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Judicial Balancing of Environmental Rights and Economic Development: A Comparative Analysis of Uganda and the European Court of Human Rights Interventions

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Abstract. In developing countries such as Uganda, the pursuit of economic development including mining and extraction of oil and mineral resources usually infringe on environmental rights. The court is faced with the arduous duty of ensuring a balance in the pursuit of economic development and preservation of environmental rights. Using doctrinal research method and comparative analytical method, this article presents a comparative analysis of judicial balancing between environmental rights and economic development in Uganda and under the European Court of Human Rights. It examines how courts structure legal reasoning when environmental protection needs conflicts with economic and developmental objectives, with particular focus on constitutional provisions, statutory frameworks, and judicial interpretation. The study is guided by the research question of how different legal systems conceptualise and operationalise the balance between environmental rights and economic development in judicial decision-making. It employs a comparative analytical method to assess the laws relating to right to a clean and healthy environment, which enables direct rights-based litigation before national courts. The European Court of Human Rights has given protection of environmental interests through established human rights provisions, especially the right to respect for private and family life. The article focuses on judicial reasonings in environmental disputes and the role of courts in resolving conflicts between environmental protection and economic development within their respective legal frameworks. The article contributes to existing scholarship by moving beyond single-jurisdiction studies to provide a structured comparison between a constitutional environmental rights model, as seen in Uganda, and an indirect human rights model, as developed by the European Court of Human Rights.

Keywords: Environmental Rights, Economic Development, Judicial Balancing, Proportionality, Uganda, European Court of Human Rights, Sustainable Development.

1. Introduction

The tension between environmental protection and economic development is one of the defining legal questions in current governance frameworks. States frequently justify projects that harm the environment, such as laying of oil pipelines through wetlands, construction of mega dams for electricity projects which may in turn cause flooding of farmlands and forests; or mining concessions in biodiversity rich areas on the basis of energy security, job creation or foreign investment. On the other hand, the affected communities, in turn, invoke constitutional or human rights to resist ecological degradation, claiming threats to clean water, health or cultural heritage. Where legislative and executive bodies prioritize economic growth over ecological sustainability, courts therefore occupy an important institutional space in resolving this conflict, especially where legislative and executive choices have failed to achieve an acceptable equilibrium between environmental protection and economic development.[1]

[1] Philippe Sands and Jacqueline Peel, *Principles of International Environmental Law* (4th edn, CUP 2018) 1–5.

The courts in Uganda and the European Court of Human Rights offer a useful comparative framework for studying how the conflict between the pursuit of economic development and preservation of environmental rights are resolved. In Uganda, the tension between environmental protection and economic development is particularly evident, where the Constitution guarantees a clean and healthy environment and the National Environment Act which requires environmental impact assessments for projects for instance the Hoima-Tanzania oil pipeline and wetland conversions for urban expansion to protect natural resources and manage environmental harm.[2] The courts in Uganda have recognized environmental rights, although they tend to accommodate national interest considerations in major development cases.[3] The European Court of Human Rights, by contrast, has no explicit environmental right in the European Convention, but it has developed a substantial body of case law under rights such as private life, home and property, often in disputes involving pollution, industrial activity and planning decisions. The European Court of Human Rights has consistently held that states must ensure that economic projects comply with the law, satisfy the requirements of proportionality, and adequately consider both human rights and environmental interests. The Court has clearly recognised that serious environmental harm may amount to a violation of human rights, even in the absence of an explicit environmental right in the Convention. This approach has laid the foundation for a body of jurisprudence requiring states to strike a fair balance between economic development and the protection of individuals from environmental risks.[4]

Against this background, this article examines how courts in Uganda and the European Court of Human Rights structure their reasoning when balancing environmental protection against economic development. It considers the tools which each system employs, including constitutional interpretation, proportionality, and the margin of appreciation, and evaluates how these tools shape judicial outcomes. It also explores what each system can learn from the other in strengthening environmental adjudication; identifies judicial approaches for possible legal transplant; and proposes practical reforms aimed at improving the clarity, consistency, and effectiveness of environmental decision-making. The authour argues that environmental adjudication is most effective where courts conceptualise environmental integrity not as a competing interest, but as a precondition for lawful and sustainable development. Section II of the study reviews the existing literature; Section III outlines the methodology and analytical tools employed; Section IV examines the legal frameworks; Section V analyses key judicial decisions; Section VI discusses the policy implications; Section VII provides recommendations; and Section VIII concludes the study.

2. Literature Review

The relationship between environmental protection and economic development has received sustained attention in environmental law, human rights law, and comparative constitutional scholarship. At its centre lies a persistent tension concerning whether environmental protection should function as an independent legal constraint on development or as one interest to be balanced against economic growth. Courts have become the principal institutional hubs where this tension is resolved, yet the methods they employ vary significantly across jurisdictions. A substantial body of scholarship treats environmental protection as part of human rights law. On this view, environmental harm is not considered a separate legal wrong on its own, but addressed when it affects existing rights such as the right to life, health, dignity, or private and family life. This approach is useful in practice because it allows courts to deal with environmental harm through established legal rights. However, scholars also note its limits, especially where environmental degradation affects ecosystems or communities in ways that do not easily fit within individual-rights frameworks.[5] In such cases, protection remains indirect rather than autonomous. This approach is most visible in the judicial jurisprudence of the European Court of Human Rights. Because the European Convention on Human Rights contains no express environmental right, the Court has developed an indirect and incremental environmental doctrine, chiefly through Article 8 on private and family life. This approach can be traced to various decided cases, for instance in *López Ostra v Spain* and *Fadeyeva v Russia*, the Court recognised that severe environmental degradation may constitute a violation

[2] Constitution of the Republic of Uganda 1995, arts 39 and 245; National Environment Act, Cap 181.

