Contributions of the African Human Rights System to International Climate Law

Abadir M. Ibrahim[†] and Angela Hefti[††]

Climate litigation is proliferating around the world, yet the potential of the African human and peoples' rights system to address climate change remains underexplored. In this Article, we argue that the African system has the potential to be a normative leader in climate law due to its recognition of collective rights, *actiones populares*, and the justiciability of the right to a healthy environment. The system's explicit recognition of the right to a healthy environment in several regional treaties, along with jurisprudence that articulates corresponding state obligations to respect, protect, fulfill, and promote this right, can be extended to protect a right to a healthy climate. Further, we argue that the African system is close to recognizing the rights of nature based on a holistic interpretation of African human rights instruments. This argument is grounded in the regional system's commitment to protecting—and its openness to be influenced by—Indigenous and traditional normative systems. It is also informed by a duty of environmental care ingrained in many African normative systems such as regional and sub-regional treaties, Indigenous and traditional legal systems, and the vast majority of African constitutions. We demonstrate that the African system is at the forefront of developing human rights norms relevant to climate change and has the potential to significantly contribute to the evolution of international climate law beyond the continent.

† Dr. Abadir M. Ibrahim is the Associate Director of the Human Rights Program at Harvard Law School. His research focuses on African approaches to human rights which studies, among other things, the iteration and practice of human rights as impacted by Africa's (post)colonial, religious and traditional heritages.

†† Dr. Angela Hefti, LL.M. (Yale) is an Assistant Professor at Florida International University, College of Law and a former Visiting Fellow at Harvard Law School's Human Rights Program. Her research focuses on climate change and human rights law through the lens of feminist theory.

We are grateful to Gerald Neuman and Idriss Fofana for their insightful feedback and review. We are also thankful to the Fall 2024 Comparative Law students of William P. Alford and Idriss Fofana and to HRP's Program Coordinator, Kai Mueller, for their valuable input.

INTRODUCTION

Climate change litigation has significantly increased over the last decade. The number of climate change-related cases has more than doubled globally in this period.[1] Recognizing that climate change poses serious human rights challenges,[2] international human rights bodies throughout the world have started formulating legal responses. For example, the United Nations treaty bodies have begun to recognize the link between climate change and violations of a wide range of human rights.[3] On July 23, 2025, the International Court of Justice delivered a groundbreaking Advisory Opinion ("ICJ Climate Advisory Opinion") describing climate change as an "urgent and existential threat."[4] Earlier that same month, the Inter-American Court of Human Rights ("Inter-American Court") clarified states' international human rights obligations vis-à-vis climate change.[5] These recent development follow other significant rulings. In 2024, the International Tribunal of the Law of the Sea handed down guidance on states' obligations to protect the marine environment.[6] The European Court of Human Rights ("European Court") too issued a historic judgment in 2024, finding that climate inaction can constitute a violation of human rights.[7]

---

1. United Nations Environment Programme, *Global Climate Litigation Report: 2023 Status Review*, 12–16 (UNEP, 2023). *See generally* Joana Setzer & Catherine Higham, *Global Trends in Climate Change Litigation: 2024 Snapshot, Grantham Rsch. Inst. on Climate Change & Env't*, LONDON SCH. ECON. & POL. SCI. 10 (2024).

2. *See, e.g.*, United Nations Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary General, Report of the Office of the United Nations High Commissioner for Human Rights on the relationship between climate change and human rights, A/HRC/10/61, ¶¶ 16–68 (Jan. 15, 2009).

3. Human Rights Committee, Comm. No. 3624/2019, U.N. Doc. CCPR/C/135/D/3624/ 2019 (July 21, 2022) [hereinafter *Billy et al.*]; *Ioane Teitiota v. New Zealand*, CCPR/C/127/D/2728/2016 (Jan 7, 2020); CRC, Comm. No. 107/2019, U.N. Doc. CRC/C/88/D/107/2019 (Sep. 22, 2021) [hereinafter *Sacchi*].

4. Obligations of States in Respect of Climate Change, Advisory Opinion, 2025 I.C.J. No. 187, ¶ 73 (July 23) [hereinafter ICJ Climate Advisory Opinion].

5. Climate Emergency and Human Rights, Advisory Opinion OC-32/25, Inter-Am. Ct. H.R. (May 29, 2025).

6. *See generally* Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, Case No. 31, Request for Advisory Opinion of May. 21, 2024, ITLOS Rep.

7. *See* Angela Hefti, *Intersectionality and Standing in Climate-Related Human Rights Cases*, HARV. L. SCH. HUM. RTS. PROGRAM: REFLECTIONS (Apr. 22, 2024), https://hrp.law.harvard.edu/intersectionality-standing-and-climate-change-and-human-rights/ [https://perma.cc/ZFA2-TT4W]; *Verein KlimaSeniorinnen v. Switzerland*, App. No. 53600/20, Judgment, Eur. Ct. H.R. (Apr. 9, 2024) [hereinafter *KlimaSeniorinnen*]. The case is currently before the Committee

In all of this, the African system[8] of human rights is uniquely positioned to respond to the climate crisis and the resulting human rights harms in Africa and beyond.[9] While the region's potential remains underexplored, the tide may be turning. The African Commission on Human and Peoples' Rights ("African Commission," or "the Commission") has been taking steps to make clear its stance on African states' obligations in relation to the human rights impacts of climate change.[10] In addition, the Pan African Lawyers Union, in collaboration with several nongovernmental organizations ("NGOs"), recently submitted an advisory opinion request on climate change to the African Court on Human and Peoples Rights ("African Court").[11] Concurrently, a number of climate cases are working their way through local courts.[12] Consequently, both the Commission and the Court—as well as subregional tribunals with human rights mandates[13]—will be afforded opportunities to articulate and advance novel contributions to the development of climate change law.

Our goal in this Article is to (1) highlight the existing normative contributions of the broader African system, (2) discuss their potential to impact climate litigation, and (3) explore the regional system's capacity to spur normative developments relevant to climate law both globally and locally. Given that Africa contributes 4% of the world's annual cumulative greenhouse gas emissions,[14] African and other climate actors ought to prioritize interventions with global or extraterritorial implications. In this Article, we will focus on ways

---

of Ministers, charged with overseeing implementation of the European Court's judgments. For the first decision on the case, see Committee of Ministers, Decisions, CM/Del/Dec(2025)1521/H46-30, 1521st meeting, 4–6 March 2025 (DH), *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland*, App. No. 53600/20, ¶ 3 (Mar. 6, 2025), available at https://rm.coe.int/0900001680b476d8 [https://perma.cc/UGK7-5BUG].

8. We are defining the African "system" to include the norms, procedures, and institutions established under the broad framework of the African Union, including subregional economic communities, involved in developing, interpreting, or enforcing human rights norms.

9. Intergovernmental Panel on Climate Change, CLIMATE CHANGE 2007: IMPACTS, ADAPTATION AND VULNERABILITY, CONTRIBUTION OF WORKING GROUP II TO THE FOURTH ASSESSMENT REPORT OF THE IPCC 47, 414, 435, 791–92 (2007) [hereinafter IPCC Working Group II]; World Meteorological Organization, State of the Climate in Africa 2019, WMO-No. 1253 (2020) p. 26.

10. Zero Draft in relation to the Study on the Impact of the Climate Change on Human and Peoples' Rights in Africa, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], ¶ 144–91 (May 23, 2023) [hereinafter Zero Draft].

11. Maria Antonia Tigre & Susan Ann Samuel, *Africa's Advisory Opinion Request: Taking Climate Justice to the Continent's Highest Court*, SABIN CTR. FOR CLIMATE CHANGE L.: CLIMATE L. BLOG (May 7, 2025) https://blogs.law.columbia.edu/climatechange/2025/05/07/africas-advisory-opinion-request-taking-climate-justice-to-the-continents-highest-court [https://perma.cc/9Y9A-RNPV].

12. Sam Adelman, *Climate Change Litigation in Africa: A Multi-Level Perspective, in* CLIMATE CHANGE LITIGATION: GLOBAL PERSPECTIVES 217, 282–86 (Ivano Alogna, Christine Bakker and Jean-Pierre Gauci eds., 2021).

13. Note that out of the eight regional economic communities recognized by the African Union, the East African Community ("EAC"), the Economic Community of West African States ("ECOWAS"), and the Southern Africa Development Community ("SADC") interpret and enforce human rights standards sufficiently enough to be considered part of the human rights system together with their tribunals. Thus, this Article's references to the African system should be understood to include subregional judicial bodies. *See* Solomon T. Ebobrah, *Human Rights Developments in African Sub-regional Economic Communities During 2009*, 10 AFR. HUM. RTS. L.J. 233, 234, *passim* (2010).

14. Al Jazeera, *How much does Africa contribute to global carbon emissions?* (Sept. 4, 2023), https://www.aljazeera.com/news/2023/9/4/how-much-does-africa-contribute-to-global-carbon-emissions [https://perma.cc/2A5D-9XLY].

in which the regional system can assume normative leadership[15] in the development of global environmental and climate norms. Considering that African Union political organs have not developed a treaty framework on climate change, this Article focuses on how regional and sub-regional African human rights bodies can apply pre-existing norms in ways that can address novel climate change challenges.

To this end, while maintaining a positivist baseline, we will draw from an intellectual tradition often described as an "original nations" or a "Fourth World" approach to international law. As a result, we will adopt an intentional openness: first, to look beyond "civilizational" hierarchies baked into international law,[16] and second, to expand the participants, sources, histories, and horizons of international law, particularly in the context of human rights.[17] Rather than offering a critique of the international legal system, captured in the African human rights literature by the notion of contextualization,[18] we hope to answer the call of many human rights scholars for the reimagination of the global human rights system through processes of "cross-cultural dialogue,"[19] "inter-civilizational norm making,"[20] "inclusive universality,"[21] or "vernacularization in reverse."[22] By centering African and non-state normative constructs, our aim is to contribute to what Makau Mutua refers to as "the construction of a truly global human rights corpus."[23]

This Article proceeds in five parts. In Part I, we provide a brief overview of international climate law, establishing a baseline against which we can measure African contributions to this developing area of law. In Part II, we will shed light on the African system's recognition of collective rights and standing rules, which offer positive benchmarks for international climate protection. In Part III, we will zoom in on one of the regional system's normative contributions: the right to a healthy environment, which is explicitly recognized in the African Charter on Human and Peoples' Rights ("African Charter," or "Banjul

15. Obiora C Okafor & Godwin EK Dzah, *The African Human Rights System as 'Norm Leader': Three Case Studies*, 21 AFR. HUM. RTS. L.J. 669, 690–93 (2021).

16. *See* Robert J. Miller & Olivia Stitz, *The International Law of Colonialism in East Africa: Germany, England, and the Doctrine of Discovery*, 32 DUKE J. COMP. & INT'L L. 1, 52–55 (2021).

17. *See, e.g.*, Amar Bhatia, *The South of the North: Building on Critical Approaches to International Law with Lessons from the Fourth World*, 14 OR. REV. INT'L L. 131, 172–73 (2012).

18. *See* Frans Viljoen, INTERNATIONAL HUMAN RIGHTS LAW IN AFRICA 283–84 (2d ed. 2012). *See generally Smart Human Rights Integration, in* FRAGMENTATION AND INTEGRATION IN HUMAN RIGHTS LAW: USERS' PERSPECTIVES, 181–82 (Eva Brems & Saïla Ouald-Chaib eds., 2018). They also discuss how contextualization can take place from a historical, economic, ideological, political and cultural—as well as from regional and domestic—points of view. *Id.* at 179–86.

19. Abdullahi Ahmed An-Na'im ed., *Human Rights in Cross Cultural Perspectives*, *passim*, 4 (1995).

20. *See* James Thou Gathii, *A Critical Appraisal of the International Legal Tradition of Taslim Olawale Elias,* 21 LEIDEN J. INT'L L., 317, 319 (2008).

21. Eva Brems, HUMAN RIGHTS: UNIVERSALITY AND DIVERSITY 308 (2001).

22. Daniel Huizenga, *The Right to Say No to Imposed Development: Human Rights Vernacularization in Reverse in South Africa*, 13 J. HUM. RTS PRAC. 205, 211 (2022).

23. Makau Mutua, HUMAN RIGHTS: A POLITICAL AND CULTURAL CRITIQUE 74 (2002). *See also* FEDERICO LENZERINI, *General Conclusions*, *in* THE CULTURALIZATION OF HUMAN RIGHTS LAW, 246 (Federico Lenzerini ed., 2014) (noting that "universality of human rights is a goal . . . [that] may only be achieved through a pluralistic process of cultural integration . . . ").

Charter"),[24] and its supplemental protocols. Here, we will shift from pre-existing to novel contributions, to explore how state obligations that emanate from the right to a healthy environment—the duty to respect, protect, promote and fulfill the environment—apply directly in the context of climate change. In Part IV, we argue that the regional system explicitly recognizes the rights of nature, or at least has sufficient legal basis to do so, by relying on the implications of its pre-existing normative achievements and on its recognition of Indigenous and traditional normative systems. Finally, in Part V, we demonstrate that this conclusion is supported by state practice, and we contend that a Pan-African normative consensus on the rights of nature predates and is reaffirmed by modern African states.

I. THE STATUS QUO IN A DYNAMIC FIELD

International climate law is an evolving field that addresses harms caused by slow-onset climate change effects, such as droughts and desertification, and rapid-onset events like hurricanes, storms, and flooding.[25] In addition to ongoing rounds of treaty negotiations on climate change, recent advisory opinions and decisions by regional human rights courts are actively shaping the contours of this emerging body of law.

The most significant treaties on climate change are the 1992 United Nations Framework Convention on Climate Change ("UNFCCC") and the 2015 Paris Convention.[26] The UNFCCC aims to stabilize "greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system."[27] The Paris Agreement sets safe limits for these emissions "to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels . . . ."[28] The Paris Agreement's bottom-up approach requires states to submit nationally determined contributions ("NDCs") that "reflect [their] highest possible ambition" to minimize GHG emissions.[29] While the Paris Agreement represents a first step in the right direction towards imposing binding obligations on individual states to mitigate and adapt to climate change, significant challenges remain. For example, the Paris Agreement's temperature goals have mostly been seen as constituting *collective aspirations* because the NDCs, which are meant to translate greenhouse gas reduction commitments to

24. The African Charter is the region's most recent foundational human rights treaty and came into force in 1986. OAU Doc. CAB/LEG/67/3 rev. 5 (1982), entered into force Oct. 21, 1986.

25. *See* ICJ Climate Advisory Opinion, *supra* note 4, ¶ 376.

26. ICJ Climate Advisory Opinion, *supra* note 4, ¶ 121; Climate Emergency and Human Rights, *supra* note 5; Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law, *supra* note 6.

27. United Nations Framework Convention on Climate Change art. 2, May 9, 1992, 1771 U.N.T.S. 107.

28. Paris Agreement to the United Nations Framework Convention on Climate Change, art. 2.1, *opened for signature* Dec. 12, 2015, T.I.A.S. No. 16-1104 (entered into force Nov. 2016).

29. Paris Agreement, *supra* note 28, at art. 4(3); Lavanya Rajamani & Jacqueline Peel, *International Environmental Law: Changing Context, Emerging Trends, and Expanding Frontiers*, *in* THE OXFORD HANDBOOK OF INTERNATIONAL ENVIRONMENTAL LAW 3, 31 (Lavanya Rajamani & Jacqueline Peel eds., 2d ed. 2021).

country-specific commitments, are iterated in ways that are neither substantively binding nor enforceable.[30]

Whereas such normative and institutional features have rendered climate law mostly nonjusticiable, the ICJ advisory opinion shifted this status quo by holding that states have *binding* treaty and customary law obligations to protect the climate from greenhouse gas emissions [31] and by requiring reparations where failure to do so causes harm.[32] Beyond these determinations, the ICJ's interpretation of numerous treaties as applicable to climate change, along with its finding that climate obligations possess an *erga omnes* character,[33] has opened up new avenues for climate litigation. Nevertheless, as years of further domestic and international litigation will be necessary to determine the precise impact of the ICJ decision, one hopes that the next progressive leap in international climate law come sooner through agreement directly negotiated and adopted by states.

