



**Submission of the Environmental Rights Africa Initiative (ERA)
to the African Commission on Human and Peoples' Rights**

**Inputs for the Development of a General Comment on Article 24 of the
African Charter on Human and Peoples' Rights**

20 July 2026

I. Introduction

The **Environmental Rights Africa (ERA) Initiative** respectfully submits these collective inputs in response to the African Commission on Human and Peoples' Rights' (ACHPR) Call for Substantive Inputs to the draft outline for the development of the General Comment on the Right to a General Satisfactory Environment Favourable to Development under Article 24 of the African Charter on Human and Peoples' Rights.¹ ERA is a **grassroots pan-African coalition** established in 2022 to advance the recognition, implementation and protection of environmental rights across Africa. It brings together organisations from across the continent working on environmental justice, Indigenous Peoples' rights, civic space, climate justice, business and human rights, access to justice and sustainable development. The Initiative seeks to strengthen collaboration among African civil society, amplify community voices, and promote the progressive development and implementation of environmental rights standards within the African human rights system. Through regional advocacy, research, strategic litigation support and engagement, ERA has consistently advocated for stronger legal protections for environmental rights and environmental human rights defenders, while advancing an African-led vision of environmental democracy and a just transition.

Since 2023, ERA has actively **engaged with the African Commission** and its Working Group on Extractive Industries, Environment and Human Rights Violations in Africa (WGEI) to support the **progressive development of environmental rights standards** under the African Charter. ERA has convened regional dialogues and expert consultations, facilitated exchanges between civil society and the

¹ These submissions were prepared, and inputs consolidated, with the support of the American Bar Association Center for Human Rights and the University of Iowa Center for Human Rights

Commission, and previously submitted recommendations to inform the Commission's thematic work on Article 24. These engagements have consistently emphasised the need for greater clarity regarding the normative content of Article 24, stronger implementation of existing environmental obligations, enhanced protection of environmental human rights defenders, and improved access to environmental justice across the continent.

The Commission's decision to develop a General Comment on Article 24 presents a significant **opportunity to elaborate authoritative guidance** on one of the African Charter's most innovative and forward-looking provisions. As the first regional human rights treaty to recognise the right of all peoples to "a general satisfactory environment favourable to their development", the Charter has long positioned Africa at the forefront of the global recognition of environmental rights. The General Comment now provides an opportunity not only to consolidate the Commission's own jurisprudence, but also to respond to contemporary environmental realities, including the accelerating impacts of climate change, biodiversity loss, pollution, extractive industries and shrinking civic space, while reaffirming the Charter's distinctive commitment to peoples' rights, solidarity, human dignity and sustainable development.

To contribute to this process, ERA put out a call to its members and partners for written submissions. **15 written inputs** were received to inform this **joint ERA submission**.

With the support of the WGEI, ERA and partners also convened a continent-wide **virtual Civil Society Consultation Meeting** on 9 July 2026.² The consultation was designed to enhance awareness of the Commission's Call for Submissions, facilitate dialogue on the principal thematic issues identified by the Commission, and develop coordinated civil society recommendations for the General Comment. The **125+ participants** included representatives of civil society organisations and networks, environmental human rights defenders, Indigenous Peoples' representatives, National Human Rights Institutions, academics, legal practitioners and community leaders from across all regions of Africa.

After the keynote introductions by the ERA Chair and the WGEI Chairperson, Honourable Commissioner Dersso, the consultation adopted an interactive methodology centred on three thematic discussions aligned with the Commission's proposed outline for the General Comment: (i) the normative content of Article 24; (ii) State (and business) obligations relating to environmental protection and sustainable development; and (iii) procedural environmental rights, accountability and the protection of rights holders, including environmental human rights defenders. Expert facilitators introduced each theme before participants engaged in rotating breakout discussions, enabling all participants to contribute across each thematic area.

² in partnership with the Africa Climate Platform (ACP), the Global Network for Human Rights and the Environment (GNHRE), CIVICUS, the Alliance for Land, Indigenous and Environmental Defenders (ALLIED), the African Environmental Defenders Initiative (Natural Justice), the Environmental Lawyers Collective for Africa (ELCA), the Network of African National Human Rights Institutions (NANHRI), the American Bar Association Center for Human Rights (ABA CHR), the International Press Institute (IPI), AfricanDefenders, the United Nations Environment Programme (UNEP), and the Office of the United Nations High Commissioner for Human Rights (OHCHR)

Rapporteurs captured the principal recommendations emerging from each discussion, which were subsequently validated during a plenary session. Participants were also invited to submit additional written comments and technical submissions following the consultation.

This submission reflects the outcome of that collaborative process. It draws upon the discussions and recommendations emerging from the 9 July consultation, together with written submissions shared by ERA members and partner organisations in response to the Commission's Call for Inputs. These contributions represent a diverse range of legal expertise, community experience and regional perspectives from across the continent, while demonstrating a striking degree of convergence on the fundamental issues that the General Comment should address.

Accordingly, this should be read alongside the accompanying annexes, which include the individual submissions prepared by ERA members, partner organisations and independent experts. Those submissions contain detailed legal analyses, comparative jurisprudence, thematic research and technical recommendations addressing specific aspects of Article 24. Rather than duplicating those valuable contributions, the purpose of the present submission is to identify the common principles, cross-cutting themes and priority recommendations that emerged across the consultation process and the written submissions.³ In doing so, ERA seeks to assist the Commission by presenting a consolidated civil society perspective that reflects broad areas of consensus while preserving the richness and diversity of the accompanying individual submissions.

The submission therefore does not attempt to provide an exhaustive restatement of the law relating to Article 24. Instead, it proposes an overarching interpretive framework and identifies the principal recommendations that African civil society believes should inform the development of the General Comment. ERA respectfully submits that this approach best reflects its role as a continental convener and coalition builder, while ensuring that the Commission benefits both from a concise synthesis of shared priorities and from the detailed technical analyses contained in the annexed submissions.

The recommendations that follow are grounded in a shared conviction that the General Comment represents a historic opportunity to reaffirm Article 24 as a living, autonomous and transformative provision of the African Charter—one capable of responding to the defining environmental challenges of the twenty-first century while remaining firmly rooted in the Charter's distinctive values of peoples' rights, human dignity, solidarity, equality and sustainable development. By clarifying the normative content of Article 24 and strengthening guidance on implementation, accountability and environmental justice, the Commission can further consolidate Africa's longstanding leadership in recognising the profound relationship between healthy ecosystems, human rights and the well-being of present and future generations.

³ Accordingly, throughout this framing document, we refer to the various annexes, where the Commission will find more detailed analysis along with legal citations. We also refer the Commission to Annex 15, which provides a summary of relevant jurisprudence from the African Court and Commission, as well as several domestic courts that have construed the meaning of Article 24 within their own legal systems. See Annex 15.

II. A Framework for Interpreting Article 24 of the African Charter as a Living, Autonomous and Transformative Right

The ERA Initiative respectfully submits that the General Comment presents a historic opportunity for the African Commission on Human and Peoples' Rights to articulate a contemporary interpretation of Article 24 that responds to the profound environmental challenges confronting the African continent while remaining firmly grounded in the text, values and object and purpose of the African Charter.

When the African Charter was adopted in 1981, Article 24 was unprecedented in recognising that *"[a]ll peoples shall have the right to a general satisfactory environment favourable to their development."* Long before the international recognition of the human right to a clean, healthy and sustainable environment by the United Nations Human Rights Council and General Assembly, the African Charter established environmental protection as a matter of human rights and recognised the intrinsic relationship between healthy ecosystems, human dignity, collective well-being and sustainable development.⁴ Today, that pioneering provision⁵ has assumed renewed significance in light of the accelerating impacts of climate change, biodiversity loss and pollution—the interconnected "triple planetary crisis"—which threaten the enjoyment of virtually every right guaranteed under the Charter.⁶

The Commission's General Comment should therefore adopt **a dynamic and evolutive interpretation** of Article 24. As this Commission has consistently recognised, the Charter is a living instrument whose provisions must be interpreted in light of present-day conditions and evolving international human rights law, consistent with Articles 60 and 61 of the Charter.⁷ Such an approach is particularly appropriate in relation to Article 24, whose broad and forward-looking language was deliberately framed to evolve alongside scientific knowledge, environmental realities and developing standards of international law.

Rather than treating Article 24 as a narrowly framed environmental guarantee, the General Comment should recognise it as **one of the Charter's foundational provisions**. Environmental degradation today poses existential threats to life, health, food security, water, housing, culture, livelihoods and the rights of present and future generations.⁸ Article 24 therefore operates not only as **an autonomous right** in its own regard, but also as **an enabling right** whose effective implementation is

⁴ African Charter on Human and Peoples' Rights, art 24.

⁵ For a full discussion of the positive impact of the African approach to environmental rights on international law, see Abadir M. Ibrahim† and Angela Hefti, [Contributions of the African Human Rights System to International Climate Law](#), 51 Yale L. J. 96 (2026). The right to a healthy environment has since been enshrined in more than [100 constitutions](#) globally, which includes the majority of [African States](#). UNEP, Environmental Rule of Law: First Global Report (July 2019). See also Annex 15, Supplemental Article 24 Legal Caselaw Research Resources,

⁶ UNEP, [Making Peace with Nature](#) (2021); UN Special Rapporteur on the Human Right to a Clean, Healthy and Sustainable Environment, [Amicus Curiae before the African Court, Advisory Opinion No 001/2025](#); UN ECOSOC, [General Comment No. 27](#) (2025) on economic, social and cultural rights and the environmental dimension of sustainable development, E/C.12/GC/27; ERA Consultation Transcript, Annex 16.

⁷ African Charter arts 60–61.

⁸ Tunisian Forum for Economic and Social Rights (FTDES), Annex 4; Green Rights Coalition, Annex 2.

indispensable to the enjoyment of the full spectrum of human rights protected by the Charter.⁹

This understanding has been reinforced by recent developments across international and regional human rights law. In its Advisory Opinion on the Obligations of States in Respect of Climate Change, the International Court of Justice affirmed that the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights and confirmed that environmental protection constitutes a necessary precondition for their effective realization.¹⁰ Likewise, the Inter-American Court of Human Rights has recognised the autonomous character of the right to a healthy environment while emphasising its interdependence with all other human rights and, more recently, its application in the context of the climate emergency.¹¹ These developments do not alter the content of Article 24; rather, they provide persuasive interpretive guidance, in accordance with Articles 60 and 61, that strengthens and confirms principles already embedded within the African Charter.

Importantly, Article 24 reflects a distinctly **African conception of environmental rights**. Unlike many constitutional or international formulations that focus primarily upon individual entitlements, Article 24 expressly recognises the right of "all peoples". This language reflects the Charter's unique emphasis upon solidarity, collective rights, self-determination and equitable development. Environmental degradation frequently affects rural communities, Indigenous peoples, pastoralists, fisherfolk, forest dwellers and future generations in ways that cannot be adequately understood through an exclusively individualistic conception of rights. The Commission should therefore affirm that Article 24 possesses simultaneous individual, collective and intergenerational dimensions, each of which deserves independent protection.¹²

The intergenerational dimension reflects the **principle of intergenerational equity** and requires States to prevent irreversible environmental degradation and safeguard ecological systems and natural resources in a manner that secures the rights and well-being of future generations.¹³

The **collective nature of Article 24** is closely connected to the Charter's broader conception of peoples' rights.¹⁴ Healthy ecosystems constitute the ecological foundation upon which communities exercise their rights to culture, development, property, natural resources and self-determination. Consequently, violations of Article 24 often simultaneously undermine several interconnected Charter rights, as the

⁹ SERAC and CESR v Nigeria (Communication No 155/96) (2001); Human Rights Council Resolution 48/13; UNGA Resolution 76/300.

¹⁰ Obligations of States in Respect of Climate Change (Advisory Opinion) ICJ (23 July 2025), especially paras 370–403.

¹¹ IACtHR Advisory Opinion OC-23/17; Advisory Opinion OC-32/25.

¹² Tunisian Forum for Economic and Social Rights (FTDES), Annex 4; Green Rights Coalition, Annex 2. See also Azadeh Chalabi, Annex 3 and Azadeh Chalabi, A New Theoretical Model of the Right to Environment (2023).

¹³ UN Special Rapporteur on the Human Right to a Clean, Healthy and Sustainable Environment, [Amicus Curiae before the African Court, Advisory Opinion No 001/2025](#);

¹⁴ See [Ibrahim & Hefti](#), pp. 104–105.

Commission recognised in *SERAC v Nigeria* and the African Court subsequently reaffirmed in *African Commission on Human and Peoples' Rights v Kenya (Ogiek)*.¹⁵

At the same time, it is respectfully submitted that Article 24 is not merely derivative of other rights. While environmental degradation frequently results in violations of the rights to life, health, food, water or housing, Article 24 protects broader ecological interests that cannot always be captured through those rights alone. Ecosystem destruction, biodiversity loss, contamination of rivers, deforestation and irreversible degradation of landscapes may violate Article 24 because they undermine **the integrity of the environment** and the **collective conditions necessary for human flourishing**.¹⁶

The Commission may also wish to recognise that Article 24 protects not only the human interests dependent upon healthy ecosystems but also reflects the **intrinsic value of nature itself**.¹⁷ This understanding is consistent with the Charter's holistic conception of peoples' rights, African philosophies emphasising the interconnectedness of people and nature, and the Commission's own recognition of the importance of protecting sacred natural sites and territories.¹⁸ Without necessarily recognising independent legal personality for nature, the General Comment could affirm that ecosystems, biodiversity and ecological integrity warrant protection not solely because of their instrumental value to human beings, but because they constitute the ecological foundation upon which present and future generations depend.

The Commission is also encouraged to clarify **the relationship between environmental protection and development**. Throughout Africa, environmental safeguards are frequently portrayed as obstacles to economic development, while environmentally harmful projects are justified in the name of national growth or poverty alleviation. That false dichotomy is inconsistent with both the text and purpose of Article 24, as well as the Commission's past opinions.¹⁹ The Charter does not establish a choice between development and environmental protection; rather, it expressly guarantees an environment *favourable to development*. Properly interpreted, development under Article 24 must be understood as sustainable, equitable, rights-based and environmentally sound development that advances the well-being of peoples without undermining the ecological systems upon which that

¹⁵ SERAC and CESR v Nigeria (Communication No 155/96) (2001); African Commission on Human and Peoples' Rights v Kenya (Ogiek) (2017 & 2022 reparations judgment).

¹⁶ Supplemental Article 24 Legal Caselaw Research Resources, Annex 15; UNEP, [The Right to a Healthy Environment in Practice](#) (2025).

¹⁷ African Court on Human and Peoples Rights Request for Advisory Opinion, No. 001 OF 2025 (In The Matter Of A Request By The Pan African Lawyers Union For An Advisory Opinion On The Obligations Of States With Respect To The Climate Crisis), [Amicus Curiae](#) by Dr. Abadir M. Ibrahim; Dr. Angela Hefti; Ms. Salma Waheedi; Dr. Muna B. Ndulo; Mr. Ibrahima Kane; Dr. Girmachew Alemu Aneme; Dr. Jonathan Liljeblad; Dr. Oluwatoyin Adejonwo-Osho; Dr. Oluwabusayo Temitope Wuraola; Dr. Pedi Obani; Dr. Raymond Akongburo Atuguba; Dr. Yusra Suedi; Dr. Angela van der Berg; Dr. Benyam Dawit Mezmur; Tyler R. Giannini; Dr. Idriss Fofana

¹⁸ ACHPR [Resolution on the Protection of Sacred Natural Sites and Territories](#) - ACHPR/Res.372(LX)2017

¹⁹ Kaniye SA Ebeku, *The Right to a Satisfactory Environment and the African Commission*, 3 AFR. HUM. RTS. L.J. 149, 164 (2003); ACHPR, [State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter Relating to Extractive Industries, Human Rights and The Environment](#).

well-being depends.²⁰ Development that destroys water sources, forests, biodiversity, agricultural productivity or the health of affected communities cannot meaningfully be regarded as development within the meaning of the Charter.

The consultation convened by ERA demonstrated broad consensus among African civil society that the General Comment should reject narratives that treat environmental protection and development as competing objectives. Instead, Article 24 should be interpreted as recognising their mutual dependence. Environmental sustainability is not an external limitation upon development; it is a constitutive element of development itself.

The General Comment should further recognise that Article 24 embodies the **principle of environmental justice**. Environmental harms and environmental benefits are not distributed equally. Throughout Africa, environmental degradation disproportionately affects communities already experiencing structural disadvantage, including Indigenous Peoples, women, children, older persons, persons with disabilities, rural communities, pastoralists, fisherfolk and informal workers.²¹ Article 24 therefore requires States not only to prevent environmental harm generally, but also to ensure that environmental burdens and environmental decision-making are distributed fairly, and that no community bears a disproportionate share of environmental risks because of discrimination, marginalisation or unequal access to power. Environmental justice therefore requires both equitable distribution of environmental benefits and burdens and equitable access to environmental information, participation, justice and effective remedies.

In the **context of climate change**, Article 24 should be interpreted as requiring States to adopt effective mitigation and adaptation measures consistent with their human rights obligations.²² Such measures should reduce foreseeable environmental harm, strengthen resilience to climate impacts, protect vulnerable communities, be consistent with the best available science, prevent foreseeable climate-related harm, avoid maladaptation, and contribute to the progressive phase-out of activities incompatible with maintaining a safe and stable climate.²³ States should also ensure that mitigation and adaptation measures contribute to a human rights-based and equitable just transition. A **just transition** should ensure that the costs and benefits of climate action are distributed fairly and should protect workers,²⁴ affected communities, Indigenous Peoples and those whose livelihoods depend upon natural resources through inclusive participation, social protection, skills development and reskilling, and access to effective remedies.²⁵ With respect to

²⁰ ERA Civil Society Consultation meeting on the ACHPR call for Inputs on the General Comment 9 July 2026, Annex 16.

²¹ Angela Hefti; Abadir M. Ibrahim and Salma Waheedi, Annex 5.; Prof. Pedi Obani, Annex 9.; HelpAge, Annex 6.; ILWA/WIEGO, Annex 8.

²² UN Special Rapporteur on the Human Right to a Clean, Healthy and Sustainable Environment, [Amicus Curiae before the African Court, Advisory Opinion No 001/2025](#); Obligations of States in Respect of Climate Change (Advisory Opinion) ICJ (23 July 2025); [General Comment No. 27](#) (2025) on economic, social and cultural rights and the environmental dimension of sustainable development, E/C.12/GC/27

²³ [CIEL Written Observations](#) before the African Court (2026) in the matter of Request for Advisory Opinion No. 001/2025 on the Obligations of States with Respect to the Climate Change Crisis before the African Court on Human and Peoples' Rights

²⁴ ILWA/WIEGO, Annex 8.

²⁵ UN Special Rapporteur on the Human Right to a Clean, Healthy and Sustainable Environment, [Amicus Curiae before the African Court, Advisory Opinion No 001/2025](#); Obligations of States in Respect of Climate

Indigenous Peoples, mitigation and adaptation measures must respect the rights to self-determination and free, prior and informed consent, and incorporate robust safeguards for meaningful participation, equality and non-discrimination.²⁶

The General Comment should emphasize that Article 24 contains **both substantive and procedural protections**.

Consistent with evolving international human rights standards, the **substantive content** of Article 24 encompasses at minimum the **rights to clean air; safe and sufficient water and sanitation; healthy and sustainably produced food; non-toxic environments in which people can live, work, study and play; healthy ecosystems and biodiversity; and a safe and stable climate**.²⁷ These interconnected elements together define the minimum environmental conditions necessary for the enjoyment of human dignity and all other human rights.

The three essential **procedural rights** recognised in international environmental human rights law are (a) the right of **access to environmental information**,²⁸ (b) the right to meaningful, active, free, inclusive and safe **participation** in environmental decision-making,²⁹ and (c) the right of **access to justice** in environmental matters.³⁰ These procedural guarantees are autonomous rights and integral constituent elements of the right to a clean, healthy and sustainable environment.

The Commission should clarify that Article 24 gives rise to **duties to respect, protect, promote and fulfil** the right to a satisfactory environment, each of which gives rise to distinct, complementary and mutually reinforcing obligations for States Parties.³¹

The General Comment should also clarify that Article 24 gives rise to **obligations of both immediate effect and progressive realization** using the maximum of available resources, and through **international cooperation** where appropriate.³²

Certain obligations are **immediately applicable** and constitute **minimum core obligations** binding on all States Parties irrespective of available resources. At a minimum, States should ensure the essential protection of the constituent elements of Article 24 (including protection against significant environmental harm, such as serious air, water and soil pollution, ecosystem degradation and exposure to toxic substances; access to safe and sufficient water and sanitation; healthy ecosystems

Change (Advisory Opinion) ICJ (23 July 2025); [ILO, Guidelines](#) for a Just Transition towards Environmentally Sustainable Economies and Societies for All (2015)

²⁶ SoUCLimA Research Project, Annex 11.

²⁷ Green Coalition, Annex 2; UNEP, OHCHR, and UNDP. (2023). *What is the Right to a Healthy Environment? Information Note*.

²⁸ IPI, Annex 7.

²⁹ SoUCLimA Research Project, Annex 11.; Revised African Convention on the Conservation of Nature and Natural Resources (2003) (Maputo Convention/ revised Algiers Convention), arts. XVI–XVII

³⁰ Green Rights Coalition, Annex 2.

³¹ ACHPR, Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter on Human and Peoples' Rights (2011); *SERAC and CESR v Nigeria* (Communication No 155/96) (2001).

³² CESR, General Comment No. 27 (2025) on Economic, Social and Cultural Rights and the Environmental Dimension of Sustainable Development.

and biodiversity; healthy and sustainably produced food; protection from exposure to toxic substances; and measures necessary to safeguard a safe and stable climate).³³

These minimum substantive guarantees should be complemented by **immediate procedural obligations** (to ensure public access to environmental information, meaningful, active, free, inclusive and safe participation in environmental decision-making, access to justice and effective remedies, protection of environmental human rights defenders and journalists, and effective regulation of public and private activities posing significant environmental risks).³⁴

Beyond these immediate obligations, States are required to take **deliberate, concrete and targeted** legislative, administrative, budgetary, judicial and other appropriate measures towards the **progressive realization** of Article 24.³⁵ The **principle of non-retrogression**³⁶ should also apply to Article 24, such that States should refrain from adopting measures that unjustifiably weaken existing levels of environmental protection or diminish the enjoyment of environmental rights, unless fully justified after careful consideration of all alternatives, in accordance with applicable human rights standards.

As evidenced by the numerous inputs from environmental human rights defenders and organizations across the Continent,³⁷ environmental rights also cannot be realized without the vigorous defence of **civil and political rights, Indigenous rights**, as well as overarching principles of **non-discrimination and equal treatment** before the law. Across Africa, communities are already experiencing severe droughts, floods, cyclones, desertification, ecosystem collapse, pollution-related illness and displacement.³⁸ These **impacts fall disproportionately upon marginalized groups** - including Indigenous peoples, rural communities, pastoralists, fisherfolk, forest dwellers, informal sector workers,³⁹ women,⁴⁰ children, older persons⁴¹ and persons with disabilities.

To address the unequal distribution of environmental harms, the General Comment should incorporate an **intersectional lens** in its analysis.⁴² An intersectional approach acknowledges historical and structural disadvantages while emphasizing that impacted communities often possess the agency, experience and knowledge critical to shaping effective legal and policy responses. In practice, intersectionality

³³ Green Coalition, Annex 2; UNEP, OHCHR, and UNDP. (2023). *What is the Right to a Healthy Environment? Information Note*.

³⁴ UN Framework Principles on Human Rights and the Environment (2018), A/HRC/37/59; Ligue Ivoirienne des Droits de l'Homme (LIDHO) and Others v. Republic of Côte d'Ivoire (Application 041/2016) [2023] AfCHPR 21 (5 September 2023); IPI, Annex 7; ISHR, Annex 14; ZLHR, Annex 13; SoUCLimA, Annex 11.

³⁵ UN Framework Principles on Human Rights and the Environment (2018), A/HRC/37/59.

³⁶ CESR, General Comment No. 27 (2025) on Economic, Social and Cultural Rights and the Environmental Dimension of Sustainable Development.

³⁷ Zimbabwe Lawyers for Human Rights (ZLHR), Annex 13; ISHR Annex 14; International Press Institute (IPI), Annex 7; ERA Civil Society Consultation meeting on the ACHPR call for Inputs on the General Comment 9 July 2026, Annex 16.

³⁸ Green Rights Coalition, Annex 2.

³⁹ ILWA/WIEGO, Annex 8.

⁴⁰ SoUCLimA Research Project, Annex 11.

⁴¹ HelpAge, Annex 6.

⁴² Profs. Angela Hefti; Abadir M. Ibrahim and Salma Waheedi, Annex 5; UN Special Rapporteur on the Human Right to a Clean, Healthy and Sustainable Environment, Amicus Curiae before the African Court, Advisory Opinion No 001/2025; Committee on the Rights of the Child, General Comment No 26 (2023).

strengthens obligations relating to consultation; and environmental, social and human rights impact assessments.⁴³

The Commission should further clarify that where proposed development, conservation, carbon market, carbon credit, nature-based solution or climate mitigation and adaptation projects would entail significant environmental and/ or social harms, the **free, prior and informed consent (FPIC)** of Indigenous Peoples must first be secured,⁴⁴ consistent with international human rights standards; and all affected rights-holders are entitled to **meaningful, free, active, inclusive and safe participation and effective consultation**.⁴⁵ The Commission should further clarify that carbon market and other climate-related projects must not result in land dispossession, restrictions on customary resource use, or violations of the rights of Indigenous Peoples and local communities, and must comply with the same human rights standards applicable to all environmentally significant activities, including environmental, social and human rights impact assessments, FPIC where applicable, and effective participation.

Heightened obligations are also due to **environmental human rights defenders and journalists**, who play an indispensable role in environmental democracy and the implementation of Article 24, yet face unjustified and intensifying threats from state and non-state actors.⁴⁶ Reprisals take various and increasingly sophisticated forms, including: the misuse of administrative measures (e.g., NGO registration laws); strategic lawsuits against public participation (SLAPP lawsuits) and other misappropriation of legal processes by corporate actors; suppression of speech through criminal defamation laws; misuse of national security and other laws to criminalize peaceful protest and other lawful activities; surveillance, harassment and arbitrary arrests by police; and physical violence and extrajudicial killing. States must not only refrain from directly committing the violations listed above but must also enact measures, such as anti-SLAPP laws, to protect defenders and journalists from harassment by private entities.⁴⁷

Here, too, an **intersectional approach** is important. Defenders on the frontlines of the environmental and climate crisis are often members of Indigenous and marginalized groups in rural areas. Unlike their professional counterparts in urban centers, these frontline defenders face greater threats yet have fewer resources and protections. By locating defender protection squarely within the right to a satisfactory environment, the African Commission can set a clear continental standard that environmental governance must be transparent, inclusive and safe for all defenders and journalists. To that end, the environmental democratic principles underlying Article 24 require taking affirmative measures to **prevent harm**.⁴⁸

⁴³ Report of the Special Rapporteur on the human right to a clean, healthy and sustainable environment, Astrid Puentes Riaño, Framework for environmental, social and human rights impact assessments and the right to a clean, healthy and sustainable environment (2025), A/80/187.

⁴⁴ SoUCLimA Research Project, Annex 11.

⁴⁵ Prof. Elena Kavanagh, Annex 1; SoUCLimA Research Project, Annex 11; Revised African Convention on the Conservation of Nature and Natural Resources (2003) (Maputo Convention), arts. XVI–XVII.

⁴⁶ Zimbabwe Lawyers for Human Rights, Annex 13; International Press Institute (IPI), Annex 7; ISHR, Annex 14.

⁴⁷ Zimbabwe Lawyers for Human Rights, Annex 13; International Press Institute (IPI), Annex 7.

