

# The Protection of the Environment in Regional Human Rights Systems Outside of Europe II: The African Human Rights System

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## ABSTRACT

The increasing recognition of environmental protection as a human right, as demonstrated by the United Nations General Assembly's 2022 adoption of the right to a clean, healthy, and sustainable environment, reflects the vital connection between environmental sustainability and the fulfilment of basic human rights. This chapter explores the role of the African human rights system in enforcing environment-related human rights, with particular focus on Article 24 of the African Charter on Human and Peoples' Rights (ACHPR). Despite Africa's minimal contribution to global carbon emissions, the continent suffers disproportionately from the impacts of climate change. However, landmark cases concerning environmental protection have been scarce in Africa's regional human rights system, with national and sub-regional courts taking the lead in adjudicating environmental disputes. This research highlights the challenges and opportunities for African human rights institutions in addressing environmental harm and promoting the right to a healthy environment.

## KEYWORDS

African Charter on Human and Peoples' Rights, environmental protection, human rights in Africa, climate change litigation, right to a healthy environment

## 1. Introduction

In recent years, environmental degradation and climate change have garnered increasing attention globally, particularly within the African context. Despite contributing only approximately 3.9% of the world's carbon emissions,<sup>1</sup> Africa suffers disproportionately from the consequences of environmental degradation, such as droughts, floods, and food insecurity. These environmental impacts affect millions

1 Statista, 2024.

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of people across the continent, causing climate-induced migration<sup>2</sup> and highlighting the urgent need to address environmental protection as a human rights issue. The African Charter on Human and Peoples' Rights (ACHPR), adopted in 1981, enshrines the right to a healthy environment in Article 24. However, the African human rights system has yet to develop significant jurisprudence on this right.

While the UN Human Rights Council's 2021 Resolution 48/13 and the subsequent 2022 UN General Assembly's recognition of the right to a clean, healthy, and sustainable environment marked significant global progress, Africa's regional human rights institutions, such as the African Court on Human and Peoples' Rights (ACtHPR) and the African Commission on Human and Peoples' Rights (ACmHPR), have been slower in addressing environmental rights explicitly. However, national and community courts have led the charge in holding corporations and governments accountable for environmental harm. In this chapter, we will explore the role of the universal and regional human rights systems in environmental protection, examine landmark cases, and analyse the potential of Article 24 of the ACHPR in shaping Africa's environmental future.

## 2. Universal Environmental Rights Instruments

Climate change and its effects contribute to the growing awareness of environmental issues. The connection between environmental protection and human rights has also garnered growing attention in recent years, as environmental challenges have become increasingly urgent, particularly in Africa. According to the Global Climate Risk Index 2021, six of the 10 countries most affected by climate change from 2000 to 2019 were in Africa (Eckstein, Künzel and Schäfer, 2021). Despite contributing minimally to global greenhouse gas emissions, the continent remains highly vulnerable to the effects of climate change<sup>3</sup> and severe environmental impacts, underscoring the critical role of African human rights systems in safeguarding the environment. Extreme environmental degradation, driven by weather events such as floods, droughts, and tropical cyclones, continues to hinder sustainable development across the continent. For instance, Mozambique was the most affected country in 2019, largely due to Cyclones Idai and Kenneth, which resulted in substantial human and economic losses. Similarly, Zimbabwe faced severe devastation from Cyclone Idai in 2019, ranking second in the index. Malawi, which was heavily impacted by flooding, ranked fifth, underscoring the enormous damage caused by climate-related disasters. In this context, the ability of African legal frameworks and human rights mechanisms to address environmental degradation is crucial to ensuring the well-being and dignity of African populations.

<sup>2</sup> Kwanhi, T. et al; 2024, p. 10.

<sup>3</sup> IPCC, 2022.

When discussing the right to a safe, clean, healthy, and sustainable environment, one might assume that it is explicitly enshrined in the Universal Declaration of Human Rights (UDHR).<sup>4</sup> However, no specific article in the UDHR – the milestone document that sets the standard for the universal protection of fundamental human rights – directly addresses this right. Many authors believe that the connection between environmental rights and UDHR provisions is undeniable.<sup>5</sup> Environmental rights can be interpreted as the adaptation and extension of existing human rights and obligations to incorporate the principles of environmental protection. This concept emphasises the intrinsic human rights approach to climate change and the link between environmental health and various articles of the UDHR, underlining the essential role of a healthy environment in realising fundamental human rights.<sup>6</sup> However, this gap in explicit recognition has prompted calls to integrate environmental rights into international law and human rights instruments.

Numerous studies underscore the connection between a healthy environment and the realisation of essential rights, such as the right to life, health, and well-being.<sup>7</sup> Recognising and formalising these connections is essential for advancing comprehensive human rights protections in an increasingly vulnerable ecological landscape. For instance, the right to life (Article 3 of the UDHR) cannot be fully realised without a healthy environment, as environmental degradation can endanger survival by compromising air quality, water availability, and overall health. This right also aligns with Sustainable Development Goal (SDG) 3, which focuses on ensuring healthy lives and promoting well-being for all. Similarly, the right to health and well-being (Article 25) directly relates to environmental factors, as it underscores access to clean air, safe water, and adequate sanitation, all of which are crucial components of SDG 6 (Clean Water and Sanitation) and SDG 3. The right to food, also included in Article 25 of the UDHR, mirrors SDG 2 (Zero Hunger), as agriculture relies on sustainable environmental conditions such as fertile land and clean water – principles tied to SDG 15 (Life on Land). Without healthy ecosystems, the ability to produce sufficient and nutritious food is jeopardised. The state of the environment directly influences people's ability to exercise their right to employment (Article 23, the Right to Work), which is intrinsically linked to SDG 8 (Decent Work and Economic Growth).

Environmental degradation poses a significant threat to livelihoods, particularly in sectors such as agriculture, fishing, and other industries that heavily rely on natural resources. Moreover, Article 21, which guarantees everyone the right to participate in the government of their country, is also at risk if environmental disasters or rising sea levels destabilise nations or lead to the disappearance of territories. Without a stable and safe environment, the rule of law and democratic participation are undermined. This demonstrates that environmental protection is a cornerstone of effective human

4 United Nations, 1948.

5 Akyüz, 2021; Habiba, 2023.

6 Shelton, 2017; Udo, 2020.

7 UN, 2021; IPCC, 2022.

rights implementation. The UDHR's provisions cannot be fully realised without a healthy environment, as human rights and environmental sustainability are deeply interconnected.