[3] Ben Kiromba Twinomugisha, 'Some Reflections on Judicial Protection of the Right to a Clean and Healthy Environment in Uganda' (2007) 3 *Law, Environment and Development Journal* 244, 255–258.

[4] European Convention on Human Rights 1950, art 8; see also *Lopez Ostra v Spain* (1994) 20 EHRR 277.

[5] Elinor Buys and Bridget Lewis, 'Environmental protection through European and African human rights frameworks' (2022) 26 *International Journal of Human Rights* 949.

of human rights even where states pursue legitimate economic objectives.[6] However, scholars disagree aon how well this approach works. The proportionality test gives courts a clear method, but the margin of appreciation often leads to inconsistent scrutiny.[7]

In Uganda, the issue is approached differently because environmental protection is mainly through constitutional rights and public interest litigation. The Constitution of the Republic of Uganda, 1995 expressly guarantees the right to a clean and healthy environment under Article 39, which places Uganda among progressive constitutional systems on environmental protection.[8] Scholars such as Twinomugisha argue that this constitutional framework has enabled courts to gradually recognise environmental rights as justiciable, even when it is against private actors.[9] This development is reflected in *Greenwatch v Attorney General*, where the High Court ordered disclosure of agreements relating to the Bujagali hydropower project. This decision enabled environmental stakeholders to scrutinise whether state institutions and private developers were complying with environmental and procedural obligations, even though the project was justified on the basis of national development of energy needs.[10] Despite this constitutional dividend, enforcement challenges exist. Courts do not always apply environmental rights consistently in disputes involving large development projects, especially where economic development is framed as a matter of national importance. As Twinomugisha observes, the enforcement of environmental rights in Uganda is often shaped by broader governance and development priorities, which can, in practice, lead courts to adopt a cautious or deferential stance in cases framed around national development.[11] As a result, the constitutional guarantee does not always translate into strong remedial protection in practice.

Comparative scholarship on environmental rights and economic development has largely developed in separate streams. Studies of the European Court of Human Rights focus on proportionality, fair balance, and the margin of appreciation, while studies of Ugandan courts emphasises constitutional design, public interest litigation, and enforcement constraints. What remains underexplored is how these different legal structures shape judicial balancing in concrete disputes where courts must weigh environmental harm against economic justifications such as infrastructure expansion, extractive projects, and energy development. The study makes a comparison of how courts in Uganda and the European human rights system reason when environmental protection and economic development conflict. It focuses not simply on whether environmental rights are recognised, but on how judicial balancing is carried out in practice, and whether the structure of each legal system affects the intensity and outcome of review.

3. Methodology

The study employs a doctrinal and comparative analytical methods of research. The research examines primary legal sources such as constitutions, statutes, regulations, and judicial decisions from Uganda and the European Court of Human Rights. Secondary sources include peer-reviewed journal articles, books and policy documents. The selection of Uganda is justified by its express constitutional recognition of environmental rights under Article 39 of the 1995 Constitution, enabling direct rights-based litigation. The European Court of Human Rights was selected for its extensive jurisprudence on environmental matters through indirect protection under Convention rights, particularly Article 8. Data collection involved systematic review of case law databases such as the Uganda Legal Information Institute and Human Rights Documentation, statutory instruments, and scholarly literature. Analysis employed thematic comparison, examining four dimensions, that is to say; (1) constitutional or legal basis for environmental protection; (2) judicial reasoning frameworks; (3) application of proportionality; and (4) remedial approaches. The analysis focuses on judicial reasoning structures rather than outcomes alone.

4. Legal Framework

The judicial balancing of environmental rights and economic development in Uganda and under the European Court of Human Rights operates within two structurally distinct legal systems, that is to say; one based on explicit constitutional environmental rights, and the other grounded in the judicial interpretation of

[6] *López Ostra v Spain* (1994) 20 EHRR 277; *Fadeyeva v Russia* (2005) 45 EHRR 10.

[7] A. Morrow, 'The European Court of Human Rights and Environmental Protection: Standards and Uncertainty' (2019) 10 *European Human Rights Law Review* 215 (characterising the Court's approach as 'derivative and incremental').

[8] Constitution of the Republic of Uganda 1995 (n 3) art 39.

[9] Twinomugisha (n 4) 244.

[10] *Greenwatch (U) Limited v Attorney General*, HCT-00-CV-MC-0139 of 2001, 12 November 2002.

[11] Twinomugisha (n 4) 258–262.

established human rights provisions. Despite this divergence, both systems require courts to resolve conflicts between environmental protection and development through structured legal reasoning grounded in proportionality and legality.