⁴⁸ Zimbabwe Lawyers for Human Rights, Annex 13.

The effective implementation of Article 24 ultimately depends upon the existence of a strong **environmental rule of law**.⁴⁹ States should therefore establish clear legal standards, independent environmental institutions, transparent decision-making processes, effective judicial oversight, accessible remedies and robust enforcement mechanisms capable of preventing, investigating, sanctioning and remedying environmental harm.⁵⁰ States should also ensure that environmental institutions are adequately resourced, independent and capable of enforcing environmental law effectively.

Fundamental to State obligations is the duty to take effective measures to **prevent serious environmental harm, hold wrongdoers accountable and provide effective remedies**.⁵¹ These obligations should be implemented in accordance with the principles of prevention, precaution, polluter pays, environmental justice, intergenerational equity and best available science. Effective prevention requires robust regulatory frameworks and enforcement mechanisms, including environmental, social and human rights impact assessments that identify and anticipate cumulative, foreseeable and differentiated impacts before decisions are taken. States must also ensure effective investigation, accountability and remediation for serious environmental harm, including harm caused by business enterprises and other non-State actors,⁵² through accessible and effective justice and accountability mechanisms.

As the Commission has recognized on numerous occasions, states must **regulate business enterprises** whose activities create risks to the enjoyment of Article 24, through legislative, administrative and judicial measures.⁵³ Necessary measures include mandatory environmental and human rights due diligence throughout business operations and value chains;⁵⁴ environmental, social and human rights impact assessments; disclosure of environmental information; independent monitoring and oversight; meaningful participation of affected rights-holders⁵⁵; and accessible mechanisms for accountability, remediation and effective remedies where environmental harm occurs.⁵⁶ States should also ensure that affected individuals and communities have access to judicial and non-judicial grievance mechanisms capable of providing timely and effective redress.⁵⁷

The General Comment may also recognise the growing importance of **environmental crimes** to deter violations, including conduct causing severe or widespread environmental destruction. In cases involving the most severe environmental destruction (such as widespread toxic spills and strip-mining), existing

⁴⁹ UNEP (2019). *Environmental rule of law: First global report*. Nairobi: UNEP.

⁵⁰ *SERAC and CESR v Nigeria* (Communication No 155/96) (2001).

⁵¹ REED Centre for Social Change (Nigeria), Annex 10.

⁵² University of Pretoria Centre for Human Rights, Annex 12.

⁵³ University of Pretoria Centre for Human Rights, Annex 12; *SERAC and CESR v Nigeria* (Communication No 155/96) (2001). See ACHPR, [Resolution 224 on a Human Rights-Based Approach to Natural Resources Governance](#) (2012); ACHPR, [State Reporting Guidelines and Principles on Articles 21 and 24 relating to Extractive Industries](#) (2018); Principles and [Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter](#) (2011).

⁵⁴ United Nations. (2011). *Guiding Principles on Business and Human Rights*. OHCHR. HR/PUB/11/04

⁵⁵ Revised African Convention on the Conservation of Nature and Natural Resources (2003) (Maputo Convention), arts. XVI–XVII

⁵⁶ University of Pretoria Centre for Human Rights, Annex 12.

⁵⁷ United Nations. (2011). *Guiding Principles on Business and Human Rights*. OHCHR. HR/PUB/11/04

national laws may inadequately address the gravity of the harms. In this regard, ongoing developments concerning the recognition and prosecution of serious environmental crimes, may be acknowledged as one aspect of the broader evolution of international and domestic approaches to addressing the most serious environmental crimes.⁵⁸

Finally, ERA submits that the Commission should continue its long-standing practice of interpreting the Charter consistently with relevant **developments in international law** while preserving the distinctive character of the African human rights system. **Articles 60 and 61** expressly authorise the Commission to draw inspiration from international human rights law, comparative jurisprudence and emerging legal standards. Recent developments—including the recognition of the right to a clean, healthy and sustainable environment by the Human Rights Council and General Assembly, the ICJ Advisory Opinion, the Inter-American Court's advisory opinions, the UN Framework Principles on Human Rights and the Environment, and evolving domestic constitutional jurisprudence throughout Africa—provide valuable interpretive guidance regarding the normative content of Article 24.⁵⁹

Critically, Article 24 should be interpreted consistently with the international **principles of prevention, precaution, polluter pays, sustainable development, environmental justice, intergenerational equity, best available science and non-discrimination**.⁶⁰

These developments should not be viewed as importing external concepts into the Charter. Rather, they confirm the continuing leadership of the African Charter in recognising environmental protection as a fundamental human right and provide persuasive authority for clarifying the obligations that Article 24 already entails.

III. Recommendations

Accordingly, ERA respectfully submits that the General Comment should interpret Article 24 as:

Nature of the right

- an autonomous human right deserving protection in its own right.
- an enabling right indispensable to the enjoyment of all other rights protected under the Charter.
- a collective and intergenerational right that protects both peoples and individuals.
- a living, autonomous and transformative right capable of responding to contemporary environmental challenges, including climate change, biodiversity loss and pollution, and businesses' environmental accountability.

⁵⁸ REED Centre for Social Change (Nigeria), Annex 10.

⁵⁹ UN Framework Principles on Human Rights and the Environment (2018), A/HRC/37/59; UNEP Right to a Healthy Environment in Practice; ICJ Advisory Opinion; Human Rights Council Resolution 48/13; UNGA Resolution 76/300; Supplemental Article 24 Legal Caselaw Research Resources, Annex 15.

⁶⁰ Tunisian Forum for Economic and Social Rights (FTDES), Annex 4.

- a transformative right grounded in the Charter's conception of peoples' rights that advances human dignity, peoples' rights, environmental justice, solidarity, equality, participation and sustainable development.

Constituent elements

- a right comprising substantive and procedural elements, including clean air; safe and sufficient water and sanitation; healthy and sustainably produced food; non-toxic environments; healthy ecosystems and biodiversity; a safe and stable climate; access to environmental information; meaningful participation; and access to justice and effective remedies.

Equality and participation

- incorporating an intersectional approach to address the structural disadvantages experienced by Indigenous Peoples, women, children, older persons, pastoralists, fisherfolk, and informal workers, including by recognising Indigenous Peoples' right to free, prior and informed consent (FPIC), and all affected rights-holders right to meaningful, free, active, inclusive and safe participation, and effective consultation, in environmental decision-making, particularly groups facing significant environmental and social harms from development projects.

Environmental democracy

- a provision that recognizes that environmental human rights defenders and journalists play an invaluable role in the protection of environmental rights, and therefore requires states to create an enabling environment for the exercise of their rights to freedom of expression, opinion and peaceful assembly.

State obligations and implementation

- a provision imposing immediate and continuing obligations upon States to respect, protect, promote and fulfil Article 24, including minimum core obligations of immediate effect; progressive realization using the maximum of available resources; compliance with the principle of non-retrogression; prevention of significant environmental harm; effective climate mitigation and adaptation measures; regulation of business enterprises through mandatory environmental and human rights due diligence and environmental, social and human rights impact assessments; protection of environmental human rights defenders; implementation of the environmental rule of law; accountability; and effective remedies.

Business obligations

- a provision that affirms that articles 1, 21 and 24 impose a binding, non-discretionary duty on States to regulate business enterprises, and that enterprises have corresponding responsibilities to respect Article 24, distinct from the legal obligations of States, to respect Article 24

throughout their operations and value chains, regardless of ownership and place of incorporation; including human rights, environmental and climate due diligence; prevention under the precautionary principle; free, prior and informed consent on community lands; disclosure of environmental and contractual information; rehabilitation secured by advance financial assurance; effective remedy including the parent companies; and the responsibility of home States, including African home States, for enterprises operating abroad.

Interpretation

- a provision that should be interpreted consistently with evolving international human rights and environmental law while remaining firmly rooted in the Charter's distinctive commitment to peoples' rights, solidarity and equitable development.

It is respectfully submitted that such an approach would honour the Charter's pioneering vision while ensuring that Article 24 remains capable of guiding States, courts, communities and future generations in responding to the defining environmental challenges of the twenty-first century.

Annexes

1. Input from Prof. Elena Kavanagh (*Free, Prior and Informed Consent*)
2. Input from Green Rights Coalition (*Scope, nature and content of the right to environment - a pre-condition for the enjoyment of other rights & constituent elements of the right to safe environment*)
3. Input from Dr Azadeh Chalabi (*Nature of the Right to Environment: Individual, Collective and Global*)
4. Input from Mounir Hassine, Tunisian Forum for Economic and Social Rights (FTDES, Tunisia) (*General inputs to General Comment - Normative content, State Obligations, procedural obligations, Environmental Defenders, Environmental Justice*)
5. Input from Profs. Angela Hefti; Abadir M. Ibrahim and Salma Waheedi (*Intersectionality and Climate Impacts*)
6. Input from HelpAge International (*Older Persons, Heightened Obligations*)
7. Input from International Press Institute (IPI) (*Procedural Obligations, Media Freedom, Access to Information, Environmental Defenders, SLAPPs*)
8. Input from ILWA/WIEGO (*Art 24 and Workers Rights*)
9. Input from Prof. Pedi Obani, PhD (*Groups in Situations of Vulnerability – Women*)
10. Input from REED Centre for Social Change (Nigeria) (*Environmental Crimes*)
11. Input from SoUCLimA Research Project (*Public Participation and Consultation*)
12. Input from University of Pretoria Centre for Human Rights (*Businesses' Obligations and Accountability*)
13. Input from Zimbabwe Lawyers for Human Rights (ZLHR) (*Protection measures for environmental defenders*)
14. Input from International Service for Human Rights (ISHR) (*Nature of Art 24 Right, Individual and Collective Dimensions, Groups with heightened obligations, Perpetrators and drivers of violence*)
15. Supplemental Article 24 Legal Caselaw Research Resources
16. ERA Civil Society Consultation meeting on the ACHPR call for Inputs on the General Comment 9 July 2026 - Transcript

ANNEX 1

Dr Elena Kavanagh, Indigenous Rights Cluster, Centre for Criminal Justice and Human Rights, School of Law, University College Cork, Ireland

IV. PROCEDURAL OBLIGATIONS

FPIC (Free, Prior and Informed Consent)

Free, Prior and Informed Consent (FPIC) should be recognised in the General Comment as a core procedural obligation necessary for the effective enjoyment of the right to a satisfactory environment under Article 24 of the African Charter. FPIC is particularly important where environmental decision-making affects Indigenous Peoples, local communities, and other peoples whose lands, territories, natural resources, livelihoods, cultures, or traditional ways of life may be impacted. It gives practical effect to the rights to participation, self-determination, development, culture, and control over natural resources guaranteed under the African Charter.

The African Commission and African Court have affirmed that communities must be meaningfully involved in decisions affecting their lands and resources and that consultation must be undertaken in good faith, with the objective of securing consent where significant impacts are anticipated. In *Endorois Welfare Council v Kenya*, the African Commission held that participation must be effective and informed and that communities must have a genuine opportunity to influence decisions affecting their lands and development. Similarly, in *African Commission on Human and Peoples' Rights v Kenya (Ogiek)*, the African Court recognised the importance of protecting the relationship between Indigenous communities, their territories, and natural resources. These decisions establish an important foundation for interpreting Article 24 in a manner that protects both environmental rights and the collective rights of affected peoples.

The General Comment should clarify that FPIC requires consent to be **free**, meaning free from coercion, intimidation, manipulation, reprisals, or undue influence; **prior**, meaning sought sufficiently in advance of authorisation or implementation of a project or activity; **informed**, meaning based on complete, accurate, accessible, and culturally appropriate information regarding environmental, social, health, climate, economic, and human rights impacts; and **consent**, meaning a process through which affected communities are able to approve, reject, or seek modifications to proposed activities through their own representative institutions and decision-making processes.

FPIC should apply to activities with the potential to cause significant environmental or social impacts, including extractive industry projects, large-scale infrastructure developments, conservation and protected area initiatives, carbon market and carbon credit projects, climate mitigation and adaptation measures, land acquisitions, and activities that may result in displacement, loss of livelihoods, or degradation of ecosystems upon which communities depend. Consent should be understood as an ongoing process that continues throughout the lifecycle of a project and should be revisited where material changes occur.

States should establish legislative, administrative, and institutional measures to ensure the effective implementation of FPIC. This includes guaranteeing access to relevant information, providing opportunities for meaningful participation at all stages of decision-making, ensuring the inclusion of women, youth, persons with disabilities, and other marginalised groups, and providing effective remedies where FPIC has not been obtained or has been

undermined. States should also regulate private actors to prevent the circumvention of consent processes and ensure accountability for violations.

Suggested language for the General Comment: *States Parties should ensure that Indigenous Peoples, local communities, and other affected peoples are able to provide or withhold their free, prior and informed consent before the approval of activities that may significantly affect their environment, lands, territories, natural resources, livelihoods, culture, or health. Such processes must be conducted in good faith, be inclusive and culturally appropriate, and be based on the timely disclosure of comprehensive environmental, social, climate, and human rights information. Failure to obtain FPIC where significant impacts are foreseeable may constitute a violation of Article 24 and related rights protected under the African Charter.*

References

1. African Commission on Human and Peoples' Rights, *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya*, Communication No. 276/2003 (2010).
2. African Court on Human and Peoples' Rights, *African Commission on Human and Peoples' Rights v Kenya (Ogiek)*, Application No. 006/2012, Judgment of 26 May 2017.
3. United Nations Declaration on the Rights of Indigenous Peoples, UNGA Res. 61/295 (2007), arts. 10, 19, 29 and 32.



Call for Contributions to ACHPR General Comment

Joint submission ERA

The Green Rights Coalition would like to contribute to ERA's joint submission, particularly regarding the following section 4 of the Proposed outline for the General Comment : "Scope, nature and content of the right to environment and the protection it guarantees", and more particularly :

- a. the nature of the right as a right on its own and as a pre-condition for the enjoyment of other rights
- b. the constituent elements of the right to safe environment

a. the nature of the right as a right on its own and as a pre-condition for the enjoyment of other rights

The right to a clean, healthy and sustainable environment now occupies a structuring place within the architecture of human rights. It is not a peripheral or accessory right, but a fundamental right whose realization conditions the effective exercise of a range of other rights protected by the African Charter.

The logic is simple and now indisputable: a healthy environment constitutes the necessary substrate for human life.

The International Court of Justice (ICJ)'s Advisory Opinion of 23 July 2025 marks a historic turning point in the international recognition of the right to a healthy environment and in the clarification of States' obligations regarding the protection of the climate and the environment.

As recalled by the ICJ, the degradation of the climate system and the environment, including weather events such as sea-level rise, droughts, desertification and natural disasters, undermines the enjoyment of human rights as recognized under international human rights law (§375–376 of the Advisory Opinion).

This approach is consistent with an already well-established jurisprudential trajectory:

- the decision *Billy v. Australia* (Human Rights Committee, 2022), recognizing that climate inaction may violate cultural rights;

- the advisory opinions of the Inter-American Court of Human Rights (2017 and 2025), affirming that environmental protection is a precondition for the realization of human rights;
- the judgment *Verein KlimaSeniorinnen Schweiz and Others v. Switzerland* of the European Court of Human Rights, establishing that insufficient climate measures may constitute a violation of the right to respect for private and family life under Article 8 of the European Convention.

In this context, the ICJ recalled that human rights are “indivisible, interdependent and interrelated” (§63). This statement has major implications: it means that human rights mutually inform and necessarily interact with one another. The natural consequence of this interdependence is that the right to a healthy environment functions both as an autonomous right and as a foundational supporting right, indispensable to the realization of other rights. Thus, the right to a healthy environment is not merely a derivative right: it is a fundamental and autonomous right without which other rights cannot be guaranteed.

The environment as a precondition for the exercise of human rights

The Court emphasized that the environment constitutes the foundation of human life, on which the health and well-being of present and future generations depend (§371). Consequently, the Court concluded that environmental protection is a “precondition” for the enjoyment of human rights, which States are obliged to promote, fulfil and protect (§373). It demonstrates that environmental degradation directly affects the rights to life, health, an adequate standard of living, water, food, housing, as well as the rights of vulnerable groups.

The Court establishes that, since the full enjoyment of human rights cannot be ensured without the protection of the climate system and the environment, States have an obligation, under international human rights law, to take measures to protect the climate and the environment (§403).

These measures include mitigation actions; adaptation measures; the adoption of standards and legislation; and the regulation of private actors’ activities.

b. the constituent elements of the right to safe environment

The right to a clean, healthy and sustainable environment includes substantive components, which define the minimum environmental conditions necessary for human dignity, as well as procedural components, which are indispensable for its effectiveness.

2.1. Substantive components of the right to a healthy environment

The substantive components define the essential elements of an environment compatible with life, health and well-being.

a) The right to clean air

The right to clean air means that every person has the right to breathe air free from pollutants harmful to human health. Air pollution causes nearly 8 million deaths per year, disproportionately affecting children, older persons and vulnerable populations.

b) The right to a safe and stable climate

The right to a safe climate means that every person has the right to live in a stable and secure climate. This right is essential to the enjoyment of the rights to life, health, food, water and housing. Climate impacts (extreme events, sea-level rise, desertification) directly threaten human rights, particularly in countries of the Global South.

c) The right to safe drinking water and sanitation

This right guarantees sufficient, safe, acceptable, physically accessible and affordable access to drinking water. Today, 2.2 billion people lack access to safe drinking water and 3.5 billion lack access to sanitation.

d) The right to healthy and sustainable food

The right to adequate food is essential to health and well-being. Extreme weather events linked to climate change are among the main causes of lack of access to healthy and sustainably produced food. Nearly 600 million people could be undernourished by 2030. States must adopt climate-resilient agricultural practices and protect soils and ecosystems.

e) The right to a non-toxic environment

This right guarantees that every person has the right not to be exposed to toxic substances harmful to their health. Toxic substances contaminate water, air, soil and living environments.

f) The right to biodiversity and healthy ecosystems

Biodiversity and healthy ecosystems are indispensable to the realization of human rights. Biodiversity loss directly threatens the rights to water, food, health and culture.

2.2. Procedural components: conditions for the effectiveness of the right

Three essential procedural rights in environmental matters are recognized in the reports of the Special Rapporteurs on the right to a healthy environment and enshrined in several regional instruments such as the Escazú Agreement: the right of access to environmental information (a), the right to participate in environmental decision-making (b), and the right of access to justice in environmental matters (c).

a) The right of access to environmental information

This right guarantees that every person can obtain relevant, reliable and up-to-date information on the state of the environment, environmental risks, hazardous activities or public policies likely to affect the environment. It enables the public to understand the issues, protect themselves and participate meaningfully in decision-making.

b) The right to public participation

This right guarantees that affected persons and communities can express their views, be consulted and actively participate in decision-making processes likely to affect the environment: industrial projects, public policies, environmental standards, administrative decisions, etc. It is a key element of environmental democracy.

c) The right of access to justice and to effective remedies

This right guarantees that every person can bring a case before an independent authority, administrative or judicial, to challenge a decision affecting the environment, seek redress for environmental harm, enforce environmental standards, or obtain preventive or injunctive measures. This right ensures the effectiveness of the other two procedural rights.

ANNEX 3

Inputs for the Development of a General Comment on Article 24 of the African Charter on Human and Peoples' Rights

Dr Azadeh Chalabi
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University of Liverpool, School of Law and Social Justice

Section 1: The Nature of the Right to Environment: Individual, Collective and Global (This piece is excerpted from my articles and a forthcoming chapter)

According to the NIC-based model of the right to environment, developed by this author elsewhere,[1] this right can be examined as existing at three levels: individual, collective and global:

1.1. Right to environment as an individual right

The right to environment as an individual right is ascribed to individuals who can wield the right, that is, exercise it, invoke it to make a claim or waive it independently in her own name or on her own authority. The right to environment at this level can be exercised only individually. The ultimate interest at this level is an individual interest and the environment is a socially reducible good that is enjoyable by an individual regardless of its impact on other recognised rights. The scope and severity of harm at this level can be limited to specific person(s) and the number of people affected can be low with often even focusing on the current or near future harms. For example, a plaintiff may file a lawsuit challenging the pollution of a nearby stream or the noise pollution caused by a rock crusher next to her house.[2]

“It may be asked what additional significance an individual right to environment holds, considering that individual rights to some components of the environment, such as to clean air and to clean water, have already been recognized. The answer is that the individual right to environment holds distinct value. It safeguards the overall integrity of the environment, ensuring that individuals can claim protection against harms and environmental degradation not covered by narrower rights. In this way, the individual right complements collective and global rights, linking personal wellbeing with the shared and planetary dimensions of environmental protection. For example, the normative scope of the right to environment is broader than that of the right to water, as it encompasses other components of the natural environment-such as air, soil, and biodiversity-and is not limited to considerations of ‘personal and domestic use’. For example, a factory may provide the local population with safe drinking water by installing purification systems in nearby households, yet simultaneously discharge toxic chemicals into a river upstream that supplies water to other communities in the region. While the factory may not directly violate the right to safe drinking water for those immediately served, its broader environmental impact would constitute a violation of the right to environment, as the overall ecological harm undermines environmental quality and public health on a regional scale.”[3]

1.2. Right to environment as a collective right

“Beyond individual entitlement, which is universal and covers every human being, the right to environment is a collective entitlement which pertains to groups of different forms. At this level, preserving an environment of certain qualities as a collective good over time is in our *collective* interest. The right at this level involves many environmental harms, such as polluted water, species under threat of extinction, and contaminated air which may be difficult to identify as an injury to an individual plaintiff but are a threat to human health and survival over time. The right to environment as a collective right has to do with biodiversity (in particular, ecological diversity) and sustainability over time. If, for instance, pollution prevents the use of a public beach or kills the fish in a navigable stream and thus potentially affects all members of the community, it impinges on the right to environment and can be characterised as a collective right. Marine pollution in Teluk Bahang, Malaysia can be an example here. Oil spill cases such as the Ixtoc 1 Oil Spill in 1979, the Mingbulak (or Fergana Valley) Oil Spill in 1992 and the Kolva River Spill in 1994 can be taken as some other examples.”[4]

The right to environment at this level is a ‘dual-standing collective right’, in Buchanan’s term. Buchanan distinguishes between two types of collective rights: non-individual collective rights and dual-standing collective rights. Non-individual collective (or group) rights can be wielded—that is, exercised, invoked to make a claim or waived—non-individually by the group through some collective procedure or by some agent(s) on behalf of the group whereas in the case of dual-standing collective rights, ‘any individual who is a member of the group can wield the right, either on his own behalf or of any other member of the group, or the right may be wielded non-individually by some collective mechanism or by some agent or agents on behalf of the group’. The key point here is that whereas any member of the group can exercise the right or invoke the right to make a claim, no one can *wave* it individually or destroy the subject of a dual-standing right by herself.⁷⁵ This makes it different from an individual right.[5]

“The right to environment as a collective right protects right holders against two types of collective harm: (a) territory-limited and individual State-bound environmental harms such as some forms of suburbanisation, farming practices, or road construction, which can cause environmental hazards in some areas within a State; and (b) extraterritorial environmental harms such as those large scale wildfires which contribute to transboundary air pollution and other cross-border problems associated with losses to human health and livelihoods. The scale of severity of an environmental problem may change over time in both directions, State-bound to extraterritorial and vice versa.” [6]

1.3.Right to environment as a global right

The natural environment must be protected in the context of global ecosystem which is based on biodiversity. The right to environment as a global right has to do with the level of protection when environmental damage can be a threat to life on the planet. Although this level can be logically placed under the previous category (right to environment as a collective right), the scale and severity of climate change to humanity combined with the fact that the damage might be irremediable demands a higher level of protection. The delayed nature of harm or so-called ‘latent harms’ is a distinctive feature of environmental harms at this level which is related to inter-generational dimensions of global environmental crisis, in particular climate change. At this level, the protection of the environment against climate change can be defined as a *global right*. Instead of collective interest, here we can talk about ‘global

interest’ to protect the environment from the detrimental effects of global warming and climate change.[7]

“Overall, the foregoing analysis shows that the recognition of the right to environment as a multi-level right has significant consequences in practice. The right to environment, in its current form, is incredibly broad in scope, protecting against a wide range of harms from minor environmental concerns at the individual level to global environmental harms, such as climate change and global warming. Although various types of environmental harm may require different level of protection, this broadness in scope has come as a barrier. For example, identifying a single legal status for a human right like the right to environment, which is significantly broad in scope, is indeed challenging. Perhaps this was a main reason why the International Court of Justice refused to clarify explicitly the legal status of this right in its 2025 advisory opinion. Adopting the ‘NIC-based model of the right to environment’ can be utilised as a response strategy to narrow the scope of the right to environment down to three categories of individual, collective (territorial and extraterritorial) and global right. Each category (level) entails distinct forms of protection, including differences in the nature of obligations (whether of result or conduct), the identification of duty bearers, the scope of legal standing, and the relevant forums for litigation or adjudication.”[8]

Invoking the global right to environment can also be used as a strong basis to advance climate litigation of different types. Importantly, as discussed elsewhere by the author, this three-level scheme can form ‘a Right to Environment-Based Approach (REBA) as a new route for human rights-based climate litigation.’[9]

Section 2: Right to Environment and Existing Human Rights

(This section is excerpted from my 2023 article published by Oxford Human Rights Law Review open access here : <https://academic.oup.com/hrlr/article/23/4/ngad023/7280083>)

The logical relationships between the right to environment and already existing human rights can be discussed in two senses: classification and causality. In illustrating the logical relationships, it helps to draw a distinction among three categories of human rights. The first category, which I would call category A, includes those human rights whose subject is an element of the natural environment such as the right to clean water, clean air and food. These rights fall into socio-economic rights. The next category, which I would call category B, includes those human rights whose subject is not an element of natural environment, but their subject is directly influenced by the natural environment such as the right to health, life, work, housing and education. These rights fall more into socio-economic rights, though some civil and political rights such as the right to life or privacy, home and family life can be found here. The last category, called category C, includes those human rights whose subject is not *directly* related to natural environment such as freedom of religion and freedom from torture. These rights belong more to the category of civil and political rights.

Category A, namely those rights whose subject is an element of the environment, logically can be seen as a sub-set of the right to environment as an individual right. The best example includes the right to clean water which enables ‘everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses’.⁸⁰ The conceptual space of the right to environment is broader than the right to water not only because it covers

other elements of the natural environment such as air and soil but also because it is not conditioned by ‘personal and domestic use’. If, for instance, a company provides sufficient clean water enough for personal and domestic use but at the same time pollutes the main rivers in the area, this will be in violation of the right to environment though it may not be the case for the right to water as currently defined by the ICESCR in General Comment No. 15. As for category B, the right to environment as an individual right can have overlap with rights such as the right to health but their conceptual spaces are not the same. Using Venn Diagram terms, there are two intersecting circles. In this case, for example, there are some similarities between the subject of the right to environment and some underlying determinants of the right to health such as water and air. There might be cases where someone’s right to health is violated because of, for example, harmful traditional practices or a lack of access to essential drugs which may have nothing to do with natural environment directly. As for category C, although in terms of subjects these rights and the right to environment appear to be unconnected circles such as the right to free elections and the right to environment, as will be discussed shortly, there can be a mutual causal relationship between them.[10]

So far as the causal relationships are concerned, the right to environment as a composite right on a multi-level scale, can pave the way for more effective realisation of basic human rights of almost all the categories identified above. The main focus here is more on top-down causality (from macro to micro level). The right to environment as a multi-level right has to do with biodiversity and sustainability which can have an impact on the realisation of individual rights over time. That said, bottom-up causality matters here as well. There is a mutual causal relationship between the right to environment and most (if not all) basic individual rights which are already recognised. The right to health can be an example here. On the one hand, a clean, healthy and sustainable environment as one of the underlying determinants of the right to health, can reduce vulnerability to ill-health, as mentioned in Article 12 (2b) of ICESCR. On the other hand, the realisation of some basic rights such as the right to health can improve the realisation of the right to environment. Take the right to education as another example. On the one hand, air pollution has been linked to poor academic performance. For example, ‘students learning in close proximity to the coal-fired power plants in Chicago or the toxic chemical sites in Florida have worse attendance and worse test scores than the national average.’⁸¹ On the other hand, environmental education is crucial for awareness raising and informing people about their responsibilities toward the environment and this can help realise the right to environment in practice.