Although the UDHR does not explicitly mention the right to a healthy environment, we have demonstrated that its provisions can be interpreted as supporting such a right. Key articles of the UDHR (mentioned above) implicitly encompass elements of environmental protection. However, the lack of explicit recognition in the UDHR highlights the need for more focused international instruments to guide African countries in implementing environmental provisions. One such legally binding treaty is the International Covenant on Economic, Social and Cultural Rights (ICESCR), which elaborates on the rights outlined in the UDHR and is widely ratified globally, including by the vast majority of African countries. Adopted by the United Nations General Assembly (UNGA) on 16 December 1966, through Resolution 2200A (XXI), the ICESCR came into force on 3 January 1976.<sup>8</sup> As of September 2024, the ICESCR has 71 signatories and 172 state parties.<sup>9</sup> This multilateral treaty binds countries to respect and implement economic, social, and cultural rights, thereby significantly expanding on the principles outlined in the UDHR. African states are significant participants in this covenant, with the notable exceptions of Botswana and Mozambique. Newly independent states such as Eritrea (which acceded in 2001) and South Sudan (which acceded in 2024) are also parties, reinforcing the continent's commitment to upholding these critical rights. Among the rights enshrined in the ICESCR are labour rights (Articles 6, 7, and 8), the right to health (Article 12), the right to education (Articles 13 and 14), and the right to an adequate standard of living (Article 11).<sup>10</sup> Crucially, the ICESCR explicitly addresses environmental concerns that are essential for the realisation of these rights. Article 12 highlights the right to 'the enjoyment of the highest attainable standard of physical and mental health', linking environmental protection to human well-being. Specifically, Article 12(2)(b) mandates the 'improvement of all aspects of environmental and industrial hygiene'. This recognition of environmental health as integral to human rights sets a clear legal obligation for state parties to provide and maintain an environment conducive to both physical and mental health.

For African nations that are parties to the ICESCR, this means they are legally bound to ensure environmental sustainability as a prerequisite for the realisation of fundamental human rights. As environmental degradation – through pollution, deforestation, or climate change – threatens the health and livelihoods of millions on the continent, the ICESCR serves as a critical framework for addressing these challenges. By committing to this treaty, African states are expected to take tangible steps to improve environmental hygiene, reduce industrial pollution, and ensure that their citizens live in an environment that supports both health and sustainable development. In this context, the ICESCR plays an essential role in bridging the gap

8 United Nations, 1966.

9 United Nations Treaty Collections, 1966.

10 United Nations, 1966.

between human rights and environmental protection. It offers a more robust and legally binding structure than the UDHR in terms of environmental rights, particularly in Africa, where environmental degradation directly threatens the enjoyment of economic, social, and cultural rights. Thus, the treaty not only strengthens the protection of labour rights, health, and education, but also ensures that these rights are realised within the framework of a sustainable and healthy environment.

### ***2.1. The UN Human Rights Council's Recognition of the Right to a Clean, Healthy, and Sustainable Environment<sup>11</sup>***

All 54 African countries are currently members of the UNGA, positioning them well to engage with and implement the principles advocated by the United Nations Human Rights Council (HRC)<sup>12</sup>. In October 2021, the HRC made a landmark political statement (Resolution 48/13) recognising the right to a clean, healthy, and sustainable environment.<sup>13</sup> This significant move paved the way for a global legal understanding of environmental rights.<sup>14</sup> Despite opposition and abstentions from countries such as India, Russia, China, and Japan, the UNGA overwhelmingly adopted the resolution in July 2022, with 161 votes in favour, demonstrating wide international support. Many African countries, aware of their environmental challenges such as deforestation, pollution, and climate change, endorsed the resolution. For African nations, recognising the right to a healthy environment is not merely a symbolic political act but a moral and legal imperative. Environmental degradation threatens the livelihoods and well-being of millions of people across the continent, where the impact of climate change is particularly severe.

Although the HRC's 2021 resolution is not legally binding, it is an essential step towards the global recognition of the connection between human rights and environmental protection. While the resolution has not been incorporated into any formal international or regional human rights convention, it operates as a powerful form of soft law. Soft law, which encompasses non-binding resolutions, declarations, and guidelines, plays a crucial role in shaping national and international policies, despite lacking the enforceability of formal treaties.<sup>15</sup> Resolutions such as the HRC's recognition of the right to a clean, healthy, and sustainable environment are pivotal in advancing global and regional human rights agendas. Although this resolution lacks the binding power of treaties, it influences states' behaviour, sets norms, and guides policy development. As members of both the UNGA and HRC, African nations are familiar with these developments and often respond positively to them. Such resolutions help shape national environmental policies, align national laws with global environmental standards, and foster cooperation on sustainability.

11 United Nations General Assembly, 2022.

12 Permanent Observer Mission of the African Union to the United Nations, n.d.

13 Limon, 2024.

14 The Office of the High Commissioner for Human Rights, UNEP and UNDP, 2023.

15 Assenza, 2024.

The HRC's recognition reinforces the growing understanding that environmental degradation has direct implications for the enjoyment of fundamental human rights. As key players in global sustainability and climate change discussions, African nations are politically motivated to align their national environmental laws with these international soft law standards. Regional bodies in Africa, such as the African Union (AU) and the ACmHPR, can leverage the HRC resolution to further develop regional commitments to environmental sustainability, adding to existing regional conventions.<sup>16</sup> Moreover, this alignment is further supported by the AU's foundational legal framework, which embeds environmental protection within its institutional mandate.<sup>17</sup> The Constitutive Act of the African Union, the organisation's founding treaty, indirectly acknowledges environmental concerns through key provisions: (1) Article 3 outlines AU objectives that are directly relevant to environmental protection, including sustainable development (j), the promotion of human and peoples' rights (h), and the prevention of diseases linked to environmental harm (n); (2) Article 13(e) tasks the Executive Council with functions such as environmental protection, humanitarian action, and disaster response, while Article 14(d) establishes the Committee on Industry, Science and Technology, Energy, Natural Resources, and Environment, institutionalising environmental governance.

Regional bodies, such as the AU and the ACmHPR, can leverage the HRC's resolution to strengthen regional commitments to environmental sustainability, building upon existing frameworks, including the African Convention on the Conservation of Nature and Natural Resources. By harmonising continental policies (Article 3(l)) and advancing climate-resilient development, Africa can translate soft law standards into binding regional action, ensuring that environmental protection remains central to its human rights and economic advancement agenda.

## ***2.2. The Paris Agreement and the Protection of the Environment in Africa***

When it comes to globally impactful legal frameworks for environmental protection, the Paris Agreement stands as a key reference point.<sup>18</sup> As a groundbreaking international treaty, it plays an essential role in addressing climate change and mitigating its widespread effects. The agreement unites nations around a shared goal of limiting global warming, making it a cornerstone in the fight against climate change and a model for international environmental cooperation. Although it is a global framework and not a specific regional instrument for Africa, it has been ratified by all 54 African

16 In her article "No Longer Hard Law's 'Poor Relative': The Growing Respect for Soft, Non-Binding Legal Instruments in the International Order", Tan Hsien-Li highlights the growing use and influence of soft law in many regimes of international law, including environmental law, using the example of the Asia-Pacific region. See: Hsien-Li, 2025. No Longer Hard Law's 'Poor Relative': The Growing Respect for Soft, Non-Binding Legal Instruments in the International Order. Blog of the European Journal of International Law.

17 African Union, 2000.

18 United Nations Framework Convention on Climate Change, n.d.

countries.<sup>19</sup> This commitment reflects the continent's recognition of the critical need to mitigate and adapt to climate change, as Africa remains one of the regions most vulnerable to its effects. Adopted in 2015 at COP21 in Paris, the agreement aims to limit the global temperature rise to below 2°C, with efforts to cap it at 1.5°C. To achieve these goals, countries must reduce their greenhouse gas emissions by 43% by 2030, with emissions peaking no later than 2025.