In the interim, human rights—which the ICJ Climate Advisory Opinion reaffirmed as shaping climate obligations[34]—will play a significant role in the pursuit of climate justice. Human rights law benefits from comparatively well-developed treaties, established jurisprudence, and human rights bodies that can hold states accountable for human rights violations and issue binding judgments. Consequently, human rights-based climate litigation strategies have emerged as a vital pathway for holding states accountable for climate inaction and inadequate action.[35] Notably, neither the UNFCCC nor the Paris Agreement directly address the devastating impacts of climate change on human rights, such as the right to water, health, property, housing, life, and the environment.[36] As a result, this means that human rights actors have an inherent interest in addressing climate-related harm that directly affect individuals, fostering greater alignment between the climate and human rights fields.

Some of the alliance's initiatives have begun to bear fruit. The European Court unequivocally linked climate change and human rights in its landmark climate judgment, *Verein KlimaSeniorinnen v. Switzerland* ("*KlimaSeniorinnen*"). In *KlimaSeniorinnen*, elderly women sued the Swiss government for its failure to mitigate climate change, specifically, its insufficient reduction of greenhouse gas emissions.[37] In the absence of an explicit recognition of the right to a healthy environment under the European Convention on Human Rights,[38] the claimants relied on the right to private and family life as well as the right to life to argue that they, as elderly women, were particularly at

30. *See, e.g.*, Sebastian Oberthür & Ralph Bodle, *Legal Form and Nature of the Paris Outcome*, 6 CLIMATE L. 40, 42, 48–51 (2016).

31. ICJ Climate Advisory Opinion, *supra* note 4, ¶¶ 224, 315, 427.

32. ICJ Climate Advisory Opinion, *supra* note 4, ¶¶ 449–54.

33. *See generally* ICJ Climate Advisory Opinion, *supra* note 4, ¶¶ 174–270, 316–404, 439–43.

34. ICJ Climate Advisory Opinion, *supra* note 4, ¶¶ 404, 386.

35. Annalisa Savaresi & Juan Auz, *Climate Change Litigation and Human Rights: Pushing the Boundaries*, 9 CLIMATE L. 244, 246–49 (2019).

36. *See* Lavanya Rajamani, *Human Rights in the Climate Change Regime: From Rio to Paris and Beyond*, *in* THE HUMAN RIGHT TO A HEALTHY ENVIRONMENT 236, 238 (John H. Knox & Ramin Pejan eds., 2018).

37. *KlimaSeniorinnen*, ¶¶10-20.

38. *Id.* ¶¶ 445, 478–88, 546.

risk of climate-induced heatwaves.[39] The European Court ruled in favor of the claimants, holding that Switzerland was under an obligation to reduce greenhouse emissions.[40] The Committee of Ministers, which monitors compliance with the judgments of the European Court, is currently overseeing the implementation of the *KlimaSeniorinnen* case. While the Swiss government initially rejected the ruling,[41] the government is actively participating in the enforcement process before the Committee.[42]

Furthermore, the ruling itself follows a cautious strategy relying on the European Court's well-established environmental jurisprudence[43] and adopting an anthropocentric view that centers on human beings rather than addressing climate change harms specifically.[44] Indeed, in line with its individualistic focus, the European Court emphasized individual, as opposed to collective, rights.[45] In doing so, the European Court reaffirmed that *actiones populares* are not permitted and upheld stringent standing requirements.[46]

Even as the current human rights-based climate change framework has advanced the discourse on climate change, it has predominantly relied on civil and political rights, which do not explicitly protect environmental rights.[47] This limitation is evident in recent jurisprudence. For example, the U.N. Human Rights Committee found no violation of the right to life in two climate-related cases. First, in *Teitiota v. New Zealand*, the Committee rejected the right to life claim of an asylum seeker in New Zealand who claimed he feared for his life due to sea level rise as an inhabitant of a low-lying island.[48] The Committee, however, found that he was not yet at real risk of irreparable harm.[49] Second, in *Billy v. Australia*, the claimant sought protection from sea level rise, arguing that it destroyed his property and livelihood. Although the Committee found violations of the claimant's right to privacy, family and home life, as well as his right to culture,[50] the Committee nonetheless rejected his right to life claim.

39. *KlimaSeniorinnen*, ¶¶ 316–336.

40. *Id.* ¶ 548.

41. The Swiss government stated that the European Court had "exceeded the limits of permissible legal development and disregarded Switzerland's democratic decision-making processes." Pierre Emmanuel Ngendakumana, *Swiss Parliament Spurns European Climate Ruling*, POLITICO EUROPE (June 12, 2024) https://www.politico.eu/article/swiss-parliament-european-court-human-rights-votes-reject-european-climate-ruling [https://perma.cc/SJ2Y-VQZ7].

42. For the government's first submission on the case, see Arrêt Verein KlimaSeniorinnen Schweiz et autres c. Suisse du 9 avril 2024 (Grande Chambre), Bilan d'Action, 3 (Oct. 4, 2024) https://rm.coe.int/0900001680b1ddd9 [https://perma.cc/58YV-7ZWS].

43. *See* Ole W. Pedersen, *Disruption, Special Climate Considerations, and Striking the Balance*, 119 AM. J. INT'L L. 129, 132 (2025).

44. Natalia Kobylarz, *Balancing Its Way Out of Strong Anthropocentrism: Integration of 'Ecological Minimum Standards' in the European Court of Human Rights' 'Fair Balance' Review*, 34 J. HUM. RTS. & ENV'T 16, 13, 18 (2022).

45. *See KlimaSeniorinnen*, ¶ 486.

46. *Id.* ¶ 596.

47. *See, e.g.*, the European Court of Human Rights ("ECtHR")'s three climate cases: *KlimaSeniorinnen,* App. No. 53600/20; *Duarte Agostinho v. Portugal and 32 Other States*, App. No. 39371/20, Judgment, Eur. Ct. H.R., (Apr. 9, 2024); *Carême v. France*, App. No. 7189/21, Judgment, Eur. Ct. H.R., (Apr. 9, 2024). *See* Kobylarz, *supra* note 44, at 34.

48. *See Ioane Teitiota v. New Zealand*, ¶¶ 2.1-2.10.

49. *Id.*

50. *Billy et al.*, *supra* note 3, ¶¶ 8.6–12.

These examples are acute reminders of the ways in which international law fails climate refugees who face irreparable harm should they return to their places of origin.[51]

The Inter-American and African systems offer the greatest potential for a tailored and possibly eco-centric approach to climate change litigation. These systems offer opportunities to address the human impacts of climate change from broader and more collective perspectives than an individual-based approach.[52] The ICJ Climate Advisory Opinion, while significant in explicitly recognizing the right to a "clean, healthy and sustainable environment,"[53] does not offer as robust an elucidation of environmental rights.[54]

The Inter-American and African systems also offer a more capacious approach for engaging with the rights of nature. Rights of nature, while long present in Indigenous traditions, and while in the early stages of being recognized in domestic jurisdictions, have yet to gain traction in international legal discourse.[55] For example, the few success stories—granting legal personhood to the Whanganui River in New Zealand,[56] and to nature itself in Ecuador[57] and Uganda,[58]—are rare and confined to domestic law.

II. AFRICAN CONTRIBUTIONS TO THE *LEGE LATA*

African contributions to international climate law have the potential to further advance the development of legal norms and principles on climate change. In the evolving climate law landscape, African approaches can help shape global discussions, especially considering their distinct ability to respond to climate change violations. The African system itself is positioned to make novel contributions via the Advisory Opinion Request pending before the African Court[59] and the Commission's recent call for input on its "Zero Draft"

---

51. *See* Bonnie Docherty & Tyler Giannini, *Confronting a Rising Tide: A Proposal for a Convention on Climate Change Refugees*, 33 HARV. ENV'T L. REV. 349, 350 (2009); Randall S. Abate & Chhaya Bhardwaj, *Enhancing Protection of "Climate Refugees" in Destination Hubs: A Comparative Analysis of Legal Mechanisms and Governance Challenges in the United States and India*, 37 HARV. HUM. RTS. J. 293, 295–300 (2024).

52. *See* Environment and Human Rights, Advisory Opinion 23/17, Inter-Am. Ct. H.R. (ser. A) No. 23, ¶¶ 43–44, 62–63 (Nov. 15, 2017).

53. ICJ Climate Advisory Opinion, *supra* note 4, ¶ 393.

54. *See, e.g.*, Declaration of Judge Tladi, ICJ Climate Advisory Opinion, ¶¶ 24–29 and Separate Opinion of Judge Bhandari, ICJ Climate Advisory Opinion, ¶ 9 (pointing out the decision's equivocality as to whether the right to a clean, healthy and sustainable environment is a standalone right or one that is a function of its utility to protect other rights, such as the right to life, and favoring the former interpretation).

55. *See infra* Section IV.A (discussing some of the Indigenous systems); *see also infra* note 211 and accompanying text (outlining the relevant jurisprudence of the Inter-American Court). Note that, although the Inter-American Court has accepted the rights of nature in principle, the legal and procedural implications of such recognition have not yet been tested.

56. Te Awa Tupua (Whanganui River Claims Settlement) Act 2017 (N.Z.). *See also* Te Urewera Act 2014 (N.Z.) (granting legal personhood to a former national park).

57. Constitución de la República del Ecuador [Constitution of the Republic of Ecuador] Oct. 20, 2008, arts. 71–74 (Ecuador).

58. *See infra* text accompanying notes 250–51.

59. Request for Advisory Opinion by the Pan African Lawyers Union (PALU) on the

on climate change and human rights.[60] As we will show, the African system's recognition of *actiones populares*, collective rights, the right to a healthy environment, and aspects of the rights of nature, makes it uniquely positioned to address climate change through human rights law. We thus begin by examining the contours and jurisprudential evolution of collective rights within the African human rights system.

A. Collective Rights

Collective rights—rights held by groups of individuals independent of, and sometimes in addition to, the rights of individual members[61]—have a long and rich history. But their incorporation into international law has been rather limited, especially in the post-war period, which saw the flourishing of individual rights norms under the U.N. human rights system.[62] The notion of collective rights was initially built into treaties that sought to protect religious minorities in the second part of the 19th Century and later incorporated in the minorities regime of the League of Nations.[63] Collective rights also hold a prominent place in the U.N. Charter, and to some extent, the Universal Declaration of Human Rights ("UDHR"), both of which affirm the principles of self-determination of peoples.[64] However, despite the visible yet limited recognition of collective rights—most notably the right to self-determination in the two covenants—and despite the sustained efforts of African and other Global South nations, the development of collective rights seemed to stagnate under the U.N. system.[65] The adoption of the Banjul Charter in 1981 represented a milestone in the internationalization, elaboration, and expansion of collective rights.

By explicitly recognizing collective rights, the African system is particularly suited to tackling issues that not only target individuals but also implicate the rights of many peoples, such as climate change-induced extreme heat and flooding. The African system's response is to protect collective rights, including the right to exist, the right to self-determination, the right to dispose of

---

Obligations of States with Respect to the Climate Change Crisis, Afr. Ct. H.P.R. (2025) (request submitted under art. 4 of the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights and Rule 82(1) of the Rules of Court).

60. Zero Draft, *supra* note 10, ¶¶ 144–191.

61. *E.g.*, Viljoen, *supra* note 18, at 219–23; *Kevin Mgwanga Gunme et al. v. Cameroon*, No. 266/03, Afr. Comm'n H.P.R., ¶ 176 (2009).

62. *See, e.g.*, Ian Brownlie, *The Rights of Peoples in Modern International Law*, 9 BULL. AUSTL. SOC'Y LEGAL PHIL. 104, 107–13 (1985) (tracing collective rights starting from the 1776 American Declaration of Independence and a 1790 decree of the French Constituent Assembly to the Banjul Charter).

63. *Id*. at 105, 107–10; Louis B. Sohn, *The New International Law: Protection of the Rights of Individuals Rather Than States*, 32 AM. U. L. REV. 1, 5, 48–49 (1982).

64. *See* G.A. Res. 217(III), Universal Declaration of Human Rights (Dec. 10, 1948), pmbl., ¶¶ 5, 10; U.N. Charter pmbl., ¶¶ 1, 10, art. 1, ¶ 2, arts. 55, 73(b), 76(b) (While new to international law, the right of peoples was a familiar notion contained in the American and French Declarations, with the former most notably starting with a claim about the necessity of exercising the right to self-determination). *See* Brownlie, *supra* note 62, at 107; THE DECLARATION OF INDEPENDENCE paras. 1–2 (U.S. 1776).

65. For a summary of the global advocacy for the right to self-determination by African and Asian countries, see Idriss Paul-Armand Fofana, *Afro-Asian Jurists and the Quest to Modernise the International Protection of Foreign-Owned Property, 1955–1975*, 23 J. HIST. INT'L L. 80, 97–107 (2021).

wealth and natural resources, the right to economic, social and cultural development, and the right to a satisfactory environment.[66] In contrast, individualistically-oriented systems, such as the European human rights system, are limited to responding to individualized harms.[67] Accordingly, the African system's collective paradigm allows it to better respond to the widespread and group-based nature of climate change as a human rights challenge.

Collective rights in the African human and people's rights system are held by peoples.[68] As the African Commission observed in *Endorois v. Kenya*, "the African Charter is an innovative and unique human rights document compared to other regional human rights instruments, in placing special emphasis on the rights of 'peoples.'"[69] The term "peoples," which is seen as an integral part of Africa's diversity,[70] has been interpreted to denote "a common historical tradition, racial or ethnic identity, cultural homogeneity, linguistic unity, religious and ideological affinities, territorial connection, and a common economic life or other bonds, identities and affinities they collectively enjoy."[71] Although some of the Commission's earlier decisions show an openness to applying the concept of "peoples" to entire populations of the country—a reading that may have particular salience in climate litigation [72]—its jurisprudence has generally only recognized specific sub-state groups as peoples, including the "people of Darfur," the "Southern Cameroonians,"[73] and Indigenous communities like the Endorois.[74] Furthermore, the Commission has emphasized "the linkages between peoples, their land, and culture," a conclusion that is

66. *See* African Charter on Human and Peoples' Rights, arts. 20–22, 24, June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (entered into force Oct. 21, 1986); *see* Lasane Koné, *Climate Change and Human Rights in the Democratic Republic of the Congo: REDD + and the Protection of the Rights of Indigenous Peoples*, *in* CLIMATE CHANGE JUSTICE AND HUMAN RIGHTS: AN AFRICAN PERSPECTIVE 207, 225 (Ademola Oluborode Jegede & Adejonwo Oluwatoyin eds., 2022).

67. Helen Keller & Corina Heri, *The Future is Now: Climate Cases Before the ECtHR*, 40 NORDIC J. HUM. RTS. 1, 4, 11 (2022).

68. As the Commission noted, "the notion of 'peoples' is closely related to collective rights." *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya*, Communication no. 276/2003, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], ¶ 149 (2009). *See Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Appl. No. 155/96, ¶ 68 (May 27, 2002) [hereinafter *Ogoni*].

69. *Centre for Minority Rights Dev. v. Kenya*, ¶ 149.

70. *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan*, Communications nos. 279/2003–296/2005, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], ¶ 220 (2009).

71. *Centre for Minority Rights Dev. v. Kenya*, ¶ 251.

72. Viljoen, *supra* note 18, at 221–23.

73. *Sudan Human Rights Organisation & Centre on Housing Rights and Evictions (COHRE) v. Sudan*, Communication. nos. 279/2003–296/2005 (2009), African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], ¶¶ 222–23 (2009); *Gunme et al. v. Cameroon*, ¶ 178, 201–03.