4.1 Constitutional and Statutory Environmental Rights Framework in Uganda

The environmental governance in Uganda is grounded in the Constitution of the Republic of Uganda 1995, which elevates environmental protection to a justiciable right. Article 39 guarantees every person the right to a clean and healthy environment, thereby providing a direct basis for judicial intervention where environmental harm is alleged. This right operates alongside Article 245, which mandates Parliament to enact laws ensuring sustainable environmental management.[12] While the National Objectives and Directive Principles of State Policy, particularly Objective XIII, impose a constitutional obligation on the state to protect natural resources.[13] These constitutional provisions establish an integrated environmental governance framework that limits state authority over natural resources by requiring their management in accordance with principles of environmental protection and sustainable use. Judicial interpretation in Uganda has primarily operationalised this framework through administrative law review, allowing courts to quash or invalidate environmental approvals where decision-makers fail to comply with mandatory environmental and social impact assessment requirements, disregard relevant statutory procedures, or act in a manner inconsistent with the Constitution and the National Environment Act. This constitutional foundation is given effect through the National Environment Act, which establishes the institutional mechanisms for environmental governance. For instance, the National Environment Management Authority (NEMA) ensures compliance with environmental impact assessment requirements, and enforcement mechanisms such as restoration and compliance orders.

Environmental and social impact assessments are required for projects with significant environmental effects, including infrastructure development, extractive industries, and large-scale land use change. The Act also incorporates principles of sustainable development and public participation as binding considerations in environmental decision-making.[14] Read together, these statutory provisions empower courts to scrutinise administrative decisions where environmental assessments are inadequate or where approvals disregard ecological carrying capacity, particularly in judicial review proceedings challenging non-compliant development authorisations.[15] Complementing the statutory framework, regulatory system operationalises environmental governance through a structured regime of prior authorisation, environmental assessment, and continuing compliance obligations that condition the legality of development activities.

The National Environment (Wetlands, River Banks and Lake Shores Management) Regulations 2000 impose restrictions on activities in ecologically sensitive areas by requiring prior approval for any intervention likely to alter ecological or hydrological integrity, thereby establishing a legally enforceable threshold for land-use intervention. This preventive approach is reinforced by the National Environment (Environmental and Social Assessment) Regulations 2020, which make environmental and social impact assessment a mandatory precondition for approval of projects with potential significant environmental effects, including infrastructure development and extractive activities. Beyond the approval stage, environmental regulation extends into the operational lifecycle of development activities through continuing compliance obligations. The National Environment (Waste Management) Regulations 2020 impose enforceable duties on waste generators and operators to comply with prescribed handling, treatment, and disposal standards, supported by inspection powers and enforcement mechanisms including sanctions and restoration orders in cases of breach. Similarly, the National Environment (Oil Spill Prevention, Preparedness and Response) Regulations 2020 require operators in the petroleum sector to maintain approved contingency plans, reporting obligations, and response capacity measures designed to ensure immediate mitigation of environmental harm arising from operational failure. In the extractive sector, the National Oil and Gas Policy for Uganda 2008 provides interpretive guidance for regulatory and administrative decision-making by framing petroleum development within a long-term sustainability and public interest

[12] Constitution of the Republic of Uganda 1995 (n 3) arts 39, 245.

[13] Constitution of the Republic of Uganda 1995, objective XIII.

[14] National Environment Act Cap 181, ss 78–79, 103, 109–115, 122, 126, 157, 163–165, 180, Schs 4–5 (Uganda).

[15] *Water & Environment Media Network (U) Ltd and 2 Others v National Environment Management Authority and Hoima Sugar Limited* (Consolidated Miscellaneous Cause Nos 239 & 255 of 2020) [2021] UGHCCD 30.

orientation. Although not directly enforceable as legislation, it informs licensing decisions and regulatory discretion by requiring consideration of poverty reduction, domestic capacity building, and long-term resource management objectives in the approval and governance of oil and gas activities.[16]

Read together, these instruments reflect a regulatory approach in which development is not prohibited, but made conditional upon compliance with environmental safeguards. Economic activity is permitted only where it has undergone environmental screening, obtained lawful authorisation through established procedures, and met legally defined environmental risk thresholds. This shifts environmental governance from broad constitutional commitments into enforceable administrative requirements, where adherence to environmental assessment procedures becomes a prerequisite for legality rather than a matter left to policy discretion.

4.2 International Environmental Law and Domestic Integration

In Uganda, environmental legal framework is shaped not only by the Constitution and statutory instruments but also by its participation in International environmental agreements. Through these International instruments, Uganda has adopted core principles of international environmental law, such as sustainable development, the precautionary principle and intergenerational equity.[17] In the domestic context, these principles do not operate as independent sources of law in a strict sense, rather, they function as interpretative standards that inform constitutional and statutory interpretation, particularly where environmental provisions are broadly framed or leave room for judicial discretion. Uganda is a party to major global environmental treaties such as the Convention on Biological Diversity, the United Nations Convention to Combat Desertification, and the United Nations Framework Convention on Climate Change.[18] These treaty commitments are primarily relied upon as interpretative reference points in environmental disputes, guiding courts and regulatory authorities in giving substantive content to statutory obligations relating to environmental protection and sustainable resource use.[19]