This reciprocal causal relationship is also true in the case of most civil and political rights. On the one hand, all basic individual rights need to be exercised in the environment and therefore the quality of the environment is always crucial. The environment influences our capabilities and this can have an impact on, for example, the right to freedom of expression, to vote or religion. On the other hand, as shown by Nobel prize winner, Amartya Sen, democracy can avoid famine mainly because the right to information and the right to free expression.[11]

[1] Azadeh Chalabi, A New Theoretical Model of the Right to Environment and its Practical Advantages, *Human Rights Law Review*, Vol 23 (4), 2023.

[2] Ibid at 13-14.

- [3] Azadeh Chalabi, Unfolding the Right to Environment as an Individual, Collective, and Global right, In Jessika Eichler and Miodrag Jovanović (eds), *Handbook on Collective Rights*, Edward Elagr (forthcoming).
- [4] Chalabi (2023) p. 14/
- [5] Ibid.
- [6] Azadeh Chalabi, Unfolding the Right to Environment as an Individual, Collective, and Global right, In Jessika Eichler and Miodrag Jovanović (eds), *Handbook on Collective Rights*, Edward Elagr (forthcoming).
- [7] Chalabi (2023), p. 15.
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- [9] Azadeh Chalabi, A Right to Environment-Based Approach as a New Route for Climate Litigation. *Nordic Journal of Human Rights*, 43(3), 241–263.
- [10] Chalabi (2023) pp 15-16.
- [11] Ibid.

ANNEX 4

Contribution of Civil Society to the African Commission in Human and Peoples' Rights Consultation on the Draft General Comment on Article 24 of the African Charter on Human and Peoples' Rights

Mounir Hassine
Tunisian Forum for Economic and Social Rights (FTDES)

I. Normative Content of Article 24

The General Comment should affirm that the right to a satisfactory and globally conducive environment favourable to development is a fundamental human right. This right is not limited to protection against pollution but also encompasses the right to a clean, healthy, safe, and sustainable environment, ensuring human dignity, the well-being of individuals, and the protection of the rights of present and future generations.¹

The Tunisian experience, particularly in the governorate of Gabès, demonstrates that the violation of the right to a healthy environment inevitably leads to the violation of a set of interdependent rights, including the right to life, the right to health, the right to water, the right to food, the right to work, and the right to development. For several years, the Tunisian Forum for Economic and Social Rights (FTDES) has been documenting the severe consequences of industrial and chemical activities on the marine environment, oases, air quality, and water resources, as well as their health, social, and economic repercussions on local communities.²

Consequently, the General Comment should interpret Article 24 as encompassing:

- the prevention of all forms of pollution;
- the protection of biodiversity and ecosystems;
- the fight against the effects of climate change;
- the sustainable management of natural resources;
- respect for the principles of environmental justice and intergenerational equity.

II. State Obligations, Environmental Protection, and Corporate Responsibility

The situation in Gabès shows that a legal framework alone remains insufficient if not accompanied by effective implementation and accountability mechanisms. Industrial emissions, as well as marine and atmospheric pollution, have persisted for decades despite constant demands from local communities for an end to environmental damage².

The General Comment should therefore specify that State obligations include, in particular:

- the adoption and implementation of effective environmental legislation, in line with African and international standards;
- the submission of all industrial and extractive projects to independent, transparent, and accessible assessments of their environmental and social impacts, as well as the publication of their results;

- the obligation for companies, both public and private, to respect human rights and the environment, notably by implementing the principle of human rights and environmental due diligence³;
- the enshrining of the "polluter-pays" principle, including compensation for environmental damage, indemnification of victims, and restoration of ecosystems;
- the guarantee of total transparency in the management of natural resources and public access to environmental information.

III. Procedural Rights, Responsibility, and Access to Justice

Procedural rights form the foundation for the effective implementation of the right to a healthy environment. The Tunisian experience shows that limited access to environmental information, restrictions on public participation, and difficulties in accessing justice are among the main obstacles to the protection of environmental rights².

The General Comment should thus stipulate that States are required to:

- guarantee free, easy, and prompt access to environmental information;
- ensure the free, prior, and effective participation of local communities in all decisions relating to projects with environmental impacts;
- establish independent, specialized, and effective judicial and administrative mechanisms to handle environmental disputes;
- remove financial and procedural obstacles hindering individuals' and communities' access to justice;
- recognize the standing of civil society organizations to bring legal action in defense of the environment and the public interest.

IV. Protection of Environmental Defenders and an End to the Criminalization of Environmental Movements

The Tunisian experience, particularly in Gabès and other regions, shows that environmental defenders and environmental movements play a crucial role in denouncing environmental violations, documenting their impacts, and defending the rights of affected populations. However, these actors have repeatedly faced restrictions, legal proceedings, and policies criminalizing peaceful environmental protests².

The effective implementation of Article 24 cannot be ensured as long as environmental demands continue to be treated as security or criminal law matters rather than as the legitimate exercise of human rights.

Consequently, we recommend that the General Comment expressly state that States are required to:

- end all forms of criminalization of environmental movements and peaceful protests related to the defense of the environment and natural resources;
- protect environmental defenders against threats, harassment, arbitrary arrests, and abusive prosecutions;
- guarantee freedom of expression, freedom of peaceful assembly, and freedom of association;
- investigate all violations committed against environmental defenders and prosecute those responsible;

- recognize the legitimate and essential role played by civil society organizations and environmental defenders in monitoring, accountability, and environmental policy development.

V. Enshrining the Principle of Environmental Justice

Environmental justice is one of the fundamental principles that the General Comment should explicitly enshrine. The situation in Gabès clearly illustrates an inequitable distribution of environmental burdens, with local communities bearing the consequences of industrial pollution for decades without equitably benefiting from the economic returns generated by these activities².

In this regard, the General Comment should specify that environmental justice implies:

- avoiding the concentration of polluting industries in marginalized or disadvantaged regions;
- ensuring an equitable distribution of environmental benefits and burdens;
- providing priority protection to the most vulnerable groups;
- guaranteeing the participation of affected communities in all stages of the decision-making process;
- ensuring effective remediation and rehabilitation of affected territories;
- taking into account the rights of future generations in the management of natural resources.

Final Recommendations

We invite the African Commission on Human and Peoples' Rights to ensure that the General Comment on Article 24:

1. expressly recognizes the right to a clean, healthy, safe, and sustainable environment as a fundamental right, intrinsically linked to all other human rights;
2. enshrines environmental justice as a fundamental principle for the interpretation of Article 24;
3. clarifies the responsibilities of States and corporations in preventing pollution, remedying damage, and restoring the environment;
4. guarantees procedural rights, including the right to information, public participation, and access to justice;
5. recognizes the protection of environmental defenders as a legal obligation of States;
6. expressly provides for an end to the criminalization of environmental movements and peaceful protests, as well as a prohibition on using criminal law or security legislation to restrict the legitimate activities of environmental defenders;
7. affirms that respect for Article 24 requires the adoption of a human rights-based development model, reconciling economic development, environmental protection, and the rights of local communities, in order to avoid the repetition of environmental injustice situations such as that observed in Gabès.

1. African Charter on Human and Peoples' Rights, 1981, article 24; African Commission on Human and Peoples' Rights, Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria, Communication n° 155/96, 2001.
2. Tunisian Forum for Economic and Social Rights (FTDES), Reports from the Environmental and Climate Justice Department on the Criminalization of Environmental Movements and Environmental Justice.
3. United Nations, Guiding Principles on Business and Human Rights, 2011; United Nations General Assembly, resolution A/RES/76/300 (2022); Human Rights Council, resolution 48/13 (2021).

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ANNEX 5

Intersectionality and Climate Impacts

Submitted by:

Angela Hefti,* Salma Waheedi,** and Abadir Ibrahim***

We respectfully submit that the Commission interpret Article 24 of the African Charter through an intersectional lens. Inequities within the African system are often layered, contextual, and historically grounded. Colonialism, racism, and sexism have generated social inequities along identity markers such as race, gender, indigeneity, and disability, producing overlapping and intersecting forms of marginalization. Climate impacts such as drought, displacement, and food insecurity deepen pre-existing inequities and affect communities in disparate and mutually reinforcing ways.

An intersectional approach offers an analytical framework for understanding how climate-related harms are distributed across African societies. It examines how multiple, interrelated identity markers interact to produce distinct forms of disadvantage, focusing on the structural systems that shape and reinforce inequality rather than treating identities as separate or additive. The concept has two central components: first, it identifies how overlapping axes of identity create specific and unequal social experiences; second, it seeks to expose and remedy the structural forces that sustain compounded disadvantage.[1] Applied to climate change, intersectionality reveals how climate harms map onto existing inequality and intensify systemic marginalization, making it an essential tool for understanding differentiated climate risks across African societies.

The African human rights system is uniquely positioned to engage in intersectional analysis and already reflects a comparatively advanced approach to addressing intersecting inequities. The Maputo Protocol expressly protects women situated at the intersection of gender and other categories:[2] Article 22 addresses the rights of elderly women and the compounded forms of discrimination they may face:[3] Article 23 addresses the rights of women with disabilities[4]; Article 24 protects “women in distress,” a category encompassing socioeconomic and situational disadvantage; and Article 18 recognizes the need to protect and seek the contributions of Indigenous women.[5] The African Children’s Charter similarly recognizes that children’s experiences of discrimination are shaped by intersecting factors of gender, disability, and social condition.[6] Emerging instruments addressing disability and older persons further reflect this trajectory.[7] The African human rights system’s reflection of intersectional reasoning within its legal and institutional framework should inform the Commission’s interpretation of Article 24.

When assessing the positionality of women, children, Indigenous peoples, persons with disabilities, and older persons in relation to Article 24, the Commission should consider that these groups’ experiences of climate harm are shaped by intersecting disadvantage rather than by any single identity marker. In this regard, intersectionality should be distinguished from vulnerability. The latter refers to heightened risk without linking it to prohibited grounds of discrimination, and risks stigmatizing certain groups by implying inherent weakness. An intersectional framework shifts the focus to the structural conditions—historical dispossession, discrimination, exclusion from decision-making—that sustain heightened climate risk, emphasizing agency and participation.

The experiences of Indigenous peoples across Africa illustrate this distinction. Climate harms affecting Indigenous communities frequently reflect the compounded interaction of historical dispossession, extractive development, environmental degradation, and entrenched discrimination—dynamics inseparable from land tenure, cultural identity, and collective survival. An intersectional approach would allow the Commission to articulate the compounded nature of such harms, recognize the agency and knowledge systems of affected communities, and ensure that Article 24 obligations are interpreted in a manner responsive to their lived realities.

An intersectional framework emphasizes lived experience, agency, and the active role of communities in shaping legal and policy responses. This is particularly relevant for Indigenous peoples, rural women, persons with disabilities, older persons, and youth, whose knowledge systems and lived experiences often shape locally effective adaptation and resilience strategies. In practice, intersectionality strengthens obligations relating to consultation, environmental impact assessments, and free, prior, and informed consent, and may support equitable participation in adaptation planning and just transition processes. The protection of environmental defenders should be understood through this lens as well: defenders facing intersecting forms of marginalization face heightened risks of reprisal and require context-sensitive protective measures consistent with states' duties under the Charter.

An intersectional framework strengthens procedural rights under Article 24. Access to environmental information, meaningful participation in decision-making, and access to justice are not equally available to all. Structural inequalities shape who can meaningfully exercise these rights. Because environmental harms often affect entire communities and manifest through complex patterns of structural inequality rather than individualized injury, those most affected—particularly groups experiencing intersecting forms of disadvantage—may be systematically excluded from legal and decision-making processes. An intersectional analysis expands the identification of affected groups by tracing overlapping inequalities to their structural roots, thereby increasing access to climate justice.

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[1] This input is based on the amicus brief submitted to the African Court on Human and People's Rights, coordinated by Abadir M. Ibrahim, Angela Hefti and Salma Waheedi et al., available here: <https://hrp.law.harvard.edu/wp-content/uploads/2026/04/Amicus-AO-No.-001-2025-Climate-Obligations-Online-.pdf>.

[2] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), adopted July 11, 2003, art. 22–24.

[3] Maputo Protocol art. 22

[4] Maputo Protocol art. 23

[5] Maputo Protocol art. 24

[6] African Charter on the Rights and Welfare of the Child, adopted July 11, 1990, arts. 21, 13

[7] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Persons with Disabilities in Africa (2020), arts 27-; arts 9, 12-14.

OLDER PERSONS AND ARTICLE 24



Heightened State Obligations for an Age-Inclusive Right to a Satisfactory Environment

Submission by HelpAge International | Annex 6 to the ERA Joint Submission | 20 July 2026

Prepared by: Hari Krishna Nibanupudi, Climate Change Adviser, HelpAge International | hari.nibanupudi@helpage.org

1. Purpose and central proposition

HelpAge International welcomes the African Commission on Human and Peoples' Rights' development of a General Comment on Article 24 of the African Charter. This submission supports the Environmental Rights Africa Initiative's interpretation of Article 24 as a living, autonomous and transformative right, and addresses a specific gap: the need to make older persons, particularly older women, visible as rights-holders, participants and environmental actors. The General Comment should clarify that Article 24, read with the Charter's equality, dignity, health, participation, development and special-protection guarantees, creates differentiated and heightened duties where age, gender, disability, poverty, livelihood, displacement or social isolation increase exposure to environmental harm.

Article 18(4) of the Charter guarantees older persons special measures of protection, while Article 24 guarantees all peoples a satisfactory environment favourable to development (African Commission on Human and Peoples' Rights [ACHPR], 1981). These provisions should be interpreted together. The result is not a paternalistic presumption that all older persons are inherently vulnerable. Rather, States must identify and remove the structural barriers—ageism, gender inequality, inaccessible systems, insecure income and land tenure, weak services and exclusion from decision-making—that convert environmental hazards into unequal rights violations.

2. Why is explicit recognition of older persons and older women necessary

Africa faces escalating heat, drought, floods, ecosystem degradation, food insecurity and climate-sensitive disease. The IPCC identifies older people among those at the highest risk of heat-related mortality and morbidity in Africa, alongside pregnant women and people with underlying health conditions (Intergovernmental Panel on Climate Change [IPCC], 2022). Older persons may experience reduced mobility, disrupted access to medicines and care, inaccessible warnings and evacuation routes, livelihood loss, displacement, and weakened family or community support. These impacts are often intensified for rural farmers, pastoralists, fisherfolk, informal workers, people with disabilities, Indigenous persons and people living in poverty or homelessness.

Older women require express attention because age and gender discrimination accumulate across the life course. Lower and irregular earnings, unpaid care work, widowhood, limited

pension coverage, unequal inheritance and land rights, and heightened exposure to violence can reduce their capacity to prepare for, withstand and recover from environmental shocks. The Maputo Protocol, therefore, combines women's right to a healthy and sustainable environment with duties to secure women's participation in environmental management and protect Indigenous knowledge, and separately requires special protection of older women against age discrimination and violence (African Union, 2003, arts. 18 and 22). The Protocol on the Rights of Older Persons in Africa further requires protection of older women from gender-based violence, property and land abuses and inheritance violations, and expressly addresses harmful practices, including witchcraft accusations affecting older women (African Union, 2016, arts. 8–9).

The General Comment should also address statistical invisibility. A review of 56 SDG indicators relevant to older persons found age-disaggregated information available for only about one third of indicators and none of the indicators under the 'enabling environment' priority (Titchfield Group on Ageing and Age-disaggregated Data, 2024). Without data disaggregated by age, sex, disability, location and other relevant characteristics—and without meaningful age bands above 60—States cannot identify unequal exposure, evaluate policy or provide accountable remedies.

3. Normative basis for heightened State obligations

The Charter's Article 24 must be read systemically with Articles 2 and 3 on non-discrimination and equal protection; Articles 4 and 16 on life and health; Article 9 on information; Article 13 on participation and access to public services; Article 18(3) on eliminating discrimination against women; Article 18(4) on special protection for older persons; and Articles 21 and 22 on natural resources and development. The Protocol on the Rights of Older Persons—now in force—provides further interpretive guidance through its guarantees on non-discrimination, decision-making, social protection, older women, disaster situations, health, participation, accessibility, data collection and remedies (ACHPR, 2024; African Union, 2016).

International standards reinforce this integrated reading. OHCHR's analytical study on climate change and older persons identifies both disproportionate impacts and the positive contributions of older persons, and calls for rights-based, participatory and age-responsive climate action (Office of the United Nations High Commissioner for Human Rights [OHCHR], 2021). CEDAW General Recommendation No. 27 recognises the multiple discrimination experienced by older women (Committee on the Elimination of Discrimination against Women, 2010). The European Court of Human Rights' KlimaSeniorinnen judgment, while not binding within the African system, is persuasive comparative authority: it recognised an association between older women's standing and found failures in State climate action inconsistent with positive human rights obligations (Verein KlimaSeniorinnen Schweiz and Others v. Switzerland, 2024).

4. Obligations that the General Comment should articulate

a. Prevention, regulation and impact assessment. States should adopt and enforce environmental, climate, public-health and land-use laws that prevent foreseeable harm to older persons. Environmental and social impact assessments, strategic assessments, and climate-risk analyses should examine age- and gender-differentiated, cumulative, and

long-term impacts, including heat, pollution, livelihood disruption, displacement, care needs, land and property loss, and impacts on cultural or community ties. States should require businesses, financiers, and public authorities to conduct age-, gender-, and disability-responsive human rights and environmental due diligence, prevent harmful projects, and provide effective remediation.

b. Accessible information and meaningful participation. Environmental information, early warnings, and consultation documents must be available in accessible formats, in local languages, and through channels that do not depend solely on digital access. Older persons and their representative organisations, including Older People's Associations, should participate from the earliest stage in environmental assessments, adaptation plans, disaster strategies, relocation decisions, natural resource governance, climate finance priorities, and monitoring. Participation must include transport or mobility support, reasonable accommodation, safe spaces for older women and safeguards against tokenism. Where Indigenous Peoples and directly affected communities' rights are engaged, the General Comment should reinforce applicable consent standards and protection of traditional knowledge.

c. Age-responsive adaptation, emergency protection and essential services. States should ensure inclusive heat-health action plans, warning systems, evacuation support, shelters, cooling and water access, continuity of healthcare and medicines, assistive devices, food and nutrition, psychosocial support and protection from violence and exploitation. Disaster registration and assistance must not exclude people without identity documents, bank accounts, digital access or fixed addresses. The Protocol on the Rights of Older Persons requires priority access to rescue, settlement, repatriation, medical assistance and care in disasters (African Union, 2016, art. 14). Climate-resilient and shock-responsive social protection—including universal or adequate pensions, emergency cash and livelihood support—should be treated as an adaptation obligation, not discretionary welfare.

d. Land, livelihoods, just transition and climate finance. States should protect older persons' housing, land, inheritance, natural resources, and livelihood rights, with specific safeguards for widows and women-headed households. Compensation, relocation and livelihood-restoration measures must reflect non-market losses, unpaid environmental and care work, accessibility needs and older persons' preference to remain within their communities. Public climate finance should support age-inclusive, locally led adaptation and ensure that older women can access grants, credit, training, technology, cooperatives and markets. Carbon markets, conservation and renewable-energy projects must not dispossess communities or exclude older rights-holders from benefits, information, consent processes or remedies.

e. Accountability, remedies and monitoring. Complaint mechanisms, courts, national human rights institutions and administrative processes should be physically, financially, linguistically and digitally accessible. Legal aid, representative actions and community-based assistance should be available, particularly for older women facing property loss, violence or discrimination. Reparations should include restitution, compensation, rehabilitation, guarantees of non-repetition, and the restoration of livelihoods, health, housing, and community connections. State reporting under Article 62 should include measurable, age- and gender-responsive indicators, budget allocations, implementation outcomes, and data disaggregated at least by five-year age groups from age 60 onward, where feasible.

5. Recognise older persons as environmental actors and knowledge-holders

Protection must be matched by recognition of agency. Older persons are farmers, pastoralists, fisherfolk, caregivers, community organisers, environmental defenders and custodians of Indigenous and local knowledge. Excluding them weakens both rights and environmental effectiveness. Their accumulated knowledge of rainfall, grazing, biodiversity, water management, seed selection, food systems and conflict resolution can complement scientific information and strengthen locally legitimate adaptation (Nibanupudi, 2025). The General Comment should require States to create formal, resourced pathways for older persons to co-design environmental policy, mentor younger generations and receive equitable support for ecosystem stewardship.

Evidence from the HelpAge programme in Ethiopia illustrates this dual approach. In drought-affected Borena and East Bale, more than 73 per cent of older people surveyed faced acute food insecurity. A programme combining Satellite-Assisted Pastoral Resource Management with local knowledge, livelihood diversification and women-led cooperatives supported more than 1,500 households; over 500 women received entrepreneurship and cooperative training. The experience showed that combining older pastoralists' knowledge with climate information improved migration decisions, while investment in older women's economic leadership strengthened household and community resilience (HelpAge International, 2025). Such initiatives demonstrate that age-inclusive environmental action is not only protective: it produces more effective, equitable and sustainable outcomes.

6. Proposed language for inclusion in the General Comment

The General Comment should state that: 'Article 24, read together with Articles 2, 3, 9, 13, 16 and 18 of the African Charter and relevant regional instruments, requires States to ensure the equal and effective enjoyment of the right to a satisfactory environment by older persons. States shall adopt age-responsive, gender-responsive and disability-inclusive legislative, administrative, budgetary and judicial measures, including disaggregated data; accessible environmental information and early-warning systems; meaningful participation of older persons and their representative organisations; age-responsive environmental and human-rights impact assessments; continuity of essential health, care and social-protection services; protection of housing, land, inheritance and livelihoods; equitable access to adaptation, just-transition and Climate-Finance measures; regulation of private actors; and accessible remedies and reparations.'

It should further state that: 'States shall pay specific attention to older women, including widows, women with disabilities, Indigenous women, rural women and women heading households, whose exposure to environmental harm may be compounded by gender-based discrimination, violence, unpaid care responsibilities, insecure income and unequal property or inheritance rights. Older persons shall not be treated solely as vulnerable recipients of assistance: States shall recognise, protect and resource their agency, knowledge, leadership and contributions to environmental governance, climate adaptation, biodiversity conservation and intergenerational resilience.'

7. Implementation, monitoring and minimum indicators

The General Comment should translate these obligations into an implementation framework that can be monitored through State reporting and independent oversight. States should be required to identify a leading institution responsible for age-inclusive environmental action, establish formal coordination among environment, climate, disaster management, health, social protection, housing, land, and ageing authorities, and consult older persons' organisations when preparing laws, budgets, and plans. National human rights institutions and environmental regulators should be mandated and resourced to monitor age and gender equality in environmental decision-making, emergencies, business conduct and access to remedies. Public officials, emergency responders, healthcare workers, judges and environmental assessment practitioners should receive training on ageism, older women's rights, accessibility and intersectional discrimination.

At minimum, periodic reports under Article 62 should disclose: climate- and pollution-related mortality and morbidity among older persons; access to warnings, evacuation, cooling, safe water, health services, medicines and assistive devices; the coverage and adequacy of pensions and emergency assistance; the number and quality of consultations involving older persons and older women; losses of housing, land, property, livelihoods and cultural connections; complaints, investigations, remedies and reparations; and the proportion of adaptation and environmental finance that reaches older persons' organisations and age-inclusive initiatives. Data should distinguish women and men, disability status, rural and urban location, displacement, livelihood and successive older age groups, while respecting privacy and avoiding stigmatisation. Community-generated evidence and qualitative testimony should complement official statistics.

The Commission should also clarify that resource constraints do not excuse discrimination or failure to meet minimum core obligations. Immediate duties include non-discrimination; access to essential information, emergency assistance and lifesaving services; protection against violence, dispossession and arbitrary exclusion; and access to complaints and remedies. Progressive measures should be deliberate, adequately budgeted and subject to transparent timelines. Particular scrutiny is required where climate or conservation measures transfer costs to older women through unpaid care, loss of land, reduced access to natural resources or exclusion from new technologies and finance. Conversely, policies should measure and reward older women's leadership, ecological labour, and contributions to household, community, and intergenerational resilience.

These standards would prevent older persons from remaining invisible within generic vulnerability language or confined to welfare responses. They would affirm a distinctly African approach linking protection, equality, participation, accountability and community knowledge, and ensure that environmental action reduces rather than reproduces age and gender inequality.

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The International Press Institute’s submission on the ACHPR General Comment on the Right to Environment through ERA

CONTRIBUTION TO SECTION ON “PROCEDURAL OBLIGATIONS”

Media freedom

Freedom of expression and access to information are fundamental rights protected under the African Charter and other international human rights laws and standards.^[1] The right to freedom of expression encompasses media freedom.

Media freedom is premised on the ability of the press to operate independently of undue government and economic interference, as articulated in international and regional frameworks.^[2]

The General Comment should explicitly recognise the indispensable role played by the media in the realisation of the right to a healthy environment under Article 24. Climate and environmental journalists are at the forefront of facilitating public access to critical information on climate change, environmental degradation, pollution, biodiversity loss, natural resource extraction and environmental governance, driving decision-making by communities and accountability efforts against environmental harms.

Robust climate and environmental reporting can only flourish where media freedom is guaranteed. The General Comment should underscore that states must promote the necessary conditions for free, independent, and diverse media, including public service, private and community media, as per the 2019 Declaration of Principles on Freedom of Expression and Access to Information in Africa (ACHPR 2019 Declaration).^[3]

Climate and environmental journalists face grave threats from state actors, businesses and community members seeking to muzzle reporting of sensitive environmental stories. If left unaddressed, their contribution to the enjoyment of Article 24 will be curtailed.

The General Comment should expressly recognise the threats faced by climate and environmental journalists and the need for States to fulfil their obligation to promote and protect their work, and to take positive action to facilitate it

According to research and monitoring reports by the International Press Institute (IPI), these violations include:^[4]

- Physical attacks, including killings of journalists
- Restrictions on access to information
- Enforced disappearances and abductions
- Threats, intimidation and harassment
- Unlawful and arbitrary detention and arrests
- Online attacks, including targeted disinformation and cyberattacks
- Illegal surveillance
- Censorship
- Legal harassment, including Strategic Litigation Against Public Participation (SLAPPs)

The General Comment should call on governments to guarantee the safety of journalists, implement legal and other measures to prevent attacks, and facilitate timely access to justice as per Principles 19 and 20 of the ACHPR 2019 Declaration and other relevant frameworks.^[5]

The General Comment should underscore the importance of an enabling legal and policy environment to fulfil the right to freedom of expression, including critical voices who promote the realisation of Article 24. The General Comment should call on states to decriminalise defamation and false news offences in compliance with Principle 22 of the ACHPR 2019 Declaration, General Comment 34 of the ICCPR, and the African Court on Human and Peoples' Rights decision in *Lohe Issa Konate v Burkina Faso*.^[6]

Media economic challenges may lead to the deprioritisation of climate and environmental stories that may not be viewed as a popular subject, muting a vital information channel for actualising the right to the environment. The General Comment should call on the state to take measures to promote media development and sustainability and incentivise climate and environmental public interest reporting as a public good with strong safeguards for independence.

Access to information

Access to credible, accurate and reliable information is a cornerstone of effective climate action and the enjoyment of Article 24. Everyone has the right to access information held by public bodies, relevant private bodies and private bodies for the exercise or protection of any right.^[7] Journalists and environmental defenders must have access to accurate environmental information.