74. *Centre for Minority Rights Dev. v. Kenya*, ¶¶ 79, 151; *See* United Nations Declaration on the Rights of Indigenous Peoples, 41st Ordinary Session, Advisory Opinion, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], ¶ 9–13 (2007) [hereinafter Advisory Opinion on UNDRIP]; Report of the African Commission's Working Group of Experts on Indigenous Populations/Communities, 28th Ordinary Session, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.] (2005) [hereinafter Working Group Report on Indigenous Populations/Communities].

reinforced by the African Court itself.[75]

The right to property is one of the more crucial and jurisprudentially well-developed collective rights within the African system, serving as a key mechanism for protecting Indigenous peoples' lands from climate-related land loss.[76] In *Endorois,* the African Commission underlined that the collective right to property requires "a much higher threshold" and a "more stringent" public interest test than that applied to individual property rights.[77] Although it did not explicitly engage with the more stringent proportionality standards suggested in *Endorois*, the African Court later affirmed the existence of a people's right to property in the *Ogiek v. Kenya* judgment.[78] The *Ogiek* case concerned the eviction of the Ogiek hunter-gatherer community from Kenya's Mau forests, on which they relied for their livelihoods.[79]

Taking inspiration from the Ogiek community's normative system and the U.N. Declaration on the Rights of Indigenous Peoples, the African Court modified what it referred to as the "classical conception" of the right to property in a way that could preclude the possibility of the permanent alienation of Ogiek land through sale. It reasoned that, because such alienation of property would not have been possible under Ogiek law prior to the introduction of colonial land regimes, contemporary law should be interpreted in a way that approximates precolonial norms.[80] At the same time, the Court also left space for the modern state to limit usufructuary rights, provided such limitations are consistent with human rights and, potentially, environmental standards.[81] Based on the strong collective conception of the right to property in the African system, along with the recognition of Indigenous and other peoples as rightsholders, one could begin to articulate legal arguments linking climate-related land loss and Indigenous

75. *African Commission on Human and Peoples Rights v. The Republic of Kenya*, No. 006/212, Decision, African Court on Human and Peoples' Rights [Afr. Ct. H.P.R.], ¶ 109 (May 6, 2017).

76. *See* Koné, *supra* note 66, at 225; *Centre for Minority Rights Dev. v. Kenya*, ¶¶ 172–73, 186–87, 212.

77. *Id*. Although the Commission has not decided a case in which it has to balance between the collective indigenous right to property and subsequently but legally acquired individual right to property over the same land, its Batwa decision anticipates that such a conflict could be resolved with the restitution of indigenous title. *See* Minority Rights Group International and Environnement Ressources Naturelles et Developpement (on behalf of the *Batwa of Kahuzi-Biega National Park, DRC) v. Democratic Republic of Congo,* Comm. No. 588/15, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], ¶¶ 157 (2022).

78. *African Commission on Human and Peoples Rights v. The Republic of Kenya*, ¶¶ 123, 130, 164, 167–68. The religious and property rights here are different from an individual right to property that is exercised alone or in association or community with others since the collective right to religion or property in *Endorois* and *Ogiek* are communally exercised "peoples'" rights that cannot be explained as individual rights.

79. *African Commission on Human and Peoples Rights v. The Republic of Kenya*, ¶¶ 3–4, 6.

80. *Id.* ¶¶ 8, 124, 126–28, 140–41 (however, in addition to the fact the recontextualized definition of the right to property does not end in becoming determinative of its finding of a violation, the Court expresses some hesitation by noting a "greater emphasis" on *usus* and *fructus* and proceeds "without fully excluding" *abusus*, *id*.,¶ 127); *see also Centre for Minority Rights Dev. v. Kenya*, ¶¶ 88, 90; George Mukundi Wachira, *Vindicating Indigenous Peoples' Land Rights in Kenya*, LL.D. Dissertation, University of Pretoria 57–65 (2008) (noting that, although normative systems that had components of individual land holding existed in precolonial Kenya, communal holdings were more common and current land ownership norms were introduced by colonial authorities).

81. *African Commission on Human and Peoples Rights v. The Republic of Kenya*, ¶¶ 127–29.

property rights. In allowing for 'collective rights' capable of responding to widespread climate change crises, the African Court also broadens the nature of who can be vindicated on the basis of those rights.

B. Actiones Populares

One of the African system's key contributions is its explicit recognition of *actiones populares*—claims brought on behalf of the general public without requiring the claimants to be direct victims.[82] By contrast, the European Court does not allow *actiones populares*[83] and has even restricted individuals' access in climate cases.[84] These limitations have, in some instances, prevented the recognition of climate-related claims.[85] For example, the U.N. Human Rights Committee has explicitly held that "no individual can in the abstract, by way of an *actio popularis*, challenge a law [or] practice,"[86] and has ruled out the justiciability of Indigenous peoples' right to self-determination under the first Optional Protocol.[87] The Human Rights Council's 1503 procedure, which originates from the pro-rights campaigns of the U.N.'s Africa Group,[88] comes closest to the African system by allowing complaints by "any person or group of persons … including non-governmental organizations."[89]

Under Rule 115 (1) of the African Commission, "any natural or legal person"[90] may submit an application to the African Commission, even if they do not "know or have any relationship with the victim."[91] This enables individuals and even NGOs to submit claims on behalf of others. Indeed, NGOs can act as representatives for victims, represent other NGOs, or even initiate

82. Viljoen, *supra* note 18, at 305*; see* Ademola Oluborode Jegede, *Shifting Lens: The Protection of Environment and Human Rights under the African Charter on Human and Peoples' Rights*, 23 S. AFR. J. ENV'T L. & POL'Y 23, 33 (2015); Yusra Suedi & Marie Fall, *Climate Change Litigation Before the African Human Rights System: Prospects & Pitfalls*, 16 J. HUM. RTS. PRAC**.** 146, 150 (2024). Justine Bendel and Yusra Suedi, *Public Interest Litigation in International Law* 57 (1st ed. 2023).

83. *Burden v. the United Kingdom [GC]*, App. No. 13378/05, ¶ 33 (Apr. 29, 2008); *see* Angela Hefti, *Intersectional Victims as Agents of Change in International Human Rights-Based Climate Litigation*, 13 TRANSNAT'L ENV'T L. 610, 620–21 (2024).

84. In *KlimaSeniorinnen*, an NGO was granted standing. However, the European Court limits victim status for individuals, requiring a "high intensity of exposure" and "[a] pressing need [for] to ensure the applicant's individual protection." *Verein KlimaSeniorinnen v. Switzerland,* App. No. 53600/20, ¶¶ 487, 521. (Apr. 9, 2024).

85. *See id.* ¶¶ 527–35.

86. *Shirin Aumeeruddy-Cziffra and 19 other Mauritian women v. Mauritius*, Communication No. 35/1978, U.N. Doc. CCPR/C/OP/1, ¶ 9.2. (1984).

87. For the Human Rights Committee's well-established jurisprudence, see Roy v. Australia, Communication No. 3585/2019, U.N. Doc. CCPR/C/137/D/3585/2019, ¶ 7.2 (2023); *see Chief Bernard Ominayak and the Lubicon Lake Band v. Canada*, Communication No. 167/1984, U.N. Doc. CCPR/C/38/D/167/1984, ¶ 13.3 (1990).

88. M. E. Tardu, *United Nations Response to Gross Violations of Human Rights: The 1503 Procedure*, 20 SANTA CLARA L. REV. 559, 560, 583 (1980).

89. Human Rights Council, Institution-building of the United Nations Human Rights Council, Res. 5/1, A/HRC/RES/5/1 (Jun. 18, 2007) ¶ 87 (d).

90. African Commission on Human and Peoples' Rights, Rules of Procedure of the African Commission on Human and Peoples' Rights, 2020, art. 115(1). *See also* Suedi & Fall, *supra* note 82, at 150–51.

91. *Article 19 v. The State of Eritrea*, Communication No. 275/ 2003, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], ¶ 65 (May 30, 2007).

communications in their own name. [92] NGOs are the primary vessel through which claims on behalf of the general public are brought before the Commission.[93] NGOs may also submit *actiones populares* before the African Court, though doing so is more procedurally complex as they must hold observer status before the Commission and the respondent state must have accepted the jurisdiction of the Court.[94]

The recognition of *actiones populares* offers an important, albeit still human-centric,[95] avenue for claimants seeking to vindicate climate-related human rights harms. While the strict European standing requirements are designed to avoid overburdening courts, *actiones populares* in the African system serves an entirely different purpose: to protect actual victims from retaliation and to ensure access to justice for victims who may have died, cannot reveal their identities safely, or lack the social or economic means to access international legal mechanisms.[96] Climate change is one of the widespread human rights violations that *actiones populares* ideally address. In climate contexts, *actiones populares* lowers structural barriers for large groups as well as those in destitute or otherwise at-risk situations to have their claims heard.

In the context of climate litigation in Africa, which remains largely unchartered and often demands significant scientific and technical expertise, *actiones populares* can play a crucial role in providing equitable access to justice. Marginalized and historically disadvantaged groups who are disproportionately affected by climate change[97] frequently face financial and logistical challenges in suing states for inadequate climate action.[98] Against this backdrop, the support of NGOs is essential: they provide not only material support, but also the legal

92. Sabelo Gumedze, *Bringing Communications before the African Commission on Human and Peoples' Rights*, 3 AFR. HUM. RTS. L.J., 118, 121 (2003).

93. *See, e.g.*, *African Commission on Human and Peoples Rights v. The Republic of Kenya*, No. 006/212, Decision, African Court on Human and Peoples' Rights [Afr. Ct. H.P.R.], ¶ 109 (May 6, 2017).

94. Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, arts. 5(3), 34(6), June 10, 1998, OAU Doc. OAU/LEG/EXP/AFCHPR/PROT (III) (entered into force Jan. 25, 2004). *See* Suedi & Fall, *supra* note 82, at 151 (submitting that the African Court allows for claims brought on behalf of the general public).

95. Actiones populares require an identifiable public interest tied to specific victims. Sonja Kahl, *The Legal Standing in Environmental Litigation before Regional International Courts in Africa and Latin America*, 20 OPOLE STUD. ADMIN. L. 63, 70 (2022).

96. *Article 19 v. The State of Eritrea*, *supra* note 91. Frans Viljoen, *Communications under the African Charter: Procedure and Admissibility*, *in* THE AFRICAN CHARTER ON HUMAN AND PEOPLES' RIGHTS: THE SYSTEM IN PRACTICE 1986–2006, 76, 104 (Malcolm Evans & Rachel Murray eds., 2d ed. 2008).

97. Such as Indigenous peoples, women, and children. *See* CLIMATE CHANGE JUSTICE AND HUMAN RIGHTS: AN AFRICAN PERSPECTIVE (Ademola Oluborode Jegede & Oluwatoyin Adejonwo eds., 2022), 3. *See* Oluwatoyin Adejonwo & Olubunmi Afinowi, *Human Rights Approach to Climate Justice in Africa: Experiences from other Jurisdictions*, *in* CLIMATE CHANGE JUSTICE AND HUMAN RIGHTS: AN AFRICAN PERSPECTIVE 35, 55 (Ademola Oluborode Jegede & Oluwatoyin Adejonwo eds., 2022); Suedi & Fall, *supra* note 82, at 147.

98. *See* ECOWAS Court of Justice, Judgment No° ECW /CCJ/JUD /16/14, ¶ 61 (10 June 2014) ("[T]o ease access to Justice on Human Rights issues by the most vulnerable individuals and by impoverished communities, which, most of time, do not have means to lodge a complaint by themselves, in particular when the opposite party is a very powerful entity."). This is interesting in comparison the ECtHR's *KlimaSeniorinnen* case, where it granted access to justice to an NGO to ensure access to justice.

acumen necessary to navigate the complex procedural terrain.[99] Likewise, Indigenous peoples in African and other legally plural societies may lack the technical capacity to navigate formal legal frameworks or the inclination towards formal legalism needed to effectively engage with state-based legal frameworks.[100] NGOs are often better situated to operate within both domestic and regional levels, absorb prohibitive litigation costs, and strategically advance rights-based claims. Taken together, *actiones populares* are "wisely allowed under the African Charter."[101]

III. THE RIGHT TO A HEALTHY CLIMATE

Article 24 of the African Charter recognizes the right to "a generally satisfactory environment," often referred to as the right to a healthy environment.[102] This recognition is significant not only because it is enshrined in a binding treaty, but also because it is reaffirmed across multiple regional and sub-regional treaties.[103] Such recognition can shape human rights-based climate advocacy and litigation by enabling policymakers, advocates, and litigants to base climate claims directly on environmental rights, without needing to route them through derivative rights such as life or health.[104] While the right to a healthy environment appears in most African constitutions,[105] its diffusion from the African Charter into domestic jurisprudence can yield positive outcomes for climate protection even in states whose constitutions do not explicitly recognize such a right.[106]

---

99. Pedi Obani, *Climate Litigation in South Africa and Nigeria: Legal Opportunities and Gender Perspectives*, *in* CLIMATE LITIGATION AND JUSTICE IN AFRICA 219, 303 (Uzuazo Etemire, Kim Bouwer, Tracy-Lynn Field & Ademola Oluborode Jegede eds., 2024).

100. Françoise Hampson, Claudia Martin & Frans Viljoen, *Inaccessible Apexes: Comparing Access to Regional Human Rights Courts and Commissions in Europe, the Americas, and Africa*, 16 INT'L J. CONST. L., 161, 164 (2018).

101. *Ogoni*, ¶ 49; *see* Viljoen, *supra* note 96, at 104.

102. We will use the terms right to a "healthy" instead of a "satisfactory" environment since the latter is more widely used and has gained traction in the African system, which uses both terms. *E.g.*, *Ogoni,* Appl. No. 155/96, ¶ 52; *African Commission on Human and Peoples Rights v. The Republic of Kenya*, No. 006/212, ¶ 199; *Minority Rights Group International and Environnement Ressources Naturelles et Developpement (on behalf of the Batwa of Kahuzi-Biega National Park, DRC) v. Democratic Republic of Congo*, Comm. No. 588/15, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], ¶¶ 157 (2022), ¶¶ 210, 211.

103. The Inter-American system too, while having to fashion the right through its jurisprudence, provides a treaty basis for the right to a healthy environment in the Protocol of San Salvador. The ECtHR, on the contrary, does not recognize the right to a healthy environment despite the best efforts of advocates and litigators. *See* IACtHR, Advisory Opinion requested by the Republic of Colombia, Human Rights and the Environment, OC-23/17, Series A No 23, ¶ 59 (15 Nov. 2017); Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, O.A.S. Treaty Series No. 69 (1988), OEA/Ser.L.V/II.82 doc.6 rev.1 at 67 (1992) Art. 11; ECtHR, *Kyrtatos v. Greece*, appl. no. 41666/98, ¶ 52 (22 May 2003); *see* Corina Heri, *Justice in the Liminal: The Council of Europe and the Right to a Healthy Environment*, 73 INT. COMP. LAW Q. 319, 320 (2024).

104. *See, e.g.*, Suedi & Fall *supra* note 82, at 147.

105. *See* Christof Heyns & Waruguru Kaguongo, *Constitutional Human Rights Law in Africa*, 22 S. AFR. J. ON HUM. RTS. 673, 706–08 (2006).

106. *See, e.g.*, *Gbemre v. Shell Petroleum Dev. Co. Nig. Ltd. and Others*, Federal High Court of Nigeria, Benin Judicial Division, suit FHC/B/CS/53/05 at 30–31 (14 Nov. 2005) (holding that the provisions of a statute are null and void for contravening, inter alia, Art. 24 of the African Charter); *Export*

Beyond the African Charter, the African system's commitment to environmental rights is further reflected in its specialized treaty regimes on women's and children's rights. For instance, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the "Maputo Protocol") explicitly guarantees the right to a "healthy and sustainable environment" for African women,[107] making it the most progressive regional women's rights treaty regarding environmental protection. By contrast, neither its European nor Inter-American counterparts—the Istanbul Convention and the Belém do Pará Convention—even mention environmental issues.[108] The inclusion of the right to a healthy environment, or aspects of it, in these specialized treaties creates meaningful openings for claimants to bring claims that are both normatively grounded and procedurally viable.

The African system's multi-treaty baseline recognition of the right to a healthy environment provides a legal hook for deriving an accompanying right to a healthy climate. The right to a healthy *environment* has traditionally been applied in localized contexts, such as the destruction of Indigenous peoples' environment, the toxic pollution of rivers, and industrial activities. But from this entrenched jurisprudence,[109] one can extrapolate a right to a healthy *climate* more broadly.[110] Extending this right to the climate context, as was recently done by the Inter-American Court,[111] would broaden African states' duties *visa-à-vis* transboundary and global atmospheric harms linked to climate change.

Bridging environmental and climate concerns is within the ambit of the system's "implied rights" doctrine,[112] and it was anticipated by the Kampala Convention on internally displaced persons. The African Commission, following its practice of "progressive interpretation,"[113] articulated its implied rights doctrine in *Ogoni*, where it reinforced protections for Charter-based rights to

---

Processing Zone Auth. et al. v. Nat'l Env't Mgmt. Auth. et al., (KLR) KESC 75 (Judgment, 6 December 2024) ¶¶ 105, 135, 153–55 (using the *Ogoni* and *Ogiek* decisions in interpreting Kenyan law on restitution for the violation of environmental rights).