In environmental litigation, these principles are primarily invoked to support preventive reasoning in cases involving uncertain scientific risk or cumulative environmental harm. The precautionary principle enables decision-makers and courts to justify intervention even where scientific certainty is lacking, provided there is a credible risk of serious environmental damage. Sustainable development requires that proposed economic activity be assessed against environmental constraints rather than economic benefit alone, while intergenerational equity extends the analysis to the long-term consequences of environmental degradation on future generations. In practice, these principles are most frequently engaged in disputes concerning wetland encroachment, pollution of water resources, and environmental impacts arising from infrastructure and extractive projects, where ecological harm may be gradual, cumulative, and difficult to reverse once development has commenced. However, the influence of international environmental law in Uganda is not uniform. Its application depends on the extent to which courts are willing to integrate international principles into domestic adjudication, the manner in which such principles are invoked by litigants, and whether judicial reasoning adopts a harmonised or deferential approach to administrative environmental decision-making. This variation contributes to differences in intensity of judicial review in environmental disputes involving competing development interests.

4.3 Environmental Rights Approach under the European Court of Human Rights

The European Court of Human Rights addresses environmental protection indirectly, through established rights under the European Convention on Human Rights rather than any standalone environmental right. The primary provision is Article 8, which protects private and family life and the home.[20] Environmental harm, such as pollution,

[16] National Environment (Wetlands, River Banks and Lake Shores Management) Regulations 2000 (No 3 of 2000, Uganda); National Environment (Environmental and Social Assessment) Regulations 2020 (No 143 of 2020, Uganda); National Environment (Waste Management) Regulations 2020 (No 49 of 2020, Uganda); National Environment (Oil Spill Prevention, Preparedness and Response) Regulations 2020 (Uganda); *National Oil and Gas Policy for Uganda* (Ministry of Energy and Mineral Development 2008) 5–7.

[17] Rio Declaration on Environment and Development (adopted 14 June 1992) princs 3, 15.

[18] Convention on Biological Diversity (adopted 5 June 1992) 1760 UNTS 79; United Nations Convention to Combat Desertification (adopted 14 October 1994) 1954 UNTS 3; United Nations Framework Convention on Climate Change (adopted 9 May 1992) 1771 UNTS 107.

[19] Abdul Khamid Kalumbi, 'The principle of intergenerational equity in Uganda's legal framework' (LLM thesis, Makerere University 2026).

[20] European Convention on Human Rights (n 5) art 8

industrial emissions, and infrastructure-related disturbance, is brought within the scope of Article 8 where it attains a sufficient level of severity to interfere with the enjoyment of these interests. Once Article 8 is invoked, the Court applies a structured proportionality analysis requiring that the interference be lawful, pursue a legitimate aim such as economic development or public infrastructure, and strike a fair balance between individual rights and the interests of the community. At the proportionality stage, the Court examines both the intensity of environmental harm and the adequacy of the regulatory response. This includes consideration of whether environmental standards were effectively enforced, whether mitigation measures under environmental impact assessments were implemented in practice, and whether affected individuals had access to remedies such as compensation or relocation. The analysis therefore combines regulatory effectiveness with the practical impact of environmental harm on daily life.

The fair balance assessment constitutes the decisive stage of review. It requires the Court to determine whether the environmental burden imposed on individuals is disproportionate in relation to the public interest pursued by the state. Even where a project serves legitimate economic or infrastructural objectives, a violation may be found where serious environmental harm is insufficiently mitigated or unevenly distributed. This approach is reflected in *López Ostra v Spain*, where the Court held that severe pollution from a waste treatment facility violated Article 8 due to the authorities' failure to prevent serious harm to nearby residents.[21] A similar reasoning was applied in *Fadeyeva v Russia*, where prolonged industrial pollution affecting a residential area was not adequately controlled, and economic justification was insufficient in the absence of effective mitigation.[22] However, the intensity of review varies depending on the complexity of the subject matter and its connection to domestic policy choices. Through the margin of appreciation doctrine, states are afforded discretion in balancing environmental protection against economic priorities, particularly where decisions involve technical assessments or planning judgments. Nevertheless, this discretion is not unlimited. Where environmental harm is serious and persistent, the Court examines whether regulatory systems are effectively implemented in practice rather than merely existing in law.

In environmental property related disputes, Article 1 of Protocol No. 1 is applied where environmental harm, whether through state action or regulatory omission, amounts to an interference with the peaceful enjoyment of possessions.[23] Such interference may arise where pollution, noise, or environmental degradation results in a restriction on use, a reduction in economic value, or a regulatory burden affecting effective control of property, thereby triggering the Court's proportionality assessment between individual property rights and the public interest in environmental and economic policy. This approach was applied in *Hatton v United Kingdom*, where the Court considered whether night flight operations at Heathrow Airport imposed a disproportionate burden on residents.[24] The assessment required a balancing exercise between the economic importance of aviation policy and the practical impact of sustained noise on private life and property enjoyment. More recent decisions suggest that environmental litigation under the Convention is slowly moving beyond localised pollution disputes toward broader claims involving climate change and cross-border environmental harm. This development is illustrated by *Duarte Agostinho and Others v Portugal and 32 Other States*, where the applicants sought to hold multiple European states responsible for insufficient action on greenhouse gas emissions, arguing that climate inaction exposed them to foreseeable and long-term risks affecting their health, home environment and quality of life.[25] The case illustrates a shift from isolated pollution disputes to broader challenges to regulatory and policy frameworks.