Despite Africa contributing minimally to global emissions, the region suffers disproportionately from the impacts of climate change, including extreme weather events, desertification, and rising sea levels. The Paris Agreement provides African nations with a framework to address these challenges, while offering them financial and technical support. African countries have submitted their Nationally Determined Contributions (NDCs), outlining their commitments to both reducing emissions and enhancing resilience to climate change. Through these NDCs, Africa can align its development goals with environmental sustainability, particularly in the agriculture, water management, and renewable energy sectors. The Paris Agreement's financing mechanisms are particularly beneficial for African nations. Developed countries are committed to providing financial assistance to developing nations, with a pledge of at least \$100 billion annually starting from 2025.<sup>20</sup> This financial assistance is critical for African countries to implement both mitigation and adaptation measures, including transitioning to low-carbon technologies and developing climate-resilient infrastructure. The funding also helps combat climate-induced challenges such as droughts, floods, and food insecurity, while simultaneously fostering sustainable industrial growth with minimal emissions. The focus on adaptation is especially vital for Africa, given the continent's heightened vulnerability to the adverse impacts of climate change.

On 29 May 2024, the OECD released its seventh assessment of progress towards the United Nations Framework Convention on Climate Change (UNFCCC), with the goal of mobilising USD 100 billion annually for developing countries.<sup>21</sup> In 2022, developed nations surpassed this target for the first time, mobilising USD 115.9 billion in climate finance. Although this achievement came two years later than initially planned for 2020, it exceeded prior projections made before COP26. Key findings indicate that public climate finance accounted for nearly 80% of the total, with bilateral and multi-lateral contributions from developed countries increasing from USD 38 billion in 2013 to USD 91.6 billion in 2022, demonstrating substantial growth in climate investments. Adaptation finance experienced a notable recovery after a brief decline in 2021, reaching USD 32.4 billion in 2022, tripling the 2016 level, although mitigation continued to dominate, comprising 60% of total finance. Additionally, private finance mobilisation rose by 52%, driven by public climate finance, signalling a growing role for the private sector in advancing climate action, which is essential for achieving long-term goals.

19 USAID, n.d.

20 Munang and Mgendi, 2016.

21 OECD, n.d.

For African countries and other developing nations, surpassing the USD 100 billion target marks a significant milestone in global climate efforts, particularly for those most vulnerable to climate change impacts. This increase in climate finance will enable these nations to implement vital adaptation and mitigation strategies, from building resilient infrastructure to reducing their carbon footprints. This surge in adaptation funding reflects the international community's growing recognition of the urgent need to protect vulnerable regions from climate-related disasters.

While the financial target has been met, according to the OECD, the challenge now lies in ensuring that this funding is used effectively to reduce emissions and build climate resilience in developing nations. The rise in private finance, driven by public sector efforts, highlights the growing importance of public-private partnerships in sustaining climate action. This collaboration will maintain momentum and ensure continued progress in the years to come. For example, the implementation of the Paris Agreement in Africa was strengthened by international partnerships, such as the United States Agency for International Development's (USAID) commitment to supporting African countries in reaching their climate goals.<sup>22</sup>

Although the Paris Agreement is not specifically tailored to Africa, its implementation remains vital for the continent's sustainable development. The agreement establishes a global framework that enables African countries to address their distinct climate challenges while benefiting from international support for mitigation and adaptation strategies, which are essential for building a resilient and sustainable future.<sup>23</sup> Financial and technical assistance under the agreement has enabled African nations to mitigate climate impacts and enhance their resilience. By aligning with global goals, Africa is not only protecting its environment but also advancing human rights and equitable development. African countries continue to periodically update their climate plans, ensuring their relevance in the face of an evolving crisis. This iterative process fosters sustainable development by integrating emerging opportunities for adaptation and mitigation. Thus, the Paris Agreement remains a critical tool for Africa's climate action, safeguarding environmental rights and advancing towards a healthy and sustainable future, even as the landscape of international partnerships evolves.

### ***2.3. The End of an Era and Africa's Path to Self-Reliance***

For decades, USAID has been the cornerstone of American aid to developing nations, addressing poverty, health crises, and climate-related vulnerabilities. Founded in 1961, it played a pivotal role in global humanitarian efforts before its closure in 2025.<sup>24</sup> Its partnerships, such as those with the African Union Commission (AUC), strengthened climate adaptation, institutional capacity, and policy localisation, aligning with the Paris Agreement's goals. Yet, while USAID's departure marks the end of an era,

<sup>22</sup> USAID, n.d.

<sup>23</sup> Adhikari, 2024.

<sup>24</sup> Faguy, 2025.

the author of this chapter believes that it also presents Africa with an opportunity in the form of an urgent imperative: self-reliance is no longer a choice but a necessity.

As African Development Bank (AfDB) President Akinwumi Adesina declared in a recent address, ‘The era of aid or free money is gone.<sup>25</sup> Africa must overhaul its approach toward achieving fast-paced development’ (AfDB, 2025). Speaking at Nigeria’s National Open University, Adesina warned that foreign aid, restrictive global policies, and undervalued natural resources demand a radical shift in strategy. ‘The dismantling of USAID and similar anti-aid measures in Europe means the old development models Africa relied on will no longer work,’ he asserted. ‘Benevolence is not an asset class.’ The author of this chapter shares President Adesina’s vision that Africa must pivot from aid dependency to investment discipline, leveraging its vast resources and intracontinental trade. The African Continental Free Trade Area (AfCFTA) offers a blueprint: ‘Produce local, buy local, trade more locally’, while strategic alliances and value-added industrialisation can unlock sustainable growth. The challenges are undeniable: climate injustice, tariff wars, and systemic undervaluation of Africa’s natural capital. However, as mentioned above, they are also opportunities to ‘chart Africa’s future, not on the benevolence of others, but on self-reliance and smart global positioning.’<sup>26</sup>

Moreover, the closure of USAID calls for a critical reassessment of traditional aid structures, their effectiveness, long-term impacts, and inherent limitations. Rather than lamenting its departure (doing so will bring nothing positive), Africa must seize this moment to leverage its untapped potential: its skilled workforce, diaspora, knowledge, and vast natural resources. The path forward demands strong governance, zero tolerance for corruption, and policies that unapologetically centre African interests in multilateral partnerships, regional cooperation, and climate finance models built on equity, not dependency. This chapter supports the opinion that such a shift presents a transformative opportunity: placing Africa’s climate resilience and development agenda firmly in African hands. By prioritising homegrown solutions backed by strategic alliances and sustainable investment, the continent can move beyond aid-driven stagnation. The goal is clear: a self-determined future in which external support acts as an enabler rather than a lifeline.

#### ***2.4. The Impact of the Rio Conventions on Environmental Protection in Africa***

The loss of biological diversity is another critical global environmental challenge and an urgent issue in Africa.<sup>27</sup> Biodiversity is essential for providing fundamental resources, such as food and water, and delivering crucial ecosystem services, such as climate regulation, pollination, disaster resilience, and nutrient cycling. Recognising these critical functions, the international community established the Convention on Biological Diversity (CBD), a treaty aimed at protecting biodiversity and ensuring

<sup>25</sup> African Development Bank, 2025.