107. OAU Doc. CAB/LEG/66.6 (2000), art. 18; *see id*., arts. 16 and 24. *See also* the African Charter on the Rights and Welfare of the Child (the "African Children's Charter"), OAU Doc. CAB/LEG/24.9/49 (1990) arts. 11 (2) (g) and 14 (2) (h).

108. *See* Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence, May 11, 2011, C.E.T.S. No. 210; *see* Inter-American Convention on the Prevention, Punishment, and Eradication of Violence Against Women, June 9, 1994, 33 I.L.M. 1534 (1994).

109. While over a dozen environment-related cases have been decided by the regional and subregional bodies, some of which are discussed in this section, this jurisprudence is captured most notably in *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Appl. No. 155/96, ¶¶ 51–52 (May 27, 2002).

110. Perhaps the only example recognizing the right to a healthy environment in the *climate* context is *Held v. Montana*, which was affirmed in December 2024 by the Montana Supreme Court. *Held v. Montana*, 2024 MT 318, 389 Mont. 456, 512 P.3d 789.

111. *See* Inter-Am. Ct. H.R., *Climate Advisory Opinion, supra* note 5, ¶ 296. *See* ICJ Climate Advisory Opinion, *supra* note 4, ¶¶ 298–304. Note also that in a separate opinion to the ICJ Climate Advisory Opinion, Judge Charlesworth notes that the right to a healthy environment "includes the right to a safe climate" *supra* note 4, ¶ 9.

112. Viljoen, *supra* note 18, at 327–29.

113. *Id*. at 327. Comparable notions of "evolutive interpretation" or a "living instruments" approaches exist in the Inter-American and European systems, see *infra* notes 211–212 and accompanying text.

property, health, and family life by fashioning distinct rights to food and housing, despite those not appearing in the Charter's text.[114] The Commission even suggested deriving the right to privacy from the implied right of housing, suggesting the potential breadth of the implied rights doctrine.[115] The intuitive logic of the Commission's implied rights doctrine—-wherein the implied rights are carefully built around Charter-based rights—seems to have helped build regional consensus around derived rights. Whereas the Commission has been sparing and cautious in the deployment of the doctrine itself, it has applied the implied rights in subsequent decisions and incorporated them into the Commission's state-reporting standards with little pushback from member states.[116]

A similar line of reasoning supports the derivation of an implied right to a healthy climate, as such a right is essential to safeguarding the already-recognized right to a healthy environment. The applicability of implied rights jurisprudence is further reinforced by the Kampala Convention, which is the only treaty in the world to explicitly address climate displacement. The Convention connects environmental and climate concerns by imposing a duty on states to prevent environmental degradation and, when prevention fails, to protect and assist those who are displaced by the resulting environmental and climate disasters.[117] This linkage was recently reaffirmed by the ICJ Climate Advisory Opinion, which characterized harm to the climate system as a form of significant environmental harm. Similarly, the Inter-American Court, in recognizing a standalone right to a healthy climate derived from environmental rights, reasoned that harm to the climate system constitutes a specific type of environmental harm.[118]

The right to a healthy climate follows both from the strength of its nexus with environment rights and from its interdependence with nearly all the rights enshrined in the African Charter, many of which are also jeopardized by climate change. By recognizing both the right to a healthy environment and a healthy climate, it is easier to elucidate their substance through the lens of the state obligations they imply. The Commission and the Court have clarified that states owe a fourfold duty under the right to a healthy environment: to (1) respect, (2) protect, (3) promote, and (4) fulfill this right.[119] As we will show, these duties

---

114. *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Appl. No. 155/96, ¶¶ 60 (May 27, 2002).

115. *Id.* ¶ 61.

116. *See, e.g.*, Manisuli Ssenyonjo, *Analysing the Economic, Social and Cultural Rights Jurisprudence of the African Commission: 30 Years since the Adoption of the African Charter*, 29 NETH. Q. HUM. RTS. 358, 378–79 (2011); Yohannes Eneyew Ayalew, *Untrodden Paths Towards the Right to Privacy in the Digital Era Under African Human Rights Law*, 12 INT'L DATA PRIV. L. 16, 20–24 (2022).

117. African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa, 6 Dec. 2012, arts. 5 (4), 9 (2) (j), 10 (3) ("the Kampala Convention").

118. ICJ, Advisory Opinion on the Obligations of States in Respect of Climate Change ("Climate Advisory Opinion"), ¶ 134; Inter-Am. Ct. H.R., *Advisory Opinion OC-32/25*, (2025) ¶ 295, 297, 299.

119. *Ligue Ivoirienne des droits de l'homme (LIDHO), Mouvement ivoirien des droits humains (MIDH) and Fédération internationale pour les droits humains (FIDH) v. Ivory Coast,* No. 041/2016, African Court on Human and Peoples' Rights [Afr. Ct. H.P.R.], ¶¶ 131, 182 (Sept. 5, 2023); *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Appl. No. 155/96, ¶ 54 (May 27, 2002).

can and should extend to the right to a healthy *climate,* which would require states to account for localized harms and point-source pollution, as well as the transboundary complexities of emissions contributions and the unequal distribution of climate impacts.

A. The Duty to Respect

The first of these duties, the duty to *respect*, prohibits state intervention in the enjoyment of rights and focuses on the state as a potential perpetrator of climate harm.[120] Although this duty may seem less immediately relevant in the African context due to the African continent's minimal contribution to the climate crisis, it nevertheless obligates states to mitigate their emissions.[121] While states can fail in their duty to respect by causing greenhouse gas emissions (through, for example, state-owned or controlled oil and gas or utility companies), they can also do so by providing subsidies and grants to industries that cause substantial emissions or deforestation. The duty to respect also requires states to refrain from persecuting climate defenders, destroying homes, livelihoods, or other resources that support climate resilience or sustainable lifestyles.[122] Similarly, the duty to respect would require states not to impede independent scientific studies and research on climate impacts in the African region.[123]

B. The Duty to Protect

The duty to *protect* becomes particularly salient when the perpetrators of climate harm, or the producers of emissions that cause climate harm, are non-state actors (usually, private corporations) or state actors other than the respondent state. The duty to protect begins with an obligation, to the extent possible, to *prevent* climate-related harm.[124] This duty also requires states to both mitigate and adapt to the realities of climate impacts, and to ensure appropriate remedial measures are taken when rights have been violated. A notable African contribution is the duty of states to protect from future climate risks. Unlike the European system, which relies on the standard of imminence in climate cases,[125]

120. As a result, it has left private violence or such violence that cannot be attributed clearly to a state actor outside the purview of international law until recently. *See* Dorothy Q. Thomas & Michele E. Beasley, *Domestic Violence as a Human Rights Issue*, 58 ALB. L. REV. 1119, 1121 (1995).

121. In the environmental context, see *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR)*, Appl. No. 155/96, ¶¶ 65, 69–70 (state oil and gas company is involved in pollution and the state authorities engage in violence against environmental defenders). The duty to respect refers to "non-interventionist conduct." *Id.* ¶ 52.

122. *Id.* ¶ 45.

123. *Id.* ¶ 53.

124. *Id.* ¶ 52; ECOWAS Court of Justice, *SERAP v. Nigeria*, Judgment No. ECW/CCJ/JUD/18/12 (2012) ¶ 112. *Cf. Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria,* Appl. No. 155/96, ¶ 61 (May 27, 2002); *Ligue Ivorienne*, ¶ 183.

125. This entails "an element of physical [and temporal] proximity of the threat", *KlimaSeniorinnen* ¶¶ 512, 536.

the African system uses the foreseeability standard in non-climate contexts,[126] which suggests that it might also be applied in the climate context. The foreseeability standard has been lauded by scholars as a way to replace the imminence standard, which is seen as overly restrictive.[127] Foreseeability of climate harm in the African context could be deduced from the existence of climate-related harm, as well as from climate science and states' ratifications of international climate agreements. Interestingly, the Economic Community of West African States ("ECOWAS") Court set a high bar for states' due diligence, requiring states to prevent foreseeable harm with "vigilance and diligence."[128] Together, the foreseeability standard and the heightened due diligence obligation are highly relevant for climate litigation, where claimants must link climate effects and human rights violations.

The obligation to protect also requires states to create and enforce climate-related laws.[129] In environmental cases, these laws relate to localized impacts that stem from specific industrial activities. In the climate context, however, regulatory efforts must account for a broader and more diffuse set of contributors, including the state, individuals, and corporations doing business in Africa. In enacting laws, states should include the temperature targets of the Paris Agreement, to which 54 African states have committed.[130] As the ECOWAS Court aptly stated in *SERAP v. Nigeria*, even "advanced" legislation is insufficient if it "remain[s] on paper and [is] not accompanied by additional and concrete measures aimed at preventing the occurrence of damage."[131]

The obligation to protect also requires states to carry out or require climate impact studies and risk assessments for private and public projects and

126. ANGELA HEFTI, CONCEPTUALIZING FEMICIDE AS A HUMAN RIGHTS VIOLATION, STATE RESPONSIBILITY UNDER INTERNATIONAL LAW 248 (2022) (arguing that the African system makes a significant contribution to the prevention of harm in the context of women's rights). The African Commission was satisfied that girls "in the area where [forced marriage] was rampant," were at risk of being harmed. *Equality Now and Ethiopian Women Lawyers Ass'n v. Federal Republic of Ethiopia*, Communication 341/2007, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], ¶ 131 (Feb. 25, 2016).

127. Bell-James & Briana Collins, *Human Rights and Climate Change Litigation: Should Temporal Imminence Form Part of Positive Rights Obligations?*, 13 J. HUM. RTS. & ENV'T 212, 220 (2022). Véronique Boillet & Clémence Demay, L'exigence d'imminence: examen de la jurisprudence de la Cour européenne des droits de l'homme à l'aune de deux affaires climatiques suisses, N° 135 REVUE TRIMESTRIELLE DES DROITS DE L'HOMME 675, 689–91 (2023); *See* Michelle Foster & Jane McAdam, An Analysis of Imminence in International Protection Claims: Teitiota v. New Zealand and Beyond, 69 INT'L & COMP. L.Q. 975 (2020).

128. ECOWAS Court of Justice, *Adou Kouma*, Judgment ¶ 226 (30 Nov. 2023); *see* Zero Draft, *supra* note 60, ¶ 164 (showing that the African system adopts the foreseeability or awareness standard); Hefti, *supra note* 126, at 234.

129. In the context of environmental law, see *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Appl. No. 155/96, ¶ 64 (May 27, 2002).

130. *See Africa NDC Hub*, AFR. DEV. BANK, https://www.afdb.org/en/topics-and-sectors/initiatives-partnerships/africa-ndc-hub [https://perma.cc/PX9Z-BWGE].

131. ECOWAS Court of Justice, *SERAP v. Nigeria*, Judgment No. ECW/CCJ/JUD/18/12 (2012) ¶ 112. *Cf. Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Appl. No. 155/96, ¶ 105 (May 27, 2002).

investments.[132] These assessments must consider the worldwide causes of harms and the conduct of transnational corporations whose activities produce adverse effects in Africa. In addition to recognizing the vulnerabilities of minority and at-risk communities, risk assessments should reflect the intensity and frequency of climate risks over time.[133] The African Court has already acknowledged this precautionary principle in *Ligue Ivorienne v. Ivory Coast,* applying Article 2 of the African Conservation Convention, which prescribes that states should adopt conservation measures "in accordance with scientific principles and with due regard to the best interest of the people."[134] However, Africa's positionality and unique exposure to climate threats further requires the Court to recognize and respond to the unequal impact and ongoing nature of climate risks.

The duty to provide effective remedies ensues once prevention has failed and harm to the rights of individuals and peoples has occurred.[135] In *Ligue Ivorienne,* the African Court held that the state had a duty "to ensure full and effective decontamination once the waste had been dumped."[136] Likewise, the ECOWAS Court stated that legislation aimed at preventing environmental harm should include "effective reparation of the environmental damage,"[137] and that a failure to "seriously and diligently" hold polluters accountable violates states' obligations under the right to a healthy environment.[138] In *Adou*, the ECOWAS Court clarified that impunity for polluters enables harmful corporate activities in violation of Article 24 and other provisions of the Banjul Charter.[139] The duty to remedy climate harm thus requires states to provide reparations, including by recovering damages from corporate actors responsible for emissions or environmental destruction.

Finally, there is also the question of the scope of the duty to provide remedies in relation to human harms that are caused by activities that take place outside the territorial jurisdiction of African states. The ICJ Climate Advisory Opinion is partially instructive in this regard as it reaffirms the rights of states, of that of victims of environmental rights violations, to seek "full reparation[s]" from states that are responsible for extraterritorial climate harms.[140] Similarly, the Inter-American Court in its recent Climate Advisory Opinion accepted that

132. For environmental impact studies, see *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR),* Appl. No. 155/96, ¶ 53. *See* ICJ Climate Advisory Opinion, *supra* note 118, ¶ 298.

133. Angela Hefti, *An Ecofeminist Approach to Climate Risks* 46 MICH. J. INT'L L. 363, 395–97 (2025).

134. *Ligue Ivoirienne des droits de l'homme (LIDHO), Mouvement ivoirien des droits humains (MIDH) and Fédération internationale pour les droits humains (FIDH) v. Ivory Coast,* No. 041/2016, African Court on Human and Peoples' Rights [Afr. Ct. H.P.R.], ¶¶ 15 (Sept. 5, 2023).

135. *See generally* Ademola Oluborode Jegede, *State Duty to 'Protect' Rights and Legal Obstacles to Climate Litigation* in CLIMATE LITIGATION AND JUSTICE IN AFRICA 43, 48–53 (Uzuazo Etemire, Kim Bouwer, Tracy-Lynn Field & Ademola Oluborode Jegede eds., 2024).

136. *LIDHO et al.*, ¶ 183.

137. ECOWAS Court of Justice, *SERAP v. Nigeria*, Judgment No. ECW/CCJ/JUD/18/12 (2012) ¶ 112. *Cf. Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Appl. No. 155/96, ¶ 105 (May 27, 2002).

138. *Id.* ¶ 110; *Adou Kouma*, Judgment, ¶ 223.

139. *Adou Kouma*, Judgment, ¶ 225.

140. ICJ Climate Advisory Opinion*, supra* note 4, ¶¶ 449–54.

States can be held responsible for extraterritorial harm when such harm originates on their territory.[141] The ICJ construes extraterritorial harm broadly, as including states responsible for "all actions or omissions"—including those connected to the exploration of hydrocarbons and extending all the way through to the emission of greenhouse gases—that result in climate impacts.[142] A combined reading of the right of states to seek reparations for transboundary harm along with their obligation to protect and provide redress under human rights law, raises the question of whether African states may have an obligation, rather than a mere prerogative, to seek reparations. Such a reading may be especially pertinent where a state party to the Banjul Charter fails, or is unable to, undertake effective climate measures to avoid or mitigate human rights harms due to a lack of sufficient resources.

C. The Duties to Promote and Fulfill

The duties to *promote* and *fulfill* the right to a healthy climate[143] require states to, more positively, "promote conservation" and improve "environmental and industrial hygiene."[144] This also includes "raising awareness" about climate change through education and research, as well as "building infrastructures" that enhance resilience.[145] For example, specialized treaties like the Maputo Protocol on Women's Rights mandate that states promote research, invest in renewable energy, and develop technologies, all while promoting Indigenous knowledge systems that support a healthy climate.[146] The African Children's Charter also includes the duty to promote formal and community-based environmental and climate education.[147]

Although many of these obligations are associated with the duties to respect and protect, they are also relevant to obligations to promote and fulfill, particularly when situated within states' broader obligations to overcome the legacies of colonialism,[148] establish a rights-based governance system,[149] and proactively foster equality and non-discrimination.[150] The right to access

141. Inter-Am. Ct. H.R., Climate Advisory Opinion*, supra* note 5, ¶ 277.

142. *Id.* ¶¶ 94, 427.

143. *See Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Appl. No. 155/96, ¶ 46 (May 27, 2002).

144. *Id.* ¶ 52.

145. *Id.* ¶ 47.

146. Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, July 11, 2003, OAU Doc. CAB/LEG/66.6 (2003), art. 18 [hereinafter Maputo Protocol].

147. *African Children's Charter*, *supra* note 107, arts. 11(2)(g), 14(2)(h).

148. Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR), Appl. No. 155/96, ¶ 56.