The General Comment should call for information holders, including public bodies, and relevant private bodies, to proactively disclose public interest environmental information as per Principle 29 of the 2019 Declaration.^[8]

The General Comment should call for the full implementation of the African Commission Resolution on Access to Information and the Right to a Healthy Environment.^[9] In this regard, it must emphasise state responsibility to:

- Provide timely, accurate, accessible, and proactive disclosure of climate and environmental information
- Guarantee meaningful public participation and access to justice in environmental decision-making
- Ensure an open, pluralistic, and enabling information environment
- Facilitate unimpeded access to information for journalists, human rights defenders, and relevant communities
- Enact strong access to information laws in compliance with regional and international standards.
- Prevent, investigate, and remedy attacks against environmental defenders, including journalists
- Take legislative, administrative and judicial measures to prevent and address malicious or abusive litigation

CONTRIBUTION TO SECTION ON “GROUPS IN SITUATIONS OF VULNERABILITY AND ENVIRONMENTAL DEFENDERS”

Protection measures for environmental defenders: Protection against SLAPPs

SLAPPs are a form of judicial harassment that is increasingly used to silence climate and environmental defenders and journalists.^[10] SLAPPs are ‘meritless litigation, whether civil, criminal or administrative, instituted by powerful individuals or entities to obstruct public participation, silence critics and watchdogs, impede investigative reporting, and evade accountability in matters of public interest through long, arduous and costly litigation, typifying a gross abuse of the judicial or administrative processes.’^[11] According to a recent report by IPI, there is a dearth of data on SLAPPs affecting climate reporting, despite the severity of the threat to critical voices, requiring broad interventions from states, civil society and development partners.^[12]

The General Comment should expressly recognise the serious threat posed by SLAPPs on environmental defenders and journalists and their critical role in advancing the right to a healthy environment. The General Comment should provide that the enjoyment of Article 24 requires states to address this threat through measures such as:

- Repealing criminal defamation, sedition, false news and insult laws.
- Enacting specific anti-SLAPP laws
- Strengthening judicial independence and integrating SLAPPs in judicial training curriculum
- Strengthening access to legal aid assistance for SLAPP victims
- Investigating allegations of misuse of court processes through abusive and oppressive litigation.

^[1] Principles 11-15 2019 ACHPR Declaration. Also see Para 40 General Comment 34 of the ICCPR.

^[2] Article 19 International Covenant on Civil and Political Rights (ICCPR); Article 9 African Charter on Human and Peoples’ Rights; Para 40 General Comment 34 of the ICCPR & Principle 11 & 12 [ACHPR 2019 Declaration](#).

^[3] Principles 11-15 2019 ACHPR Declaration. Also see Para 40 General Comment 34 of the ICCPR.

^[4] [IPI Monitoring Report: Climate and environmental journalism in Africa: March-September 2025](#); [IPI Climate and Environmental Journalism Under Fire 2024](#)

^[5] Also see [Resolution on the Safety of Journalists and Media Practitioners in Africa & A/HRC/RES/59/15 UN Human Rights Council Resolution: Safety of Journalists & A/RES/80/217 UN General Assembly Resolution on the safety of journalists and the issue of impunity](#)

^[6] [Lohe Issa Konate v Burkina Faso. Application 004/2013](#). Also see [ACHPR/Res.169 \(XLVIII\)10 Resolution on Repealing Criminal Defamation Laws in Africa](#).

^[7] Principle 26 2019 Declaration

^[8] Subject to adoption by the ACHPR, please also see Guidelines 6, 20 & [Appendix A African Guidelines on Promoting and Harnessing Data Access as a Tool for Advancing Human Rights and Sustainable Development in the Digital Age](#)

^[9] [ACHPR ‘Resolution on Access to Information and the Right to a Healthy Environment -ACHPR/Res.657\(LXXXVI\) 2026’](#).

^[10] [IPI “SLAPPs against environmental and climate journalists in Africa: A perfect storm for harassment’ \(2026\)](#).

^[11] Please note that there are ongoing efforts to introduce a SLAPPs Resolution for consideration by the African Commission. This definition is lifted from the Resolution to ensure definitional harmony in the African Commission frameworks.

^[12] [IPI “SLAPPs against environmental and climate journalists in Africa: A perfect storm for harassment’ \(2026\)](#)

ANNEX 8

SUBMISSION TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS WORKING GROUP ON EXTRACTIVE INDUSTRIES, ENVIRONMENT AND HUMAN RIGHTS VIOLATIONS IN AFRICA

SUBSTANTIVE INPUTS ON THE UPDATED OUTLINE FOR THE PROPOSED GENERAL COMMENT ON THE ARTICLE 24 RIGHT TO A SATISFACTORY ENVIRONMENT FAVOURABLE TO DEVELOPMENT

INTERNATIONAL LAWYERS ASSISTING WORKERS (ILAW) NETWORK AND WOMEN IN INFORMAL EMPLOYMENT: GLOBALIZING AND ORGANIZING (WIEGO)

20 JUNE 2026

I. Introduction

The International Lawyers Assisting Workers (ILAW) Network and Women in Informal Employment: Globalizing and Organizing (WIEGO) submit these strategic inputs in response to the call from the African Commission on Human and Peoples' Rights (the Commission) Working Group under Resolution ACHPR/Res.633 (LXXXIII) 2025.

The core submission is that Article 24 should be interpreted in a worker-centred manner: the right is not limited to the environment, understood in purely ecological terms. It encompasses the socioeconomic conditions that enable people to live – and work – in dignity. Therefore, the normative content of Article 24 should be interpreted in light of the principle of indivisibility and interdependence. This directly links it to Articles 15 (Right to Work) and 10 (Freedom of Association). The Commission should codify that the right to a satisfactory environment encompasses the right to a Just Transition, ensuring that shifts toward ecologically sustainable economies are fair, inclusive, equitable, and protective of fundamental labor rights.

II. Normative Content and Scope of Article 24

Article 24 should be understood as both an autonomous right and an enabling condition for the enjoyment of other Charter rights. The Commission has consistently interpreted the right to a “general satisfactory environment favourable to their development” as extending beyond ecological protection, to encompass the lived environment of people’s daily lives. On this basis, the Commission should clarify that conditions in which people work and sustain their livelihoods are part of the lived environment protected by Article 24.

The principle of indivisibility and interdependence is central in this interpretation. Article 24 must be read with the specific rights of the African Charter. In this regard, Article 10 on freedom of association, Article 15 on the right to work under equitable and satisfactory conditions, Article 16 on health, Article 21 on people’s freely disposable wealth and natural resources, and Article 22 on development are all critical.

The phrase “favourable to their development” is a critical element of Article 24. It grounds environmental protection in an understanding of human development that is socially inclusive

and non-destructive of livelihoods. Read in this way, Article 24 can be interpreted as requiring that climate action be implemented in a manner consistent with the right to a just transition. While States are entitled—and indeed required—to pursue climate mitigation and adaptation measures, such measures must not result in disproportionate harm to workers and communities.

Articles 60 and 61 further support this interpretive approach by authorizing the African Commission to draw from international human rights law; UN standards, and comparative jurisprudence. This enables systemic integration of contemporary international labour, environmental and human-rights standards on the right to a just transition, including the ILO Just Transition Guidelines, the Paris Agreement, the UN General Assembly recognition of the right to a clean, healthy and sustainable environment, the ICJ Advisory Opinion on climate change, the Inter-American Court's Advisory Opinion OC-32/25, and CESCR General Comment No. 27.

III. The right to the environment and groups in conditions of vulnerability

Workers in the informal economy constitute a particularly vulnerable group under Article 24. Their economic activities entail sustained exposure to environmental hazards, including air pollution, extreme heat, unsafe water and sanitation, toxic substances, and climate-related shocks. At the same time, these workers face systemic challenges that undermine their rights to work and their rights at work. They are also directly affected—positively or negatively—by climate transition measures.

IV. State Obligations: Climate, Biodiversity, Conservation and Sustainable Development

The General Comment should translate Article 24 into concrete duties to respect, protect, promote, and fulfill. At a minimum, States should adopt deliberate, targeted, and evidence-based measures to prevent environmental degradation, reduce exposure to pollution and climate hazards, protect biodiversity, and ensure that mitigation and adaptation policies do not deepen poverty, informality, or inequality.

In line with the obligation to respect, states must refrain from adopting transition measures that interfere with or curtail the enjoyment of workers' rights. The suppression of any informal work should be replaced with another type of work that is at least as valuable to workers, through livelihood protection plans designed with workers.

In line with the obligation to protect, states must ensure that transition measures aimed at moving towards more sustainable production and consumption models do not displace workers from sectors they've established, and hold companies accountable for the impacts of their activities on the rights of workers in informal employment.

In line with the obligation to fulfil, states must invest the maximum available resources in transition measures that cater to the specific needs of those living in poverty and working informally.

Particular policy interventions to guarantee the right to a just transition include:

- Climate-responsive occupational safety and health: States should update labour, OSH and public-health laws to address heat stress, floods, toxic exposure, vector-borne

diseases and extreme weather risks. This should include enforceable standards on heat thresholds, rest, water, shade measures, protective equipment adapted to climate conditions, labour inspection, emergency evacuation, compensation and the right of workers to remove themselves from imminent danger without retaliation.

- Employment and skills pathways: States should adopt active labour-market policies for workers and communities affected by climate impacts and decarbonization, including reskilling, redeployment, public employment programmes, local green-enterprise development, and transition plans for carbon-intensive sectors before closures or restructuring.
- Social protection as climate resilience: Article 24 should require climate-responsive social protection floors, including income support, health coverage, unemployment protection, disaster-response support, childcare, and basic services for workers and communities affected by environmental harm. These protections must extend beyond standard formal employment relationships.
- Adaptation for climate-sensitive livelihoods: States should prioritize early warning systems, water security, resilient infrastructure, crop and livelihood protection, insurance or compensation mechanisms, and targeted support for farmers, pastoralists, fisherfolk, market traders, and other livelihood groups dependent on ecosystems.

V. Procedural Environmental Rights and Civic Space

Procedural guarantees are indispensable to Article 24. The General Comment should require access to environmental information, public participation, and access to justice at the national, local, and workplace levels. Information should be timely, accessible, gender-responsive, and available in languages and formats understood by affected communities and workers.

Workplace and community right to know. Workers, trade unions, informal economy worker organizations, and affected communities should have legal access to environmental impact assessments, pollution data, toxicity information, heat-stress and hazard assessments, closure plans, carbon market agreements, land use decisions, and rehabilitation commitments before decisions are finalized.

Participation and social dialogue. The Commission should recognize social dialogue as a procedural environmental right when decisions affect jobs, livelihoods, or working conditions. Consultation should include trade unions, informal economy worker associations, cooperatives, smallholder organizations, community-based organizations, and representatives of women, youth, and persons with disabilities. When Indigenous peoples and affected communities are involved, consultation should meet the standard of free, prior, and informed consent.

Environmental defenders and worker organizers. States should protect environmental defenders, journalists, community leaders, trade unionists, and informal economy worker organizers from violence, intimidation, surveillance, dismissals, blacklisting, criminalization, and SLAPP-type litigation. Restrictions on assembly, association, and expression should meet strict tests of legality, necessity, and proportionality.

VI. Concrete Textual Propositions for the Updated Outline

To assist the Working Group in refining the text, we propose that the following concrete propositions be integrated into the respective sections of the draft outline:

1. Normative Content and Scope of Article 24

The Just Transition Principle: The General Comment should state that the right to a satisfactory environment includes a right to a Just Transition. Environmental protection frameworks must actively protect, rather than displace, human livelihoods.

Climate-Responsive OSH: The text should explicitly define a "satisfactory environment" to include the workplace's immediate micro-environment. This requires States to establish maximum permissible humid-heat thresholds, mandate rest and hydration periods, and provide structural protection for outdoor workers.

The Crime of Ecocide: Recognizing the growing momentum across the continent, the General Comment must state that widespread, long-term, or severe environmental destruction that decimates local livelihoods constitutes an egregious violation of Article 24 and creates individual criminal liability for corporate executives.

2. State Obligations: Adaptation versus Mitigation

Equitable Adaptation Policy: While mitigation is vital, the Commission should emphasize that Article 24 imposes an immediate obligation on States to finance and implement climate adaptation measures for workers in climate-sensitive sectors.

Sovereign Debt and Labour Adaptation: The text should clarify that international debt-servicing requirements cannot excuse a State's failure to fund public social protection floors.

3. Rights of Vulnerable Groups (The Informal Economy and Gender)

Universalizing Social Dialogue: The General Comment must direct States to extend the definition of "social dialogue" beyond formal tripartism to include associations of informal economy workers, street vendor unions, and smallholder cooperatives.

Decoupling Social Protection: States must decouple climate-resilience social safety nets from traditional formal employment models, ensuring that informal workers displaced by environmental disasters have immediate access to baseline income guarantees.

Mitigating the Unpaid Care Burden: Environmental degradation (e.g., water scarcity) exponentially increases the hours women must spend on unpaid domestic care work, locking them out of green-economy training programs. The text must require gender-impact assessments for all national transition strategies.

4. Business, Human Rights, and Extractive Industries

The "Critical Minerals" Safeguard: The global green energy transition has triggered an extractive boom across Africa for transition minerals. The General Comment must assert that green supply chains cannot be built on environmental degradation or labour exploitation.

Economic Decolonization and Local Value-Addition: Under Articles 21 and 24, the Commission should clarify that States are obligated to restrict the export of raw, unrefined transition minerals and mandate domestic processing to yield high-quality, unionized, local green jobs rather than localized ecocide.

Transnational Corporate Liability: The General Comment should require African States to enact corporate due diligence laws that hold parent companies legally liable for environmental and labor violations committed by their subsidiaries within African borders.

5. Procedural Rights: Workplace Information Integrity and Civil Space

The "Workplace Right to Know": Reaffirming Resolution ACHPR/Res.657(LXXXVI) 2026 on Access to Information and the Right to a Healthy Environment, the General Comment must establish that Article 24 requires States to legally penalize corporations that conceal environmental impact assessments, toxicity metrics, or localized heat-stress data from workers and their representatives.

Worker-Community Veto Power: Procedural participation must include a legal requirement for Free, Prior, and Informed Consent for joint worker-community councils, granting them co-determination rights over the environmental practices of local enterprises.

6. Remedies, Accountability, and Reparations

Reversal of the Burden of Proof: In cases of industrial environmental degradation, the General Comment should recommend that States shift the burden of proof to the corporation to demonstrate that its operations are not causing the alleged environmental or health harms.

Just Transition Funds: Remedial mechanisms must include structural reparations, requiring polluting enterprises to contribute to localized Just Transition Funds to rehabilitate ecosystems and retrain affected workforces.

VII. Conclusions

The right to a satisfactory environment favorable to development cannot be realized in an economy that treats workers as collateral damage. By formally integrating the right to a Just Transition and robust occupational protections into the General Comment on Article 24, the African Commission will establish a transformative, legally binding precedent that ensures Africa's green transition is both ecologically sound and socially just.

Respectfully submitted,

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ANNEX 9

Groups in Situations of Vulnerability – Women

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Background

Addressing climate change is fundamental to realising Article 24 of the African Charter on Human and People's Rights. Climate change is disproportionately reshaping women's lives in many African societies, through impacts on food, energy, water and health systems. National climate change laws and policies increasingly integrate gender, in line with international and regional climate change commitments for advancing gender equality. Yet, the quality of policy and legislative responses is affected by the lack of gender disaggregated data. Women also remain underrepresented in climate governance and continue to face significant challenges with accessing climate and environmental justice due to poverty and institutional gaps within domestic legal systems (Obani, 2024). Although African countries are increasingly recognising women's rights in national action plans and climate change laws, the provisions are mostly skewed towards vulnerabilities rather than the opportunities for strengthening women's capabilities and agency.

At the regional level, several instruments exist that support gender-responsive climate governance towards the realisation of Article 24 of the African Charter on Human and People's Rights. The **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa** outlines women's rights, including the right to a healthy environment, which are impacted by climate change. The **African Union Climate Change and Resilient Development Strategy and Action Plan (2022-2032)** supports regional collaboration on climate change and emphasizes the importance of gender-inclusive approaches. The **African Union Gender Policy** strengthens a rights' based approach to development through evidence-based decision-making and the use of gender-disaggregated data and performance indicators. The framing of women's rights and environmental issues under the African Union instruments underscores the importance of formal recognition of the right to environment, alongside inclusive governance and equity.

For instance, the **Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Article 18** recognises the right of women to live in a healthy and sustainable environment while further calling on the States Parties to take all appropriate measures to:

- a) ensure greater participation of women in the planning, management and preservation of the environment and the sustainable use of natural resources at all levels;
- b) promote research and investment in new and renewable energy sources and appropriate technologies, including information technologies and

facilitate women's access to, and participation in their control; c) protect and enable the development of women's indigenous knowledge systems; c) regulate the management, processing, storage and disposal of domestic waste; d) ensure that proper standards are followed for the storage, transportation and disposal of toxic waste.

The **African Charter on the Rights and Welfare of the Child** although not focused on women, is relevant where climate or environmental harm affects girls, intergenerational equity, and caregiving burdens on women.

The South African case of [African Climate Alliance v. Minister of Minerals Resources and Energy](#) is instructive in relation to the duty to act in the best interest of children, including on climate change and environmental matters. In this case, the applicants successfully challenged the South African Government's plan to procure an additional 1500 megawatts of new coal-fired stations, which would affect the (health) rights of children.

Practical Recommendations

1. The General Comment should directly highlight:
 - (a) the disproportionate impacts of environmental and climate harms on women, and the systemic gaps which make women and girls vulnerable to human rights violations;
 - (b) the lack of access to justice through formal legal systems and courts due to lack of legal aid support for poor women and other institutional challenges;
 - (c) the links between lack of participation in decision making, lack of access to technology, weak enforcement of waste management and other environmental standards, and the realisation of the right to a healthy environment to be the effect that State Parties;
 - (d) the need to ensure that the implementation of the right to a healthy environment does not compound the vulnerabilities experienced by women and other marginalised groups.
2. State Parties should fund access to legal aid for climate and environmental matters for women and other marginalised groups ([Obani, 2024](#)). This can be enabled through funding from penalties for environmental violations or pollution (polluter pays principle).
3. The implementation of the right to a healthy environment must mainstream justice and inclusiveness, to ensure that no one is left behind or forced to bear a disproportionate burden of the human rights implementation.
4. States should adopt structural, process and outcome indicators for measuring the effectiveness of their implementation of the right to a healthy environment. Maximum available financial and other resources should be committed, and measures should be established to ensure that progress is equitable and there is no retrogression for women and other groups in marginalised situations.

Obani, P. (2024) 'Climate Litigation in South Africa and Nigeria: Legal Opportunities and Gender Perspectives' In: Kim Bouwer, Uzuazo Etemire, Tracy-Lynn Field and Ademola O. Jegede (eds) *Climate Litigation and Justice in Africa* (Bristol: Bristol University Press).





**Joint Submission of the Environmental Rights Africa Initiative (ERA)
to the African Commission on Human and Peoples' Rights**

**Inputs for the Development of a General Comment on Article 24 of the African
Charter on Human and Peoples' Rights**

Submitted by: REED Center for Social Change (Nigeria)

I. ENVIRONMENTAL CRIMES

1. Prevention of Environmental Crimes

The right to a generally satisfactory environment guaranteed by **Article 24 of the African Charter** requires States to take **effective measures to prevent serious environmental harm before it occurs**. Prevention is a well-established principle of both international environmental law and African human rights jurisprudence. In *SERAC & CESR v. Nigeria*, the African Commission affirmed that States have obligations to prevent pollution, ecological degradation and unsustainable exploitation of natural resources.

Furthermore, States' obligations to uphold these rights include the duty to prevent violations by third parties, as well as the duty to ensure investigation of cases, cessation and non-repetition of any violations under general international law.

Preventing environmental crimes requires more than the existence of environmental legislation. States should establish **effective regulatory frameworks**, environmental impact assessment procedures, monitoring and inspection mechanisms, enforcement authorities, and sanctions capable of **detering conduct likely to cause severe environmental harm**. Prevention of such harm, especially when transboundary, is a state obligation as set out in the ICJ Advisory Opinion on Climate Change 2025, and should also include measures addressing corruption, illegal exploitation of natural resources, environmental crimes linked to organised

criminal networks, and activities creating substantial risks of severe, widespread or long-term environmental damage.

The Commission may wish to emphasise that prevention is particularly important where environmental damage may be irreversible or where affected communities depend directly upon ecosystems for their livelihoods, food security, health and cultural identity.

2. Relationship Between Environmental Crimes and Human Rights Violations

Environmental crimes frequently result in violations of multiple rights protected under the African Charter. Severe environmental destruction may undermine **the rights to life, health, development, culture, property, natural resources and self-determination**, while also impairing the collective **right to a satisfactory environment** protected by **Article 24**.

The relationship between environmental harm and human rights violations has been recognised by the African Commission, regional human rights bodies and international courts. Environmental crimes often disproportionately affect Indigenous Peoples, local communities, women, children and persons whose livelihoods depend directly upon natural resources.

The Commission may wish to clarify that environmental crimes should not be viewed solely as offences against environmental regulations. Where environmental harm reaches a sufficient level of gravity, **it may simultaneously constitute a violation of human rights obligations arising under the Charter**.

3. Accountability Mechanisms

Effective protection of Article 24 requires accessible and effective accountability mechanisms capable of investigating, sanctioning and remedying serious environmental harm.

States should ensure the availability of administrative, civil and criminal mechanisms appropriate to the nature and gravity of the conduct concerned. Such mechanisms should provide for prompt and independent investigations, effective enforcement, access to justice for affected individuals and communities, and sanctions proportionate to the harm caused.

Accountability should not be limited to punishment. Effective remedies should include ecological restoration, environmental rehabilitation, remediation of contaminated sites, compensation where appropriate, guarantees of non-repetition, and measures addressing long-term and intergenerational impacts.

Given the collective nature of environmental rights, remedies should be capable of **addressing harms suffered by communities and peoples**, as well as damage caused to ecosystems themselves.

4. Regional Cooperation

Many environmental crimes have **transboundary dimensions**. Illegal logging, illegal mining, wildlife trafficking, pollution of shared watercourses, marine pollution and other forms of environmental harm frequently affect multiple States and ecosystems.

Article 24 should therefore be interpreted consistently with obligations of **regional cooperation**. States should strengthen information sharing, mutual legal assistance, cross-border investigations, joint enforcement efforts and regional institutional cooperation aimed at preventing and addressing environmental crimes.

The Commission may also wish to recognise the important role played by African regional institutions in developing common approaches to severe environmental harm and environmental governance challenges affecting the continent.

5. Emerging Discussions Regarding Ecocide

Recent years have witnessed significant developments at national, regional and international levels concerning legal responses to the most severe environmental destruction, including discussions regarding the recognition of **ecocide**.

At the **national level**, States have increasingly begun exploring criminal law responses to severe environmental harm. **France** strengthened its environmental criminal law framework through the 2021 Climate and Resilience Law. **Belgium** became the first European State to adopt a standalone crime of ecocide in 2024. **In Africa, Mauritius** adopted a domestic crime of ecocide in 2026. In the **Democratic Republic of the Congo**, legislation was formally introduced before Parliament in December 2025 seeking to establish ecocide as a domestic criminal offence. In **Ghana**, the Constitution Review Committee recommended the creation of a crime of ecocide with stringent sanctions, explicitly linking severe environmental destruction and the constitutional right to a clean environment, particularly in response to the impacts of illegal mining. In **Zimbabwe**, Parliament opened a formal inquiry in 2025 into the possible criminalisation of ecocide following a citizen petition. Similar legislative initiatives have emerged in other regions, including the **Philippines**. These developments illustrate a growing willingness among States to consider criminal law as a tool for addressing the most severe forms of environmental destruction.

These developments form part of a broader international trend. The **European Union** strengthened criminal accountability for severe environmental harm through Directive (EU) 2024/1203 on environmental crime. States Parties to the **International Criminal Court** are currently considering a proposal led by **Vanuatu, Fiji and Samoa** to amend the Rome Statute and recognise ecocide as a fifth international crime. International institutions, including the **International Union for Conservation of Nature** and the **Office of the Prosecutor of the International Criminal Court**, have also increasingly focused attention on severe environmental destruction and environmental accountability.

While **States retain sovereign** discretion regarding the legal mechanisms they adopt, these developments demonstrate **growing recognition that existing legal frameworks may not**

always adequately address the most serious forms of environmental harm. The Commission may therefore wish to acknowledge emerging discussions regarding ecocide as part of the broader evolution of legal approaches aimed at strengthening protection of the right to a satisfactory environment under Article 24.

Suggested Language for the General Comment

"States Parties have an obligation to take effective measures to prevent, investigate, sanction and remedy serious environmental harm. States should ensure the availability of effective accountability mechanisms and remedies, including environmental restoration and rehabilitation. In interpreting Article 24, consideration may be given to evolving regional and international legal developments concerning accountability for the most serious forms of environmental destruction, a legal concept sometimes referred to as ecocide and generally understood as *unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment caused by those acts.*^[1] "

^[1] For reference, the 2021 Independent Expert Panel proposed defining ecocide as

"unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts."

The Panel further proposed that:

- "Wanton" means with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated;
- "Severe" means damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources;
- "Widespread" means damage which extends beyond a limited geographic area, crosses State boundaries, or is suffered by an entire ecosystem or species or a large number of human beings;
- "Long-term" means damage which is irreversible or which cannot be redressed through natural recovery within a reasonable period of time.

"Environment" means the earth, its biosphere, cryosphere, lithosphere, hydrosphere and atmosphere, as well as outer space.

SOUCLIMA RESEARCH PROJECT



ERA JOINT SUBMISSION TO ACoHPR GENERAL COMMENT ON ART. 24

Overview

- **Topic: IV. PROCEDURAL OBLIGATIONS: Public Participation and Consultation**
- **Institutions: Max Planck Institute for Social Anthropology (Germany) and Federal University of Para (Brazil)**
- **Authorship: Max Planck Partner Group Abroad “Social-Environmental Rights in the Face of Climate Change: Global South Perspectives” (SoUclimA Research Project)**
- **Project’s Team Members: Mariana Monteiro de Matos (Prof. Dr. iur.); Giovana Camelo do Nascimento (LL.B. and M.A.); Nicolas Manoel Carvalho Vieira (LL.B. and M.A.); Hector Rafael Vilhena Marinho (LL.B.).**

I. Introduction: Legal Framework

Public participation and consultation concern the role of individuals and selected groups in governmental affairs, including policy and decision-making on environmental and climate matters, in accordance with Article 13(1) of the ACHPR.[1] This right is directly linked to other rights and freedoms set out in the ACHPR: access to information (Article 9), freedom of association (Article 10), freedom of peaceful assembly (Article 11), and freedom of movement (Article 12).

In addition, Article XVI(1)(c) of the 2003 African Convention on the Conservation of Nature and Natural Resources (also known as the revised Maputo Convention) recognises “participation of the public in decision-making with a potentially significant environmental impact” as a procedural right and requires States to adopt legislative and regulatory measures. Article XVII (Traditional Rights of Local Communities and Indigenous Knowledge) of the revised Maputo Convention establishes related State obligations, including the active participation of local communities in the planning and management of natural resources upon which such communities depend.

Moreover, several international and regional legal agreements provide for public participation and consultation (*e.g.*, the 2001 Stockholm Convention on POPs, the 1992 Convention on Biological Diversity, and the 1994 Convention to Combat Desertification).

These agreements have been cited in the case law of regional human rights courts, namely, the ACtHPR,[2] the ECtHR,[3] and the IACHR[4].

Based on the analysis of the aforementioned normative framework, public participation and consultation emerge as a corollary of the rule of law, an axiom of participative democracy, and a fundamental condition for the exercise of sovereignty by the people of a given country. Notably, they have a dual status: public consultation and participation are both rights and obligations with a procedural character.