Therefore, this jurisprudence read together, demonstrates that the Court does not recognise environmental protection as an autonomous right. Instead, environmental claims are assessed through Article 8 and resolved through proportionality review, requiring a fair balance between environmental harm and competing public interests, subject to controlled deference to national authorities.

4.4 Comparative Analysis of Constitutional and Judicial Interventions of Ugandan Courts and European Human Rights Court

A comparison of Uganda and the European human rights judicial intervention reveals two distinct

[21] *López Ostra v Spain* (1994) 20 EHRR 277.
[22] *Fadeyeva v Russia* (2005) 45 EHRR 10.
[23] Protocol No 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms (adopted 20 March 1952, entered into force 18 May 1954) art 1.
[24] *Hatton v United Kingdom* (2003) 37 EHRR 28.
[25] *Duarte Agostinho and Others v Portugal and 32 Others* App no 39371/20 (ECtHR, 9 April 2024)

constitutional and adjudicative models for judicial balancing of environmental protection and economic development. As earlier noted, environmental protection in Uganda is constitutionally entrenched under Article 39 of the Constitution of the Republic of Uganda 1995, which guarantees the right to a clean and healthy environment. This provision, read together with Article 245 and the National Objectives and Directive Principles of State Policy, provides a direct constitutional basis for judicial review of environmental decision-making.[26] These constitutional provisions enable courts to assess both procedural compliance and substantive environmental legality in development related disputes. Judicial intervention typically arises where environmental impact assessments are not conducted in accordance with statutory requirements, or where administrative approvals fail to adequately account for ecological risk and sustainability obligations.[27] In this sense, environmental adjudication in Uganda operates through a combination of constitutional enforcement and administrative law review, allowing courts to invalidate decisions that are inconsistent with environmental protection obligations. On the other hand, the European Court of Human Rights does not recognise an express environmental right within the European Convention on Human Rights. Instead, environmental protection has been developed through judicial interpretation of existing Convention rights, principally Article 8, which protects private and family life and the home, and in certain circumstances Article 1 of Protocol No. 1 on peaceful enjoyment of possessions.[28] Environmental harm becomes legally relevant where it attains a level of severity that interferes with the effective enjoyment of these rights. The Court's jurisprudence is grounded in the doctrine of positive obligations, which requires states not only to refrain from unlawful interference but also to establish and maintain a regulatory framework capable of protecting individuals from serious environmental harm.[29] This approach requires an assessment of both the design and implementation of domestic environmental regulation. The Court examines whether states have established adequate environmental standards, whether environmental impact assessment procedures are properly applied, and whether enforcement mechanisms operate effectively in practice. The inquiry therefore extends beyond formal legality to the practical effectiveness of regulatory systems in preventing or mitigating environmental harm.

The central analytical test remains whether, in light of the severity of the environmental impact and the public interest pursued, the state has struck a fair balance between the competing interests of the individual and the community. This proportionality assessment integrates both environmental harm and economic or developmental justification within a single evaluative framework.[30] While the harm must reach a minimum level of seriousness to engage Article 8, the Court also recognises risk-based claims where the likelihood and gravity of potential harm are sufficiently substantiated to trigger positive obligations. The threshold is therefore not limited to actual harm but may extend to credible and significant environmental risks affecting private life or the home under Article 8.[31] The case law, taken as a whole, demonstrates that environmental protection under the European Convention on Human Rights is not based on an autonomous environmental right. Rather, it is constructed through the application of existing Convention rights, principally Article 8 and, in property-related disputes, Article 1 of Protocol No. 1, to environmental conditions that interfere with the effective enjoyment of private life, the home, and personal well-being.

Despite these differences, judicial reasoning across both systems is structured by proportionality-based analysis, although it operates through different legal entry points. In Uganda, proportionality reasoning is embedded within constitutional rights adjudication and statutory environmental compliance, whereas in the European Court of Human Rights system it is expressed through the fair balance test under Article 8 jurisprudence. Despite these doctrinal differences, both systems require courts to evaluate whether environmental harm is justified in light of competing economic or public policy considerations.

5. Judicial Analysis

The courts in Uganda have progressively deepened environmental adjudication in disputes involving land use, energy infrastructure, and public interest litigation. Building on the constitutional entrenchment of environmental protection, judicial engagement has been facilitated through purposive interpretations of

[26] Constitution of the Republic of Uganda 1995 (n 3) arts 39, 245; and (n 13) objective XIII.
[27] National Environment Act (Cap 181), ss 68–72.
[28] European Convention on Human Rights, art 8; Protocol No 1, art 1.
[29] *López Ostra v Spain* (n 21).
[30] *Hatton v United Kingdom* (n 24).
[31] *Tătar v Romania* App no 67021/01 (27 January 2009).

standing, particularly where communities and civil society organisations seek to enforce environmental accountability in development projects.[32] A notable illustration is *Greenwatch (U) Ltd v Attorney General*, arising from the Bujagali hydropower project, a major energy infrastructure initiative intended to address national electricity deficits. The High Court emphasised that compliance with environmental impact assessment requirements under the National Environment Act is a mandatory precondition to lawful project approval, reaffirming the statutory role of the National Environment Management Authority in safeguarding environmental integrity.[33] While the project itself reflected a serious public interest in energy expansion, the court's reasoning emphasized that economic necessity does not extinguish procedural environmental safeguards. The decision therefore strongly illustrates judicial insistence on procedural legality as a threshold condition for development activity rather than a post-hoc consideration.