<sup>26</sup> Ibid.

<sup>27</sup> Saliu, Komolafe, Bamidele and Raimi, 2023, pp. 269–294.

sustainable development. All African nations are signatories to the CBD, reflecting the continent's understanding of the importance of biodiversity in supporting economic growth, sustainable development, livelihoods, and overall well-being.<sup>28</sup> Biodiversity is also crucial for Africa's strategic goals, contributing directly to the achievement of both the AU Agenda 2063 and the 2030 Agenda for Sustainable Development. African nations are committed to the CBD's key objectives, including the equitable sharing of benefits derived from the use of genetic resources. This sharing promotes fairness and equity, ensuring that the use and valuation of biological resources benefit all stakeholders, especially those from resource-rich but economically disadvantaged regions.

Since its inception in 1992, the CBD has achieved near-universal membership, with South Sudan being the last African state to join in 2014.<sup>29</sup> The widespread adoption of this convention by African countries is a testament to their collective commitment to conserving biodiversity, using natural resources sustainably, and ensuring the fair distribution of benefits derived from these resources. Like their global counterparts, African countries have incorporated the principles of the CBD into their regional and national legislation, demonstrating their dedication to environmental protection.

The CBD was officially opened for signature at the Rio Earth Summit on 5 June 1992, alongside two other significant environmental treaties: the UNFCCC, which at that time already highlighted the importance of adaptation laws<sup>30</sup> in addressing climate change, and the United Nations Convention to Combat Desertification.<sup>31</sup> These three treaties, collectively known as the Rio Conventions, symbolised a universal initiative to tackle the world's most critical environmental challenges. For African nations, adopting these conventions significantly strengthened their global environmental commitments and bolstered efforts to incorporate solutions for desertification, climate change, and biodiversity protection into national and regional policies. This integration allows African states to address these interconnected issues holistically, ensuring sustainable development while aligning with international frameworks. These treaties not only guide African countries in combating environmental degradation but also facilitate access to global resources and technical support, which are crucial for implementing effective environmental protection strategies to tackle the profound impacts of climate change and global warming across Africa, particularly in sub-Saharan countries where the effects are felt most acutely.<sup>32</sup> These impacts extend to both the environment and the economy, affecting livelihoods, agricultural productivity, and overall development. In response, African nations are actively implementing various strategies and international frameworks to mitigate these negative effects. These strategies aim to reduce vulnerabilities, enhance resilience, and foster sustainable development to ensure that both the natural environment

28 AUDA-NEPAD, 2020.

29 Convention sur la diversité biologique, 1992.

30 Verschuuren, 2022, pp. 14–30.

31 Food and Agriculture Organization, n.d.

32 Adenuga, Mahmoud, Dodo, Albert, Kori and Danlami, 2021, pp. 393–409.

and economic systems can adapt to and withstand the changing climate. In terms of implementation, the AU Development Agency–NEPAD (AUDA–NEPAD) plays a crucial role in advancing the objectives of the CBD across Africa. Various programmes, such as the AFR100 (African Forest Landscape Restoration Initiative), TerrAfrica, and the African Biosafety Network of Expertise (ABNE), are helping member states integrate the principles of biodiversity conservation into broader policies on agriculture, infrastructure, and trade.<sup>33</sup> For instance, initiatives such as the Comprehensive Africa Agriculture Development Programme (CAADP), the Programme for Infrastructure Development in Africa (PIDA), and the AfCFTA are integrating biodiversity protection as a core part of their strategies. These initiatives are driving the transition to sustainable practices by applying nature-based solutions that enhance long-term environmental sustainability. AUDA–NEPAD also works closely with a range of stakeholders, including local communities, the private sector, development partners, and government ministries, to ensure that biodiversity is an integral part of Africa’s development model. This holistic approach promotes biodiversity conservation, ensuring a meaningful contribution to improving livelihoods and promoting sustainability for future generations.

By aligning national policies with the objectives of the CBD and other international frameworks, African countries are making significant strides towards balancing development with environmental conservation. The CBD continues to serve as a vital instrument for ensuring the protection of Africa’s rich biological diversity, with a strong focus on sustainable development and the fair sharing of resources. Through regional programmes, African nations are actively working towards a future in which economic progress and environmental protection go hand in hand.

### 3. Regional Environmental Rights Instruments

#### *3.1. African Union Climate Change and Resilient Development Strategy and Action Plan (2022–2032)*<sup>34</sup>

The AU’s Climate Change and Resilient Development Strategy and Action Plan (2022–2032) outlines a comprehensive roadmap for addressing the continent’s escalating climate vulnerabilities while advancing human rights, environmental sustainability, and economic development. This 10-year strategy aligns with Africa’s broader vision, particularly the AU Agenda 2063, which seeks to build climate-resilient economies and societies. By integrating global frameworks such as the Paris Agreement and the UN Agenda 2030 for Sustainable Development, the strategy demonstrates Africa’s proactive stance in balancing climate change adaptation and mitigation while focusing on social equity and environmental protection.

33 AUDA-NEPAD, 2020.

34 African Union, 2022.

As already mentioned in this chapter, Africa's contributions to pollution are minimal. In 2021, Africa contributed only 3.9% of the world's total CO2 emissions from fossil fuels and industry, the smallest share among all global regions. Over the past two decades, Africa's contribution to global greenhouse gas emissions fluctuated between 3.4% and 3.9%, highlighting its relatively minimal impact compared to other regions.<sup>35</sup> However, the continent is disproportionately vulnerable to the adverse impacts of climate change, including droughts, floods, and extreme weather events.<sup>36</sup> This strategy highlights the significant socio-economic impacts of these changes on food security, water resources, infrastructure, and livelihoods, exacerbating poverty and inequality across the continent. With 105 million internal migrants expected by 2050 due to environmental degradation, the strategy acknowledges that climate change is both a human rights and development issue.

As African countries continue to face these immense challenges, their commitment to international human rights frameworks is critical. By implementing a Climate Change Strategy and Action Plan, African countries are working to ensure environmental protection and safeguard fundamental human rights, such as the right to life, health, and adequate living conditions, as emphasised in various international environmental conventions and frameworks ratified by African states. This strategy highlights the importance of effective governance in coordinating climate action at all levels – national, regional, continental, and international – across key sectors such as agriculture, energy, and water management. According to the AU Climate Change and Resilient Development Strategy and Action Plan,<sup>37</sup> promoting inclusive governance ensures that local communities, including marginalised groups such as women and youth, are actively involved in climate decision-making processes. This participatory approach advocates for coherent climate policies aligned with national socio-economic goals, focusing on strengthening the institutional capacity to monitor and implement these policies regionally.

Key policy measures include promoting renewable energy, improving agricultural productivity through climate-smart practices, and enhancing water management systems. These initiatives aim to foster climate-resilient infrastructure, which is crucial for addressing the continent's climate challenges while safeguarding human rights and promoting sustainable development. The strategy provides a blueprint for creating resilient economies that prioritise environmental protection through enhanced governance, low-carbon development pathways, resource mobilisation, and international cooperation. The focus on human rights, equitable resource use, and international climate commitments underscores Africa's pivotal role in global climate action and environment-related human rights. Regional flagship initiatives, such as the Great Green Wall Initiative<sup>38</sup> and TerrAfrica, demonstrate how nature-based

35 Statista, 2024.

36 United Nations Framework Convention on Climate Change, n.d.

37 African Union, 2022.

38 United Nations Convention to Combat Desertification, n.d.

solutions can address both climate resilience and sustainable development while advancing the implementation of environment-related human rights.