Likewise, this obligation comprises three aspects: “access to information,” “participation in decision-making and policy-making,” and “access to justice.” In line with Principle 10 of the Rio Declaration, these three aspects form the pillars of the obligation to public participation and consultation. States must comply with this obligation, in accordance with the principles of non-discrimination, equity, transparency, publicity, and effectiveness.

II. Right Holders

Despite the absence of a binding definition, “public” concerns (i) legal persons (*i.a.*, non-governmental actors and scientific organisations), (ii) natural persons, and (iii) selected groups, such as women, children and youth, farmers, environmental defenders, Indigenous peoples, minorities, and local communities—regardless of nationality. The “public” may be defined by the degree or likelihood of impact or by an interest in the decision-making process. Depending on the legislation, transboundary public participation standards may apply, as established under Article XVI(2) of the Revised Maputo Convention. The private corporate sector is recognised as a separate category of stakeholders. Given the need to use the best available science in environmental decisions, States should promote the participation of the scientific community in environmental policy and decision-making.

III. Legal Standards and Procedural Safeguards

Procedural guarantees of the obligation to “participate in decision and policy-making” may be grouped into four pillars: (i) structural interdependence with access to information and justice; (ii) accessibility and public dissemination; (iii) temporal adequacy; and (iv) due consideration of public input. The first pillar requires, *a priori*, comprehensive, culturally appropriate, and readily intelligible public access to information about planned activities. *A posteriori*, it requires the availability of independent and impartial judicial or administrative review mechanisms to challenge State decisions (if necessary).

Moreover, beyond ensuring access to information about the decision-making process, the “participatory mechanisms” (*e.g.*, public hearings, working groups, and surveys) must be structured to facilitate broad societal engagement and raise public awareness.[5] This requires proportional public notice and dissemination to ensure a representative level of participation among both directly and indirectly affected populations.[6] The consultation process must allow oral and written participation, individually or collectively.[7] States must conduct consultations that proactively engage marginalised groups,[8] including Indigenous peoples,[9] women,[10] the elderly, and people with disabilities.[11] In this regard, good practices include convening forums on the traditional territories of these peoples and communities that promote women’s participation, and ensuring that public consultation events are physically accessible to the elderly and individuals with disabilities.

Regarding temporal adequacy, public participation must be guaranteed at all stages of the environmental decision-making process—including conservation initiatives[12]—beginning in the project’s earliest phases.[13] If a State decision results in environmental degradation or human rights violations, public participation must be maintained throughout the subsequent mitigation and remediation stages and within the scope of the benefit-sharing process.[14]

Finally, meaningful participation entails the genuine capacity to influence decision-making outcomes. States shall afford due consideration to all inputs received through participatory mechanisms. If a government departs from the core recommendations offered by the public, it must formally justify its position and demonstrate strict compliance with its human rights and environmental obligations.[15]

Belém, Brazil, 12 July 2026

[1] Article 13(1) of the ACHPR stipulates that: “Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.” Article 23(1)(a) of the American Convention of Human Rights contains a similar wording, framing this right as a political one.

[2] *African Commission on Human and Peoples’ Rights v Republic of Kenya* (2017), Application No. 006/2012 [‘Ogiek People Case’], Judgement, para. 133; *Ogiek People Case*, Application No. 006/2012, Order (compliance), para. 84-98; *Ligue Ivoirienne des Droits de l’Homme (LIDHO) and others v Republic of Côte d’Ivoire* (2023) [‘LIDHO case’], Application No. 041/2016, Judgment, para. 233.

[3] *Tatar v Romania* (2009), Judgment (Merits and Just Satisfaction), paras. 116-125; *Vides Aizsardzibas Klubs v Latvia* (2004), Judgment (Merits and Just Satisfaction), para. 42.

[4] Advisory Opinion on the Climate Emergency and Human Rights (2025), Series A No. 32, paras. 530-539; Advisory Opinion on Environment and Human Rights (2017), Series A No. 23, paras. 226-232.

[5] UNEP, *Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters*, Governing Council Decision SS.XI/5, part A (26 February 2010) Guideline 14.

[6] Participation must also be guaranteed in a culturally appropriate manner, including the creation of mechanisms and institutions that promote cultural rights of Indigenous peoples and other communities. In this regard, see: *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (African Commission on Human and Peoples’ Rights, Comm. No. 276/2003, 2009), paras. 248.

[7] African Commission on Human and Peoples’ Rights, *State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment* (ACHPR 2021) pp. 17-29.

[8] African Commission on Human and Peoples’ Rights, *Guidelines on the Right to Water in Africa* (ACHPR 2019) p. 15; African Commission on Human and Peoples’ Rights, *State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment* (ACHPR 2021) pp. 32-33.

[9] African Commission on Human and Peoples’ Rights, *Report of the Working Group on Indigenous Populations/Communities on Extractive Industries, Land Rights and Indigenous Populations/Communities’ Rights* (ACHPR 2022); African Commission on Human and Peoples’ Rights, *Resolution on Extractive Industries and the Protection of Land Rights of Indigenous Populations/Communities in Africa*, ACHPR/Res. 490 (LXIX) (5 December 2021).

[10] Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (Article 18). Adoption: 11 July 2003. Entry into force: 25 November 2005.

- [11] African Commission on Human and Peoples' Rights, *State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment* (ACHPR 2021) p. 21
- [12] *Ogiek People Case*, fn. 4, p. 5.
- [13] Resolution on Developing General Comment on the Protection and Promotion of the Right to Environment in Africa- ACHPR/Res.633 (LXXXIII) 2025; UNEP, *Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters*, Governing Council Decision SS.XI/5, part A (26 February 2010) Guideline 8.
- [14] African Commission on Human and Peoples' Rights, *State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment* (ACHPR 2021), pp. 19-23
- [15] African Commission on Human and Peoples' Rights, *State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment* (ACHPR 2021), pp. 35-36; African Commission on Human and Peoples' Rights, *Guidelines on the Right to Water in Africa* (ACHPR 2019), pp. 13-14.



**Written submission to the ACHPR Working Group on Extractive Industries,
Environment and Human Rights Violations in Africa**

**Draft General Comment on Article 24 of the African Charter on Human and
Peoples' Rights (African Charter) – Businesses' Obligations and Accountability**

Submitted by the Centre for Human Rights (Business and Human Rights Unit).

This submission was prepared by Lassané Ouedraogo, Dr Dorcas Basimanyane, Clement Agyemang and Oluwatosin Senami Adegun (Centre for Human Rights)

Introduction

Corporate behaviour constitutes one of the principal drivers of environmental degradation in Africa. The major threats to the 'satisfactory environment favourable to development' that article 24 of the African Charter guarantees result from the business conduct of enterprises acting alone or in partnership with the State.[1] These threats include oil pollution in the Niger Delta, lead contamination at Kabwe, displacement along major pipeline and infrastructure corridors, and deforestation and water depletion from mining and agribusiness. So, a General Comment which only deals with inter-State obligations would miss the main source of the harm.

Two propositions should be set out at the beginning of the General Comment. First, business enterprises have binding independent obligations in relation to the environment, **not just aspirational corporate social responsibility**. Second, those obligations are given legal force primarily through a correlative and non-discretionary duty on the State to regulate, monitor and hold business to account. These channels are complementary, not a replacement for each other.

2 The African Charter already obligates States to regulate business actors

The Working Group does not need to import this duty from external instruments. The Working Group does not need to derive the duty to regulate business enterprises from external instruments. The African Charter, read together with the Commission's jurisprudence and interpretive instruments, already establishes a coherent framework requiring States parties to regulate business activities that threaten environmental rights. This framework is found in the Commission's Resolution on a Human Rights-Based Approach to Natural Resources Governance, the State Reporting Guidelines and Principles on Articles 21 and 24 relating to Extractive Industries, and the Principles and Guidelines on the Implementation of Economic, Social and Cultural Rights in the African Charter.

Further, this has been decided by the Commission in its own case-law. In *SERAC v Nigeria*, the Commission found that Nigeria had violated articles 16 and 24 by failing to prevent and regulate the environmental harm caused by oil operations, including operations conducted by private and joint-venture actors.[2] The Commission confirmed that the State has obligations to respect, protect, promote and fulfil Charter rights.[3] It also, in the same case, highlighted that the duty to protect requires the State to prevent third parties, including corporations, from impairing those rights, through measures including environmental and social impact assessment, independent monitoring and oversight, disclosure of information to affected communities, and meaningful participation.[4]

The General Comment should therefore state clearly that article 1, read together with articles 24 and 21 imposes a legal obligation on State parties to regulate business conduct that is binding in content, not a matter of discretion in implementation.[5] This is a practical point of importance. African climate and environmental laws allow regulators to impose duties on private actors but do so in permissive language, providing that the authority ‘may’ impose obligations, thereby leaving corporate duties latent and unenforced.[6] The General Comment should make it clear that a purely discretionary framework, which is never operationalised, does not discharge the State’s article 24 duty. State parties should take concrete, deliberate and targeted measures to impose, monitor and enforce real obligations on business.

The duty to regulate has particular elements that the General Comment should list: a legal requirement of environmental and human rights impact assessment before project authorisation; licensing subject to compliance; ongoing, adequately resourced monitoring and inspection; mandatory public disclosure of environmental data; prohibition of regulatory capture and of conflicts of interest where the State is itself a commercial partner, as is the case with many joint ventures and production-sharing arrangements; and effective sanction for non-compliance.

3 The business’s direct obligation to respect environmental rights

The General Comment should not only establish the duty of the State but also the direct duty of business enterprises to respect the right to the environment. This duty is separate from State enforcement and does not wait for State enforcement. Its substance can be coherently assembled by articles 60 and 61 of the Charter,[7] which permit the Commission to refer to other international and regional instruments, such as the ECOWAS Supplementary Act on Investment,[8] the AfCFTA Protocol on Investment,[9] and notably the UN Guiding Principles on Business and Human Rights,[10] the Commission’s own Extractive Industries Guidelines[11] and the the OECD Guidelines for Multinational Enterprises.[12]

The duty to respect should apply to all enterprises, irrespective of size, sector, ownership (including State-owned enterprises) or place of incorporation and across the enterprise’s own activities and its business relationships, including subsidiaries, contractors, suppliers and joint-venture partners throughout the value chain. This scope is vital in the African context, where harm is often perpetrated by a local operating subsidiary, a service contractor, or minority - held venture while control and profit are held by a remote parent.

4 Businesses’ human rights, environmental and climate due diligence duties

Due diligence is at the heart of business responsibility.[13] The General Comment should require enterprises to undertake human rights, environmental and climate due diligence s proportionate to the potential harm. This due diligence should include identifying and assessing actual and potential adverse impacts, including cumulative and climate impacts. Businesses should therefore integrate these findings into their decision-making processes and take holistic, appropriate measures to mitigate the identified harms. They must also publicly communicate how adverse impacts are addressed. Enhanced due diligence should be the standard for extractive, infrastructure and agribusiness projects, which involve the gravest and often irreversible risks. The General Comment should make clear that due diligence is an ongoing duty of conduct that does not free the responsible parties from liability for any harm that may occur.[14] A completed process is not a defence for damage caused.

Following the international trend towards mandatory due diligence, the General Comment should encourage State parties to move from a voluntary expectation to a legislated obligation with supervision, enforcement and liability for non-compliance. Environmental and climate due diligence should be named explicitly. In this regard, businesses should assess and disclose their greenhouse gas footprint and transition risk, align with Africa's just transition and adaptation needs, and avoid shifting environmental burdens onto communities and future generations.

5 Transparency and Disclosure Prevention

The first environmental duty is prevention, and the second is remediation, a fallback when prevention fails. The General Comment should endorse a corporate duty to prevent environmental harm, reflecting the precautionary principle: where there is a risk of serious or irreversible damage, the lack of full scientific certainty does not justify inaction, and the burden of demonstrating safety shifts to the enterprise proposing the activity.[15]

Prevention is a matter of transparency. The General Comment should require meaningful disclosure by businesses: publication of environmental and social impact assessments; disclosure of pollutant releases, tailings and waste management, and water use; publication of the terms of concessions, contracts and rehabilitation and decommissioning plans, together with the financial guarantees securing them; and disclosure of beneficial ownership. Transparency is not only a tool to prevent, but also a condition for the procedural rights of access to information, participation and free, prior and informed consent.

6 Environmental rehabilitation, remediation and financial assurance

Corporate accountability cannot be meaningful if enterprises are allowed to evade responsibility for environmental harm by leaving affected communities and States to bear its consequences. The General Comment should recognise a corporate duty to restore and rehabilitate environments damaged by their operations, and to pay for such restoration and rehabilitation, consistent with the polluter-pays principle.[16] The General Comment should recommend that, to ensure the obligation is effective rather than merely nominal, States parties should require financial assurance as a condition of authorisation. Such assurance may take the form of bonds, escrowed rehabilitation funds, or equivalent guarantees, and should be sufficient to cover the full projected cost of restoration and decommissioning. This would help ensure that liability cannot be evaded through the use of **undercapitalised subsidiaries, insolvency, or the abandonment of operations.**

The persistent existence of unremediated sites long after operators have left, in the Niger Delta and at Kabwe, illustrates why assurance has to be secured in advance.

7 Right to remedy against corporate actors

The third pillar, access to remedy, is the weakest in practice. Article 7 of the Charter and the Commission's jurisprudence require effective remedies. The General Comment should give concrete content to the obligation to provide effective remedies against corporate defendants. It should call on States parties to ensure that judicial and non-judicial mechanisms provide effective remedies, including compensation, restitution, rehabilitation and guarantees of non-repetition. Furthermore, where environmental violations constitute crimes under domestic and international law, States Parties have an obligation to investigate and prosecute corporate actors—individuals and corporate entities—for such crimes and to prescribe appropriate punishment that is sufficient to deter future environmental violations.

Also, states have a duty to criminalise conduct that damages the environment, such as by proscribing ecocide and prescribing appropriate punishment capable of achieving deterrence and remedying harm to victims.

It should also require States to remove the procedural and substantive barriers that routinely frustrate environmental claimants. These may include removing restrictive standing rules, prohibitive litigation costs, excessive evidentiary burdens, short limitation periods or latent or continuing environmental harm, and the rigid application of the separate personality doctrine that shields parent companies from liability for the conduct of their subsidiaries. In this regard, the General Comment should endorse broad rules on standing, including representative actions, class actions, and *actio popularis* in environmental matters.

Finally, the corporate structure as an accountability barrier must be addressed directly in the General Comment. Where a parent or controlling enterprise exercises operational control over, or assumes responsibility for, the conduct of a subsidiary or partner causing environmental harm, the remedy should extend to the parent. The need for and viability of this route is illustrated by recent transnational litigation, such as claims brought by Kabwe residents against a parent company in the courts of its home jurisdiction. The General Comment should also protect against the abuse of law to undermine accountability, including strategic lawsuits against public participation and the criminalisation of environmental human rights defenders.

8 Extraterritorial responsibility, extractives and State sovereignty over natural resources

Africa's environmental harms are often transnational. The capital, the control and the profit are foreign, but the pollution is local. Article 21, including article 21(5) on elimination of foreign economic exploitation, and the principle of permanent sovereignty over natural resources, provide the Commission with a unique basis, stronger than in most other regional systems, upon which to act in this regard. The General Comment should mention article 60 and the Maastricht Principles, which provide that home States of transnational enterprises have duties to regulate the extraterritorial environmental conduct of enterprises domiciled or headquartered in their jurisdiction and that home and host States have shared obligations to

ensure that victims have access to remedy across borders through international cooperation and mutual legal assistance.

For the extractive sector specifically, the General Comment should translate into normative form the Extractive Industries Guidelines: the environmental and social impact assessment and free, prior and informed consent as preconditions to extraction on community and indigenous lands; benefit-sharing and the alignment of resource exploitation with the peoples' right to development; and rigorous mine-closure and rehabilitation standards. 'Green' and financial instruments do not become new channels of dispossession or environmental damage; extractive and infrastructure financing arrangements, conservation agreements and carbon-credit schemes should be subjected to the same accountability net.

This submission adopts an Africa-centred interpretation of Article 24. While international standards on business and human rights provide valuable guidance through articles 60 and 61 of the African Charter, the proposed interpretation is primarily grounded in the Charter, the jurisprudence of the Commission and the African Court, the Commission's resolutions and guidelines, and the African Union's broader normative framework on sustainable development, natural resource governance and regional economic integration.

9 Recommendation for the Working Group

At a minimum, the General Comment should provide that:

- (1) Articles 1, 21 and 24 impose on State parties a binding, non-discretionary obligation to regulate, monitor and hold accountable all business enterprises whose activities impact on the environment.
- (2) All business enterprises have a direct duty to respect the right to a satisfactory environment in all their operations and business relationships, regardless of their size, sector, ownership or place of incorporation.
- (3) Enterprises shall undertake continuous human rights, environmental and climate due diligence, with increased due diligence for extractive, infrastructure and agribusiness projects; State parties shall make such due diligence legally binding and enforceable.
- (4) Enterprises shall consistently prevent harm in accordance with the precautionary principle, disclose environmental and contractual information and rehabilitate and restore damaged environments secured by advance financial assurance.
- (5) State parties should ensure effective access to remedy against corporate actors, including parent and controlling entities, remove procedural barriers to environmental claims and protect environmental defenders against criminalisation and strategic lawsuits against public participation.
- (6) Home and host States have extraterritorial and cooperative obligations to ensure that transnational enterprises, especially in the extractive sector, do not cause or contribute to environmental harm, and that victims obtain cross-border redress.

- [1] See African Charter on Human and Peoples' Rights, adopted 27 June 1981, entered into force 21 October 1986, Art 24.
- [2] *Social and Economic Rights Action Centre (CERAC) & Others v Nigeria* (2001) AHRLR 60 (ACHPR 2001).
- [3] *SERAC v Nigeria* paras 44-48.
- [4] *SERAC v Nigeria* paras 53 & 57.
- [5] Resolution on a Human Rights-Based Approach on Natural Resources Governance, ACHPR/Res. 148 (XLVI) 09.
- [6] Climate Change Act 2016 (Kenya) sec 16-23.
- [7] African Charter, Articles 60 & 61.
- [8] Supplementary Act A/SA.3/12/08 adopting community rules on investment and the modalities for their implementation with ECOWAS (Chapter III).
- [9] Protocol to the agreement establishing the African Continental Free Trade Area on Investment (2023), Part V, Articles 33, 34, 35.
- [10] Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework (2011) UN Doc A/HRC/17/31.
- [11] State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter relating to Extractive Industries, Human Rights and the Environment' (2018).
- [12] OECD Guidelines for Multinational Enterprises on Responsible Business Conduct (2023).
- [13] S Besson *Due Diligence in International Law* 83-85.
- [14] J Kulesza 'Human rights due diligence' (2021) 30 *William & Mary Bill of Rights Journal* 274.
- [15] Rio Declaration on Environment and Development (1992), Principle 15.
- [16] Rio Declaration principle 16 (polluter-pays principle).



Submission on the Draft General Comment on the Right to Environment under Article 24 of the African Charter

Focus: Protection measures for environmental defenders

1. The normative place of environmental defenders within Article 24

The right to a satisfactory environment under Article 24 of the African Charter is both substantive and procedural. Its realisation depends not only on the protection of air, water, land and ecosystems, but also on the existence of open civic space, access to information, public participation, and access to justice. These procedural guarantees are constitutive elements of Article 24.

Environmental defenders are indispensable actors in the fulfilment of this right. They monitor environmental harm, expose violations, facilitate community participation, and hold both State and corporate actors accountable. Their work operationalises Article 24 in practice. Accordingly, their protection is a core State obligation arising from the Charter.

This submission draws focuses on 4 interlinked areas essential to the effective realisation of Article 24 namely:

1. Protection of civic space and enabling environments for environmental advocacy;
2. Protection from reprisals and malicious criminalisation; and
3. Protection against Strategic Lawsuits Against Public Participation (SLAPPs).
4. Early warning and protection mechanisms

These areas represent urgent and escalating threats across the continent. Global Witness documented 196 killings of land and environmental defenders worldwide in 2023 and has repeatedly cautioned that African figures are significantly understated owing to underreporting, weak documentation infrastructure and fear of reprisal.[1] The premise running through this submission is that the right to a satisfactory environment under Article 24 cannot be realised where those who monitor, document and litigate environmental harm are silenced. The General Comment should therefore treat defender protection as a component of the State's obligation to give effect to the right to environment, not merely as a cross-cutting concern.

2. Protection of civic space and enabling environments for environmental advocacy

The African Commission on Human and Peoples Rights (ACHPR) has long recognised that environmental protection cannot be achieved without meaningful participation. In *SERAC v Nigeria*, the Commission held that Article 24 obliges States to prevent pollution, promote conservation and secure ecologically sustainable development through public participation

and access to information.[2] The African Court reinforced this principle in the *Ogiek* case, emphasising that conservation measures must respect participatory rights and cannot exclude affected communities from decisions concerning their lands and resources.[3]

Across the continent civic space for environmental advocacy is narrowing. In Kenya, defenders opposing the Lamu coal plant were arrested during peaceful protests and repeatedly denied access to environmental impact assessment processes.[4] In Uganda, organisations raising concerns about the East African Crude Oil Pipeline experienced office raids, suspensions under NGO regulations and arrests of staff members.[5] In Nigeria, community representatives in the Niger Delta have struggled to obtain environmental information and have been excluded from remediation processes despite ongoing pollution. Similarly, in Zimbabwe, community members peacefully protesting the establishment of a cement factory were arrested for alleged criminal trespass in 2024.[6] These incidents mirror the broader continental trend in which environmental advocacy is met with criminalisation rather than engagement.

The General Comment should articulate a positive State obligation to establish and maintain an enabling environment for environmental advocacy, grounded in Articles 9, 10 and 11 of the Charter read together with Article 24, and consistent with the Commission's Guidelines on Freedom of Association and Assembly in Africa (2017) and the Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019).[7] The Commission's Resolution ACHPR/Res.657 (LXXXVI) 2026 on Access to Information and the Right to a Healthy Environment already recognises that access to environmental information is indispensable to the enjoyment of Article 24; the General Comment should consolidate this into binding interpretive guidance.[8]

Further, associational law is increasingly deployed against environmental civil society. In Zimbabwe, the Private Voluntary Organisations Amendment Act and its implementing statutory instruments impose burdensome registration and re-registration requirements, intrusive supervision of governance and funding, restrictions on access to foreign funding, and criminal penalties for operating while unregistered.[9] Comparable frameworks exist across the region. In Uganda, the NGO Act 2016 vests broad discretionary powers in the National Bureau for NGOs, which in August 2021 suspended the operations of 54 organisations, among them the Africa Institute for Energy Governance, at the very moment that organisation was documenting the human rights impacts of the East African Crude Oil Pipeline.[10] In Tanzania, the Written Laws (Miscellaneous Amendments) Act No. 3 of 2019 subjected NGOs to compulsory re-registration, expanded government powers of suspension and intrusive scrutiny of funding agreements.[11] In Egypt, Law No. 149 of 2019 on civic associations maintains extensive administrative control over registration, activities and foreign funding.[12] Ethiopia's Charities and Societies Proclamation of 2009, which capped foreign funding for rights-based work at 10% and hollowed out the country's human rights sector for a decade, demonstrates both the destructive capacity of such regimes and, through its repeal and replacement with a more enabling law in 2019, the possibility of reform.[13] Where an organisation documenting mining pollution or wetlands destruction can be deregistered, defunded or prosecuted through ordinary administrative discretion, the procedural guarantees in section 5(c) of the outline become illusory.

International standards reinforce the centrality of civic space to environmental protection. Principle 10 of the Rio Declaration, the UN Declaration on Human Rights Defenders and Article 9 of the Escazú Agreement all affirm that access to information, participation and

protection of defenders are essential components of environmental governance.[14] The General Comment should therefore recognise that safeguarding civic space is integral to the effective realisation of Article 24 and call upon States to adopt measures that ensure meaningful participation, protect fundamental freedoms and prevent intimidation or retaliation against environmental advocates.

Recommendations

The General Comment must call on States to:

- a. Guarantee that registration regimes for associations engaged in environmental work are notification-based or otherwise non-discretionary, and that deregistration, suspension or asset-freezing may occur only on narrowly defined grounds, by reasoned decision, subject to prompt judicial review;
- b. Refrain from restricting access to funding, including foreign funding, for environmental advocacy, and treat such restrictions as limitations on Articles 10 and 24 requiring strict justification under the principles of legality, necessity and proportionality set out in section 3(e) of the outline;
- c. Guarantee proactive disclosure of environmental information, including environmental impact assessments, licences, concession agreements and monitoring data in the extractive sector, and prohibit blanket confidentiality clauses in mining and investment contracts that defeat public scrutiny;
- d. Protect the freedoms of assembly and expression of communities and defenders protesting environmental harm, including a presumption in favour of peaceful assembly and a prohibition on internet shutdowns and network throttling during environmental protests; and
- e. Guarantee meaningful public participation and, for indigenous peoples and affected communities, free, prior and informed consent, before the grant of extractive and land-use concessions, consistent with the Commission's findings in *Social and Economic Rights Action Centre (SERAC) and Another v Nigeria* (Communication 155/96) and *Centre for Minority Rights Development (Endorois) v Kenya* (Communication 276/2003).[15]

3. Protection from reprisals and malicious criminalisation

Across the continent, environmental defenders face arbitrary arrest, prolonged pre-trial detention, surveillance, abduction, assault and, in the gravest cases, killing. Reprisals emanate from both State agents and private actors connected to extractive operations, who frequently act in concert. The Commission's Resolution ACHPR/Res.663 (LXXXVII) 2026 on the Situation of Human and Peoples' Rights Defenders in Africa records this deterioration.[16]

In South Africa, Fikile Ntshangase, a leader of the Mfolozi Community Environmental Justice Organisation challenging the expansion of the Tendele coal mine at Somkhele, was shot dead in her home in KwaZulu-Natal in October 2020, days before a related appeal was to be heard. Years later no one has been held accountable for her killing.[17] In Kenya, Joannah Stutchbury, who had campaigned for years against the encroachment of Kiambu Forest by private developers, was shot dead near her home in July 2021 after receiving repeated threats.[18] These killings were preceded by documented threats and followed by protracted impunity, a pattern that recurs across the continent and that the General Comment must directly confront.

The Commission has addressed such patterns before. In *International PEN and Others (on behalf of Ken Saro-Wiwa Jr.) v Nigeria*, the Commission found grave violations of the Charter, including Articles 5 and 6, arising from the arbitrary arrest, detention and ultimately execution of Ogoni leader Ken Saro-Wiwa on account of his environmental advocacy against oil operations in Ogoniland.[19] In *SERAC*, the Commission emphasised the State's obligation to protect communities and their representatives from reprisals by both State and non-State actors. Article 12 of the UN Declaration on Human Rights Defenders further requires States to take immediate measures to protect defenders from violence, threats, retaliation, discrimination or arbitrary action resulting from their legitimate work.[20]

A distinct and growing concern is the enactment of vaguely worded national security and 'patriotism' offences, which are readily applied to defenders who engage foreign embassies, international NGOs or mechanisms such as this Commission on environmental harm. In Zimbabwe, section 22A of the Criminal Law (Codification and Reform) Act, inserted in 2023, criminalises 'wilfully damaging the sovereignty and national interest of Zimbabwe', including through participation in meetings where sanctions or military intervention are considered, and carries severe penalties extending to loss of citizenship rights.[21] In Algeria, the 2021 amendment to Article 87 bis of the Penal Code expanded the definition of terrorism to encompass advocacy for a change in the system of governance by 'unconstitutional means', a formulation that has since been invoked against civic activists.[22] In Egypt, counter-terrorism legislation and terrorist-entity listing procedures have been used to freeze the assets and restrict the travel of civil society figures.[23] The General Comment should state expressly that engagement with regional and international human rights mechanisms is protected activity, and that criminal law may never be used to penalise it.