A similar constitutional approach is reflected in *Advocates Coalition for Development and Environment (ACODE) v Attorney General*, which concerned state approval processes relating to the management and conversion of forest resources, such as Butamira Forest Reserve. The petitioners challenged the legality of administrative decisions authorising commercial use of protected ecological areas, invoking Articles 39 and 245 of the Constitution, which establish both an individual environmental right and a public trust obligation over natural resources.[34] The court's reasoning reinforced the principle that natural resources are held by the state in fiduciary capacity for present and future generations, which obliges decision makers to justify alienation or conversion of protected environmental assets in accordance with constitutional and statutory standards.

These decisions indicate that Ugandan courts now treat environmental protection under Article 39 as a constitutional standard of review that conditions the legality of development decisions, particularly through mandatory compliance with environmental impact assessment procedures and fiduciary obligations under Article 245, which embeds environmental considerations within judicial review of development authorisations. However, environmental adjudication operates within a constitutional framework where environmental protection is considered alongside strong development imperatives, and courts frequently deal with projects justified on grounds of energy security, industrialisation and investment needs. In such cases, judicial reasoning tends to focus on whether the statutory environmental impact assessment requirements under the National Environment Act have been followed, rather than applying a structured proportionality test that directly weighs environmental harm against economic benefit. The main legal inquiry is therefore procedural, that is to say; whether a proper environmental assessment was carried out, whether public participation was ensured, and whether NEMA lawfully approved the project.[35] As a result, Article 39 is mainly enforced through administrative law review, rather than through a direct balancing of competing environmental and economic interests.

Balancing environmental rights and development still occurs, but it is mostly implicit. Courts consider both development needs and environmental protection, but they rarely apply a clear proportionality framework based on necessity, suitability, and minimal impairment. The level of scrutiny also varies. Courts tend to intervene more strongly where there is clear failure to compliance with procedures, but they are more deferential where projects are presented as being in the national interest or linked to strategic development goals.[36] In contrast, the European Court of Human Rights jurisprudence on environmental disputes is characterised by a structured judicial inquiry into justification, necessity and regulatory adequacy once a prima facie interference is established. This approach is clearly illustrated in several leading cases, which together show a consistent pattern in how environmental harm is assessed through a balancing framework between individual interests and public or economic considerations. A notable illustration is *López Ostra v Spain (1994)* as one of the earliest and most important landmark case.[37] The applicant lived near a waste treatment plant built to manage industrial waste and supported by public authorities as part of urban infrastructure. Although the facility served a clear public and economic function, it produced strong fumes, foul smells, and pollution that made everyday life extremely difficult for nearby residents and eventually rendered parts of the area almost unfit for

[32] Constitution of the Republic of Uganda 1995 (n 3) arts 39, 245; and (n 13) objective XIII.
[33] *Greenwatch (U) Limited* (n 10).
[34] *Advocates Coalition for Development and Environment v Attorney General*, Miscellaneous Cause No 100 of 2004.
[35] *Water & Environment Media Network (U) Ltd and 2 Others v National Environment Management Authority and Hoima Sugar Limited* (n 15).
[36] Twinomugisha (n 4) 244, 258-62.
[37] *López Ostra v Spain* (n 21).

normal habitation. The Spanish authorities were aware of the situation but failed to take effective steps to stop the pollution or to relocate those affected. The Court held that this amounted to a violation of Article 8. What is important is that the Court did not treat the economic usefulness or legal authorisation of the plant as decisive. Instead, it focused on whether the state had taken reasonable and effective measures to protect individuals from serious environmental interference affecting their private and family life.

Fadeyeva v Russia (2005) builds directly on this reasoning and shows how the Court deals with long-term industrial pollution.[38] In this case, the applicant lived in close proximity to a large steel plant and was exposed over many years to harmful emissions, including dust, Sulphur dioxide, and heavy metals. The government relied on the economic importance of the plant, particularly its role in employment and local industry. However, the Court made clear that economic necessity does not remove the state's responsibility under Article 8. The central issue was the failure of public authorities to take practical and sustained measures, such as reducing emissions or relocating residents away from the danger zone. The judgment also clarified that where a state is already aware of environmental risks and recognises them in its own legal framework, it is expected to act on that knowledge. Failure to do so narrows the state's margin of appreciation.

