and its agreement to the Paris Agreement⁵¹.

2.9 Conclusion

Over and above those, non-legal factors, such as socio-economic status, institutional capacity, political will, public participation, and cultural context, are critical determinants of the realization of environmental rights in Uganda and South Africa. Both countries confront huge, complex issues, but South Africa has stronger institutions, a more vibrant civil society, and a greater degree of public participation, which improves enforcement. Social welfare, rule of law, and public education are necessary for effective environmental governance in Uganda.

⁵⁰ The National Environment Act 2019 as amended

⁵¹ Green Scorpions

CHAPTER THREE

3.0 Enforcement mechanisms of the right to a clean and healthy environment in Uganda and South Africa.

3.1 Introduction

The realization of environmental rights is not solely a matter of constitutional or statutory recognition but is also dependent on available enforcement mechanisms. This chapter examines the implementation of children's rights in Uganda and South Africa with regard to statutory, institutional, and attitudinal structures and processes. It contrasts the practical challenges of implementation in both countries, considering what lessons Uganda can learn from South Africa and its successes and failures.

3.2 Uganda's Mechanisms for Enforcement

The legal system for environmental protection in Uganda is based on Article 39 of the 1995 Constitution, which provides that every Ugandan is entitled to a clean and healthy environment. The operationalization of this right is through the National Environment Act and other sectoral laws. However, the exercise of these rights is not without its problems⁵².

3.2.1 Regulatory and Institutional Arrangements

NEMA: The principal agency in environmental management, in charge of surveillance, enforcement, and coordination. NEMA is responsible for environmental law enforcement, issuance of permits, and reacting to violations.⁵³

⁵² The constitution of the republic of Uganda 1995 as amended, article 39

⁵³ The national environmental management authority 2021

Other Departments: The Ministry of Water and Environment, Uganda Wildlife Authority, and local government have also been included as stakeholders in environmental governance.

Legislative Tools: The National Environment Act allows for EIAs, pollution control, and public participation. Restorative, compensation, or injunctive orders may be issued by courts.

3.2.2 Practical Challenges

Mission Creep: Confusing assignments among many agencies lead to waste and redundancy.

Resource Constraints: NEMA and other related agencies are usually financially and technically challenged.

Political Interference: Political considerations may subvert regulatory decisions, compromising enforcement agency autonomy.

Poor Public Participation: Although the law mandates public involvement, the level of knowledge and participation remains low, particularly in rural communities.

Judicial Enforcement: Courts have jurisdiction to enforce environmental rights, but access to justice is limited by the absence of legal aid, procedural impediments, and slow processing of court cases.

Case Example

While this is the law, enforcement can be problematic in practice. For example, where NEMA's interventions to tackle illegal sand mining or wetland encroachment are delayed or ineffective, bureaucracy and politics are in some cases to blame.

3.3 Mechanism for Enforcement in South Africa

South Africa's environmental enforcement system is based on Section 24 of the Constitution of 1996, which provides that "everyone has the right to an environment that is not harmful to their health or well-being." The country has implemented a stronger and more multi-layered enforcement system⁵⁴.

3.3.1 Constitution and law provisions

Constitution of South Africa 1996 (Section 24)-provides for the right to an environment that is not harmful to health or well-being and imposes a duty on the state to prevent pollution and promote conservation. ⁵⁵

NEMA, 1998: The National Environmental Management Act gives effect to constitutional rights, and enables EIAs and public participation, and recruits Environmental Management Inspectors ⁵⁶

3.3.2 Institutional Framework

Department of Environmental Affairs: National oversight and guiding policy.

Members of the Environmental Management Inspectorate ("The Green Scorpions"): They are responsible for the investigation and prosecution of environmental crime and have enjoyed considerable success in the previous years. ²³

Regional and Local Authorities: Enforce national policies, but there is a wide discrepancy in capacity.

⁵⁴ The constitution of the republic of Uganda, 1996, section 24.

⁵⁵ Constitution of South Africa 1996 (Section 24)-

⁵⁶ Green Scorpions").

3.3.3 The Legal and Institutional Framework

3.3.3.1.1 Statutory

National Environmental Management Act (NEMA), 1998: Provides the legislative framework for environmental governance, including principles such as sustainable development, public participation, and access to justice.

Department of Forestry, Fisheries and the Environment (DFFE): National government institution responsible for policy and enforcement.

Specialized Law Enforcement Agencies: South Africa has Green Scorpions and environmental courts/prosecutors to punish violators.

Legislative Tools: Interdicts, restoration orders, administrative penalties, and penal sanctions are established by law.