Recommendations

The General Comment must call on States to:

- a. Recognise the right of everyone, individually and in association with others, to promote and strive for the protection of the environment, drawing on the UN Declaration on Human Rights Defenders (1998) via Articles 60 and 61 of the Charter;
- b. Review and repeal or amend offences that criminalise environmental advocacy directly or through vagueness, including overbroad public order, criminal defamation, false news, sedition and national security provisions, applying the legality, necessity and proportionality principles in section 3(e) of the outline;
- c. Prohibit reprisals against defenders, witnesses and communities for cooperation with courts, NHRIs, this Commission and UN mechanisms, and treat any such reprisal as an aggravated violation attracting a duty of prompt, independent and effective investigation;
- d. Exercise due diligence in respect of violence and intimidation by private actors, including security contractors, artisanal mining syndicates and corporate personnel, consistent with the State's duty to protect in section 5(b)(ii) of the outline and the business obligations in section 6; and
- e. Ensure that prosecutorial and judicial officers are guided to identify and terminate manifestly retaliatory prosecutions at the earliest stage, including through prosecutorial guidelines, and that defenders in detention enjoy prompt access to counsel and to bail on non-punitive terms.

4. Protection against Strategic Lawsuits Against Public Participation (SLAPPs)

SLAPPs are an emerging and sophisticated form of retaliation against environmental defenders. They weaponize judicial processes to intimidate, exhaust resources, and deter public participation. SLAPPs undermine Article 24 because they deter individuals and communities from raising environmental concerns and obstruct access to justice. They also violate Articles 7, 9, 10 and 11, which protect access to justice, freedom of expression, association and peaceful assembly.

The phenomenon is no longer hypothetical on this continent. In South Africa, 2 Australian mining companies and their executives sued 6 environmental attorneys and community activists for defamation, claiming R14.25 million over public criticism of the Tormin and Xolobeni mineral sands operations. The Western Cape High Court dismissed the claims in 2021 as an abuse of process designed to silence critics, and the Constitutional Court in *Mineral Sands Resources (Pty) Ltd v Reddell* unanimously confirmed that a SLAPP defence exists within the doctrine of abuse of process, holding that litigation whose primary aim is to silence or exhaust critics rather than vindicate a genuine right is inconsistent with constitutional values.[24] In its companion judgment the Court further curtailed the ability of trading corporations to claim general damages for defamation arising from public interest discourse.[25] In Zimbabwe, the director of the Centre for Natural Resource Governance, Farai Maguwu, was detained for weeks on charges of publishing falsehoods prejudicial to the State after documenting abuses in the Marange diamond fields; the charges were eventually withdrawn, but the prosecution consumed months and chilled reporting on the sector.[26] Criminal defamation and insult prosecutions initiated at the instance of corporate complainants persist in several jurisdictions and perform the same silencing function in criminal form.

The African Commission's jurisprudence consistently interprets Charter rights as imposing positive obligations on States to protect individuals from interference by both State and non-State actors. This protective duty must now be understood to include preventing the abuse of judicial processes to silence environmental advocacy.

The General Comment would be the first instrument of the African human rights system to define and prohibit the practice and should seize that opportunity. SLAPPs in the African context take civil form (defamation and injuria claims by mining houses against community activists and journalists, claims in delict for economic loss caused by protest, interdicts restraining publication) and criminal form (criminal defamation and insult prosecutions initiated at the instance of corporate complainants).

The Commission can draw on a maturing body of comparative standards. Article 9 of the Escazú Agreement (2018), which obliges States parties to guarantee a safe and enabling environment for environmental defenders; Directive (EU) 2024/1069 on protecting persons who engage in public participation from manifestly unfounded claims; the Council of Europe's Recommendation CM/Rec(2024)2 on countering SLAPPs; and the anti-SLAPP jurisprudence of the South African courts, which has recognised abuse of process where litigation is directed at silencing environmental critics rather than vindicating genuine rights.[27]

Recommendations

The General Comment must call on States to:

- a. Define SLAPPs as legal proceedings whose primary purpose is to harass, intimidate or financially exhaust persons engaged in public participation on environmental matters, and recognise them as a violation of Articles 9, 10, 11 and 24 for which the State bears responsibility where its courts and prosecution services are the instrument;
- b. Introduce early dismissal mechanisms allowing courts to strike out abusive claims at a preliminary stage, before discovery and trial costs accrue, with the burden on the claimant to show the claim is genuine and proportionate;
- c. Empower courts to award full indemnity costs, and where appropriate damages, against SLAPP claimants, and to require security for costs from claimants whose proceedings bear the hallmarks of abuse;
- d. Abolish criminal defamation and insult laws, in line with the Commission's Resolution 169 (XLVIII) 2010 and the jurisprudence of the African Court in *Lohé Issa Konaté v Burkina Faso*[28], and preclude their use by or at the instance of corporate actors against environmental speech; and
- e. Require that anti-SLAPP protection extend to the full chain of participation: complainants to regulators, witnesses, community-based monitors, journalists, researchers and the lawyers who represent them.

5. Early warning and protection mechanisms

Attacks on environmental defenders rarely occur in isolation. They are typically preceded by a discernible pattern of escalation: anonymous threats, surveillance by unidentified persons, smear campaigns portraying defenders as anti-development or agents of foreign interests, administrative harassment through repeated inspections or summonses, and the sudden initiation of criminal investigations on vague public-order or national-security grounds. These early indicators are well-documented across the continent. In Mozambique, defenders monitoring coastal gas projects have reported months of surveillance and intimidation before arrests occur.[29] In Ghana, community activists opposing illegal mining have faced escalating threats and vilification campaigns before being assaulted.[30] In Uganda, defenders working on oil-pipeline impacts have described prolonged administrative harassment and repeated police summonses preceding detention.[31] These patterns demonstrate that violence against defenders is rarely spontaneous; it is preceded by warning signs that, if acted upon, can prevent harm.

Monitoring bodies and the UN Special Rapporteur on Environmental Defenders under the Aarhus Convention have documented this progression across regions, and the mandate itself is built on the premise that intervention must reach defenders who are at imminent threat, well before a threat becomes an act.[32]

A General Comment that focuses solely on remedies after violations occur would miss the critical interval in which lives can be saved. The African human rights system has long recognised the importance of preventive protection. The Commission's Special Rapporteur on Human Rights Defenders has repeatedly emphasised that protection must begin at the earliest stage of risk, not only after an attack has materialised. [33]The UN Declaration on Human Rights Defenders, read through Articles 60 and 61 of the Charter, similarly frames State obligations as both preventive and responsive.[34]The duty to protect under Article 24 therefore requires States to anticipate foreseeable risks to environmental defenders and to take reasonable measures to prevent harm.

The continent offers instructive examples of both failure and possibility. In South Africa, community leaders resisting mining expansion at Somkhele reported months of threats and intimidation before the killing of Fikile Ntshangase, yet no protective intervention occurred.[35] In Kenya, defenders of Kiambu Forest described repeated threats and surveillance before the killing of Joannah Stutchbury, again without preventive action.[36] Conversely, in Côte d'Ivoire, early intervention by local authorities and civil society networks has, in some cases, prevented escalation against defenders documenting illegal logging.[37] These examples illustrate that early warning and protection mechanisms can prevent irreversible harm when implemented effectively.

Recommendations

The General Comment must call on States to:

- a. Establish or designate national protection mechanisms for defenders at risk, with dedicated budgets, defender participation in governance, and protocols covering risk assessment, emergency relocation, physical and digital security support, and psychosocial care, paying specific attention to the gendered risks faced by women environmental defenders;
- b. Maintain accessible emergency channels, including hotlines and duty prosecutor and duty magistrate arrangements, that guarantee defenders prompt access to counsel, to habeas corpus or equivalent remedies, and to urgent interdictory relief;
- c. Collect and publish disaggregated data on threats, attacks and legal proceedings against environmental defenders, as an early warning function and a basis for State reporting under section 7(g) of the outline;
- d. Cooperate with the Commission's Special Rapporteur on Human Rights Defenders and the Working Group on Extractive Industries, including through prompt substantive responses to urgent appeals and letters of allegation, and protect those who supply information to these mechanisms from reprisal; and
- e. Require, as part of the corporate due diligence obligations in section 6 of the outline, that businesses in the extractive and land-based sectors adopt zero-tolerance policies on attacks against defenders, conduct defender-specific risk assessments, and establish operational grievance mechanisms that do not preclude recourse to courts.

We further encourage the Commission to build a monitoring dimension into the General Comment itself. State reporting guidelines under Article 62 should require States to account specifically for the situation of environmental defenders, including statistics on prosecutions arising from environmental advocacy and the status of investigations into attacks.

6. Conclusion

The General Comment on Article 24 emerges at a time when environmental defenders across Africa face escalating pressure, shrinking civic space and increasingly sophisticated forms of retaliation. Yet it is their work that gives practical meaning to the participatory and accountability-driven vision at the heart of Article 24. By locating defender protection squarely within the right to a satisfactory environment, the African Commission can set a clear continental standard that environmental governance must be transparent, inclusive and safe for those who speak out. This will not only respond to current threats but will also equip States, communities and institutions to confront future environmental challenges with resilience and respect for human rights.

Submitted by:

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- [1] Global Witness, *Missing Voices: The Violent Erasure of Land and Environmental Defenders* (September 2024), recording 196 killings of land and environmental defenders worldwide in 2023 and noting that the true figure is likely higher owing to underreporting.
- [2] *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights v Nigeria*, Communication 155/96, African Commission on Human and Peoples' Rights (2001), paras 52–53.
- [3] *African Commission on Human and Peoples' Rights v Republic of Kenya (the Ogiek case)*, Application No. 006/2012, African Court on Human and Peoples' Rights, judgment of 26 May 2017.
- [4] See Human Rights Watch and the National Coalition of Human Rights Defenders–Kenya (December 2018), documenting threats, arrests, detentions and restrictions on public meetings against Lamu activists. Kenya's National Environment Tribunal set aside the plant's licence on 26 June 2019 for inadequate public participation in the environmental and social impact assessment.
- [5] See Observatory for the Protection of Human Rights Defenders (FIDH–OMCT), Uganda: Suspension of 54 civil society organisations (1 September 2021), recording office raids, the targeting of the Africa Institute for Energy Governance (AFIEGO) and the arrest of AFIEGO's Maxwell Atuhura on 26 May 2021 during fieldwork on communities affected by oil and pipeline development.
- [6] See, e.g., “Villagers protest cement project ahead of Hurungwe Council meeting”, *The Zimbabwean* (December 2024), reporting the Labenmon Investments cement and power-station development at Katenhe, Ward 11, Magunje (Hurungwe District) and the arrest of protesting community members; the matter remains before the courts.
- [7] African Commission on Human and Peoples' Rights, *Guidelines on Freedom of Association and Assembly in Africa* (2017); and *Declaration of Principles on Freedom of Expression and Access to Information in Africa* (2019).
- [8] ACHPR/Res.657(LXXXVI)2026 on Access to Information and the Right to a Healthy Environment, adopted at the 86th Ordinary Session, Banjul, 9 March 2026.
- [9] Private Voluntary Organisations Amendment Act (Zimbabwe), 2025, and its implementing instruments, Statutory Instruments 97 and 98 of 2026.
- [10] Announcement of the National Bureau for Non-Governmental Organisations, 20 August 2021, suspending 54 organisations under the Non-Governmental Organisations Act 2016; the High Court subsequently found the suspension of Chapter Four irregular (see Human Rights Watch, *Court Ends Suspension of NGO in Uganda*, 24 May 2022).
- [11] Written Laws (Miscellaneous Amendments) Act No. 3 of 2019 (Tanzania).
- [12] Law No. 149 of 2019 on the Regulation of the Exercise of Civil Work (Egypt).
- [13] *Charities and Societies Proclamation No. 621/2009* (Ethiopia), repealed and replaced by the *Organizations of Civil Societies Proclamation No. 1113/2019*.
- [14] Rio Declaration on Environment and Development (1992), Principle 10; UN Declaration on Human Rights Defenders, UN General Assembly Resolution 53/144 (1998); and the Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement, 2018), Article 9.
- [15] *Social and Economic Rights Action Centre (SERAC) v Nigeria*, Communication 155/96 (2001); and *Centre for Minority Rights Development (Kenya) and Minority Rights Group International (on behalf of the Endorois Welfare Council) v Kenya*, Communication 276/2003, African Commission on Human and Peoples' Rights (2009).
- [16] ACHPR/Res.663(LXXXVII)2026 on the Situation of Human and Peoples' Rights Defenders in Africa, adopted at the 87th Ordinary Session, Banjul (24 April–20 May 2026).
- [17] Fikile Ntshangase, of the Mfolozi Community Environmental Justice Organisation, was shot dead at her home in Ophondweni, KwaZulu-Natal, on 22 October 2020, shortly before a Supreme Court of Appeal hearing concerning the Somkhele (Tendele) coal-mine expansion; no prosecution has followed. See Centre for Environmental Rights, joint statement (2 November 2020).
- [18] Joanna Stutchbury was shot dead near her home outside Nairobi on 15 July 2021 after repeated death threats linked to her defence of Kiambu Forest. See the communication of the UN Special

Rapporteur on the situation of human rights defenders and others to the Government of Kenya, 17 November 2021.

[19] International PEN, Constitutional Rights Project, Interights and Civil Liberties Organisation (on behalf of Ken Saro-Wiwa Jr.) v Nigeria, Communications 137/94, 139/94, 154/96 and 161/97, African Commission on Human and Peoples' Rights (1998).

[20] UN Declaration on Human Rights Defenders, UN General Assembly Resolution 53/144 (1998), Article 12.

[21] Criminal Law (Codification and Reform) Amendment Act (Zimbabwe), 2023 (the "Patriotic Act"), inserting section 22A into the Criminal Law (Codification and Reform) Act [Chapter 9:23].

[22] Ordinance No. 21-08 of 8 June 2021 amending Article 87 bis of the Algerian Penal Code.

[23] Counter-Terrorism Law No. 94 of 2015 and Law No. 8 of 2015 on Terrorist Entities (Egypt).

[24] Mineral Sands Resources (Pty) Ltd and Others v Reddell and Others [2022] ZACC 37 (Constitutional Court of South Africa, 14 November 2022), affirming that a SLAPP defence exists within the doctrine of abuse of process; on appeal from Mineral Sands Resources (Pty) Ltd v Reddell; Mineral Commodities Ltd v Dlamini; Mineral Commodities Ltd v Clarke [2021] ZAWCHC 22 (Western Cape High Court, 9 February 2021). The three defamation actions claimed some R14.25 million over public criticism of the Tormin and Xolobeni mineral sands operations.

[25] Reddell and Others v Mineral Sands Resources (Pty) Ltd and Others [2022] ZACC 38 (Constitutional Court of South Africa, 14 November 2022).

[26] Farai Maguwu, Director of the Centre for Natural Resource Governance, was arrested in 2010 and detained on charges of publishing or communicating falsehoods prejudicial to the State after documenting abuses in the Marange diamond fields; the charges were later withdrawn.

[27] Escazú Agreement (2018), Article 9; Directive (EU) 2024/1069 of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings; and Council of Europe Committee of Ministers Recommendation CM/Rec (2024)2 of 5 April 2024 on countering the use of SLAPPs.

[28] ACHPR/Res.169(XLVIII)2010 on Repealing Criminal Defamation Laws in Africa (Banjul, November 2010); and Lohé Issa Konaté v Burkina Faso, Application No. 004/2013, African Court on Human and Peoples' Rights, judgment of 5 December 2014.

[29] Amnesty International, *Mozambique: Attacks on Human Rights Defenders in Cabo Delgado* (2021), documenting surveillance and intimidation of environmental and land defenders.

[30] Human Rights Watch, *Ghana: Illegal Mining and Threats Against Environmental Activists* (2022).

[31] Observatory for the Protection of Human Rights Defenders (FIDH–OMCT), *Uganda: Harassment of AFIEGO Staff* (2021).

[32] <https://unece.org/environmental-policy/public-participation/about-special-rapporteur-environmental-defenders>

[33] ACHPR, *Report of the Special Rapporteur on Human Rights Defenders in Africa* (2025), emphasising preventive protection.

[34] UN Declaration on Human Rights Defenders, UNGA Res 53/144 (1998), Articles 2, 9 and 12.

[35] Centre for Environmental Rights, *Joint Statement on the Killing of Fikile Ntshangase* (2 November 2020).

[36] UN Special Rapporteur on Human Rights Defenders, *Communication to Kenya on the Killing of Joannah Stutchbury* (17 November 2021).

[37] African Defenders, *Protection Mechanisms in West Africa: Case Studies* (2024).



ISHR's Contribution to ERA's joint submission for the Development of a
General Comment on Article 24 of the African Charter on Human and
Peoples' Rights

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The right to a clean, healthy and sustainable environment

● **Enabling right**

Source: [ISHR Academy : Advocacy for environmental defenders](#)

On 8 October 2021, the [UN Human Rights Council adopted Resolution 48/13](#), formally recognised the right to a clean, healthy and sustainable environment as a human right. The UN General Assembly (UNGA) later solidified the global recognition of the right on 28 July 2022 when it [adopted Resolution 76/300](#) reinforcing the Human Rights Council (HRC) resolution.

This milestone broadens the interpretation of human rights law with a clear prerogative: **People cannot fully enjoy their human rights if the environment they depend on is unsafe or degraded.** Therefore, everyone has the right to live in a clean, healthy and sustainable environment.

Many regional treaties, instruments, bodies and systems already recognise the right to a healthy environment like the [San Salvador Protocol](#), the [African Charter on Human and Peoples' Rights](#), the [ASEAN Human Rights Declaration](#), and the [Arab Charter on Human Rights](#). After the UNGA adopted the resolution, international courts further incorporated the right to a clean, healthy and sustainable environment in two landmark advisory opinions in 2025:

- The International Court of Justice (ICJ) [Advisory Opinion on the obligations of States in respect of climate change](#) (2025).
- The Inter-American Court of Human Rights (IACtHR) [Advisory Opinion on the Climate Emergency and Human Rights](#) (2025), building on its earlier recognition of the autonomous right to a healthy environment in Advisory Opinion OC-23/17 (2017) and affirming that States' obligations extend to the climate emergency.

Treaty Bodies have also incorporated the right in some General Comments, including the Committee on the Right of the Child General Comment on [children's rights and the](#)

[environment](#); and the Committee on Economic, Social and Cultural Rights Comment on [the environmental dimension of sustainable development](#).

These developments illustrate the normative traction of the UNGA resolution, which has been invoked by international courts and treaty bodies as they clarify the concrete environmental obligations States already owe under human rights law.

Finally, to date, and even before the recognition of the right to healthy environment at the Human Rights Council and the General Assembly, the right was enshrined in more than [100 constitutions](#) globally, which includes the majority of [African States](#).

- [Individual and collective dimensions](#)

Source: [ISHR Academy : Advocacy for environmental defenders](#)

The right to a healthy environment includes substantive and procedural elements. Substantive elements refer to the environmental conditions people are entitled to—such as clean air, safe and sufficient water and safe climate, non-toxic environments, healthy and sustainable food, and healthy ecosystems. Procedural elements **ensure that people can defend and realise these [conditions](#)** through access to information, meaningful and safe participation in decision-making (including in international and regional environmental fora), and access to justice and effective remedies. These procedural elements are fundamental tools to realise the substantive elements. The substantive and procedural elements are meant **to protect the individual and collective dimension of the right to a healthy environment**. To effectively guarantee the right to a healthy environment, [States have the obligation to respect, protect, and fulfil each of these elements](#) separately and in combination.

This approach heavily relies on **the human rights principle of interdependence, acknowledging no right can be fully realised in isolation**. This principle confirms that the right to a healthy environment is not a 'new right' but rather the recognition and consolidation of environmental dimensions already embedded in existing human rights. This recognition also clarified States' obligations to prevent foreseeable environmental harm and to provide remedies.

- [Environmental human rights defenders](#)

Source: [ISHR Academy : Advocacy for environmental defenders](#)

The term “Environmental human rights defenders” (EHRD) refers to any person who individually, or in association with others acts or seeks to promote, protect, or strive for the realisation of the right to a clean, healthy and sustainable environment. Consistent with the UN Declaration on Human Rights Defenders and Declaration +25, EHRDs are identified by their activities rather than their profession, affiliation, or status, and can include Indigenous Peoples, rural and fisher communities, women defenders, and community and collective actors.

EHRDs face disproportionate and intersecting risks, including in the context of extractive industries and corporate capture of public institutions. EHRDs also face **heightened and overlapping risks** due to different factors, including **structural power imbalances and corruption**. As their work often challenges powerful State and corporate interests behind

major development, extractive, or tourism projects, they become exposed to abuses by both State and non-State actors.

Relevant international and regional instruments

In 2019, the UN Human Rights Council recognised the vital work of EHRDs [through resolution 40/11](#), **which acknowledges the essential role EHRDs play in protecting the environment and highlights the threats, attacks, and reprisals many defenders experience**. The message is simple yet powerful: When EHRDs are prevented from their activities or work, environmental protection itself is weakened.

This resolution explicitly references not only individual protection but also **States' obligation to ensure that EHRDs can work in a safe and enabling environment**. The resolution urges States to take steps to prevent attacks, protect EHRDs when risks arise, investigate and punish abuses, and provide access to justice and remedies when harm occurs.

At the regional level, the Escazu Agreement already recognizes the work of EHRDs as one of the most important pillars for environmental governance. Article 9 of the Escazu Agreement acknowledges that EHRDs often face threats, violence, and criminalisation for their work across the region and requires States to take effective measures to recognise, protect, and promote their rights.

African regional instruments

At the African level, the most recent resolution on the situation of human rights defenders working on environmental issues in Uganda adopted in 2024, recognises the specific threats and attacks faced by environmental defenders.

The Maputo Protocol — entered into force in 2005, while not an environmental treaty as such, is highly relevant to environmental rights because it recognises women's rights in areas directly affected by environmental harm, including **food security, housing, health, and sustainable development** (Articles 15, 16, 18 and 19). In practice, it helps frame environmental degradation not only as an ecological issue, but also as a matter of **gender equality, dignity, and access to the conditions necessary for life**.

The Maputo Protocol is particularly useful **when environmental harm affects women in specific or disproportionate ways**. It can assist to demonstrate how pollution, land dispossession, water scarcity, or extractive projects often deepen **existing gender discrimination** by affecting women's access to land, natural resources, livelihoods, health, and participation in decision-making.

The Kampala Convention — entered into force in 2012. While it is not an environmental treaty, it can be a powerful tool when environmental harm leads to **displacement, land loss, or threats to communities**. For instance, it recognises that displacement can result from **natural or human-made disasters, climate change, and development or extractive projects**, and it places obligations on States to prevent and respond to those harms.

What makes it relevant is the fact that it also addresses the role of **non-state actors**, including companies. It requires States to ensure accountability for arbitrary displacement linked to resource exploitation (Article 3), to protect people displaced by climate-related impacts (Article 5), and to prevent environmental degradation in areas where displaced persons are

located (Article 9). It also requires, as far as possible, that States prevent displacement caused by public or private projects, provide **full information and consultation**, and carry out **socio-economic and environmental impact assessments** before such projects proceed (Article 10).

The **African Children's Charter** — entered into force in 1999, helps connect **environmental harm with children's rights to survival, development, health, and well-being**. It further recognises that children's lives depend on safe living conditions, access to essential resources, and an environment that supports their physical and social development. The Charter can be relevant when pollution, environmental degradation, or extractive activities affect children's health, food, water, or living conditions. **In particular, it requires States to protect children's survival and development (Article 5)** and to ensure the **highest attainable standard of health**, including adequate nutrition, safe drinking water, and preventive healthcare (Article 14). It also recognises the **importance of education in promoting respect for the environment and natural resources (Article 11)**, reinforcing the idea that environmental protection is essential to children's present and future rights.

Perpetrators of violence

Violence has been thoroughly documented. Hence, even if there are no clear perpetrators, there are repeated drivers for violence:

- **State actors:** State authorities — including police, security forces, and the military — can use tactics like direct aggression, forced evictions, arbitrary detentions, and excessive use of force that result in injuries or even death.

Parliamentarians also play a role in enabling the criminalisation of EHRDs, either through laws they promote and adopt, or through those they fail to change. For instance, adopting vague or overly broad legislation, increasing penalties for protests or other public-facing activism, or prioritising development and extractive interests without strong human rights safeguards or consultation. All of these are strong enablers for abuses to deter EHRDs from carrying out their activities.

Additionally, a lack of independence and impartiality in the judicial system can open the door to abuses, including criminalisation, dismissal of complaints, and denunciations.

Furthermore, authorities can also shape the public perception of defenders, a power that has been abused through efforts to stigmatise them as 'terrorists' or 'anti-development' to fuel other dangerous misconceptions.

- **Non-State actors:** These include members of organised crime, armed groups, gangs, and paramilitary groups. On occasion, they provide services to other actors or target EHRDs when their work collides with their activities.

Other non-State actors that have been involved in attacks against EHRDs include businesses from the extractive sector - mining, large agribusiness or even 'green energy' companies - that contravene corporate human rights regulations and carry out abusive practices against communities and the environment by prioritising profit. Some documented abusive practices include contracting private security

companies to disrupt protests, skewing community deliberation processes by bribing individuals, dividing communities, and filing civil and criminal lawsuits to criminalise EHRDs, including Strategic Lawsuits Against Public Participation (SLAPPs).

Risks and retaliation

Environment and climate activism plays a fundamental role in protecting the environment and combating climate change, however engaging in such activities brings risks and retaliation against EHRDs which take different forms:

Criminalisation and judicial harassment: Particular crimes that have been used against EHRDs include aggravated land occupation, criminal conspiracy, illicit association, trespassing and, most recently, terrorism. These are often followed by unusually harsh prison sentences and freezing of assets. Additionally, SLAPPs are increasingly used against those calling for phasing out fossil fuels or in cases involving critical minerals. [EarthRights](#) has identified at least 152 SLAPPs by the fossil fuel industry in the United States. A recent example is the March 2025 ruling ordering Greenpeace to pay over \$600 million for alleged defamation and other claims linked to its opposition to the Dakota Access pipeline project.

Disproportionate use of force with regards to civil disobedience: In response to governments' inaction on climate change, EHRDs have exercised their right to peacefully protest, including through civil disobedience^[1]. The Special Rapporteur on Environmental Defenders under the Aarhus Convention notes that civil disobedience is recognised by international law as an exercise of freedom of expression and peaceful assembly^[2] and that 'all acts of civil disobedience are a form of protest, and, as long as they are non-violent, they are a legitimate exercise of this right.'^[3] However, often States have responded to civil disobedience by using disproportionate criminal, administrative and civil measures including excessive use of force, extensive investigation and surveillance.

Stigmatisation, delegitimisation and 'labeling': Negative narratives that form and strengthen stigma against EHRDs by framing them as 'against development', 'anti-government', 'terrorists', 'traitors', or even 'uncivilized' and 'savage' are common. This is often coupled with hate speech, disinformation and misinformation tools. This can create a foundation for state and non-state actors to justify unlawful actions. In addition, EHRDs also face climate change denial by certain groups, contributing to delegitimising their activism.

Moreover, instrumentalization of human rights language creates a false dichotomy between environmental protection and the rights to development, property and liberty, among others.

Physical violence: This includes assassinations, harassment, enforced disappearances, forced evictions and forced displacement.

Mental health risks: During the Declaration +25 consultations with EHRDs, mental health issues, depression, stress, fear, helplessness, and burnout were identified as particular risks that EHRDs suffer. Youth and children have also expressed 'climate anxiety' and distress, often facing parental, or guardians' restrictions limiting their activism in order to 'protect' them.