149. *See* art. 9 (1) of the African Charter on Human and Peoples' Rights ("Banjul Charter"); art. 2 (10) of the African Charter on Democracy, Elections and Good Governance (2007) [hereinafter the African Charter on Democracy].

150. The participatory aspects of promoting equality are for example reflected in arts. 2 (11), 3(7), 8 (3), 29 (3), and 31 of the African Charter on Democracy, *supra* note 149; art. 9 of the Maputo Protocol, *supra* note 146; 9 (2) (k) & (l), 10 (2), 11 (2) of the Kampala Convention, *supra* note 117; arts. 4 (j), 18, 21–24, 27 (b), 29 (2) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (2020) (the African Disability Protocol); and arts. 2, 5

environmental and climate information includes a state's obligation to proactively create, keep, organize, maintain, and disclose such information—and, where appropriate, require the same of private actors.[151] While the requirement of "prior informed consent" in the environmental setting was subsequently given a treaty basis,[152] *Ogoni* recognized the state's duty to "provid[e] meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities."[153] In addition, the concept of "consent" from Indigenous communities on decisions affecting them is also well established in African human rights jurisprudence, as further explored below.[154]

IV. RIGHTS OF NATURE: AN UNEXPLORED POTENTIAL

The African system's contributions discussed thus far illustrate a series of gradual but deliberate jurisprudential steps to reach new and progressive conclusions that are based on or implied by the text of the African Charter and case law. The argument for the notion that nature has or ought to have rights irrespective of the rights of human beings involves a similar process.[155] However, deriving rights of nature from a human rights system is not as straightforward as, for instance, adapting a *mutatis mutandis* application of environmental law precepts to climate obligations, as discussed above. Rather, a more deliberate jurisprudential step is required to justify the rights of nature and a concomitant extension of the right to pursue legal remedies on nature's behalf.

Building on the African system's pre-existing achievements in environmental rights, we will show how the rights of nature can be derived from the interaction of the regional system with Indigenous and traditional[156] normative systems that already recognize important aspects of these rights. Following a brief exploration of the rights of nature in African Indigenous and traditional legal systems, we will show that the African system recognizes the 'jurisgenerativity' of these systems, and that such recognition has significant

(3) of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Older Persons (2024) (African Protocol on Rights of Older Persons).

151. Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR), Appl. No. 155/96, ¶ 53; Afr. Comm'n Hum. & Peoples' Rts., Declaration of Principles on Freedom of Expression and Access to Information in Africa, 65th Ordinary Session (2019), Principles 28–30; Afr. Comm'n Hum.& Peoples' Rts., Model Law on Access to Information for Africa (2013), arts. 6–7.

152. African Convention on the Conservation of Nature and Natural Resources (Revised, 2003), art. 22 (2) (f) (the African Conservation Convention); East African Community Protocol on Environment & Natural Resource Management, arts., 4 (2) (f), 17 (b), 34.

153. *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR)*, Appl. No. 155/96, ¶ 53.

154. For a discussion on the definition of consent, see *infra* Section IV.B.

155. *See* Christopher D. Stone, *Should Trees Have Standing—Toward Legal Rights for Natural Objects*, 45 S. CAL. L. REV. 450 (1972).

156. We use "Indigenous and traditional" to account for a broad range of Africa's customary and religious legal systems that may not all be captured by contemporaneous understandings of indigeneity in international human rights law. We use "traditional" despite its challenges absent better alternatives and because it aligns with the lexical practices of regional human rights institutions. *See* Brian Z. Tamanaha, *Understanding Legal Pluralism: Past to Present, Local to Global*, 30 SYD. L. REV. 375, 397–400 (2008).

consequences for the interpretation of the region's human rights treaties. Drawing on both textual and purposive interpretation—as well as on the Banjul Charter's legislative history and subsequent state practice—we will demonstrate that the rights of nature have a firm basis in the African system of rights.

A. Nature in Indigenous and Traditional Normative Systems

A review of the literature on African Indigenous and traditional normative systems quickly reveals that many of these frameworks have long supported environmental protection—likely offering protection against climate change-related harm. A striking feature of the literature is how rarely it appears in legal discourse. This absence limits the legal field's ability to register Indigenous and traditional normative contributions to environmental protection. This stands in stark contrast to extensive ethnographic literature covering the broad contours of this subject, as well as a vibrant, and specialized discourse that falls under the rubric of "African environmental ethics." We focus on the African environmental ethics literature which, besides containing a review of the voluminous ethnographic work, provides an interface with the human rights field through its focus on communitarianism and holism.

Among the most widely discussed contributions to the environmental ethics discourse, Ogungbemi's "ethics of care" or "ethics of nature-relatedness"[157] and Behrens's "relational environmentalism",[158] attempt to build a broad-based understanding of what constitutes an Africa-wide approach to environmentalism. However, much of the literature engages with one, or a smaller sample of, pre-colonial, Indigenous, or traditional normative systems in deriving their iteration of an African ontology and environmental ethic. Some of the more prominent examples of the latter include Ramose's Ubuntu ecology,[159] Tangwa's eco-bio-communitarianism,[160] and Kelbessa's Indigenous environmental ethics.[161] Much of this literature seeks out Indigenous ecological knowledge expressed in mythologies, metaphors, taboos, and rituals.[162] Others, such as Blasu's "African theocology",[163] and to some extent Balcomb's "African

157. Philomena A. Ojomo, *Environmental Ethics: An African Understanding*, 5 AFR. J. ENV'T SCI. & TECH. 572, 574–77 (2011).

158. Kevin Gary Behrens, *An African Relational Environmentalism and Moral Considerability*, 36 ENV'T ETHICS 63, *passim* (2014).

159. MOGOBE B RAMOSE, AFRICAN PHILOSOPHY THROUGH UBUNTU 99, 105–10 (2005) (relying on several Bantu languages, at 35–38, 43–46, 61–62, 97).

160. Godfrey B. Tangwa, *Bioethics: An African Perspective*, 10 BIOETHICS 183, 186, 192 (1996) (relying on the culture of the Nso' people of Cameroon).

161. Workineh Kelbessa, *The Rehabilitation of Indigenous Environmental Ethics in Africa*, 52 DIOGENES 17, 21–26 (2005) (relying on the East African Oromo culture).

162. *See generally* Ademola Kazeem Fayemi, *African Environmental Ethics and the Poverty of Eco-Activism in Nigeria: A Hermeneutico-Reconstructionist Appraisal*, 48 MATATU 363, 375–84 (2016).

163. Ebenezer Yaw Blasu, Christian Higher Education as Holistic Mission and Moral Transformation: An Assessment of Studying Environmental Science at the Presbyterian University College, Ghana and *Ecological Thought of the Sokpoe-Eve for the* Development of an African Theocology Curriculum (2017) (Ph.D. Dissertation, Akrofi-Christaller Institute of Theology). Note also that Blasu acknowledges that he is engaged in an interpretive process, *see id*. at 84–98.

theology of the environment",[164] add to the mix a contextualized layer of Christian or Islamic scriptural hermeneutics and theological ethics.

Despite Africa's vastness and diversity, this literature reveals a striking degree of convergence: namely, that Indigenous and traditional African environmental ethics are characterized by communitarianism and holism. This convergence is, in a sense, also unsurprising since it aligns with the African human rights literature. Under a communitarian reading, the African human rights field converges around the conclusion that African approaches to human rights are distinguishable for being less individualistic than their Western, especially Western-liberal, counterparts.[165] Holism extends communitarian notions of kinship, community, and family not only to "a vast family of which many are dead, few are living, and countless numbers are unborn,"[166] but also to the biosphere, the ecosystem, or the cosmos.[167]

Although both communitarianism and holism play a role in both African human rights and environmental discourses, they are not treated equally across the disciplines. Communitarianism—a perspective that centers the well-being of communities, whose welfare is regarded as a necessary condition for the flourishing of individuals—is well established in the human rights literature, while holism is rarely addressed.[168] The concept of holism is central to African environmental ethics. Going beyond communitarianism's focus on human interconnectedness, holism emphasizes the inseparability and interdependence of different parts of nature of which humans are only a part.

Some scholars also point out that African Indigenous and traditional normative systems, besides viewing humans as a small part on an interconnected natural world, can have a relational understanding in which rights and obligations are created within relationships between members of a community.[169] Thus, these normative systems are not easily captured by non-local vocabularies such as holism, anthropocentrism, or ecocentrism. Behrens, for example, points out how the holistic view of family and community creates

164. A.O. Balcomb, *African Christianity and the Ecological Crisis – Tracing the Contours of a Conundrum*, 118 SCRIPTURA 1 (2019).

165. Makau Wa Mutua, *The Banjul Charter and the African Cultural Fingerprint: An Evaluation of the Language of Duties*, 35 VA. J. INT'L L. 339, 346–59 (1995); Josiah A.M. Cobbah, *African Values and the Human Rights Debate: An African Perspective*, 9 HUM. RTS. Q. 309, 314–25 (1987).

166. A quote from a Nigerian chief who was interviewed by the West African Land Committee of UK's Colonial Office between 1912 and 1915. Sara Berry, *Hegemony on a Shoestring: Indirect Rule and Access to Agricultural Land*, 62 AFR. J. INT'L AFR. INST. 327, 342 (1992).

167. Blasu, *supra* note 163, at 5, 10–11; Balcomb, *supra* note 164, at 51–54, 71–75; Behrens, *supra* note 158, at 65–66, 125–28. For an exploration of a broad spectrum of these views, see Kevin Behrens, African Philosophy, Thought and Practice, and Their Contribution to Environmental Ethics (2021) (Ph.D. Dissertation, University of Johannesburg) at 53–84.

168. Besides the disuse of the notion of holism in the human rights field, it was later used to denote the lack of distinction between three "generations" of rights in the African system. *See* J. Oloka-Onyango, *Beyond the Rhetoric: Reinvigorating the Struggle for Economic and Social Rights in Africa*, 26 CAL. W. INT'L L. J. 1, 6–10 (1995); Vincent O. Orlu Nmehielle, THE AFRICAN HUMAN RIGHTS SYSTEM: ITS LAWS, PRACTICE, AND INSTITUTIONS 123 (2001).

169. Behrens, *supra* note 158, at 66–67, 69, 82; Caesar Alimsinya Atuire, *African Perspectives of Moral Status: A Framework for Evaluating Global Bioethical Issues*, 48 MED. HUM. 238, 239–40 (2022); *see* Ramose, *supra* note**Error! Bookmark not defined.** 159, at 99; Fayemi, *supra* note 162, at 382; Balcomb, *supra* note at 164.

moral duties towards the diverse members of this community which, in relevant part, includes the ecosystem and future generations, of both humans and other species.[170] The notion of communal land holding, for example, cannot be reduced to economic regulation; rather, it encodes rights and responsibilities to past, present, and future communities.[171]

What is clear is that African environmental ethics, both in their Indigenous and modern iterations, postulate that members of the community have certain rights and owe each other duties of care.[172] The conceptualization of human beings as right- and duty-bearing members of a community cohabited by one or more deities, nature spirits, future generations, ancestors, plants, and animals has clear ramifications for the rights of nature. While we will be drawing on these ramifications to make a case for the rights of nature—a conclusion that is common in the African environmental ethics literature[173]—we also must acknowledge the need for caution. Translating Indigenous and traditional normative systems into the register of positive law carries significant risks: it can lead to the reification and (mis)appropriation of Indigenous and traditional norms or to their (re)construction in ways that reproduce unjust power-relations or justify serious human rights violations,[174] including violations of Indigenous peoples' rights.[175] This caution is especially warranted as we traverse a normative pluralist setting defined by heightened potentialities and risks that come with normative and methodological indeterminacy.

B. The Legal Pluralist Turn

To bring Indigenous and traditional normative systems to bear on the existence of the rights of nature, their position within the regional human rights system must be understood. Drawing on theoretical and empirical insights from legal anthropology, many Indigenous and traditional systems can be understood as semi-autonomous legal orders that share the same social field with state-based legal systems.[176] They thus operate in a social space where distinct state and non-state networks, institutions, and norms co-exist and inevitably interact. The question of whether Indigenous and traditional legal systems exist is both empirical and, in part, definitional. More specifically, it concerns whether the

170. Behrens, *supra* note 158, at 69–71, 77–78, 148–49.

171. Kevin Gary Behrens, *Moral Obligations Towards Future Generations in African Thought,* 8 J. GLOBAL ETHICS 179, 183–88 (2012).

172. Balcomb, *supra* note 164, at 5; Fayemi, *supra* note 162, at 381–82; Kelbessa, *supra* note at 161, 24; Ramose *supra* note 159, at 106.

173. *E.g.*, Ojomo, *supra* note 157, at 573; Kelbessa, *supra* note 161, at 24; Fayemi, *supra* note 162, at 370, 378; Ramose, *supra* note 159, at 106.

174. *See, e.g.*, Martin Chanock, *Human Rights and Cultural Branding: Who Speaks and How*, *in* CULTURAL TRANSFORMATION AND HUMAN RIGHTS IN AFRICA 38, 39 (Abdullahi An-Na'im ed., 2022).

175. *See, e.g.*, Koné, *supra* note 76, at 215–33; Kenneth Toah Nsah, *Conserving Africa's Eden? Green Colonialism, Neoliberal Capitalism, and Sustainable Development in Congo Basin Literature*, HUMANITIES, May 8, 2023, 1, 64 (showing how a discursive narrative combining sustainable development, environmental conservation, and imagery of Africa as a "pristine" "Eden," serves to displace indigenous communities that have historically caused little to no environmental harm).

176. Tamanaha, *supra* note 156, at 394–97; Boaventura de Sousa Santos, *The Heterogeneous State and Legal Pluralism in Mozambique*, 40 L. & SOC. REV. 39, 44–47 (2006).

regional human rights regime recognizes the existence non-state normative systems as distinct legal systems; whether it accords *de jure* recognition to these systems and, if so, whether, and to what extent, it is open to their influence on the outcomes of state-based international and domestic legal processes.

Although the African system protects Indigenous and traditional normative systems under the rubric of the right to cultural life,[177] it does not do so in a reductive manner. Rather than reducing Indigenous and traditional systems to their cultural core, thus leaving what does not fall under "culture" unprotected, the regional system recognizes that Indigenous and traditional communities can have legal systems that order economic, political, and governance structures that are distinct from that of the state.[178] It is thus not just that these non-Westphalian political, economic, and legal systems exist as a matter of fact, or that they make competing claims over the regulation of the same social field,[179] but these are also claims that are encompassed by the right to self-determination[180]—a right determined by the African Court to constitute a *jus cogens* norm of international law.[181]

A more constructive and integrative relationship between regional human rights norms, on one side, and Indigenous and traditional normative systems, on the other, is not only conceivable but anticipated by the African Charter itself. The Charter claims equal lineage from both Africa's historical traditions and the broader global human rights movement.[182] The Banjul Charter, besides imposing a duty on individuals and states to preserve African traditions, explicitly notes that "historical tradition" and the "values of African civilization" should "inspire and characterize" African "reflection[s] on the concept of human and peoples'

177. *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya,* Communication no. 276/2003, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], ¶ 149 (2009) ¶¶ 246–249; *African Commission on Human and Peoples Rights v. The Republic of Kenya*, No. 006/212, Decision, African Court on Human and Peoples' Rights [Afr. Ct. H.P.R.], ¶¶ 178–179 (May 6, 2017).

178. *See African Commission on Human and Peoples Rights v. The Republic of Kenya*, ¶ 110 (May 6, 2017); Working Group Report on Indigenous Populations/Communities, *supra* note 74, at 21, 25–26, 108; *see Centre for Minority Rights Dev. v. Kenya*, ¶¶ 241, 250.

179. These claims typically include what would fall under positive law categories of family law, law of succession and inheritance, land tenure and property law, and can occasionally extend to criminal justice, they can also go as far as claims over the power to levy taxes or even make peace and war. On the latter, *see* Aninka Claassens, *Resurgence of Tribal Levies: Double Taxation for the Rural Poor*, 35 S. AFR. CRIME Q. 11, 11–12, 14–16 (2011); Maame A.S. Mensa-Bonsu, Customary Law and the 1992 Constitution of Ghana: A Comparative Theoretical Study 92*,* 100–04, 160–61, 237 (Ph.D. dissertation, University of Oxford 2021).