3.3.3.1.2 Judicial and Administrative Remedies

Judicial Activism: South African courts have taken the lead in upholding environmental rights. In the case of *Fuel Retailers Association of South Africa v Director-General: Environmental Management* (2007),⁵⁷ the Constitutional Court stressed the importance of sustainability and affirmed the judiciary's mandate to protect the environment.

Public Interest Litigation: NGOs and affected communities often resort to litigation against both the government and private actors.

Access to Justice: The Constitution and environmental laws grant broad standing, often allowing plaintiffs to proceed hundreds of miles from their home community.

⁵⁷ CCT677/06(2007) ZACC 13

3.3.4 Practical Challenges

Local Government Capacity: National frameworks are strong, but implementation at the municipal level can be sporadic due to a lack of resources and technical abilities.

Implementation Shortfalls: Good laws might exist, but compliance can differ, and often, the most marginalized are overlooked.

3.4 Comparative Evaluation

3.4.1 Strengths

South Africa: Enforceability profile of constitutionalism and rule of law. Strong constitutional and statutory framework: in South Africa due to its parliament's ability to pass a law for everything; it may be weak, but its statutes and constitution are fairly strong.

Judicial activism: 3.5 due to issues like DA's private lawsuits, which are really state matters, Marikana, and connectivity to ANC used to influence too much.

Specialized enforcement agencies: in SA, considering SOX.

Judicial institutions: with active engagement of the courts and public opinion.

Civil society engagement: considering what civil society is doing to influence parliament and parties to ensure rule of law.

Uganda: To the extent Mission: The constitutional framework is in place; there needs to be a legal provision for such principles.

3.4.2 Weaknesses

South Africa: Local level implementation deficits, resource limitations, and competing economic needs.

Uganda: Overlapping mandates, poor institutional capacity, insufficient financial resources, political interference, and limited public participation.

3.4.3 Key Differences

Judicial Role: South African courts are relatively more proactive and less strict on access to justice, while Ugandan courts are less commonly sought for environmental enforcement owing to limitations of procedure and resources.

Institutional Specialization: South Africa's practice of employing specialized inspectors and courts promotes enforcement, a practice Uganda has not adopted.

Public Participation: South Africa's legal system and civil society are better at enabling public involvement and litigation.

3.5 Lessons for Uganda

Special Procedure Implementation Bodies: Uganda could also consider developing specialized environmental courts and law inspectors (similar to the Green Scorpions in South Africa).

Enhance Institutional Capacity: Increased investment, expertise, and coordination across agencies is needed.

Improve Access to Justice: Reforms to systems, streamlined procedures, and increased legal aid will help communities access courts.

Encourage Public Participation: Raising public awareness and supporting civil society can help empower communities to demand enforcement.

Lessen Political Interference: It is important to maintain the independence of enforcement authorities to make effective regulations.

3.6 Conclusion

Uganda and South Africa have made important progress in the recognition of the right to a clean and healthy environment. However, the power of these enforcement tools is mixed. The South African experience illustrates the importance of vigorous judicial activism, specialized enforcement agencies, and rigorous public participation. Uganda's enforcement is still constrained by institutional weaknesses, resource constraints, and political involvement. After all, transplanting some of South Africa's best practices into the Ugandan context has the potential to go a long way in advancing the realization of environmental rights.”

CHAPTER FOUR

4.0 FINDINGS, CONCLUSIONS, AND RECOMMENDATIONS FOR ACTION

4.1 Summary of Findings

In particular, this study sought to do a comparative legal analysis of the enforcement frameworks for a clean and healthy environment in South Africa and Uganda, through the tracing of constitutional and other legal instruments. The main findings are:

Legal Recognition: Article 39 of Uganda’s Constitution and Section 24 of South Africa’s Constitution specifically recognize the right to a clean and healthy environment and are an exposition of international and regional environmental standards⁵⁸.

Legal and Institutional Frameworks: Uganda has established a robust legal framework comprising the National Environment Act and the laws relating to each sector. However, a lack of coordination, overlap, few resources, and political interference are hindering enforcement. The single lead agency, NEMA, has overwhelming operational challenges.

Judicial and Administrative Remedies: In Uganda, the right to a fair trial is undermined by existing procedural limitations; access to justice in environment-related cases is compromised by a lack of legal assistance and the slow conclusion of cases. In contrast, South Africa has established dedicated environmental courts and inspectors, and its judiciary has actively intervened to enforce environmental rights, such as in the Fuel

⁵⁸ The constitution of the republic of Uganda 1995 as amended, article 39.