Solutions prioritizing further development projects: In a number of cases, measures ostensibly intended to protect the climate^[4] and the environment, including renewable energy

projects or geo-engineering, have resulted in significant human rights violations, including forced displacement of Indigenous Peoples. Laws legalising human rights violations such as land grabbing in Guatemala or weakened protections for Indigenous Peoples in Kenya^[5] have been adopted in association with development. This includes regressive and weak environment and climate legislation and policies that benefit extractive and fossil fuels agendas, rather than addressing the climate crisis.

Weak human rights protections in national legal frameworks

Absence, lack of implementation and/or inadequate human rights protections in national laws and systems, includes the following:

- Inadequate laws and mechanisms, that do not consider diverse identities, or provide collective or adequate protection measures for EHRDs.^[6]
- Complex procedures to obtain or renew protection measures or asylum.^[7]
- National Human Rights Institutions and international mechanisms that do not have enforcement powers or sufficient resources to effectively protect human rights or those exercising the right to defend rights.

Limited support and capacities of EHRDs

Limited capabilities, opportunities and support for HRDs, especially for newer, smaller or grassroots movements includes:

- Lack of legal assistance when EHRDs are criminalised,
- lack of internet connections, access, adequate equipment, tools and technology;
- lack of sustainable funding and financial resources,
- language barriers,
- difficult requirements to access international protection bodies, and
- obstacles to meaningfully participate in international and regional climate and environmental fora, including lack of access of information and transparency in the decision-making process.

Increasing power of non-state actors, particularly businesses: Corporate capture is when businesses or other economic actors gain undue influence over public institutions — legislatures, regulators, courts, international bodies and spaces — so that decisions meant to serve the public interest instead serve private commercial interests. EHRDs are often faced with “corporate capture” in national, regional and international policy and decision-making spaces, where businesses have clear conflict of interest and imbalance of power with other constituencies.

Reprisals: EHRDs are often subject to reprisals for engaging or seeking to engage with the UN. The most common forms include threats and intimidation, smear campaigns, surveillance and travel restrictions. Other forms include targeting family, friends and acquaintances, investigations and prosecutions, physical attacks, kidnappings, detention and imprisonment, administrative harassment or expulsion. Since 2010, the UN Secretary-General's annual reports^[8] have highlighted reprisal cases against EHRDs and Indigenous Peoples working on environmental and climate issues engaging with UN human rights bodies and other platforms, including the Conference of the Parties (COP) and the UN Forum on Indigenous Issues. The fear of reprisals also has a chilling effect, where the prospect of retaliation silences defenders — deterring documentation, testimony, and

participation, and depriving UN mechanisms of the information it depends on.

Declaration + 25

Several provisions of Declaration +25 speak directly to the content of Article 24 and merit reflection in the General Comment. Its preamble expressly acknowledges the environmental and climate crisis and the vital role of defenders working on a just transition and in ensuring a clean, healthy and sustainable environment for all. Article 2 reaffirms the enabling rights that constitute the procedural dimension of the right to a healthy environment, including the rights of access to information, participation, and safe and unhindered access to and communication with international and regional human rights bodies. Article 6 expressly identifies climate justice, land and environmental rights, and the rights of Indigenous Peoples among the issue areas generating heightened risk, and requires a collective and intersectional approach to protection.

Declaration +25 also elaborates the protection obligations that give effect to these guarantees. Article 4 details the State duty to ensure a safe and enabling environment, including obligations to investigate threats and attacks, to guarantee access to justice and effective remedies, to adapt protection measures to collective defenders, and to ensure free and safe access to international mechanisms. Article 5 addresses stigmatisation and criminalisation, including the prohibition of SLAPPs — tactics disproportionately deployed against land and environmental defenders — while Article 8 extends protection to defenders' families, associates, and communities, a provision of particular significance where entire communities defend territory and environment collectively. Articles 17 and 18 address State duties in respect of non-State actors and the responsibilities of business enterprises — including human rights and environmental due diligence, respect for free, prior and informed consent, and refraining from SLAPPs and from lobbying that restricts civic freedoms — responding directly to the corporate conduct most implicated in attacks on environmental defenders in extractive contexts. Finally, Article 19 addresses the responsibility of international and regional bodies themselves to prevent, investigate, and promote accountability for reprisals against those who engage with them — a standard the Commission could affirm in respect of its own mechanisms and sessions.

^[1] See “Exercise of the rights to freedom of peaceful assembly and of association as essential to advancing climate justice”, Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, General Assembly, Seventy-sixth session, A/76/222, 23 July 2021, para. 11 and 64; See also

<https://www.amnesty.org/en/wp-content/uploads/2024/02/ACT1074712024ENGLISH.pdf>

^[2] ‘State repression of environmental protest and civil disobedience: a major threat to human rights and democracy’, Position Paper by Michel Forst, UN Special Rapporteur on Environmental Defenders under the Aarhus

Convention, https://unece.org/sites/default/files/2024-02/UNSR_EnvDefenders_Aarhus_Position_Paper_Civil_Disobedience_EN.pdf

^[3] On this, the Declaration +25 clarifies that ‘non-violent’ or ‘through peaceful means’ should not be equated with ‘through [or by] lawful means’, as oppressive national laws may conflict with

international law. Thus, actions unlawful under national law can still remain lawful under international law

^[4] See “Impact of new technologies intended for climate protection on the enjoyment of human rights”, Report of the Human Rights Council Advisory Committee, 10 August 2023, <https://docs.un.org/en/A/HRC/54/47>

^[5] See ISHR “Report of consultations with human rights defenders as part of the Declaration +25 Project” 19 June 2024. ¶9, 30

<https://ishr.ch/wp-content/uploads/2024/06/2024-DeclarationPlus25-ReportOnConsultations.pdf>

^[6] Defenders denounced that protection measures usually focused on providing “panic buttons” or other communication technologies meant to alert authorities of imminent risks. However, these only worked in urban contexts, and not in remote locations where internet access was limited – however, it was in these areas where WHRDs needed other forms of protection.

^[7] For example, HRDs in Perú indicated that protection is only granted if HRDs prove they belong to an NGO or community

^[8] Annual reports on reprisals for cooperation with the UN. Last accessed on 4/10/2025

<https://www.ohchr.org/en/reprisals/annual-reports-reprisals-cooperation-un>

Supplemental Article 24 Legal Caselaw Research Resources

Domestic and International Jurisprudence to Support the Commission as it Develops its Comment

We share here a collection of domestic, international, and regional cases that highlight relevant human rights standards under Article 24 of the African Charter on Human and Peoples' Rights to inform the Commission for a General Comment on the right to environment. Included domestic jurisprudence covers decisions interpreting Article 24 in countries that have domesticated this provision, international jurisprudence covers interpretations of the right to environment generally, and regional cases include African Commission and African Court decisions interpreting Article 24 directly.

Domestic jurisprudence

Several countries have domesticated Article 24 of the African Charter, and their courts have examined the right in the context of litigation.

Nigeria

Nigeria has domesticated the African Charter through the *African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act*, now Cap. A9, Laws of the Federation of Nigeria, 2004 ("the African Charter Act"). Upon domestication, the Charter became an integral part of Nigerian municipal law, enforceable in Nigerian courts.

In *Gbemre v. Shell*, the Federal High Court upheld the community's right to a clean, poison-free environment, finding gas flaring violated Article 24 alongside constitutional rights to life and dignity. *Gbemre v. Shell* (Federal High Court, 2005), available at: <https://www.globalhealthrights.org/wp-content/uploads/2013/02/HC-2005-Gbemre-v.-Shell-Petroleum-Development-Company-and-Ors.pdf>. This was the first time environmental protection was framed in human rights terms in Nigeria.

The applicant, Jonah Gbemre, brought proceedings on behalf of himself and the members of the Iwherekan Community in Delta State under the Fundamental Rights (Enforcement Procedure) Rules, seeking enforcement of their rights to life and dignity as guaranteed by sections 33(1) and 34(1) of the Constitution of the Federal Republic of Nigeria 1999. Those constitutional rights were pleaded alongside Articles 4, 16, and 24 of the African Charter Act, the domesticated form of the Charter. The applicants' argued that by virtue of Article 24 they were entitled "to enjoy the best attainable state of physical and mental health as well as right to a general satisfactory environment favourable to their development," and that Shell's persistent gas flaring carried out without any environmental impact assessment had violated those rights. *Id.* at para. 3. The factual particulars of that violation included: serious pollution of the air causing respiratory diseases and endangering health; exposure to an increased risk of premature death, asthma, and cancer; contribution to adverse climate change through emissions of carbon dioxide and methane; and reduction of crop production with adverse impacts on food security. *Id.* para. 4(4-7). The specific composition of the emissions included particulate matter, sulphur dioxide, nitrogen dioxide, and carcinogenic substances as independently dangerous to human health and life. *Id.* at (8).

The court held that the constitutionally guaranteed rights to life and dignity "inevitably include the right to clean, poison-free, pollution-free healthy environment," and that Shell's continued gas flaring constituted "a gross violation of their fundamental right to life (including healthy environment) and dignity of human person as enshrined in the Constitution." *Id.* at para. 5(3-4). The court went further, holding that the failure to carry out an environmental impact assessment had independently "contributed to a further violation of the said fundamental rights." *Id.* at para. 5(5). Most significantly for the constitutional architecture, the court declared the provisions of the Associated Gas Re-Injection Act and the Associated Gas Re-Injection (Continued Flaring of Gas) Regulations 1984, under which continued flaring had been permitted inconsistent with sections 33(1) and 34(1) of the Constitution and Articles 4, 16, and 24 of the African Charter, were "unconstitutional, null and void." *Id.* at para. 5(6). The practical relief granted was a perpetual injunction restraining Shell from further gas flaring in the community. *Id.* at para. 6.

By invoking the Fundamental Rights (Enforcement Procedure) Rules as the procedural vehicle and reading Article 24 of the domesticated Charter as directly reinforcing constitutional rights to life and dignity, the court established that environmental harm of sufficient severity is not merely a statutory or common law matter, it is a constitutional human rights violation. This was the first time a Nigerian court had approached environmental protection in those terms, and the first time gas flaring had been declared illegal on that basis. The court's reasoning implies a threshold test: where pollution demonstrably endangers life and degrades the conditions necessary for human development, the standard drawn from Article 24's "general satisfactory environment favourable to their development," it crosses into the domain of justiciable fundamental rights. This judgment remains the foundational authority in Nigeria for the proposition that Article 24, read with the right to life, generates an enforceable individual and community right to a clean environment.

Centre for Oil Pollution Watch v. Nigerian National Petroleum Corporation (NNPC)

(Supreme Court, 2018), available at:

https://cdn.climatepolicyradar.org/navigator/NGA/2005/centre-for-oil-pollution-watch-copw-vs-nnpc-2018-supreme-court-of-nigeria_5ea857ce53466dc2a04bb90c55419e8c.pdf, was primarily about whether a non-governmental organization (NGO) had legal standing to bring the case, but the Supreme Court cited Article 24 in its reasoning on substantive environmental rights.

Although the immediate question before the Supreme Court was whether an NGO had standing to bring an environmental pollution claim on behalf of affected communities (the Centre for Oil Pollution Watch having sued NNPC over an oil spill that had contaminated the Ineh and Aku streams in Acha Community, Abia State), the court's reasoning on that question required it to articulate the substantive human rights foundation on which environmental claims rest. In doing so, it produced an authoritative judicial statement on the enforceability of Article 24 of the African Charter before Nigerian domestic courts. The court places Article 24 alongside the constitutional right to life and the state's environmental protection duty as co-equal and mutually reinforcing sources of the same fundamental right:

Section 33 of the 1999 Constitution guarantees the right to life while section 20 of the Constitution provides that the state shall protect and improve the environment and safeguard the water, air and land, forest and wild life of the country. Also, article 24 of the African Charter on Human and Peoples' Rights provides that all people shall have the right to a general satisfactory

environment favourable to their development. These provisions show that the Constitution, the legislature and the African Charter on Human and Peoples' Rights, to which Nigeria is a signatory, recognise the fundamental rights of the citizenry to a clean and healthy environment to sustain life.

Id. at Holding 37, p. 587, paras. D-F.

The court went further in two related holdings that amplify the practical reach of Article 24, finding it to be not merely an interpretive aid but a directly enforceable domestic legal obligation:

[T]he African Charter on Peoples' and Human Rights, an international treaty, having been domesticated, forms part of Nigerian corpus juris. For as long as Nigeria remains signatory to the Charter and other international treaties on environment and other global issues for so long also would the Nigerian courts protect and vindicate human rights entrenched therein.

Id. at Holding 38 (p. 598, paras. B-C).

The concurring opinion of Eko JSC applied this principle to the specific community facts, stating that those dependent on the Ineh and Aku streams "have a right to a general environment favourable to their development" and that the state, including NNPC as a statutory corporation, "owes the community a duty to protect them against noxious and toxicant pollutants and to improve and safeguard the water they drink, the air they breathe, the land and forest, including wildlife in and around the two rivers, they depend on for their existence, living and economic activities." *Id.* at p. 598, paras. D-E. This is notable because it reads Article 24's collective "peoples'" framing as generating a specific, community-level duty of protection owed by state-owned corporations.

On the standing question, the court's reasoning has direct implications for how Article 24 rights can be enforced in practice. The court held that "no particular person owns the environment" and that where government agencies fail to enforce environmental protections, NGOs "which do not necessarily seek their personal interest, can bring an action in court to demand compliance and ensure the restoration, remediation and protection of the environment." *Id.* at Holding 32 (pp. 591–592). The court further noted that "the natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be strengthened for the benefit of the present and future generations through careful planning and management." *Id.* at Holding 33 (pp. 599–600). Read alongside the Article 24 holdings, this establishes a significant procedural principle: because the right to a satisfactory environment is collective in nature, the standing rules governing its enforcement should be correspondingly broad. The case therefore advances the human rights framework in two directions simultaneously: it confirms the substantive enforceability of Article 24 as domestic law, and it removes a procedural barrier that had previously prevented civil society from bringing that right before the courts on behalf of affected communities.

Seychelles

Seychelles has signed and ratified the African Charter. Article 64(4) of its constitution provides that international agreements are not fully domesticated until an Act or resolution is passed. However, Article 48 of Seychelles' constitution provides that the constitution must be interpreted in a way so as not to be inconsistent with any international obligations relating to

human rights and freedoms, and that courts must take judicial notice of international instruments containing these obligations.

In *Ministry of Environment, Energy and Climate Change & Others v Woodlands Holdings Limited & Anor*, the Court of Appeal of Seychelles read Article 38 of the constitution (“the right of every person to live in and enjoy a clean, healthy and ecologically balanced environment”) to mean that the entire constitution “must be interpreted” in the context of Article 24 of the African Charter. In *Ministry of Environment, Energy and Climate Change & Others v Woodlands Holdings Limited & Anor* (SCA CL 01/2023) [2023] (Arising in CP 04/2021)

(18 December 2023), para. 38, available at:

<https://r2he.info/wp-content/uploads/2024/10/Ministry-of-Environment-Energy-and-Climate-Change-Others-v-Woodlands-Holdings-Limited-Anor-SCA-CL-012023-2023-Arising-in-CP-042021-SCA-CL-012023-2023-Arising-in-CP-042021-2023-SCCA-57-18-December-2022.pdf>. The court notes that Article 24 “requires the State to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources.” *Id.*

The court analyzed the constitutional right to a healthy environment:

The positive obligation on the State in terms of Article 38 of the Constitution includes the obligation to take measures for the improvement of the environment. Improvement of the environment includes developing the environment to a better condition. Cleaning up the environment which has been polluted by private citizens also falls within this obligation. The State cannot be heard to claim that such obligation arises only where the polluter fails to comply with the polluter pays principle enshrined in section 42(3) and 42(4) of the EPA.

Id. at para. 56.

The court held that the state had an obligation under the constitutional right to a healthy environment to take measures to ensure private citizens do not pollute the environment, to clean up pollution caused to public places such as rivers and beaches, and that failure to do so may render the state liable to its citizens for damages. *Id.* at para. 66.

South Africa

Fuel Retailers Association of Southern Africa v. Director-General Environmental Management presents an example of a court interpreting the right to a healthy environment under domestic law. Though this decision does not reference Article 24 of the African Charter, it may still be useful in drawing out how this right has been examined in some jurisdictions.

Section 24 of the South African Constitution guarantees the right to an environment not harmful to health or well-being, and to have the environment protected through measures that “secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.” The Constitutional Court in this case interpreted section 24 by explicit reference to the international sustainable development principles that also underpin the African Charter. *Fuel Retailers Association of Southern Africa v. Director-General Environmental Management, Department of Agriculture,*

Conservation and Environment, Mpumalanga Province and Others, Constitutional Court of South Africa, Case CCT 67/06, 7 June 2007 (Ngcobo J), available at: <https://www.saflii.org/za/cases/ZACC/2007/13.html>

The case arose from a challenge to the Mpumalanga environmental authorities' decision to grant authorisation for the construction of a filling station without properly considering its socio-economic and cumulative environmental impact. The court held that section 24 of the constitution "contemplates the integration of environmental protection and socio-economic development" and that this integration is achieved through the principle of sustainable development, which the court grounded in the 1972 Stockholm Conference, the Brundtland Report, and the 1992 Rio Declaration. The National Environmental Management Act, enacted to give effect to section 24, was read in the same light: its definition of sustainable development "incorporates two of the internationally recognised elements of the concept of sustainable development, namely, the principle of integration of environmental protection and socio-economic development, and the principle of inter-generational and intra-generational equity." *Id.* at para. 59.

The court held that "pure economic factors are no longer decisive. The need for development must now be determined by its impact on the environment, sustainable development and social and economic interests. The duty of environmental authorities is to integrate these factors into decision-making and make decisions that are informed by these considerations." *Id.* at para. 79. The environmental authorities had failed that standard and the authorisation was set aside. The court further held that environmental protection "is vital to the enjoyment of the other rights contained in the Bill of Rights; indeed, it is vital to life itself. It must therefore be protected for the benefit of the present and future generations. The present generation holds the earth in trust for the next generation." *Id.* at para. 102.

Fuel Retailers establishes that the right to a satisfactory environment, framed under a domestic constitutional provision, generates enforceable procedural and substantive obligations on decision-makers to assess, integrate, and justify how environmental and developmental considerations have been balanced, with failure to do so being judicially reviewable.

Relevant international jurisprudence

The following international decisions do not specifically address Article 24, but provide relevant interpretations of the right to environment generally, and may be persuasive in interpreting the right regionally.

In its recent Advisory Opinion, the International Court of Justice analyzed the right to a healthy environment as closely tied with the realization of other human rights. International Court of Justice, Advisory Opinion on Obligations of States in Respect of Climate Change (2025 23 July General List No. 187), available at:

<https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>.

The court considered that "the protection of the environment is a precondition for the enjoyment of human rights" and that "the effective enjoyment of a number of human rights cannot be fully realized if those who hold them are unable to live in a clean, healthy and sustainable environment." *Id.* at paras. 373, 389. Referring to IPCC reports underscoring the interdependence between the vulnerability of human populations and that of ecosystems, the

court found that the “degradation of the climate system and of other parts of the environment impairs the enjoyment of a range of rights protected by human rights law.” *Id.* at para. 375.

The court also highlighted that climate change threatens individuals’ ability to enjoy rights to health, noting that States “are responsible for promoting environmental conditions that ensure the enjoyment of the right to health.” *Id.* at para. 379. The court also found impacts associated with climate change on rights to an adequate standard of living, to privacy, family and home, and considers that “a State’s failure to implement timely and adequate adaptation measures to address the adverse impacts of climate change may violate” the latter. *Id.* at paras. 380-381.

Additionally, the court noted that climate change may impact the enjoyment of the rights of women, children and indigenous peoples – and indeed that climate change disproportionately impacts women and indigenous peoples. *Id.* at paras. 382, 384.

On the matter of the right to a clean, healthy, and sustainable environment, the Court considered the recognition of said right in regional human rights instruments, in constitutions and domestic legislation, and by the UN General Assembly, and concluded:

[A] clean, healthy and sustainable environment is a precondition for the enjoyment of many human rights, such as the right to life, the right to health and the right to an adequate standard of living, including access to water, food and housing. The right to a clean, healthy and sustainable environment results from the interdependence between human rights and the protection of the environment. Consequently, in so far as States parties to human rights treaties are required to guarantee the effective enjoyment of such rights, it is difficult to see how these obligations can be fulfilled without at the same time ensuring the protection of the right to a clean, healthy and sustainable environment as a human right. The human right to a clean, healthy and sustainable environment is therefore inherent in the enjoyment of other human rights. The Court thus concludes that, under international law, the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights.

Id. at paras. 390-93.

The Court is of the view that international human rights law, the climate change treaties and other relevant environmental treaties, as well as the relevant obligations under customary international law, inform each other. . . . States must therefore take their obligations under international human rights law into account when implementing their obligations under the climate change treaties and other relevant environmental treaties and under customary international law, just as they must take their obligations under the climate change treaties and other relevant environmental treaties and under customary international law into account when implementing their human rights obligations.

Id. at paras. 403-04.

The Inter-American Court of Human Rights, in a 2017 Advisory Opinion (OC-23/17), explained that the human right to a healthy environment is both an individual right and a collective right:

The human right to a healthy environment has been understood as a right that has both individual and also collective connotations. In its collective dimension, the right to a healthy environment constitutes a universal value that is owed to both present and future generations. That said, the right to a healthy environment also has an individual dimension insofar as its violation may have a direct and an indirect impact on the individual owing to its connectivity to other rights, such as the rights to health, personal integrity, and life. Environmental degradation may cause irreparable harm to human beings; thus, a healthy environment is a fundamental right for the existence of humankind.

The Environment and Human Rights, Advisory Opinion OC-23/17, Inter-Am. Ct. H.R. (ser. A) No. 23 (Nov. 15, 2017), para. 59, available at:
https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf.

The court also looked to the African Commission's interpretation of the right to a healthy environment in the *SERAC* case (described below) in formulating its understanding of this right:

[T]he African Commission on Human and Peoples' Rights underscored that the right to a healthy environment imposed on States the obligation to take reasonable measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources, as well as to monitor projects that could affect the environment.

Id. at para. 61.

In a 2025 Advisory Opinion (AO-32/25), the Inter-American Court continued to develop its analysis of this right:

The human right to a healthy environment has been understood as a fundamental right for the existence of humanity, with both individual and collective connotations. In its collective dimension, this right constitutes a universal value that is owed to both present and future generations. That said, the right to a healthy environment also has an individual dimension insofar as its violation may have direct or indirect repercussions on the individual owing to its connectivity with other rights, such as the rights to health, personal integrity and life, among others.

This Court also reiterates that, as an autonomous right, the right to a healthy environment protects the components of the environment, such as forests, rivers, and seas, as legal rights in themselves, even in the absence of certainty or evidence of the risk to the individual. This means that it protects nature, not only because of the effects that its degradation may have on other human rights, but because of its vital interdependence with other living organisms that make life on this planet possible. . . .

The Court has emphasized that the right to a healthy environment, as an autonomous right, differs from the environmental content that arises from the

protection of other rights, such as the right to life or the right to personal integrity. Thus, this Court has reiterated that, in addition to violating the right to enjoy a “healthy environment,” environmental damage may affect all human rights, and that some rights, precisely substantive rights, are more susceptible to such effects. Consequently, protection of the right to a healthy environment necessarily results in the protection of substantive human rights.

Climate Emergency and Human Rights, Advisory Opinion AO 32/25, Inter-Am. Ct. H.R. (ser. A) No. 32, paras. 272-74 (May 29, 2025), available at: https://www.corteidh.or.cr/docs/opiniones/seriea_32_en.pdf

African Court & African Commission

Social and Economic Rights Action Center (SERAC) v. Nigeria is often cited in reference to Article 24, as the African Commission on Human and Peoples’ Rights found that in this case it had been violated alongside several other articles of the Charter. *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v. Nigeria*, Communication 155/96, African Commission, 27 October 2001, para 10, available at: https://leap.unep.org/sites/default/files/court-case/achpr30_155_96_eng.pdf. In this case, plaintiffs alleged that the military government of Nigeria had been directly involved in oil production through the State oil company, and that these operations had caused environmental degradation and health problems resulting from the contamination of the environment among the Ogoni People. *Id.* at para. 1. The Commission’s analysis began by identifying a four-tier obligation structure:

Internationally accepted ideas of the various obligations engendered by human rights indicate that all rights, both civil and political rights and social and economic, generate at least four levels of duties for a State that undertakes to adhere to a rights regime, namely the duty to respect, protect, promote, and fulfil these rights. These obligations universally apply to all rights and entail a combination of negative and positive duties. As a human rights instrument, the African Charter is not alien to these concepts . . .

The Commission then looked specifically at Article 24, finding that:

The right to a general satisfactory environment, as guaranteed under Article 24 of the African Charter or the right to a healthy environment, as it is widely known, therefore imposes clear obligations upon a government. It requires the state to take reasonable and other measures to prevent pollution and ecological degradation, to promote conservation, and to secure an ecologically sustainable development and use of natural resources. . . . The state is under an obligation to respect the just noted rights and this entails largely non-interventionist conduct from the state for example, not from carrying out, sponsoring or tolerating any practice, policy or legal measures violating the integrity of the individual.

Id. at para. 52.

Article 24 compliance “must also include ordering or at least permitting independent scientific monitoring of threatened environments, requiring and publicising environmental and social impact studies prior to any major industrial development... and providing meaningful opportunities for individuals to be heard and to participate in the development decisions affecting their communities.” *Id.* at para. 53.

As applied to the actions of the Government of Nigeria, the Commission found that though the company had a right to produce oil, it did not take the care it should have taken to protect the rights of the Ogonis, and therefore found a violation of Article 24, along with Articles 2, 4, 14, 16, 18(1), and 21. *Id.* at para. 54, and Holding.

In *Ligue Ivoirienne des Droits de l'Homme (LIDHO) v. Republic of Côte d'Ivoire*, the African Court on Human and Peoples' Rights found a violation of Article 24, alongside Articles 4, 1, 7, 16, and 9. *Ligue Ivoirienne des Droits de l'Homme (LIDHO) v. Republic of Côte d'Ivoire*, Application No. 041/2016, AfCHPR, 5 September 2023, available at: <https://www.african-court.org/cpmt/storage/app/uploads/public/64f/ebd/f77/64febdff77f811512395983.pdf>.

Here, toxic waste, which had arrived by ship, had been dumped at several sites in the district of Abidjan which had resulted in the death of 17 people due to toxic gas inhalation, and negative health effects for thousands more. *Id.* at paras. 3 & 4. In approaching this matter, the Court adopted the Commission's reasoning in *SERAC*, quoting the *SERAC* formulation of the right under Article 24 as the governing standard. *Id.* at para. 179. On corporate involvement, the Court held that "the failure of the entities which were charged with the dumping and treatment of the waste does not exonerate the Respondent State of its responsibility to guarantee and protect the environment." *Id.* at para. 184.

The court's addition to the *SERAC* framework was to make explicit that the Article 24 obligation runs through the full pollution lifecycle, not just prevention: the state's duty was "not only to prevent the dumping of the waste without putting in place the necessary conditions, but also to ensure full and effective decontamination once the waste had been dumped." *Id.* at para. 183.

The court concluded that the state had violated Article 24, as it had not demonstrated that it had "effectively and promptly cleaned up the polluted sites. In these circumstances, it cannot be said that the Respondent State complied with its obligation to protect and implement the right to a generally satisfactory environment favourable to development." *Id.* at para. 185.