180. While this is already articulated in Article 20(1) of the African Charter and implied in Articles 20–24, it has been re-affirmed in *Katangese Peoples' Cong. v Zaire*, Comm. No. 75/92, ¶ 4; *African Commission on Human and Peoples Rights v. The Republic of Kenya*, ¶ 199 (May 6, 2017); Advisory Opinion on UNDRIP *supra* note 74, at 14–43; and Working Group Report on Indigenous Populations/Communities, *supra* note 74, at 74–75.

181. *Bernard Anbataayela Mornah v. Republic of Benin and others*, App. No. 028/2018, ¶ 298 (Afr. Ct. H.P.R. Sept. 22, 2022 [hereinafter Western Sahara Case].

182. African Charter, pmbl. paras. 3–4, arts. 17 (3), 18 (2), 20 (1), 60; Richard Gittleman, *The African Charter on Human and Peoples' Rights*, 22 VA. J. INT'L L. 667, 675–76 (1982); Frans Viljoen, *The African Charter on Human and Peoples' Rights: The Travaux Préparatoires in the Light of Subsequent Practice*, HUM. RTS. L.J. 313, 318–19 (2004). For a discussion connected with Senghor and M'Beye, see *infra* Section IV.C.

rights."[183] This dual commitment to traditional values and the human rights movement is a deeply entrenched feature of the regional system that is reiterated in numerous treaties,[184] with the African Children's Charter explicitly listing "African values and traditions" alongside the UDHR as its interpretive sources of inspiration.[185] Given the dual commitment and the African human rights system's anti-colonial predisposition[186]—which is particularly poignant in the context of Indigenous rights[187]—it is difficult to envision the regional system being open to the continued influence of the legal traditions of colonial powers,[188] while being closed to legal systems that are the repositories of African history and tradition.

Despite this dual commitment, institutional actors have taken a cautious approach to normative plurality and have only recently begun exploring the system's plural roots in *Endorois* and *Ogiek*. Both cases involved the Kenyan government evicting Indigenous groups from ancestral lands, thereby restricting their access to the land on which their ways of life and livelihoods depended.[189] What made these actions especially troubling was not only their resemblance to colonial-era practices, but the fact that the laws and titles used to justify appropriation emanated from colonial titles and laws instituted by the British colonial government, retained to the present day.[190] In response, both the Commission and the Court found violations of the African Charter.

These decisions represent the African system's first explicit step towards embracing normative pluralism. Besides finding violations of collective rights to natural resources and development, the Commission and Court created hybrid

183. African Charter on Human and Peoples' Rights, pmbl., para. 4, art. 17, ¶ 3, art. 29, ¶ 7.

184. *See, e.g.,* African Charter on the Rights and Welfare of the Child pmbl. para. 6, art. 46 (1999) [hereinafter African Children's Charter]; African Convention on the Conservation of Nature & Natural Resources art. 4 (2003); African Youth Charter pmbl. paras. 4–5, 14, arts. 20, 26 (m) (2009); African Charter on Democracy arts. 27 (9), 35; African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa pmbl. Para. 3 (2012); African Protocol on Rights of Older Persons pmbl. para. 11.

185. *See* art. 46 of the African Children's Charter.

186. Besides the assumption of the lasting impacts of the colonial experience to human rights practices within the system, the Banjul Charter goes as far as implying a duty to assist the liberation struggles of "[c]olonized or oppressed peoples." African Charter, art. 20; *see id.* pmbl. paras. 3, 8; Cultural Charter for Africa pmbl., arts. 1 (d), 2 (e), 22 (a) (1990); Grand Bay (Mauritius) Declaration and Plan of Action art. 8 (b) (1990); African Committee of Experts on the Rights and Welfare of the Child, General Comment on Article 6, CERWC/GC/02 ¶ 4 (2014); African Commission on Human & Peoples' Rights, General Comment No. 4 ¶ 11 (2017).

187. *See Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Appl. No. 155/96, ¶ 53 (May 27, 2002). *Centre for Minority Rights Dev. v. Kenya*, ¶ 245–46; Working Group Report on Indigenous Populations/Communities, *supra* note 74, at 69–71, 86–97, 111; *see generally Western Sahara Case*, App. No. 028/2018, ¶¶ 290–291.

188. *See generally* Colin B. Picker, *International Law's Mixed Heritage: A Common/Civil Law Jurisdiction*, 41 VAND. J. TRANSNAT'L L. 1083 (2008) (classifying international law as a legal hybrid, or a "mixed system", that merges the two Western legal traditions).

189. *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v. Kenya,* Communication no. 276/2003, African Commission on Human and Peoples' Rights [Afr. Comm'n H.P.R.], ¶¶ 209, 212 (2009); *African Commission on Human and Peoples Rights v. The Republic of Kenya*, ¶¶ 128, 130–31 (May 6, 2017).

190. *Centre for Minority Rights Dev. v. Kenya*, ¶¶ 88, 184, 199; *African Commission on Human and Peoples Rights v. The Republic of Kenya*, ¶¶ 120, 140–41 (May 6, 2017).

norms of collective, that is non-individual, rights to property and to religion.[191] These collective Indigenous peoples' rights cannot be traced to the UDHR and are not explicitly articulated in the Banjul Charter either. Moreover, they did not exist, at least in their "classical" form, in the *Endorois* and *Ogiek* law either.[192] The resulting human rights norms can thus be understood as products of legal hybridization, or a double-vernacularization, created through the interaction between international and Indigenous legal systems.[193] These decisions also highlight the communitarian approach, in which collective and individual rights to religion and property, instead of being mutually exclusive, are different sides of a single reality.

The *Endorois* decision, in direct contrast to the legacy of the colonial acquisition of Indigenous land through, and without, Indigenous consent,[194] provides another instance of a hybrid norm. *Endorois* requires "consent" to be defined in accordance with Indigenous norms and procedures.[195] Here, the notion of land alienation and its procedures, and the power of modern Westphalian states to engage in eminent domain takings, do not exist in most Indigenous systems. In this context, Indigenous understandings of consent are also being introduced into international law in instances where legal standards such as public consultation,[196] or "free, prior, and informed"[197] consent are applied to specific communities.

An alignment between, or even the contribution of, all the normative systems in the relevant social fields was not expected to achieve these doubly-vernacularized hybrid norms. In deciding on collective rights to religion and property, both the Commission and the Court dealt with the interactions between international law and the normative systems of *Endorois* and *Ogiek*. Kenya's colonial and post-colonial laws, many of which were in effect during the pertinent period, as well as its constitution, which at the time recognized neither Indigenous rights nor collective rights, were discussed in much detail in the

191. *Centre for Minority Rights Dev. v. Kenya*, ¶¶ 172–73, 186–87, 212; A*frican Commission on Human and Peoples Rights v. The Republic of Kenya*, ¶¶ 123, 130, 164, 167–68 (May 6, 2017).

192. *See Centre for Minority Rights Dev. v. Kenya*, ¶¶ 90, 199, 155, 250, 291, 295; *African Commission on Human and Peoples Rights v. The Republic of Kenya*, ¶ 140 (May 6, 2017).

193. For a similar process, a description of the "reverse trajectory" in vernacularization, as well as some of the background to the UNDRIP and Inter-American jurisprudence that the Commission and Court cite, see César Rodríguez-Garavito, *Globalising the Indigenous: The Making of International Human Rights from Below*, *in* THE COMPLEXITY OF HUMAN RIGHTS: FROM VERNACULARIZATION TO QUANTIFICATION 75, 86, 88–91 (Philip Alston ed., 2024); *see generally* Tamanaha, *supra* note 156, at 380–81, 403, 409; *Santos*, *supra* note 176, at 45–47.

194. *See* Miller & Stitz, *supra* note 16, at 16–20, 22–28, 34–39 (2021); James Thuo Gathii, *Geographical Hegelianism in Territorial Disputes Involving Non-European Land Relations: An Analysis of the Case Concerning Kasikili/Sedudu Island (Botswana/Namibia)*, *in* THE THIRD WORLD AND INTERNATIONAL ORDER: LAW, POLITICS & GLOBALIZATION 75, 97–99 (Antony Anghie, B. S. Chimni, Karin Mickelson & Obiora Chinedu Okafor eds., 2003).

195. *Centre for Minority Rights Dev. v. Kenya*, ¶ 291.

196. African Charter for Popular Participation in Development and Transformation, U.N. Econ. Comm'n for Afr., E/ECA/CM.16/11, art. 9 (1990); *see also* "effective participation" in Article 3(7) of the African Charter on Democracy.

197. *Centre for Minority Rights Dev. v. Kenya,* ¶ 291. *See also Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, Appl*. No. 155/96, ¶ 53 (May 27, 2002) (and on the nexus with colonialism, ¶ 58); *African Commission on Human and Peoples Rights v. The Republic of Kenya*, ¶ 131 (May 6, 2017).

relevant decisions.[198] These laws, while not necessarily found to be in violation of the Banjul Charter, were circumvented in the process of hybridizing international and indigenous norms.

This deliberate approach to hybridity, while novel, is not necessarily an incomprehensible departure in the context of the regional human rights system. It is, for example, anticipated in the African Commission and the African Union Assembly's transitional justice policy declarations, which provide for the application of Indigenous and traditional mechanisms—sometimes in ways that can bypass criminal justice and due process standards contained in African constitutions and domestic law, as well as international human rights law.[199] Compared to the relatively extensive levels of hybridization anticipated by these transitional justice policies, as is exemplified by Rwanda's *Gacaca* courts or Uganda's *Mato Oput*,[200] the *Endorois* and *Ogiek* decisions are rather measured.

The most far-reaching implication of the African human rights system's legal pluralist turn is a realization that numerous African legal systems already grant rights to nature. The lived reality of most Africans, as captured by Chuma Himonga's "deep legal pluralism" or described by Sally Engle Merry's "new legal realism,"[201] is one in which a plurality of legal systems—domestic, international and non-state—coexist in overlapping and contiguous social spaces. Recognizing this plurality both acknowledges reality and demonstrates that multiple African legal systems extend rights and protections to nature.

Yet, embracing legal pluralism at this level also raises difficult questions, especially in light of another prevailing party: the modern post-colonial state. The modern African state claims and its jealously guards a dominant law-making role that leaves limited space for Indigenous and traditional laws. While the state may selectively incorporate Indigenous and traditional norms through its own

198. *Centre for Minority Rights Dev. v. Kenya*, ¶¶ 90, 199, 155, 250, 291, 295; *African Commission on Human and Peoples Rights v. The Republic of Kenya*, ¶ 140 (May 6, 2017). These cases refer to the previous Constitution of Kenya (1969, rev. 1997) while the 2010 Constitution contains the right to a "clean and healthy" environment in Article 42.

199. *See* African Commission on Human and Peoples' Rights, Study on Transitional Justice and Human and Peoples' Rights in Africa ¶¶ 61–64 (Adopted Apr. 2019); African Union, Transitional Justice Policy, ¶¶ 18, 56–59 (adopted Feb. 2019. Note that we are referring to situations in which normal procedural standards are set aside in transitional justice settings due to practical considerations such as the sheer scale of atrocities or where judicial and criminal justice systems may have been severely damaged by the preceding conflict. While not attempting to take a position on the legality or propriety of such measures, which would require a detailed case-by-case analysis, we recognize that such extraordinary measures to set regular norms and procedures aside do take place, and that the African system contemplates effectuating them through a formal hybridization of state and Indigenous or traditional norms and procedures. For a broader outline risks associated with such a process of hybridization *see supra* notes 176–77 and the accompanying text. For examples, and a discussion of the dilemmas raised by theses settings, see Barbara Oomen, *From Gacaca to Mato Oput: Pragmatism and Principles in Employing Traditional Dispute Resolution Mechanisms*, *in* FACING THE PAST: AMENDING HISTORICAL INJUSTICES THROUGH INSTRUMENTS OF TRANSITIONAL JUSTICE 169, 169–87 (Peter Malcontent ed., 2017).

200. These paradigmatic examples are also noted by the African Commission's Transitional Justice Study. *See id.* ¶ 63.

201. Chuma Himonga, *State and Individual Perspectives of a Mixed Legal System in Southern African Contexts with Special Reference to Personal Law, 25* TUL. EUR. & CIV. L.F. 23, 26–28, 31 (2010); Sally Engle Merry, *New Legal Realism and the Ethnography of Transnational Law*, 31 L. & SOC. INQUIRY 975, 976, 980 (2006).

law-making powers or acknowledge the law-making capacities of non-state institutions, it does not explicitly recognize those entities that affirm the rights of nature. Nor does it directly provide for the rights of nature in its own laws. While this leads to a complicated situation in which different state and non-state norms with disparate impacts on human behavior towards nature coexist, the state still has the greatest capacity to affect climate-impacting behavior due to its command over the purse and the sword.

A paradox thus emerges from the reality of *deep legal pluralism,* which leads us to a legal frontier left undeveloped by both colonial and post-colonial jurists. Conflict of laws, a field of positive law with the most sophisticated methods addressing normative plurality, is grossly inadequate for this purpose. Not only is it limited to choosing between competing norms, but its choice of law rules are also based on "civilizational" hierarchies and exclusionary doctrines that favor state-based laws over Indigenous and traditional ones.[202] Despite the existence of state-based pluralist theories of law, such as policy-oriented jurisprudence which explicitly recognizes the legality of Indigenous normative systems,[203] or some that extend a margin of appreciation to Indigenous institutions,[204] methodologies dealing with normative hybridization have not evolved.

The competitive, cooperative, and accommodative interactions between the modern state and non-state normative systems,[205] while generating this seemingly intractable methodological lacuna, also present a productive tension that can result in the types of normative innovations described earlier as the pluralist turn. A similar example is provided by César Rodríguez-Garavito's description of how Indigenous activism led to the vernacularization and hybridization of human rights norms, and the subsequent globalization of these norms, reflected in Inter-American human rights jurisprudence and in the U.N. Declaration on the Rights of Indigenous Peoples.[206] Rather than being something to be necessarily avoided or invited, the indeterminacy and generative potential that comes out of the pluralist setting are a "design feature" of the region's inter-polity normative order.[207] Combined with the African system's dual commitment

202. *See, e.g.*, Berihun Adugna Gebeye, A Theory of African Constitutionalism 55–57, 64–65 (2021); Sally Engle Merry, *Legal Pluralism*, 22 L. & SOC'Y REV. 869, 870 (1988). *See generally* Tamanaha, *supra* note 156, at 383–84, 389, 400–07.

203. *E.g.*, Siegfried Wiessner, *Indigenous Self-Determination, Culture, and Land: A Reassessment in Light of the 2007 UN Declaration*, *in* INDIGENOUS RIGHTS IN THE AGE OF THE UN DECLARATION 31, 46 (Elvira Pulitano ed., 2012); Paul Schiff Berman, *A Pluralist Approach to International Law*, 32 YALE J. INT'L L. 301, 310, 312–15 (2007).

204. Wiessner, *supra* note 203, at 45–47; Valeska David & Julie Fraser, *A Legal Pluralist Approach to the Use of Cultural Perspectives in the Implementation and Adjudication of Human Rights Norms*, 23 Buff. Hum. Rts. L. Rev. 75, 96–100 (2017); *see also* Kristen A. Carpenter & Angela R. Riley, *Indigenous Peoples and the Jurisgenerative Moment in Human Rights*, 102 Calif. L. Rev. 173, 222–33 (2014) (discussing examples of the implementation of international human rights norms through indigenous legal systems).

205. Tamanaha, *supra* note 156, at 386–90, 403–07; Santos, *supra* note 176, at 42–43.

206. Rodríguez-Garavito, *supra* note 193, at 87, 88.

207. Extending Idriss Fofana's description of contradictory understandings and applications of Euro-African treaties, Idriss Paul-Armand Fofana, *The Two Faces of Franco-Sudanian Treaties: The Peripheral Practice of Ratification as Evidence of Transregional International Law in the Nineteenth Century*, 37 LEIDEN J. INT'L L. 819, 822–24 (2024).

to traditional and modern protections of rights and its strong anti-colonial predisposition, the recognition of legal pluralism, therefore, creates a great deal of space for innovative jurisprudence.

This space, however, is also spared from the void of indeterminacy. The African human rights system is primarily a part of the state-based legal order. Although this limits the African human rights system's capacity for hybridization and jurisprudential innovation, a broad margin is also left by the fact that African states have also consented to the system's ability to consider Indigenous and traditional normative systems. What this means for the pluralist turn is that the African system will mostly operate within a narrower set of implications of pluralism which Himonga describes as "state legal pluralism", or what comparativists have described as "mixity" or "legal syncretism."[208] At this level, where the state-based legal system itself sanctions the applicability of Indigenous and traditional norms, there are still significant possibilities for state-based normative systems—both domestic and international—to draw on African Indigenous and traditional legal systems that support the rights of nature.