Another landmark case *Taşkin v Turkey (2004)* extends this line of reasoning by shifting attention from damage that has already occurred to risks that arise before a project is approved.[39] The case concerned a gold mining project using cyanide, which posed serious risks to water safety and public health. The Court held that states are required to carry out proper environmental impact assessments and ensure meaningful public participation before authorising such activities. Even though the project pursued a legitimate economic aim, approval without adequate assessment and safeguards was found to violate Article 8. This case is important because it confirms that the Court's approach is not only reactive to environmental harm already suffered, but also preventive. It requires states to anticipate, assess, and manage environmental risks in advance, rather than waiting for harm to occur.

Across these cases, the European Court of Human Rights uses a clear proportionality approach based on the fair balance principle. Economic development is accepted as a legitimate state objective. However, this alone is not enough to justify environmental harm. The Court requires states to show that such development is properly regulated. This includes having effective environmental laws, carrying out proper environmental impact assessments, and ensuring that decisions are based on evidence and real necessity rather than assumptions or general economic claims. In practice, therefore this means the state must explain why a project that causes environmental damage is still necessary and why less harmful alternatives were not sufficient. The Court also looks at whether the harm to individuals or communities is excessive compared to the benefit of the development. Thus, environmental protection is not treated as an independent right in itself, but it is strongly protected through Article 8. States are therefore required to justify environmental interference in each case, rather than assuming that development goals automatically outweigh environmental concerns.

5.1 Comparative Analysis of Judicial Balancing between Ugandan Court and European Court of Human Rights

A comparison between Ugandan Court and the European Court of Human Rights shows both similarities and clear differences in how courts deal with conflicts between environmental protection and economic development. In Uganda, court intervention is mainly triggered when there is failure to follow environmental impact assessment requirements or when there is a breach of the constitutional right to a clean and healthy environment. The focus is therefore largely on whether decision makers followed the correct legal and procedural steps before approving development projects. In contrast, the European Court of Human Rights only engages with environmental matters where the harm is serious enough to affect private life, family life, or the home the rights enshrined in in the European Convention on Human Rights. The way courts reason through these disputes is also different. In Uganda, environmental disputes are generally handled through constitutional enforcement of the right to a clean and healthy environment, combined with judicial review of administrative decisions under the National Environment Act. The balancing between development and environmental protection is therefore often implied through these procedural and constitutional checks rather than set out in a structured test. In the European Court of Human Rights system, however, the court applies a clear proportionality test.

[38] *Fadeyeva v Russia* (n 22).

[39] *Taşkın and Others v Turkey* App no 46117/99 (ECtHR, 10 November 2004).

It asks whether the interference with individual rights is justified and whether a fair balance has been struck between the interests of the individual and those of the wider community. The focus of judicial review also differs in a material way. In Uganda, courts are primarily concerned with the legality and procedural integrity of development approvals, particularly compliance with constitutional and statutory requirements governing environmental assessment and authorisation. In contrast, the European Court of Human Rights goes beyond procedural legality to assess whether the environmental interference itself is substantively justified, applying a proportionality inquiry to determine whether a fair balance has been struck between individual rights and the public interest.

These differences are also reflected in the nature of remedies. In Uganda, courts generally issue orders aimed at ensuring compliance with legal and procedural requirements, such as directing proper environmental assessment or correcting defective administrative decisions. The European Court of Human Rights, by comparison, issues declaratory findings of violation and may award just satisfaction, while also prompting broader regulatory or policy adjustments at the state level through supervisory enforcement mechanisms.

Notwithstanding these differences, both systems share a clear legal position, that is to say; economic development alone is not enough to justify serious environmental harm. In both jurisdictions, development decisions must be backed by lawful procedures and supported by a reasonable, evidence supported explanation that takes environmental impacts into account. The real difference is not whether courts balance environment and development, but how they do it, Uganda does it mainly through constitutional and administrative review focused on procedure, while the European Court of Human Rights applies a clear proportionality test that directly weighs the competing interests.

6. Policy Implications

The comparative analysis points to practical reforms that can improve how courts handle conflicts between environmental protection and economic development. For Uganda, courts would benefit from adopting a more structured method when assessing environmental disputes, similar to the proportionality approach used by the European Court of Human Rights. This would require decision-makers to show, in a clear and reasoned way, that a proposed development is necessary, appropriately designed, and does not impose avoidable environmental damage. Judicial training should also be strengthened so that judges are better equipped to understand and assess technical environmental evidence, including impact assessments and ecological reports. Further, the National Environment Act should be applied in a way that treats environmental impact assessments as part of the substantive decision-making process, rather than a purely formal requirement that is satisfied once documentation is submitted without meaningful evaluation of environmental consequences. Courts should also be willing, in appropriate cases, to set aside approvals where regulatory authorities give excessive weight to economic arguments without properly addressing environmental harm. On the other hand, the European Court of Human Rights, one possible reform would be formal recognition of environmental protection as a standalone right under the Convention. This would reduce reliance on proving individual harm under private life claims and allow the Court to address broader environmental problems such as biodiversity loss and climate change more directly. If treaty reform is not immediately possible, the Court could still refine its approach by applying less deference to states in cases involving serious environmental risk, especially where pollution crosses borders or affects vulnerable communities. Greater clarity on how Article 8 applies to environmental harm would also help states better anticipate legal obligations when approving development projects.