### **3.2. Agenda 2063: The Africa We Want<sup>39</sup>**

The AU Agenda for the continent's sustainable development highlights Africa's focus on the intersection of socio-economic progress, political stability, and environmental resilience. While Agenda 2063 is not specifically a framework for combating climate change or a regional convention on environmental rights, it aligns with international treaties. The agenda underscores Africa's commitment to tackling climate challenges, protecting human rights, and promoting sustainable development. It stresses the importance of integrating environmental protection into national, regional, and continental policies. Moreover, the agenda envisions climate-resilient economies based on sustainable natural resource management, ensuring food security, access to clean water, and renewable energy development. This holistic approach to sustainability promotes nature-based solutions, as exemplified by initiatives such as the Great Green Wall and AFR100, which focus on restoring degraded lands and enhancing biodiversity. These initiatives are critical for protecting environment-related human rights, such as the right to health, clean water, and adequate living conditions.

The agenda further stresses the need for climate action across key sectors, such as agriculture, energy, and water management, and emphasises the importance of institutional capacity-building to ensure that environmental sustainability aligns with broader socio-economic goals, particularly at the regional level. Addressing climate change mitigation and adaptation aligns with global climate strategies and international commitments that are crucial for realising the right to a clean, healthy, and sustainable environment.

### **3.3. Africa Sustainable Development Report 2024<sup>40</sup>**

While Agenda 2063 is the AU's strategic vision for the continent's sustainable development, the SDGs provide a global template, including environmental and human rights priorities, which African nations, as members of the UNGA, are committed to implementing. The AU Agenda 2063 and the SDGs form a coherent and intertwined framework for addressing Africa's environmental challenges and human rights. Both frameworks integrate environment-related human rights, highlighting the responsible management of natural resources and a commitment to climate resilience (p. 15), SDG 13 (Climate Action), and SDG 6 (Clean Water and Sanitation), emphasising environmental protection, which is critical to upholding the human rights to life, health, and adequate living conditions. African countries, being bound by both regional and international frameworks, strive to address environmental degradation as part of their human rights obligations.

39 African Union, 2015.

40 The African Union, African Development Bank, United Nations Development Programme and the United Nations Economic Commission for Africa, 2024.

The 2024 Africa Sustainable Development Report highlights how African countries are progressing in implementing environmental policies. However, the pace is often hindered by external shocks such as economic crises, political instability, and, more significantly, climate change. For instance, African nations continue to face significant challenges in integrating climate adaptation strategies into national development plans, which is essential for both the SDG and Agenda 2063 goals. Nonetheless, countries such as Ethiopia, Kenya, and South Africa have made notable strides in embedding climate resilience into their national policies.

In terms of climate finance, the report notes that Africa receives a small portion of global climate finance, which is far below what is needed to meet its climate action commitments. This is a critical challenge, as approximately USD 2.8 trillion is needed to implement Africa's NDCs by 2030, but only USD 29.5 billion has been mobilised annually as of 2020 (p. 31). Agenda 2063 and the SDGs are closely linked in their pursuit of environmental protection and the safeguarding of human rights. Through their UNGA membership and ratification of international agreements, African nations are bound by global climate action commitments, which play a key role in shaping the global environmental agenda. The Africa Sustainable Development Report 2024 reflects ongoing efforts to align regional goals with global targets, ensuring that Africa's development trajectory remains sustainable while protecting its rich biodiversity and upholding environment-related human rights.

### ***3.4. Kampala Ministerial Declaration on Migration, Environment and Climate Change (KDMECC-AFRICA)<sup>41</sup>***

Another important step in addressing climate change challenges and upholding environment-related human rights in Africa is the signing of the Kampala Ministerial Declaration on Migration, Environment, and Climate Change (KDMECC-AFRICA). Several bilateral agreements and ministerial declarations aim to enhance climate action among African countries. However, the Kampala Declaration stands out as it reflects a clear commitment to developing a coordinated and integrated approach for managing the growing displacement of people caused by climate change. This declaration highlights a unified effort to address the increasing environmental challenges that drive migration and to ensure a more sustainable and collaborative response across the continent. With environmental crises such as droughts, floods, and food insecurity, projections estimate that up to 105 million people will be internal migrants in Africa by 2050, making this declaration crucial for protecting vulnerable populations and ensuring their human rights. The KDMECC-AFRICA has a continental scope, engaging African countries in their collective struggle against climate change. It aligns with their obligations under international agreements such as the Paris Agreement, SDG 13, the CBD, and the ICESCR. These frameworks emphasise the protection of vulnerable populations and the sustainable use of natural resources. By

41 International Organization for Migration, 2023.

signing this declaration, African nations reaffirm their commitment to both human rights and environmental sustainability.

Additionally, the KDMECC-AFRICA highlights the importance of international cooperation in addressing global environmental challenges such as climate-induced migration. The agreement underscores African leadership in developing innovative solutions for managing climate migration while providing a platform for international collaboration. This includes access to global climate finance, such as the Green Climate Fund and partnerships with international organisations. The declaration also emphasises that climate mobility is not solely a domestic issue, but rather requires cross-border collaboration and regional integration. When managed effectively, migration can serve as a strategic adaptation mechanism, and the declaration emphasises the need for host countries to receive adequate support to manage and integrate displaced populations. By recognising the interconnectedness of migration, environmental degradation, and human rights, African countries are positioning themselves to lead in addressing the root causes of displacement and ensuring that sustainable development is achieved across the continent. The Kampala Declaration serves as a reminder that addressing the consequences of climate change, including migration, is essential for safeguarding environment-related human rights and achieving long-term social stability across Africa.

### ***3.5. The African Charter on Human and Peoples' Rights (ACHPR)***

The ACHPR, also known as the Banjul Charter, stands as a cornerstone of the African human rights system.<sup>42</sup> This legal framework emerged from Africa's historical context, particularly its colonial past and the subsequent creation of the Organisation of African Unity (OAU) in 1963.<sup>43</sup> The OAU, established to support anti-colonial movements, played a crucial role in shaping the ACHPR, which was unanimously approved at the OAU's 18th Assembly held in Nairobi, Kenya, in June 1981. Officially coming into force on 21 October 1986, the Charter established the foundation for human rights in Africa, with 21 October designated as "African Human Rights Day".

### ***3.6. The Role of the OAU and Transition to the African Union***

The OAU, established by 32 African governments on 25 May 1963, played a pivotal role in promoting human rights, particularly through its support for the anti-apartheid and anti-colonial movements. Once these missions were accomplished, the OAU gradually shifted its focus to addressing more complex challenges, such as globalisation and regional integration. The organisation began to emphasise the importance of human rights within its broader agenda. By 26 May 2001, the OAU had transitioned into the AU, an expanded entity focused on political unity and addressing contemporary social, economic, and environmental challenges. The AU was officially launched

42 African Union, n.d.b.

43 African Union, n.d.a.

in Durban, South Africa, on 9 July 2002, with its core mandate including human rights and sustainable development.