C. Teleological Pathways to the Rights of Nature

Indigenous and traditional normative systems can more consciously engage with African environmental ethics as part of what Gerald Neuman describes as "suprapositive norms."[209] Though not enforceable, suprapositive norms such as liberty or human dignity influence the interpretation of positive law because they are seen as foundational values from which the legal or political system derives legitimacy. Ubuntu, a communitarian ideal that can be translated as "the humanity of humans is because of other human beings," is an excellent example of a suprapositive norm which is widely adopted by South African courts to interpret the constitution.[210] Since Indigenous and traditional systems are held with regard by the African human rights system, as well as by many domestic legal systems, approaching them as suprapositive norms holds much potential for overcoming the lack of their positivization in treaty and statutory law. In addition, this approach permits jurisprudential leaps to remain within interpretive bounds of what states have already consented to.

The experience of the Inter-American Court, which relied on an "evolutive interpretation" or a "living instruments" approach to recognize aspects of rights of nature is also instructive. It demonstrates how international human rights bodies can derive rights of nature through pre-existing jurisprudence on the right

208. Himonga, *supra* note 201, at 25–26; Gebeye, *supra* note 202, at 229–34. *See also* Xavier Blanc-Jouvan, *The Encounter Between Traditional Law and Modern Law in French-Speaking Africa: A Personal Reflection*, 25 Tul. Eur. & CIV. L.F. 197, 203–09 (2010).

209. Gerald L. Neuman, *Human Rights and Constitutional Rights: Harmony and Dissonance*, 55 Stan. L. Rev. 1863, 1868–69 (2003).

210. Chuma Himonga, *The Future of Living Customary Law in African Legal Systems in the Twenty-First Century and Beyond, with Special Reference to South Africa*, *in* THE FUTURE OF AFRICAN CUSTOMARY LAW 31, 45–46 (Jeanmarie Fenrich, Paolo G. Carozza & Tracy E. Higgins, eds. 2012).

to a healthy environment and indigenous peoples' rights.[211] Unlike the Inter-American system, which based its rights of nature decision on layers of other implied rights,[212] the African human rights regime provides an explicit treaty basis for several relevant peoples' rights. This explicit recognition provides a stronger baseline for developing a rights of nature jurisprudence and may better position the African system to break new jurisprudential ground.

Alongside the Maputo Protocol's acknowledgment of the importance of protecting and promoting women's Indigenous knowledge systems to support environmental protection,[213] the regional system's most progressive step in this direction may be found in the African Commission's cautious declaration on sacred sites. Notably, this declaration mirrors the Inter-American approach by grounding its reasoning on peoples' rights, the right to a healthy environment, and the right to development.[214] In it, the African Commission underscores the importance of traditional land for the survival of African Indigenous groups, as well as the importance of Indigenous custodian communities and their governance systems for the protection of sacred domains—emphasizing the need to "recognize and respect the intrinsic value of sacred natural sites and territories."[215] While the Inter-American route provides a sufficient foundation for the African system to articulate a more explicit and robust recognition on the rights of nature, the African system offers additional—and arguably stronger—pathways to the same conclusion.

Inspired by or even derived from Indigenous and traditional normative systems,[216] the African system can access such suprapositive norms indirectly by implementing Indigenous peoples' rights as a resource for interpreting the

211. *See, e.g.*, IACtHR, Advisory Opinion OC-32/25, *supra* note 5, ¶¶ 314–16; IACtHR, Advisory Opinion OC-23/17: Environment and Human Rights, Ser. A No. 23 (15 Nov. 2017) ¶¶ 43–44, 62–63. *Inhabitants of La Oroya v. Peru*, Preliminary Measures, Merits, Reparations, and Costs, Inter-Am. Ct. H.R. (ser. C) No. 511, ¶ 25–26, 118, 122 (Nov. 27, 2023). For how the Inter-American Court acknowledges the importance of indigenous legal norms, some of which are positivized through constitutional incorporation or judicial decisions, in reaching this decision, see *id.*, Advisory Opinion OC-23/17, ¶¶ 48, 62, *n*. 100–01.

212. *See, e.g.*, Federico Lenzerini, *Practice and Ontology of Implied Human Rights in International Law*, 15 INTERCULTURAL HUM. RTS. L. REV. 73, 94–100 (2020); *id.* at 106–07 (arguing that the European Court of Human rights has established a *de facto* implied right to a healthy environment); Amy Van Zyl-Chavarro, *Defining the Right to a Healthy Environment: Insights from the Inter-American Court of Human Rights*, 55 Env't L. 49, 74-75, 84-85 (2025) (describing how the right evolved from one that is implied from the right to life, indigenous peoples' rights, and a broad references to socio-economic rights into an "autonomous" right).

213. Maputo Protocol, *supra* note 146, art. 18, ¶ 2(c). One could also read Article 18(1)(c) of the African Children's Charter to indirectly infer this obligation.

214. African Commission Resolution on the Protection of Sacred Natural Sites and Territories ACHPR/Res.372/LX (2017), pmbl. para. 8.

215. *Id.*, pmbl. paras. 2, 5, arts. 2–3. Kevin Bakulumpagi, *Resolution of the African Commission on Human and Peoples' Rights on the Protection of Sacred Natural Sites and Territories: A Critical Overview*, 5 AFR. HUM. RTS. Y.B. 305, 311, 319–21 (2021) (arguing that the resolution recognizes the rights of nature in part because it recognizes precolonial normative systems that survive to date).

216. *See* discussion of dual commitment in *supra* Section IV.B and the discussion connected with Senghor and M'Beye below. *See also* Gittleman, *supra* note 182, at 675–76; Mutua, *supra* note 165, at 368–69.

duties provisions of the African Charter.[217] Unlike other global treaties which make only broad statements about duties, the Banjul Charter dedicates a preambular provision and a separate substantive chapter to outlining the duties of individuals towards their families, societies, and communities.[218] The African Children's Charter also reflects this notion of duties,[219] as do other African human rights treaties.[220]

Considering the holistic aspects of African environmental ethics, the Banjul Charter and African Children's Charter's references to duties should be interpreted to include duties to nature, in which duties to "society" and "community" are owed to nature.[221] Similarly, eco-centric duties of the individual to "preserve and strengthen" solidarity or "positive African cultural values"[222] are owed not only to contemporary members of the community, but to past, present, and future members of the community—both human and nonhuman.

The African Charter's legislative history also supports a holistic understanding of "society" or "community" that is more akin to the African environmental ethics discussed earlier, as evidenced by President Léopold Senghor's pivotal speech on communitarianism and holism at the inaugural meeting of the experts that drafted the Banjul Charter. President Senghor, joined by Kéba M'Baye, another Pan-African intellectual leader and a founding figure of the region's human rights system,[223] implored the drafters to make a provision for the "Duties of Individuals" in the treaty by noting that:[224]

> Room should be made for this African tradition in our Charter on Human and Peoples' Rights, while bathing in our philosophy, which consists in not alienating the subordination of the individual to the community, in co-existence, in giving everyone a certain number of rights and duties.
>
> . . . In Africa, the individual and his rights are wrapped in the protection [of] the family and other communities . . . [as] Professor Collomb . . . very rightly observed: "To live in Africa is to give up being an individual, particular, competitive, selfish, aggressive, concurrent, man is to live with others, in peace and harmony, with the

217. Note that one possible argument we did not pursue is the possibility of using the "common heritage of mankind" prong of art. 22 (1) of the Banjul Charter which could support the rights of nature if reinterpreted from a holistic point of view. *See, e.g.*, Cristiano Gianolla, *Human Rights and Nature: Intercultural Perspectives and International Aspirations*, 4 J. HUM. RTS. & ENV'T 58, 76–78 (2013).

218. African Charter on Human and Peoples' Rights, pmbl. para. 6, arts. 27, 29.

219. *See* art. 31 on the duties of children and arts. 9(2) & (3), 11 (4), 20 (1) on the duties of parents and guardians; *see also* J Sloth-Nielsen & BD Mezmur, *A Dutiful Child: The Implications of Article 31 of the African Children's Charter*, 52 J. AFR. L. 159, 169–87 (2008).

220. Kampala Convention, art. 20; African Disability Protocol (2020), art. 31; African Protocol on Rights of Older Persons, art. 20; and Convention Governing the Specific Aspects of Refugee Problems in Africa (1974), art. 3(1).

221. *See* African Charter art. 27(1), 29 (2), (6) & (7) and to some extent art. 18(2) of; and art. 31 of the African Children's Charter.

222. *See* African Charter, art. 29, ¶ 7; African Children's Charter, Art. 31(c) & (d).

223. Keba M'Baye, *Human Rights in Africa*, *in* THE INTERNATIONAL DIMENSIONS OF HUMAN RIGHTS 597, 602 (Karel Vasak ed., 1982) (also utilizing the same quote from quoting Collomb).

224. Leopold Sedar Senghor, Address Delivered at the Opening of the Meeting of African Experts Preparing the draft African Charter in Dakar, Senegal, 28 November to 8 December 1979, *in* HUMAN RIGHTS LAW IN AFRICA 78–80 (Christof Heyns ed., 1999).

> dead and living, with the natural environment and the spirits inhabiting [it]."

While this historical context suggests that the ordinary meaning of the Banjul Charter's duties provisions included some sort of duty towards nature, support for the holistic interpretation of the African Charter is inscribed and re-confirmed through subsequent state practice. African states have, for example, incorporated the duty to protect the environment into post-Banjul treaties such as the African Conservation Convention[225] and a series of agreements establishing sub-regional economic communities.[226] The holistic approach also finds support in the constitutions of the vast majority of African states which parallel the regional system's dual commitment to human rights and traditional values. In addition to incorporating international human rights law into their constitutions or containing bills of rights,[227] these constitutions recognize Indigenous and traditional normative systems in various ways, including by incorporating Indigenous and traditional institutions into the branches of government.[228]

Approximately 89% of African constitutions indirectly recognize the rights of nature by imposing a duty of care towards the environment. Nearly all these constitutions impose the duty on the state, though a little over half of them single out "every citizen" or "every person" as a bearer of the duty. Generally, the duty is a positive one, imposing an obligation to act in some way—to "protect," "preserve," "conserve," "defend," "enhance," or "promote" different aspects of nature and the environment.[229]

To shift from anthropocentrism to a more eco-centric view, to say that human beings owe duties to nature, can mean that nature has corresponding rights as well. The rights of nature can be derived from clearly articulated duties to respect and protect the environment by relying on a Hohfeldian correlation between rights and duties.[230]

Deriving state duties from rights is rather common in the human rights

---

225. African Conservation Convention, Pmbl. para. 5. This has prompted scholars to argue that a combined reading of art. 24 of the Banjul Charter with the Preamble and art. 3 of the 2003 African Conservation Convention imply not just a duty to protect the environment but to do so for its own worth or without considering impact on human beings. *See, e.g.*, Jegede, *supra* note 82, at 41. *But see* Bolanle T. Erinosho, *The Revised African Convention on the Conservation of Nature and Natural Resources: Prospects for a Comprehensive Treaty for the Management of Africa's Natural Resources*, 21 AFR. J. INT'L & COMP. L. 378, 384 (2013) (arguing that the Conservation Convention is anthropocentric and has a utilitarian outlook rather than a protectionist or preservationist one).

226. *See* Treaty Establishing the EAC, July 7, 1999, 38 I.L.M. 1482 (1999) arts. 109(d), 111–14, 101(2)(f); the ECOWAS Treaty, revised July 19, 1993, 20 I.L.M. 1476 (1993) art. 29; Southern African Development Community Treaty, Aug. 17, 1992, 31 I.L.M. 1437 (1992) art. 5(1)(g) & 21(3)(f). Also, Kahl, *supra* note 95, at 72–74.

227. Heyns & Kaguongo, *supra* note 105, at 676–77, 679–80 (2006).

228. *Id.* at 678. Gebeye, *supra* note 202, at 63–65; KATRINA CUSKELLY, CUSTOMS AND CONSTITUTIONS: STATE RECOGNITION OF CUSTOMARY LAW AROUND THE WORLD 55–57, 64–65 (2011), https://portals.iucn.org/library/efiles/documents/2011-101.pdf [https://perma.cc/VVM5-7HPG].

229. *See infra* notes 239–49 and accompanying text.

230. Wesley Newcomb Hohfeld, *Some Fundamental Legal Conceptions as Applied in Judicial Reasoning*, 23 YALE L.J. 16, 30 (1913). For a literature review and explanation of the Hohfeldian argument as applied to nature and animals, see Yaffa Epstein & Eva Bernet Kempers, *Animals and Nature as Rights Holders in the European Union*, 86 MOD. L. REV. 1336, 1339–41, 1353–57 (2023).

field,[231] and this reasoning can be used to derive the rights of the environment from the duties of states, citizens, or legal or natural persons to abstain from harming the environment, or to take positive measures to protect it from being harmed by others. Indian and Pakistani courts, for example, have used this reasoning to recognize the rights of watercourses, ecosystems, and nonhuman animals.[232] Islamic law applies similar typologies to extend protections to animals,[233] and legal scholars have used Hohfeldian reasoning to show that the rights of nature are also not uncommon in the animal-welfare laws of Western countries and European Union law.[234]

The rights of nature could even constitute a Pan-African normative consensus,[235] given how widespread and deeply engrained environmental ethics and the duty of care are in Indigenous and traditional systems, in constitutional law, and in regional human rights and other treaties. Regardless, the consensus certainly meets the regional recognition and the consistency with state practice requirements of Article 61 of the Banjul Charter, which, along with Article 60, constitute the Charter's interpretive guideline.[236]

Still, one potential challenge to the Hohfeldian argument is that the rights that correspond with the duty of care belong to human beings, not to nature. After all, many African constitutions also provide an anthropocentric right to a safe and healthy environment,[237] which could be interpreted to mean that the duty of care may be owed to human beings—as individuals and peoples—and not to nature.[238]

---

231. *See supra* Part III (on the regional jurisprudence on how the right to a healthy environment implies the obligation to respect, protect, fulfill, and promote).

232. Lovleen Bhullar, *Environmental Constitutionalism and Duties of Individuals in India*, 34 J. ENV'T L. 399, 411 n.88 (2022); Amjad Hussain , A. Q. Sial & Ahmad Usman, *The Study of Animal Rights and Related Laws in Pakistan*, 6 GLOB. LEGAL STUD. REV. 96, 100 (2021).

233. RICHARD C. FOLTZ, ANIMALS IN ISLAMIC TRADITION AND MUSLIM CULTURES 30–31, 46–60 (2006); Kristen A. Stilt, *Constitutional Innovation and Animal Protection in Egypt*, 43 L. & SOC. INQUIRY 1364, 1380–82 (2018). For more on the typology itself, see Anver M. Emon, *Natural Law and Natural Rights in Islamic Law*, 20 J.L. & RELIGION 351, 379–81 (2006).

234. *See, e.g.*, Saskia Stucki, *Towards a Theory of Legal Animal Rights: Simple and Fundamental Rights*, 40 OXFORD J. LEGAL STUD. 553, 544–52 (2020); John Groom, *Legal Animal Rights and Animal Welfare Legislation*, 2 CITY L. REV. 45, 49–52 (2020); Steven M. Wise, *The Struggle for the Legal Rights of Nonhuman Animals Begins – the Experience of the Nonhuman Rights Project in New York and Connecticut*, 25 ANIMAL L. 367, 374–78 (2019).

235. We are indebted to Dr. Sonja Kreibich for an insightful conversation through which we arrived at the formulation "Pan-African consensus" from among several alternatives.

236. Viljoen, *supra* note 18, at 325–27. Note also that while the "rules expressly recognized by [AU] member states" prong of Article 61 is met by the post-Banjul treaties that recognize the duty of care, the "African practices consistent with . . . on human and people's rights" prong is met by all of the domestic, international and non-state norms.

237. Heyns & Kaguongo, *supra* note 105, at 707. *See also* Oluwabusayo Temitope Wuraola, *The Legal Rights of Natural Entities: African Approaches to the Recognition of Rights of Nature*, *in* HUMAN RIGHTS AND THE ENVIRONMENT UNDER AFRICAN UNION LAW 137, 141–42 (Michael Addaney & Ademola Oluborode Jegede eds., 2020) (arguing that African constitutions can only be interpreted as being anthropocentric).