Therefore, in both systems, there is a need to strengthen judicial reasoning grounded in scientific and technical environmental evidence. Governments should not be permitted to justify environmentally harmful projects solely on broad references to economic growth or national interest without providing clear and verifiable environmental assessments supported by scientific and technical evidence. Courts in both jurisdictions should therefore require decision-makers to demonstrate, with credible environmental impact data and expert analysis, that the anticipated environmental harm has been properly identified, assessed, and weighed against the stated development objectives. In effect, Uganda would benefit from the European Court's structured reasoning, while the European system would benefit from a stronger recognition of environmental realities that go beyond individual harm. This would shift judicial review from a narrow focus on legality or individual rights alone, toward a more practical role in ensuring that development decisions remain environmentally responsible and sustainable in the long term.

7. Recommendations

7.1 Judicial Methodology Reforms

The courts in Uganda should adopt a more structured way of reviewing disputes between development and environmental protection. This does not require abandoning Article 39 of the Constitution, but it does require a clearer method when courts are asked to approve or review projects with potential environmental impact. A practical approach would be a three-step inquiry in development cases. First, courts should ask whether the project serves a legitimate public purpose such as energy supply, infrastructure or economic development. Second, courts should examine whether the environmental harm could reasonably be avoided or reduced through alternative measures or improved project design. Third, courts should assess whether the environmental harm is still justified when weighed against the expected public benefit. This would make judicial reasoning more consistent and reduce reliance on broad references to national interest without detailed justification. Fourth, Judicial capacity needs strengthening because environmental disputes require technical understanding of impact assessments, pollution levels, land degradation, and ecological risk. Regular training through the Judicial Training Institute, supported by environmental regulators and technical experts, would help judges engage more confidently with scientific evidence. In addition, assigning environmental matters to judges with specialised experience in land and environmental law would improve consistency in decision-making.

7.2 Legislative and Institutional reforms

The National Environment Act should be amended to ensure that environmental impact assessment administrative decisions clearly reflect constitutional obligations under Article 39. Environmental authorities should be required to explain not only whether statutory procedures were followed, but also show how environmental harm was considered in relation to development benefits. Access to justice also needs improvement because public interest organisations and affected communities should be allowed to bring environmental claims without restrictive standing rules, especially where environmental harm affects groups rather than individuals alone. At an institutional level, environmental disputes would be handled more effectively through a strengthened Environment and Land Court with clear enforcement powers. Courts should be able to issue binding compliance orders and require restoration of damaged environments where harm has already occurred.[40]

7.3 Cross Country Legal Lessons

Uganda and the European Court of Human Rights operate in very different institutional settings, but each system exposes a gap in the other's approach to environmental adjudication. In Uganda, the environmental main strength lies in its constitutional structure which gives environmental protection direct legal status, allowing courts to engage with environmental harm without needing to reframe it through other rights. In practice, however, judicial reasoning often remains closely tied to procedural review under environmental impact assessment processes, which can limit deeper engagement with questions of environmental harm versus development benefit. The European Court of Human Rights, by contrast, has developed a more disciplined method of reasoning through the proportionality test under the European Convention on Human Rights. This requires states to justify environmental interference in a structured way. However, because protection is indirectly derived from private and family life, environmental harm must often be translated into individual impact. This makes it more difficult to fully address broader issues such as ecosystem degradation, climate-related harm, or cumulative environmental loss that do not always present as immediate personal injury. Therefore, in practical terms, Uganda could benefit from more structured judicial reasoning when balancing environmental harm against development objectives, particularly in large infrastructure and extractive projects where public interest is often asserted in broad terms. At the same time, the European model could be strengthened by giving greater legal recognition to environmental harm that is collective or long-term in nature, especially where it affects communities rather than identifiable individuals.

8. Conclusion

This comparative analysis shows that courts play an important role in balancing environmental protection with economic development, but they do so in different ways in Uganda and before the European Court of Human Rights. In Uganda, the Constitution especially Article 39 which gives courts a direct and strong legal basis to protect the environment. This allows judges to stop or question development projects that threaten environmental harm. However, in

[40] Twinomugisha (n 4) 244, 258-62.

practice, enforcement is not always consistent. Courts sometimes give significant weight to government claims about national interest and development priorities, and environmental review may focus more on whether procedures like Environmental Impact Assessments were followed rather than on the overall environmental impact of the project. In contrast, the European Court of Human Rights applies a more structured legal test under Article 8 of the European Convention on Human Rights. It requires states to show that environmental interference is justified and that a fair balance has been struck between individual rights and public interest. This approach is more systematic and predictable, but it has a limitation: it mainly protects individuals. Environmental harm that affects ecosystems, biodiversity, or future generations may fall outside its reach unless it can be linked to individual suffering.

In effect, both systems show that economic development is not automatically allowed to override environmental protection. Courts in both contexts require justification before environmental harm is accepted. The difference lies in method and scope rather than principle. A more effective approach would combine the strengths of both systems. Ugandan courts would benefit from clearer and more consistent standards when balancing environmental and economic interests, including clearer use of proportionality, necessity, and precaution. At the same time, the European system could give greater recognition to broader environmental harm that goes beyond individual rights. Ultimately, sustainable development depends on courts treating environmental limits as real legal constraints, not optional considerations. Development should proceed only where it is justified, proportionate, and environmentally responsible.

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