### **3.7. ACHPR: A Milestone in Africa's Human Rights Framework**

The ACHPR is Africa's primary regional human rights treaty. It outlines a wide spectrum of civil, political, economic, social, and cultural rights for both individuals and peoples. Among the rights enshrined are the rights to life, a healthy environment, liberty, education, and freedom of expression. The ACHPR stands out as a comprehensive document that protects individual rights while emphasising collective rights, such as the right to self-determination and development (Article 22). One particularly notable provision is Article 24, which enshrines the right to a healthy environment, placing a collective responsibility on African states to safeguard the well-being of their populations by protecting the environment. This provision remains especially important today in the context of the fight against climate change and its negative impacts on the continent.

### **3.8. The African Commission and the Court on Human and Peoples' Rights**

The ACHPR has two main monitoring bodies: the ACmHPR and the ACtHPR. Established on 2 November 1987, the ACmHPR is headquartered in Banjul and acts as a quasi-judicial body tasked with protecting and promoting human rights.<sup>44</sup> Although its recommendations are not legally binding, they hold significant moral and political weight, pressuring states to comply with their human rights obligations.

The ACtHPR, on the other hand, has binding authority. Established through a 1998 Protocol to the ACHPR, the Court began its operations after the Protocol came into effect on 25 January 2004.<sup>45</sup> The Court's decisions are enforceable by states that have ratified the Protocol, which has been signed by 34 AU Member States. Notably, eight countries have recognised the Court's jurisdiction to accept complaints from individual citizens and NGOs: Burkina Faso, Malawi, Mali, Ghana, Tunisia, The Gambia, Niger, and Guinea-Bissau.<sup>46</sup> Although four countries have withdrawn their declaration of support for the African Court to hear cases from citizens – Rwanda (2016), Tanzania (2019), Benin (2020), and Côte d'Ivoire (2020) – it is important to mention that the rulings of the Court are binding for all AU Member States, offering an additional layer of protection when national legal mechanisms fall short.<sup>47</sup>

### **3.9. Jurisdiction and Admissibility**

Before hearing cases, the African Court assesses whether the case meets the necessary jurisdictional criteria. These include material jurisdiction, which examines whether the allegations involve violations of rights covered by the African Charter or any other

44 African Commission on Human and Peoples' Rights, n.d.

45 African Court on Human and Peoples' Rights, n.d.

46 Ibid.

47 Adjolahoun and Nantulya, 2024.

applicable human rights instrument. The Court also ensures personal jurisdiction by verifying whether the complainant belongs to a recognised group permitted to submit cases. Furthermore, the Court ensures temporal jurisdiction, determining whether violations have occurred after the state's ratification of the relevant protocol. Finally, territorial jurisdiction considers whether alleged violations occurred within the state's territory.

### ***3.10. Implementation of Environment-Related Human Rights***

A key aspect of the ACHPR is its commitment to environment-related human rights. As articulated in Article 24, the right to a healthy environment is collective, requiring states to take the necessary measures to protect and preserve the environment for their citizens.<sup>48</sup> This aligns with the broader human rights discourse on sustainable development, which is increasingly important given Africa's environmental challenges, including deforestation, climate change, and biodiversity loss. The AU's agenda includes initiatives such as the Great Green Wall and other nature-based solutions to combat desertification, preserve biodiversity, and ensure sustainable development, all of which relate directly to the right to a healthy environment.

### ***3.11. African Human Rights Institutions***

In addition to the Commission and the Court, several other institutions promote human rights and environmental sustainability within the African system. These include the AU Advisory Board on Corruption (AUABC), the African Committee of Experts on the Rights and Welfare of the Child (ACERWC), and the AU Commission on International Law (AUCIL). Collectively, these institutions form an essential part of Africa's broader governance and human rights framework, ensuring that human rights, including environmental rights, are upheld.

Based on the above, the ACHPR and its associated institutions reflect Africa's strong commitment to human rights protection, grounded in regional values and international obligations. The ACmHPR and the ACtHPR together serve as pillars of the continent's human rights framework, ensuring that both individual and collective rights – including the right to a healthy environment – are recognised and upheld. As environmental degradation poses increasingly challenging threats to the continent, the ACHPR's focus on environmental rights is more critical than ever, ensuring that African nations are legally and morally obligated to protect their populations from environmental harm. Through these frameworks, the continent continues to build a future grounded in human dignity, sustainability, and justice.

48 OAU, 1981.

#### 4. Case Studies

Environmental human rights-related cases are gaining increasing recognition on the global stage. This momentum is unlikely to slow, particularly following the UNGA's 2022 adoption of the right to a clean, healthy, and sustainable environment as a fundamental human right. This is supported by the UN HRC Resolution 48/13, which highlights the undeniable impact of environmental degradation on the enjoyment of basic human rights, such as the rights to life, health, and adequate living conditions. With its vast environmental resources, Africa is acutely affected by environmental challenges, positioning the continent at the forefront of addressing them.

Despite the growing global recognition of environmental rights, landmark decisions specifically addressing the right to a healthy environment have yet to emerge from the ACtHPR or the ACmHPR. By contrast, national and sub-regional courts, such as the Court of the Economic Community of West African States (ECOWAS), have proactively adjudicated environmental cases. This gap was already noted in 2003 by Ebeku, Van Der Linde, and Louw, who observed the limited regional jurisprudence on Article 24 of the African Charter, which enshrines the right to a satisfactory environment. More recent studies, such as those by Jegede (2024) and Suedi and Fall (2024), continue to highlight this deficiency. The ongoing absence of significant regional case law points to a disconnect between Africa's pressing environmental challenges and the legal responses available through its regional human rights mechanisms.

In recent years, the rising trend of climate change litigation has mirrored global developments, with an increasing number of lawsuits addressing the environmental impact of corporate activities. According to Setzer and Higham (2021), the number of climate-related cases has more than doubled since 2015. This surge in litigation reflects increasing recognition that environmental harm is inherently linked to human rights violations. Lawsuits against companies for environmental damage are progressively addressing both pollution concerns and their broader impacts on human rights. This shift is pushing corporations to adopt more environmentally conscious practices.

Although the African Court and Commission have received environmental cases, procedural shortcomings and insufficient evidence often hinder their success, particularly those involving Article 24. One example is the *Front for the Liberation of the State of Cabinda v. Republic of Angola* (2013), in which the African Commission dismissed environmental rights claims due to insufficient evidence. Similarly, the *AFTRADE-MOP and Global Welfare Association v. Cameroon* (2013) case was struck out due to a lack of diligent prosecution, revealing the procedural challenges that often obstruct environmental litigation in Africa.<sup>49</sup> While African countries heavily rely on their natural resources for development, the author of this chapter believes that courts must strike a balance between these economic interests and the protection of human rights and environmental sustainability. As more litigation cases arise, regional bodies are

49 Open Society Justice Initiative, 2015.

expected to play a more decisive role in safeguarding environmental rights. Article 24 will increasingly come to the forefront of regional judicial decisions, particularly as the influence of climate change activism and the global push for environmental justice grows.