238. Courts in Ghana and Nigeria have interpreted constitutional duties of environmental protection as bestowing a corresponding right on human beings and not on nature. The courts did not, however, opine on a rights of nature per se, as plaintiffs did not make a claim on behalf of nature. *Centre for Public Interest Law v. Environmental Protection Agency*, (EN)1/2005, High Ct. at Accra (Mar. 27, 2009) at 4–5; *Oil Pollution Watch v. Nigerian National Petroleum Corporation* SC. 319/2013 (2018) at 587, 597.

And yet, this challenge fails because duties being owed to humans do not preclude them from also being owed to nature. In many cases, nature can be a corresponding right-holder of the duty of environmental care, either alongside or irrespective of human beneficiaries. This is especially the case when we consider the same communitarian and holistic understandings discussed earlier, which underpin the setting in which these constitutions are written, read, and applied. Even if we ignored the African normative settings of these constitutions, however, the rights of nature conclusion will still stand on a purely lexical reading of these constitutions. Of the forty-eight African constitutions that contain the duty to protect the environment, up to thirty-nine allow for the derivation of correlating rights of nature. Twenty constitutions contain the duty to protect the environment, some of which contain modest[239] or more substantial[240] inferential support for the right to a healthy environment, and some of which explicitly articulate the right.[241] situate this duty outside of their bills of rights. By contrast, the remaining nineteen constitutions articulate both the right to a safe environment and the duty to protect the environment in a way that is sufficiently independent of each other, such that neither is subsumed under the other. These include constitutions that either contain the duty both inside and

239. These include the Constitución de la República de Guinea Ecuatorial [Constitution] Nov. 17, 1991, as amended 2012, art. 6 (Eq. Guinea); Constitution of the Federal Republic of Nigeria [Constitution] May 5, 1999, as amended 2011, art. 20 (Nigeria); Constitution of the United Republic of Tanzania [Constitution] Apr. 25, 1977, as amended 2005, arts. 9(c), 27(2) (Tanz.).

240. Constitution of Eritrea [Constitution] May 23, 1997, art. 8(3) (Eri.); Constitution of the Kingdom of Eswatini [Constitution] 2005, arts. 60(11), 63, 210(2), 216 (Eswatini); Constitution de la République Gabonaise [Constitution] Mar. 26, 1991, as amended 2023, arts. 1(8), 47(1) (Gabon); Constitution of the Republic of the Gambia [Constitution] 1996, as amended 2018, arts. 22(2)(f), 215(4)(d)–(e), 220(1)(j) (Gam.); Constitution of the Republic of Ghana [Constitution] Apr. 28, 1992, as amended 1996 (Ghana); Constituição da República da Guiné-Bissau [Constitution] May 16, 1984, as amended 1996, art. 15 (Guinea-Bissau); Constitution of Lesotho [Constitution] Apr. 2, 1993, as amended 2018, arts. 27(1)(b), 36 (Lesotho); Constitution de la République de Madagascar [Constitution] Nov. 17, 2010, pmbl., arts. 91, 95(II)(6), 141, 149, 152 (Madag.); Constitution of the Republic of Malawi [Constitution] May 18, 1994, as amended 2017, art. 13(d) (Malawi); Constitution of the Republic of Namibia [Constitution] Feb. 9, 1990, as amended 2014, art. 95(l) (Namib.); Constitutional Document of the Republic of the Sudan [Constitution] Aug. 17, 2019, art. 8(14) (Sudan); Constitution of Zambia [Constitution] Aug. 24, 1991, as amended 2016, arts. 43(1)(d), 255–57 (Zambia).

241. Constitution of the Republic of Cameroon [Constitution] June 2, 1972, as amended 2008, pmbl. princ. 21 (Cameroon); Constitution de la République du Tchad [Constitution] 2023, arts. 51, 57 (Chad); Dustūr Jumhūrīyat Miṣr al-ʻArabīyah [Constitution] Jan. 18, 2014, as amended 2019, arts. 44–46, 78, 236 (Egypt); Constitution de la République Islamique de Mauritanie [Constitution] July 12, 1991, as amended 2012, art. 19 (Mauritania); Transitional Constitution of the Republic of South Sudan [Constitution] July 9, 2011, as amended 2013, arts. 37(b), 41, 46(2)(g), 152(e), 166(c)(j), 173(2)(i), (n), 175(2)(f) (S. Sudan). Note, however, that the constitutions of Cameroon, Egypt, Eritrea, Guinea-Bissau, and South Sudan are sufficiently open to anthropocentric interpretations despite not containing their duty of care provisions in their bills of rights.

outside their bills of rights,[242] contain it as a duty in bills of "rights and duties,"[243] or contain separate bills of rights and bills of duties with the duty of environmental care falling in the latter.[244]

In addition to the six African constitutions that make no reference to either the right to a healthy environment nor to the duty to care for nature,[245] only ten of the constitutions that do include a duty to protect the environment locate it within in their bills of rights and articulate it as a duty owed to human subjects who wield the right.[246] While even these constitutions could support the rights of nature from other points of view,[247] at least seventy percent of Africa's

242. *See* Dustūr al-Jumhūrīyah al-Jazā'irīyah [Constitution] Nov. 1, 2020, arts. 20, 67 (Alg.); Constituição da República de Angola [Constitution] Feb. 5, 2010, arts. 21(m), 39, 91(2) (Angl.); Constitution de l'Union des Comores [Constitution] 2018, arts. 8(9), 43 (Comoros); Constitution [of Kenya] Aug. 27, 2010, arts. 42, 69–70 (Kenya); Constitution de la République du Mali [Constitution] 2023, arts. 22, 25, 42 (Mali); Constituição da República de Moçambique [Constitution] Nov. 16, 2004, as amended, arts. 45(f), 90, 117 (Mozam.); Constitution de la République du Niger [Constitution] Nov. 25, 2010, as amended 2017, arts. 35, 37, 149 (Niger); Constitution of the Republic of Rwanda [Constitution] June 4, 2003, as amended 2015, arts. 22, 53 (Rwanda); Constituição da República Democrática de São Tomé e Príncipe [Constitution] Nov. 5, 1975, as amended 2003, arts. 10(d), 49(1), 50(2) (São Tomé & Príncipe); of the Republic of South Africa [Constitution] Dec. 18, 1996, as amended 2012, arts. 24, 152 (S. Afr.); Provisional Constitution of the Federal Republic of Somalia [Constitution] Aug. 1, 2012, as amended, arts. 25, 45 (Somalia); Constitution of the Republic of Uganda [Constitution] Oct. 8, 1995, as amended 2017, arts. XIII, 17(j), 39, 237(2)(b), 245 (Uganda); Constitution of Zimbabwe [Constitution] May 22, 2013, as amended 2017, arts. 73, 282(d) (Zimb.).

243. *See* Algeria Const. arts. 20, 67; Angola Const. arts. 21(m), 39, 91(2); Constituição da República de Cabo Verde [Constitution] Sept. 25, 1980, as amended 1992, arts. 70, 82 (Cape Verde); Comoros Const. arts. 8(9), 43; Constitution de la République de Côte d'Ivoire [Constitution] Nov. 8, 2016, as amended 2020, arts. 27, 40 (Côte d'Ivoire); Constitution de la République de Guinée [Constitution] Apr. 6, 2020 (suspended 2021), art. 22 (Guinea); Mali Const. arts. 22, 25, 42; Mozambique Const. arts. 45(f), 90, 117; Niger Const. arts. 35, 37, 149; Somalia Const. arts. 25, 45; *See* Constitution de la République du Sénégal [Constitution] Jan. 22, 2001, as amended 2016 (Sen.) which lists the right to a healthy environment in art. 8 separately from a list of duties, including environmental duties, in art.25–3 while also merging the two ideas in art. 25–2. Although the fact that art. 25–3 is contained under a title listing its bill of rights, the fact that duties are listed separately makes this constitution sufficiently ambiguous to include it in this list or one that sees the duty as corresponding to a human right to a healthy environment.

244. *See* Rwanda Const. chs. IV–V, arts. 22, 53; Constitution of the Republic of Seychelles [Constitution] June 18, 1993, as amended 2017, ch. III pts. I–II, arts. 38, 40 (Sey.); Uganda Const., arts. XIII, 17(j), 39, 237(2)(b), 245.

245. This includes the Constitution of Botswana [Constitution] Sept. 30, 1966, as amended 2016 (Bots.); Constitution de la République de Djibouti [Constitution] Sept. 4, 1992, as amended 2010 (Djib.) ; Constitution of the Republic of Liberia [Constitution] Jan. 6, 1986 (Liber.); Constitutional Declaration [Constitution] Aug. 3, 2011, as amended 2012 (Libya); Constitution of Mauritius [Constitution] Mar. 12, 1968, as amended 2016 (Mauritius); Constitution of Sierra Leone [Constitution] Oct. 1, 1991, as amended 2013 (Sierra Leone).

246. *See* Constitution de la République du Bénin [Constitution] Dec. 11, 1990, as amended 2019, art. 27 (Benin); Constitution du Burkina Faso [Constitution] June 2, 1991, as amended 2015, art. 29 (Burk. Faso); Constitution de la République du Burundi [Constitution] June 7, 2018, art. 35 (Burundi); Constitution de la République Centrafricaine [Constitution] 2023, art. 53 (Cent. Afr. Rep.); Constitution de la République Démocratique du Congo [Constitution] Feb. 18, 2006, as amended 2011, art. 53 (Dem. Rep. Congo); Constitution de la République du Congo [Constitution] Nov. 6, 2015, art. 41 (Congo); Gabon Const. art. 1(8); Dustūr al-Mamlakah al-Maghribīyah [Constitution] July 1, 2011, arts. 19, 31 (Morocco); Constitution de la République Togolaise [Constitution] Sept. 27, 1992, as amended 2007, art. 41 (Togo); Dustūr al-Jumhūrīyah at-Tūnisīyah [Constitution] Jan. 27, 2014, art. 45 (Tunis.).

247. Most African constitutions, including the ones that do not allow for the Hohfeldian argument, provide room for a rights of nature interpretation through their recognition of the importance of traditional institutions and cultural values which support the rights of nature or at least communitarian and holistic interpretations described in Section IV.A. *See, e.g.*, the constitutions discussed in Gebeye, *supra* note 202, at 63–65; Cuskelly, *supra* note 228, at 6–11.

constitutions directly support the Hohfelidan argument. The Pan-African normative consensus argument is further strengthened by the fact that communitarian and holistic approaches, which temporally cut across the pre- and post-colonial divide, pervade the settings in which African constitutions were created and operate.

In addition, the Pan-African consensus can be expanded through advocacy and, in the legal sphere, with constitutional and statutory amendments as well as through judicial decisions which can, in turn, influence both constitutional interpretation and state practice. Uganda provides an instructive example: its constitution separately articulates a duty to protect the environment and an individual right to a clean and healthy environment.[248] A subsequent statute clarified this framework by stating that "[n]ature has the right to exist, persist, maintain and regenerate its vital cycles, structure, functions and its processes in evolution."[249] The same statute also incorporates the *actio popularis* principle allowing any person to bring a lawsuit for "any infringement of rights of nature" which includes a right to proactively request environmental and social impact and risk assessments.[250] Overall, the incorporation of environmental duties and the rights of nature into statuary law will simultaneously aid in the implementation of the rights of nature at the domestic level.

CONCLUSION: AFRICAN SOLUTIONS TO GLOBAL PROBLEMS?

This Article highlighted the largely untapped potential for Africa to emerge as a strong normative leader in global climate protection, with great potential to inspire climate litigation in the continent and beyond. The African system's existing contributions to international climate law are already notable. Specifically, the African system's recognition of collective rights, *actiones populares* and a justiciable right to a satisfactory environment provides a robust basis for advancing climate claims. Moreover, its acknowledgment of the intrinsic—or non-anthropocentric—value of sacred natural sites and territories marks a progressive step that brings the rights of nature within reach. While these are laudable steps, the African system's past jurisprudential and normative achievements position it to play an even greater role in shaping the future of international climate law.

In *Ogoni*, the African Commission explained its position on the justiciability of collective rights, including the collective right to a healthy environment, by noting that "[t]he uniqueness of the African situation and the special qualities of the African Charter" imposed upon it a duty to read international law and human rights in a way that is "responsive to African circumstances."[251] Today, climate change once again puts the African system at the center of an unprecedented challenge to which it must respond. This moment

248. *See* Uganda Const. arts. XXVII, XIII, 17, 39, 237, 245.

249. National Environment Act, No. 5 of 2019, *The Uganda Gazette* No. 10, Volume CXII (Mar. 7, 2019), art. 4, ¶ 1.

250. *Id*., art. 4, ¶ 2, art. 118, ¶ 1.

251. *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Appl. No. 155/96, ¶ 68 (May 27, 2002).

is particularly acute given Africa's disproportionate vulnerability to climate harm despite its minimal contribution to greenhouse gas emissions, which leaves African states, and thus the African human rights system, with limited mitigatory recourse.[252]

Unlike in the *Ogoni* case, where the court followed a localized and contextualizing approach, the African system must take a decidedly global and integrative view of climate norm development. Without necessarily losing sight of its contextualizing role, or of the localized nature of climate impacts, the African system can approach climate norms with the understanding that it is engaging in judicial dialogue with global and regional bodies in co-developing global norms.[253] The African system already provides a broadly defined treaty-basis for judicial dialogue under Article 60 of the Charter and, in practice, the system also directly cites and engages with non-African international and domestic jurisprudence.[254] What is missing, and what is required in the context of climate law, is a broader reorientation towards a more proactive participation in the development of global norms.

At the same time, global human rights bodies should pay greater attention to preexisting and emerging contributions of the African human rights system. While the European and Inter-American human rights systems do engage, to some extent, with the jurisprudence of their African counterpart,[255] the frequency and depth of the engagement leaves much to be desired.[256] Nonetheless, glimpses of new potentialities for reciprocal influence and dialogue can be seen, for instance, in *KlimaSeniorinnen*, where the European Court cited the Banjul Charter and *Ogoni*, even though it did not directly incorporate African legal reasoning into its judgment.[257] Still, more promising is the participation of the African Union and several African states in the climate change advisory proceedings of the ICJ, many of which have cited or relied on the African system in their written and oral submissions. Together, these developments signal a growing potential for cross-system influence—one that should be actively encouraged, cultivated, and harnessed.[258]

---

252. IPCC Working Group II, *supra* note 9, at 47, 414, 435, 791–92; Jazeera, *supra* note 14.

253. *See* Neuman, *supra* note 209, at 1880–99 (discussing methods of judicial dialogue and their role in reducing normative dissonance between domestic and international courts); Anne-Marie Slaughter, *A Typology of Transjudicial Communication*, 29 U. RICH. L. REV. 99, 112–14, 126 (1994).

254. *E.g.*, Viljoen, *supra* note 18, at 325–26. Article 7 of the Protocol establishing the African Court, *supra* note 94, also provides an additional treaty basis for judicial dialogue although it provides a narrower latitude than art. 60 of the Charter.

255. Wayne Sandholtz, *Human Rights Courts and Global Constitutionalism: Coordination Through Judicial Dialogue*, 10 GLOB. CONSTITUTIONALISM 439, 456–57 (2021). For example, the ICJ cited African jurisprudence, without, however, discussing it. ICJ Climate Advisory Opinion, *supra* note 4, ¶ 144. The Inter-American Court has also referenced the idea of "Ubuntu" as referring to interdependent relationships that are fostered and developed in communities. *Advisory Opinion on the Duty of Care* (OC-31–25), Inter-Am. Ct. H.R., 121 (June 12, 2025).

256. Sandholtz, *supra* note 255, at 456–57, 460; Wayne Sandholtz, *The ECtHR, Transregional Dialogues and Global Constitutionalism*, 9 GLOB. CONSTITUTIONALISM 543, 549 (2020).

257. *Verein KlimaSeniorinnen v. Switzerland,* App. No. 53600/20, ¶¶ 229–31 (Apr. 9, 2024) (also citing an amicus intervention which mentions the African Commission's resolution on the human rights impacts of climate change induced extreme weather in Eastern and Southern Africa, *id*., n.152).

258. Perhaps as a result of this engagement, the I.C.J. also referenced Article 24 of the African Charter. ICJ Climate Advisory Opinion, *supra* note 4, ¶ 390.