Retailers Association matter, which has resulted in much more skepticism from regulatory agencies.⁵⁹

Public Participation and Civil Society: The South African legal system is also conducive to enabling greater public participation and litigation, which is a function of an active civil society. Public awareness and consultations are still low in Uganda, particularly among rural dwellers, which hinders the enforcement process.

Strengths and Weaknesses: The constructivist theory of the state's structure encompasses an array of weak and strong informing factors that should be considered as such in the discussion above. South Africa is more effective in enforcement. Mechanisms of enforcement are more effective in South Africa's case, featuring judicial activism, special agencies, and more civil society involvement. The major challenges facing Uganda are institutional overlap, inadequate resources, and political interference.⁶⁰

Lessons to Uganda: In South Africa, the experience shows that special enforcement agencies, strong judicial remedies, and active public participation are critical. Such institutions are few and/or virtually non-existent in Uganda.

⁵⁹ CCT677/06(2007) ZACC 13

⁶⁰ Chuki view

4.2 Conclusions

Comparative analysis shows that the formal recognition of environmental rights is a necessary but not sufficient condition. Enforcement is most effective when:

1. Strong and independent institutions, with clear mandates and sufficient resources.
2. Judicial overreach and remedies open to affected communities.
3. Public engagement and civil society interaction in practice.
4. A political commitment to AFL, environmental protection, and minimal interference.

As South Africa's example makes clear, these ingredients can turn constitutional rights into living realities, whereas the problems faced by Uganda demonstrate the dangers of institutional fragility and inadequate resourcing.

4.3 Recommendations

From the results and comparisons, the recommendations for Uganda can be made thus:

4.3.1 Institutional Capacity Building

4.3.2 Strengthening of RIR's Institutions

The institutions of RIR will be strengthened.

1. Clarify responsibilities and enhance environmental agency cooperation to eliminate redundancy and waste.
2. Support NEMA and other related organs in their enforcement roles by providing them with more resources (funding and technical capacity) so they are able to implement effectively.
3. Protect enforcement agencies from political meddling.

4.3.3 Reform of the Judiciary and Legal System

1. Set up specialized environmental courts and inspectors based on South Africa's Green Scorpions and environmental judiciary.
2. Simplify legal processes and broaden access to legal assistance to increase access to justice for affected communities.
3. Foster judges' training in environmental law to stimulate proactive supervision.

4.3.4 Stakeholder Participation and Awareness

1. Strengthen environmental information campaigns to educate citizens about their environmental rights and remedies.
2. Assist civil society organizations in advocacy, monitoring, and litigation.
3. Establish the public right for involvement in environmental decision-making and planning processes at all levels.

4.3.5 Policy and Legislative Reform

1. Reassess and update environmental laws to respond to new challenges and plug enforcement loopholes.
2. Integrate environmental issues into all relevant sectoral policies (agriculture, infrastructure, energy, for example).

4.3.6 Lessons from South Africa

1. Emulate best practices in South Africa, especially judicial activism, institutional specialization, and public participation.
2. Promote regional cooperation for the exchange of experience and reinforcement of cross-border enforcement.

4.3.7 Revitalize Environmental Education at ALL Levels

Incorporate environmental education into school curricula and develop community-generated awareness programs to inculcate ethics of environmental care and encourage public participation.

4.3.8 Fostering Multi-stakeholder Partnerships

Stimulate collaboration between governments, the private sector, academia, and civil society organizations for resource mobilization, innovation, and a diversity of views in policy-making.

4.3.9 Strengthening Monitoring, Data Collection, and Transparency

Purchase modern monitoring tools and issue environmental compliance reports on a frequent basis to enhance the ability to uncover violations and promote accountability.

4.3.10 Dominant Ecological Problems as a Factor in Economic Planning

Environmental considerations will be systematically integrated into national and local development plans, budgeting, and investment decision-making, and require strong and standardized environmental impact assessments to be completed for all major projects.

4.3.11 Enhancing Regional and International Cooperation

Actively involve in regional and international environmental programs, exchange experiences with neighbouring countries, and seek technical and financial support for the implementation of laws and monitoring measures in the guise of regional projects, especially in relation to the management of shared resources.

4.4 Future Work

1. Conduct evidence-based research on the impact of particular enforcement interventions in Uganda and South Africa.
2. Explore the role of local authorities and traditional leadership in environmental enforcement.
3. Assess the influence of international and regional legal developments on domestic enforcement capacity.

4.5 Final Remark

The achievement of the right to a healthy environment in Uganda and South Africa rests on the transition from paper guarantees to a real, effective, and practical enforcement strategy. Uganda is “deficient and lagging behind in the enterprise,” but with strong institutions, an independent judiciary, and public participation, the country can make “great leaps in achieving environmental justice and sustainable development.”

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