#### **4.1. Landmark Cases Addressing Environmental Rights in Africa**

One of the most significant environmental rights cases in Africa is the *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria (155/96)*.<sup>50</sup> In this case, the ACmHPR found the Federal Republic of Nigeria in violation of several articles of the ACHPR, specifically Articles 2, 4, 14, 16, 18(1), 21, and 24. These violations stemmed from the Nigerian government's involvement, alongside oil companies, in activities that severely damaged the environment, health, and livelihoods of the Ogoni people in Ogoniland. The Commission made several key recommendations to the Nigerian government, including: (1) Halting all attacks on Ogoni communities and ensuring free access for citizens and independent investigators to the affected areas; (2) Conducting thorough investigations into the human rights abuses by security forces, the Nigerian National Petroleum Corporation (NNPC), and related agencies, and prosecuting those involved; (3) Providing adequate compensation to the victims, offering resettlement assistance, and undertaking a comprehensive cleanup of the lands and rivers damaged by oil operations; (4) Ensuring that environmental and social impact assessments are carried out for future oil developments and establishing independent oversight for the safe operation of the petroleum industry; (5) Offering health and environmental risk information to affected communities and providing meaningful access to regulatory and decision-making processes related to oil operations.

Additionally, the Commission urged the Nigerian government to keep it informed of the progress made by various national bodies, including the Federal Ministry of Environment, the Niger Delta Development Commission (NDDC), and the Judicial Commission of Inquiry, which were set up to address human rights violations. This ruling underscored the African Commission's stance on linking environmental protection with human rights, making it a landmark case for environmental justice in Africa.

Another pivotal case in the African human rights landscape is the *Ogiek Indigenous Peoples v. Kenya (Ogiek Case)*, heard by the ACtHPR.<sup>51</sup> This case centred on the Ogiek community's struggle to protect their land rights and cultural heritage in the face of an eviction notice issued by the Kenya Forestry Service, which ordered them to vacate their ancestral lands in the Mau Forest. The Commission argued that the eviction notice overlooked the critical role the Mau Forest played in the survival of the Ogiek people, leading to violations of several articles of the African Charter, including Articles 1, 2, 4, 8, 14, 17(2) and (3), 21, and 22. While Article 24, which pertains to the

50 ACHPR, 2001.

51 ACtHPR, 2012.

right to a healthy environment, was not directly cited in the judgment delivered on 26 May 2017, the case's focus on land rights and environmental protection highlighted its underlying principles. The Ogiek's ability to maintain their cultural practices and way of life was intrinsically linked to their access to a healthy environment, including the preservation of their ancestral lands and natural resources. Consequently, even though Article 24 was not explicitly mentioned, its essence was considered in the Court's decision, making the Ogiek Case a broader affirmation of the right to a healthy environment.

Another landmark case in which the Court specifically mentioned Article 24 is *Ligue Ivoirienne des Droits de l'Homme (Lidho) & Others v Côte d'Ivoire*, in which the ACtHPR addressed the State's failures in protecting its citizens from corporate environmental harm.<sup>52</sup> The facts of the case state that on 19 August 2006, the cargo ship *Probo Koala*, chartered by the multinational company *Trafigura Ltd.*, arrived at the port of Abidjan, Côte d'Ivoire, carrying 528 cubic meters of highly toxic waste. This waste was unloaded and dumped at various locations across Abidjan and its surrounding suburbs, none of which had proper facilities for treating chemical waste.

Following the dumping, the surrounding areas experienced widespread air pollution and an overpowering stench. On the same day, thousands of residents sought medical help, reporting symptoms such as nausea, vomiting, headaches, rashes, and nosebleeds. According to official Ivorian sources, the incident led to the deaths of 17 people due to toxic gas exposure, while hundreds of thousands more were adversely affected. Environmental assessments also confirmed significant contamination in the impacted areas.

The Court's examination revealed several critical failures. In its landmark ruling, the ACtHPR identified violations of five key Charter provisions: (1) Article 4 (right to life) through failure to prevent deaths from toxic exposure; (2) Article 16 (right to health) due to inadequate medical response; (3) Article 24 (right to a healthy environment) by permitting uncontrolled hazardous waste dumping; (4) Article 9(1) (right to information) due to a lack of transparency about risks; (5) Articles 1 & 7 (access to justice).

The Court's remedial orders established important precedents, including: (1) Comprehensive medical rehabilitation programmes; (2) Legislative reforms on hazardous waste management; (3) Strengthened corporate accountability mechanisms; (4) Victim compensation funds.

Significantly, while declining to order a public apology, the judgment emphasised that monetary settlements cannot substitute for proper accountability (paragraph 228). The ruling's broader importance lies in its explicit linkage between environmental protection and human rights obligations under Article 24, which this author believes builds on the Ogiek case's implicit recognition of this connection. In this case, it is clear that the Court intended to highlight the need for states to proactively

52 See *Lidho v. Côte d'Ivoire*, 2023.

regulate corporate actors to prevent environmental harm, rather than merely reacting to disasters after they occur.

As mentioned earlier, the author of this chapter believes that the increasing global awareness raised by civil society efforts, along with the emergence of domestic laws and policies aimed at mitigating climate change, will likely lead to more environmental litigation in the future. The previous case, *Ligue Ivoirienne des Droits de l'Homme (Lidho) & Others v Côte d'Ivoire* provides a good example. The impact of such regional rulings clearly influences domestic justice systems. This assumption is supported by the fact that, at the domestic level, national frameworks such as South Africa's Carbon Tax Act (Act No. 15/2019), Nigeria's Climate Change Act 2021, Kenya's Climate Change Act (Act No. 11/2016), and Uganda's National Climate Change Act 2021 are examples of legislative tools designed to address climate change and protect environmental rights. A notable case in South Africa was brought by the Centre for Environmental Rights against the South African Minister of Environmental Affairs in 2019. The plaintiffs argued that poor air quality in the Highveld Priority Area violated residents' constitutional rights to health and dignity. The High Court ruled in favour of the plaintiffs, finding that the Minister had unreasonably delayed the preparation of necessary air quality regulations. The Court ordered that these regulations be developed within 12 months, focusing on factors such as improved air quality reporting and emission controls.<sup>53</sup>

In Uganda, *Mbabazi and Others v. The Attorney General and National Environmental Management Authority* (2012) also stands out as a landmark decision on environmental rights, in which the Court addressed the government's responsibilities in managing environmental resources to safeguard citizens' rights to a healthy environment.

These cases underscore the growing intersection between environmental protection and human rights in Africa, with courts increasingly ruling that environmental harm can infringe upon fundamental human rights. This recognition is critical as Africa confronts economic development and environmental sustainability challenges, particularly in resource-rich regions.

An example of this is the natural resource-rich nation of Nigeria. According to the International Energy Agency (IEA), Nigeria is home to vast oil reserves.<sup>54</sup> The environmental impact of oil exploitation has led to significant legal battles. While climate-change litigation in Nigeria is still in its infancy (Etemire, 2021), notable progress has been made. In the landmark case *Centre for Oil Pollution Watch (COPW) v. Nigerian National Petroleum Corporation (NNPC)*, the Nigerian Supreme Court established an important precedent for environmental rights in 2021.<sup>55</sup> COPW sued NNPC over an oil spill in Abia State, alleging that NNPC's negligence had led to the contamination of

53 For additional environmental protection cases in South Africa, see: *EarthLife Africa Johannesburg v. Minister of Environmental Affairs*, 2017. For Kenya, the case on the importance of Environmental Impact Assessments is highlighted in *Save Lamu v. National Environmental Management Authority and Amu Power Co Ltd*, 2019.

54 International Energy Agency, n.d.

55 See *Centre for Oil Pollution Watch v. NNPC*, 2018.

local water sources and environmental harm. Initially dismissed by the lower courts due to a lack of standing, the Supreme Court overturned these rulings, affirming that NGOs have the right to sue in the public interest. More significantly, the Court recognised the right to a clean and healthy environment as a fundamental human right under Nigeria's Constitution and the African Charter, specifically under Article 24. It is worth noting that under Article 20 of the 1999 Constitution, updated by the 1st, 2nd, and 3rd Alterations (2010), 4th Alteration (2017), and 5th Alteration (2023), it is stated that the 'State shall protect and improve the environment and safeguard the water, air and land, forest and wildlife of Nigeria'. This decision affirmed the enforceability of the ACHPR within national legal systems, strengthening the link between environmental protection and human rights in Africa.<sup>56</sup>

A similar case addressing environmental rights in Nigeria is *Gbemre v. Shell Petroleum Development Company of Nigeria Ltd. and Others*.<sup>57</sup> In this case, the applicant argued that the gas-flaring activities conducted by Shell, with the endorsement of the Nigerian government, violated the community's rights to life and human dignity, as enshrined in Sections 33 and 34 of the 1999 Nigerian Constitution. Additionally, the claim referenced Articles 4, 16, and 24 of the ACHPR, which had been ratified and domesticated in Nigeria under Cap. A9, Laws of the Federation of Nigeria (2004).

This case specifically challenged the decades-long gas flaring in the Iwherekana Community, arguing that the activity posed severe health and environmental hazards. The Federal High Court of Nigeria ruled in favour of the applicant, finding that gas flaring violated the community's constitutional rights to life, dignity, and a healthy environment. The Court ordered the Nigerian government and Shell to cease gas-flaring operations immediately. Moreover, it urged the strengthening of legislative reforms to prevent future violations and ensure environmental protection in line with human rights principles. This decision marks another landmark, linking environmental degradation with the violation of fundamental human rights in Africa and setting a legal precedent for environmental justice.

In addition to national courts, sub-regional courts such as the ECOWAS Court of Justice have played an important role in enforcing environmental rights. The ECOWAS Court, established under Article 15 of the Revised Treaty of ECOWAS, has addressed cases in which environmental degradation has violated human rights, underscoring the need for collective regional action to address these issues. This court guarantees the promotion and protection of human and peoples' rights in accordance with the African Charter, and ensures that individuals have recourse when their environmental rights are violated.

Overall, while Africa's regional human rights institutions (the African Court and the African Commission) have yet to make substantial landmark rulings on Article 24, national and community courts are increasingly addressing the connection between environmental degradation and human rights. The growing trend of climate change

<sup>56</sup> Federal Republic of Nigeria, 1999.

<sup>57</sup> See *Gbemre v. Shell Petroleum Development Company Nigeria Limited and Others*, 2005.

litigation, particularly against corporations, reflects the realisation that human rights cannot be fully protected without safeguarding the environment. Africa's human rights system will likely play a pivotal role in driving corporate accountability and promoting sustainable development, ensuring that economic growth and human dignity are prioritised across the continent. This evolution in environmental jurisprudence is critical for protecting Africa's natural resources and upholding the human rights of its people.

## 5. Conclusion

The right to a clean and healthy environment has emerged as a critical component of international human rights law, particularly in the context of global climate change. However, Africa's human rights system has not fully exploited its potential to enforce this right. The ACHPR explicitly guarantees the right to a satisfactory environment under Article 24, recognising its interdependence with other fundamental rights, such as life, health, and livelihood.

However, prior to the landmark 2023 decision in *Ligue Ivoirienne des Droits de l'Homme (LIDHO) v. Côte d'Ivoire*, neither the African Court nor the Commission had consistently developed robust jurisprudence linking environmental harm to human rights violations. The LIDHO case marked a turning point, with the Court explicitly addressing state obligations for corporate-driven environmental damage under Article 24. Earlier, the African Commission's ruling in *SERAC and CESR v. Nigeria (155/96)* set a precedent by holding Nigeria accountable for the oil-related devastation in Ogoniland, tying environmental degradation to violations of the Charter. Despite these victories, such cases remain rare at the regional level, with most environmental litigation confined to national or sub-regional courts.

Among the challenges highlighted in this chapter are domestic remedies and the shrinking of jurisdiction. A critical barrier is the exhaustion of domestic remedies, a requirement emphasised by the UN HRC, which continental courts, such as the ACHPR, often cite to declare a complaint inadmissible for non-compliance. This procedural hurdle often delays or blocks access to regional justice. Compounding this issue, some African states (mentioned in this chapter) are increasingly withdrawing their jurisdictional declarations under Article 34(6) of the African Court Protocol, limiting citizens' and civil society's ability to hold governments accountable for environmental rights violations. This trend risks weakening the enforcement of ratified regional and international instruments, including those related to environmental protection.

Nevertheless, states face competing pressures. African governments must demonstrate a commitment to environmental governance and human rights to attract foreign investment and maintain credibility with international financial institutions. Even as some withdraw from the Court's jurisdiction, they may still implement environmental rights domestically to avoid scrutiny from monitoring bodies, such as

the African Commission's State Reporting Mechanism and the African Peer Review Mechanism. These voluntary and self-regulatory tools ensure that African States and the AU adopt relevant policy and legislative frameworks to promote and protect the right to a clean and healthy environment and to prevent violations and enforce accountability for infringements or sanctions from global partners.

While the UN's recognition of the right to a healthy environment is a milestone, Africa's regional system must accelerate its jurisprudence to match this progress. National and sub-regional courts – such as the ECOWAS Court's rulings on extractive industry abuses – have led the charge in holding polluters accountable. However, the African Court and Commission must clarify state obligations under Article 24, streamline admissibility rules, and confront jurisdictional withdrawals to ensure that environmental rights are fully entrenched in Africa's human rights framework. Only then can the continent bridge the gap between its vast legal potential and the urgent realities of climate injustice.

To conclude this chapter, it is essential to note that on 2 May 2025, the ACtHPR received a request for an advisory opinion regarding the obligations of states in the context of climate change. This landmark development, coupled with growing civil society pressure, could counterbalance the trend of jurisdictional withdrawals by compelling states to align their domestic climate policies with their regional obligations. As Suedi (2025) noted, the ACtHPR has sufficient time to carefully study its forthcoming advisory opinions from the International Court of Justice (ICJ) and the Inter-American Court of Human Rights (IACtHR) and position its own opinion accordingly, marking a historic milestone in the pursuit of climate justice.

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