In *African Commission on Human and Peoples' Rights v. Republic of Kenya*, Article 24 was not directly invoked and was not among the violations found. African Commission on Human and Peoples' Rights v. Republic of Kenya, Application No. 006/2012, AfCHPR, 26 May 2017, available at: <https://www.african-court.org/cpmt/storage/app/uploads/public/5f5/5fe/9a9/5f55fe9a96676974302132.pdf>

However, in analyzing violations of other rights under the Charter, the African Court on Human and People's Rights addressed the question of whether the notion "people" used by the Charter covers not only the population as the constituent elements of the State, but also ethnic groups or communities, and whether "the enjoyment of the rights unquestionably recognised for the constituent peoples of the population of a given State can be extended to include sub-state ethnic groups and communities that are part of that population." *Id.* at para. 198. The court answers in the affirmative for the right to development (Article 22), the right to peace and security (Article 23), and the right to a healthy environment (Article. 24). This finding indicates that Article 24 is capable of attaching to indigenous and minority communities specifically, and that those groups may make claims to this right distinct from the entire population of a country.

In *Minority Rights Group International and Environnement Ressources Naturelles et Développement (on behalf of the Batwa of Kahuzi-Biega National Park, DRC) v Democratic*

Republic of Congo, the Commission found that the DRC government violated at least ten articles of the African Charter, including Article 24, in a land rights case relating to the expulsion of a hunter-gatherer community from the Kahuzi-Biega National Park dating back to the 1970s. Minority Rights Group International and Environnement Ressources Naturelles et Développement (on behalf of the Batwa of Kahuzi-Biega National Park, DRC) v Democratic Republic of Congo (Communication 588/15) [2022] ACHPR 15 (13 May 2022), available at: <https://africanlii.org/en/akn/aa-au/judgment/achpr/2022/15/eng@2022-05-13>. The Commission's analysis of Article 24 began with the importance of the right, as evidenced by its recognition in many international instruments. *Id.* at para. 207-210. The Commission noted that the right includes a requirement for environmental assessments:

[I]n activities related to exploration, extraction, toxic waste management, exploitation and governance of natural resources, States are called upon to ensure that independent social and human impact assessments are carried out, in order to guarantee, inter alia, indigenous and customary rights, and environmental impact assessments.

Id. at para. 212.

The Commission also emphasized the importance of this right for indigenous communities, framing environmental protection and Indigenous land rights as mutually reinforcing:

The Commission therefore considers that in the implementation of its activities, the State must take into account the specificity of the indigenous population in order not to create an unfavourable environment for their fulfillment as human beings. As with all other human rights, States have an obligation to respect, protect and fulfil. In the present case, the Congolese State which has not responded to the submissions of the Complainants, has not provided any evidence that it has complied with the requirements of the provisions of Article 24 after the eviction of the Batwa people. In other words, the Commission agrees that the eviction of the Batwa from the Kahuzi-Biega Forest did not take into account the natural and cultural conditions that are likely to have a negative impact on their lives. It is clear that the alleged violation is established.

Id. at para. 213.

In *Centre for Minority Rights Development (Kenya) and Minority Rights Group International on behalf of Endorois Welfare Council v Kenya* (276 / 2003), available at: <https://www.refworld.org/jurisprudence/caselaw/achpr/2010/71724>, the Commission does not find a violation of Article 24 of the Charter, but includes important understandings of the right as a peoples' right, and its application to indigenous peoples:

The African Commission also notes that the African Charter, in Articles 20 through 24, provides for peoples to retain rights as peoples, that is, as collectives. . . .

The African Commission is thus aware that there is an emerging consensus on some objective features that a collective of individuals should manifest to be considered as "peoples", viz: 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 – especially rights enumerated under Articles 19 to 24 of the African Charter – or suffer collectively from the deprivation of such rights. What is clear is that all attempts to define the concept of indigenous peoples recognize the linkages between peoples, their land, and culture and that such a group expresses its desire to be identified as a people or have the consciousness that they are a people.

Id. at para. 150-151.

Though not with explicit reference to Article 24, the Commission links land and environment with other Charter rights:

After studying all the submissions of the Complainants and the Respondent State, the African Commission is of the view that Endorois culture, religion, and traditional way of life are intimately intertwined with their ancestral lands - Lake Bogoria and the surrounding area. It agrees that Lake Bogoria and the Monchongoi Forest are central to the Endorois' way of life and without access to their ancestral land, the Endorois are unable to fully exercise their cultural and religious rights, and feel disconnected from their land and ancestors.

Id. at para. 156.

The Commission found that Kenya had violated several articles of the African Charter, and recommended that the rights of ownership and access to land of the Endorois community be ensured.

English Transcript ERA-ACHPR General Comments Consultation 9 July 2026

Time: 13:00 - 15:10 GMT

Participants: 125+

Fiona Iliff: Meeting Start

...we thought it really important to convene this broad meeting with civil society organizations, community representatives, environmental human rights defenders, legal practitioners, and academics to gather your diverse perspectives and formulate recommendations for submissions to the Commission.

During the meeting, we hope you'll freely share your perspectives, which we will document and share with the Commission, and we hope that you'll also send in written submissions, if you can, after the meeting, before the 20 July deadline.

The meeting will start with welcome remarks from the ERA chairperson, and we'll then hand over to the Honorable Commissioner Solomon Dersso who is the Chairperson of the African Commission Working Group on Extractive Industries, Environment and Human Rights Violations to tell us more about the Commission's development of the General Comment and the Call for Inputs.

We will then call upon three experts to give us a high-level overview of some of the themes arising under the general comment. And then open up for discussions under these themes in thematic breakout rooms. And we'll then share feedback from those rooms in the plenary before we conclude. We anticipate the meeting will last approximately 2hrs. So, we hope you can stay for the full meeting, but if not, please do share your inputs. After the meeting we'll keep sharing the call for inputs in the chat.

So, without further ado, I'd like to hand over to Ahmad Abdallah, who is the Chairperson of the Environmental Rights Africa (ERA) Initiative, and Co-Founder and Chair of the Board for the Egyptian Commission for Rights and Freedoms (ECRF). Over to you, Ahmad. Thanks.

#####

Ahmad Abdallah: Yes, Fiona, and good afternoon, everyone. It's a profound privilege to....[inaudible]

Inclusion by African Civil Society Consultation, and on behalf of Environmental Rights Africa, I would like to extend our deepest gratitude to our extraordinary conveners and partners who have made this platform possible. Our allies at the Africa Climate Platform and members of ERA, the American Bar Association, Defend Defenders, Civicus, and we are equally honored by the strategic presence and structural support from OHCHR and UNEP. And most notably, I would like to express our deepest respect to the African Commission on Humans and People's Rights, specifically to the Working Group on Extractive Industries, Environment and Human Rights Violations in Africa.

And we are profoundly indebted to the visionary leadership of Honorable Commissioner Dr. Solomon Dersso. Under his guidance, the Working Group has paved the way for this historical moment. So we are gathered here today for a singular monumental purpose which directly shapes the legal architecture of environmental rights in our continent.

And the ACHPR has opened a historic window through its call for submissions, and our task today is to ensure that the voice of the African civil society contributes to the text of the upcoming General Comment on Article 24.

And, of course, for those who don't know, actually, Article 24, long before the United Nations Human Rights Council or the General Assembly celebrated the global recognition of the right to a clean, healthy, and sustainable environment, the African Charter had already set the global precedent, so in 1981, through Article 24, our Charter declared that all people shall have the right to a general satisfactory environment favorable to development.

So we, as Africans, developed these standards, and the rest of the world followed our lead. So, what is ERA? Speaking of ERA, it's one of the largest coalitions in Africa, if not the largest. It's bringing together 75 organizations. We are united under a single vital mission, which is to champion environmental rights in our continent. So, our collective focus is to strengthen the legal framework governing environmental rights throughout Africa.

And, crucially, this includes, pioneering regional instruments designed to safeguard the right to information, public participation, environmental justice, while ensuring robust protection to environmental defenders and indigenous people.

We have already achieved the historic milestone just last year, the African Ministerial Conference on the Environment (AMCEN) formally adopted groundbreaking decision which required the UNEP and African Union and key partners and I quote here to “support the advancement of human rights obligations relating to the enjoyment of safe, clean and healthy and sustainable environment, including through the development of continental instrument on access to justice, environmental information, and public participation in environmental matters.”

So, lots of efforts in our continent, and, basically our consultation today is to support one of our, biggest answers to environmental matters, to support the African Commission and its proposed outline for the General Comment. It provides an exceptional and comprehensive blueprint that covers principles like mandatory *[inaudible]*, the precautionary principles, and the definition of *[inaudible]* rights. It touches on substantive guarantees, Corporate obligations and the role of indigenous knowledge.

Without further ado, I would like to thank you all for your presence, for your courage, and let me remind you that Africa pioneered the right to a healthy environment. And it's time for the African Civil Society to pioneer the gold standard for its enforcement now through the General Comment. Thank you all, and let's go to work. Over to you, Fiona.

#####

Walda Shaka: Thank you, Fiona. Thank you very much, Ahmad, for those remarks and for introducing the initiative. It's my pleasure to introduce Honorable Commissioner Dr. Solomon Dersso, Commissioner of the African Commission on Human and People's Rights

and the Chairperson of the Commission's Working Group on Extractive Industries, Environment, and Human Rights. Commissioner Dersso, we're truly honored by your presence today. And just to reiterate what Ahmad mentioned already, we're grateful for this opportunity to contribute through this consultation to the ongoing process of developing the General Comment, so we're keen to learn more about the significant progress that has already been made by the Working Group so far and the opportunities for further civil society engagement moving forward. So, thank you so much for making the time to join us, and I invite you to please take the floor.

####

Solomon Dersso: Thank you very much, Walda. First of all, a very Good Afternoon or Good Morning to all of you dear friends, colleagues who joined us today for this important conversation that different institutions, particularly, ERA put together. I am deeply grateful, for the work and the leadership that you have been playing in the lead-up to, and since the adoption of the African Commission's resolution, which mandated the Working Group on Extractive Industries, for facilitating the development of the General Comment on the Right to Environment, under Article 24 of the African Charter on Human and People's Rights. Ahmad, thank you for your kind statement, and indeed, the work that we do at the African Commission on Human and People's Rights writ large, and the Working Group in particular on Extractive Industries, Environment and Human Rights wouldn't be possible without active engagement, collaboration, and support from the wider human rights community. And in this respect, when it comes to the General Comment on the Right to Environment, from the community that is present here today. So thank you on behalf of all the members of the Working Group on Extractive Industries, Environment and Human rights.

The African Commission's Working Group on Extractive Industries, Environment and Human Rights is one of the special mechanisms of the Commission that is established in order to address human rights and environmental issues that arise in particular in the extractive industries sector. It was tasked to undertake studies, to initiate responses to emerging human rights and environmental issues that arise in the context of extractive industries, and also to advise the work of the African Commission on Human and People's Rights in the promotion and protection of human and people's rights, particularly rights issues that arise in the context of extractive industries, and it has carried out various activities towards the development of studies, soft law instruments, some of which include the Background Study on Extractive Industries, Environment, and Human Rights that the Commission adopted.

The State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter on Human and People's Rights is one of the many of the activities that the working group carried out. Often it focused mostly on issues that arrived, of course, covering Article 24 as well, but much of the focus has been on Article 21 of the African Charter on Human and People's Rights, which, as you may know guarantees the right of all peoples to natural resources, and it is one of the most extensive provisions. It contains one of the most extensive provisions of the African Charter on Human and People's Rights.

In the course of the execution of our mandate as the working group, we have come to observe: First, the *[inaudible]* threat facing the environment has been on the increase. And environmental rights have come under enormous pressure and threat over the course of time. On the one hand, we have environmental degradation arriving from various aspects of issues, including not just limited to extractive industries, but broadly various human activities that lead to various environmental degradation and pollution, that is one aspect. Loss of

biodiversity and the implication thereof to environment and ecological balance has been another one, and of course, over the course of the past a decade or more, we have seen the ferocity and intensity of the climate change induced extreme weather events, having devastating consequences on the well-being of affected communities, but also on the environment, and the combination of all these developments indicated to us that we need to have a dedicated engagement on the right to environment under Article 24 of the African Charter on Human and People's Rights.

And it is again of this background that we in the African Commission, through the initiative from the Working Group proposed the adoption of that Resolution on the General Comment. So the idea is really to address the [inaudible] legal, institutional, and implementation gaps around the promotion, respect for and protection of the right to environment. And we, of course, cover a wide range of issues, not only in terms of the kind of clarifying and clearly articulating the kind of obligation that states parties bear under Article 24 of the Charter On [inaudible] and of itself, but also as Article 24 of the Charter relates to all other rights in the African Charter on Human and People's Rights. That is one aspect of it. And the other aspect of it is basically the identification of the various sources of [inaudible] to the right to environment, whether these relate to the impact that the pressure that environmental rights groups, social movements, indigenous communities, and affected communities find themselves in both in terms of state actors, but also non-state actors, particularly non-state economic actors, who, because of investment and so on, have particular interest in pursuing certain activities without limitations and restrictions coming from the protection of the environment, and indeed, the right to environment writ large. And it is within this framework that we now are trying to also identify the kind of obligations that non-state actors, particularly private actors, would bear within the framework of Article 24 of the Charter, and importantly the kind of protection that Article 24 extends to local communities.

And to, various [inaudible] Groups who, on account of their socio-economic, their mode of survival, mode of livelihood, and their identity actually depend on the preservation, conservation, and protection, and the development of the environment. What kind of protection does Article 24 have?

The charter extends to this group of people. What kind of protection does Article 24 extend to civil society organizations working in environmental defenders, engaging in advancing the protection and preservation of the environment, and also in terms of remedies, access to remedies that communities would have in terms of accountability, systems of accountability and redress that needs to be put in place. And ultimately, of course, the kind of avenues that Article 24 avails for bringing cases, but also for alerting the African Commission on Human and People's Rights, for it to initiate various engagements, whether that is in terms of state report reviews when States present their report under Article 20, under Article 26 of the Maputo Protocol, or under Article 62 of the African Charter, or when the African Commission undertakes promotion missions in the States, or when the African Commission actually has to respond to urgent letters of appeal or letters of concern, or, of course, ultimately, in terms of the processing of specific complaints that need to be adjudicated by the African Commission on Human and People's Rights, and the kind of really arrangement that needs to be put in place in that respect. And here I think that is where I will stop.

It is extremely important that the lived experiences of affected communities in various parts of the continent are adequately captured and that becomes the basis on which we actually inform the analysis and articulation of the content of the General Comment, in order for the

general comment really to be responsive to the needs and lived realities of people on the African continent, as well as various stakeholders form part and parcel of the system that is necessary for advancing and upholding the right to environment under Article 24 of the African Charter, including environmental defenders. So these are really the kinds of issues that we would like to see reflected, and I'm very pleased by the initiative that you have put together here, and I urge and call on all of you to provide inputs in response to the call that we have put out.

As Fiona mentioned earlier on, the deadline has been extended until 20 July, and we welcome all the inputs that's possible. And we would like really this General Comment, apart from really advancing doctrinal and jurisprudential content and richness, to be also really practical in terms of addressing the gaps and lacuna that exists as far as really the promotion, protection and advancement of the right to environment on the African continent.

Thank you all very much once again for your kind attention and we look forward to a very productive deliberation and indeed to receive the conclusions of this important convening. Thank you very much again.

#####

Walda Shaka: Thank you. Thank you very much, Honorable Commissioner Dersso. Thank you for your remarks. You've clearly set the context for this consultation, you've outlined the background, the rationale, and the work that has already been put into drafting this general comment. So we appreciate also your mandate's deliberate and ongoing commitment to participatory human rights standard setting, including engaging in such platforms. So without further ado, I'd like to invite Fiona back to take us through the next part of the agenda.

#####

Fiona Iliff: Great. Yes, thank you so much, Commissioner Dersso, for this introduction to the General Comment and generally for undertaking this critical process, particularly at a time when there's such a convergence between human rights and environmental law processes. So a lot of the participants today have really critical experience in these processes, and we're so grateful to you all for joining us. We're going to turn now to 3 experts, and I just wanted to thank these experts for joining us. They are experts who really take an interest in working, you know, really not just being technical academic experts, but also looking at what's happening, on the ground. So [*inaudible*] and they're also going to stay with us, throughout the [*inaudible*], breakout rooms to hear your inputs and share those with the Commission. So we're going to have 5 min presentations from each of the experts, giving a high-level overview of some of the themes that are arising under the General Comment. As has been said, the outline is very progressive and covers a lot of issues, so we really welcome your inputs on any of these issues. The themes in the expert presentations and the thematic breakout groups include the normative content and scope of the right to a satisfactory environment, state and corporate obligations under the right, rights of particular groups, procedural rights, and accountability mechanisms, among many other issues that we hope to cover.

But it's a short meeting, we won't be able to cover everything, but please do share your inputs afterwards as well. So I'm going to hand back to Walda now to introduce our experts, and thank you again to them for joining us.

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Walda Shaka: I'd like to invite to the floor Professor Angela van der Berg, an Associate Professor in the Department of Public Law and Jurisprudence at the University of the Western Cape and Director of the Global Environmental Law Center. Professor Angela is an

internationally recognized scholar and has served as legal advisor and consultant to the African Union, the South African presidency, and national and provincial government departments, as well as international organizations on climate governance, environmental law, and public policy. Professor Angela will be guiding us through the first thematic area, which is the normative content of the right to a satisfactory environment. Professor Angela, you're welcome.

Angela van der Berg: Thank you, and good afternoon, everyone. Thank you, Walda, for the introductions, Fiona, Ahmad, and the colleagues at ERA for convening this discussion and for the invitation. I am going to provide a high-level overview of the normative content of the right of Article 24. I think that Ahmad speaking earlier, as well as the Honourable Commissioner, already alluded to the fact that Article 24 is one of the most innovative provisions in the Africa Charter long before environmental rights became commonplace in constitutions, or even alluded to in international law, the Charter recognized specifically that all people shall have the right to a general satisfactory environment favourable to their development.

This article only consists of one single sentence. It tells us that the right exists. But very little really about what the right protects. And that is why our convening today is important. It's why the General Comment is important too. So, I think as a starting point for understanding the normative content of this right is to refer back to the SERAC case where the Commission confirmed that Article 24 establishes a substantive environmental right and recognized that states have duties to prevent pollution, promote conservation, and secure ecologically sustainable development.

The case focused mostly on state obligations, but it did provide the foundation for understanding what the right protects. So, building on this, I think I will just elaborate in brief on sort of four key features of this article.

So, I've already said the first feature. It is that Article 24 is a substantive environmental right. So, unlike other international human rights instruments, the Charter expressly recognises an autonomous environmental right. It's not derived from the right to life or the right to health. It's recognized as a fundamental people's right. Secondly, the right protects the environmental conditions necessary for human flourishing. So the wording "general satisfactory environment favourable to development" indicates that the right is concerned, albeit implicitly, with maintaining the ecological conditions necessary for people and communities to live with dignity and pursue development. If you look at the Commission's jurisprudence, it makes it clear that this extends beyond preventing isolated pollution. Instead, this protects the environmental conditions necessary for life, health, and well-being.

In other words, Article 24 is concerned with the quality and integrity of the environment as a whole. So the normative content is about protecting the ecological conditions necessary for human and collective flourishing. And that collective flourishing is interesting. I hope that the Court in the Advisory Opinion, and the Commission in its General Comment, flesh that out.

Thirdly, Article 24 has individual and collective dimensions. It refers to all peoples. This is distinctive of the African Charter and the normative content, therefore, extends beyond individual interests alone, can be used to protect individual interests, but also communities, groups of people, groups of vulnerable people, individual peoples, indigenous peoples, future generations, and collective interests tied to ecosystems and territories upon which peoples

depend. So, the environment here isn't protected only because individual people depend on it, but because communities and people maintain profound cultural, spiritual, economic, and territorial relationships with land and ecosystems. We see this throughout the jurisprudence of the court.

Fourthly, I think the right should be understood holistically. The Charter doesn't define "environment". It also doesn't distinguish necessarily between air, water, biodiversity, or ecosystems. The concept "general satisfactory environment" suggests a holistic understanding of environmental integrity. And this understanding has characterized much of the Commission's jurisprudence as well, and African conceptions of the relationship between people, land, and nature.

So these broad contours of this right are established, but there are aspects that are underdeveloped. So, for example, maybe today we can think about what makes an environment satisfactory. Does Article 24 expressly encompass climate stability? Does it include biodiversity protection and ecosystem integrity? Does it recognize the intrinsic value of nature, or is it only anthropocentric? And what ecological conditions are indispensable before we can say that this right has truly been realised? Especially in the context of the climate crisis. I think that our discussions today, also being mindful of Articles 60 and 61, provides an opportunity to really interpret the content of this right in line with international conventions, standards, customary international law, precedent set by the other international advisory opinions, particularly from the International Court of Justice and the Inter-American Court. And I think taken together, we can say that the Charter is not a static instrument. It is a live instrument and should be interpreted as such.

Just briefly before I end, I think that the advisory opinion [General Comment] is also going to show us how Article 60 and 61 work in terms of interpreting the content for Section 24, Article 24. In a recent amicus brief that I was involved in, for example, we argued that Article 24 should be understood as encompassing a right to a healthy climate. The climate crisis doesn't create a new right, for instance. Climate stability is one of the ecological conditions necessary for maintaining a general healthy or satisfactory environment that's favorable to development.

We also argue, for instance, that Article 24 and its interpretation of "people", coupled with the jurisprudence of the court, provides a nice point of departure also for a more ecocentric interpretation of the content, the normative content of this right. But I think I leave my thoughts there, and I hope that these discussions in the breakout room will be fruitful and that we consider what are the essential characteristics then of this general satisfactory environment. Does it extend only to humans? Is it also to nature? And for instance, does it include a stable or healthy climate? Thank you.

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Walda Shaka: Thank you. Thank you very much, Professor Angela. Also for just giving us something to think about as we approach the breakout sessions. I'd like to invite our next expert facilitator, also called Angela, who'll be taking us through, the second theme, which is state obligations for environmental protection and sustainable development. Angela Kariyuki is a legal officer in the United Nations Environment Program, Legal Division, and the Interim Head of the Climate Section and for the [inaudible] Initiative. She has also, previously served in, UNEP's New York office including roles that focused on environmental human rights defenders. Thank you for joining us, Angela, and you may take the floor.

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Angela Kariuki (UNEP): Thank you so much, Walda, and I'm super excited that there are two Angelas here. It's quite rare. But good afternoon, everyone. It's really a privilege to be in this virtual room with you all. So from hearing a bit about the General Comment some months ago in the margins of the regional forum, I was immediately thinking about, kind of, the stakes that are involved. A General Comment has sort of more staying power in a way than a Resolution sometimes doesn't, because it then becomes the authoritative reading of Article 24. So I feel like this is a great opportunity to help draft the standard that our own governments will be held to, and for me, that's the starting point around the theme of state obligations.

You've already heard from Professor van der Berg on the normative content, and that was an exceptional act to follow, Professor. But my emphasis today is to kind of go to where one of the gaps exist that we see also from an intergovernmental level on state obligations. I think, as you've heard already, Africa's challenge is not primarily normative. I mean, if we look at the [inaudible] the case, the Ogiek case in Kenya, for instance, I think it was 2017 where the African court found that Kenya had violated the rights, to natural resources and development, et cetera, and it also rejected conservation as a justification for eviction and then a few years later, in 2022, it kind of spelled out what Kenya must do, consult, respect FPIC, recognize the community.

But then by December of last year, none of this had been implemented. So the standard exists, but what I think is lacking a little bit is the kind of the machinery. And at least from our side, we hope that the General Comment will get concrete about implementation regarding state obligations. Because across the continent, and we all see this again and again in our various, our work, excellent constitutional environmental provisions sitting alongside regulators with perhaps no budget, or a small budget, or no staff, or no reach, capacity constraints, etc. Even impact assessments that are sometimes becoming more of a box-ticking exercise. And then enforcement that stops at the courtroom. So, if the General Comment specifies what “respect, protect, promote, and fulfill” actually require, so the second part of what Prof just mentioned, talking about resources, institutions, mandatory environmental and human rights due diligence, real monitoring, you know, that proper enforcement, then I think it gives all of us something that we can really use concretely.

And I hope that this line of thinking could also be good, entry points for the breakout discussions. The, the core duties, *respect, protect, promote, fulfill*, legislative and institutional implementation. Basically, the system that is required, but also looking at it against the international backdrop. So how the African system connects to the now, near universal, right to a healthy environment while keeping its own distinctive voice on people's rights, but also on development. So, just, you know, in terms of the substantive side of things, climate change, biodiversity loss, and pollution, and then there's also business and human rights, and I think this is where the [inaudible], the doctrine is genuinely unsettled and where the African system, given, of course, our extractives reality and additional elements that we're now dealing with more and more on a regular basis from an intergovernmental perspective around carbon markets and carbon rights, et cetera, this can really contribute more.

So the duty to protect against corporate harm is well established. But maybe how far it reaches, so extraterritorially and also into mandatory due diligence is where the doctrine is still genuinely in motion. I feel like with this General Comment, it could help to settle it and then on the framing of “favorable to development”.

I think the [inaudible] we all have an understanding that the Charter never saw, protecting the environment and developing our societies as, you know, kind of two things that are going in opposite directions, but it saw them as really belonging together. And I think the hard part of this theme is maybe the balancing, what we hear from states, you know, choosing between protecting an ecosystem and lifting people out of poverty. But [inaudible] Article 24, when it's, you know, read properly, doesn't, accept that choice. So, development that is, eating away at the water, the health, the [inaudible] food security that people depend on, that is kind of borrowing against the very communities that it claims to serve. So I think there's a real opportunity here for the General Comment to say it plainly, sustainable development isn't, you know, a limit on the right, but it's actually part of what the right is.

And I think it can also help to connect the African system to the global context without losing what's distinctive and precious about the Charter's own language of peoples and their development, as I mentioned. So I'm hoping that for the breakout discussions in a bit, it would be great if you could all come with specifics, you know, the case, the law, the judgment, where obligations are maybe ambiguous enough to cause real harm, where corporate accountability needs to reach further than it does, but also where something is genuinely working and deserves to be lifted up in the context of the General Comment. So I'm going to end there. I look forward to the breakout discussions, and I think it's back to you, Walda or Fiona.

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Walda Shaka: Thank you. Thank you very much, Angela. And for our last theme for this consultation, we'll be focusing on procedural rights, accountability, and protection of rights holders. We'll be having Dr. Michael Addaney as a facilitator for this theme. Dr. Michael is a senior lecturer in the Department of Land Management at the School of Built Environment of the University of Energy and Natural Resources in Ghana. Michael has researched, published, and consulted widely on climate change, human rights, and sustainability issues at the international, regional, and national levels. Doctor Michael, you're welcome.

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Michael Addaney: Thank you so much. Good afternoon, everyone.

I would like to thank the organizers or conveners for this consultative meeting this afternoon. Because of time, I'll stand on existing protocols and proceed with my presentation. So, my theme is on procedural rights, accountability, and protection of right holders. And I believe strongly that this is very important, that, the General Comment has to dedicate a lot of attention to why procedural rights matter for Article 24. First of all, procedural rights help us to bridge substance and access to Article 24, because a right to a healthy environment is hollow without foreseeable mechanisms. Because access to information, participation, and redress bring these rights home to people. And Africa's peculiar context is also very important, because communities across Africa face extractive industry harms, toxic environment increasing climate impact and land dispossession with limited legal recourse. This is very common to all African countries. For instance, about 200+ environmental defenders are killed globally as reported by Global Witness, a majority of these are in Africa and Latin America.

Many people in Africa face prosecution, harassment, and enforced disappearance in environmental-related matters. So, article 24, provides a normative foundation through which we can bring this right home to vulnerable people across Africa. And Article 24 contains both substantive and procedural rights, as it was decided in the *SERAC v Nigeria* case, the state must actively protect environmental rights, including through procedural guarantees. It is not enough for our constitutions and environmental legislation to recognize the right to a healthy

environment, or various forms of environmental rights. But then there should be mechanisms to make them enjoyable by people. And these are the key procedural elements that are important as the Commission prepares the General Comment.

The first one is access to information. Under access to information, states must proactively disclose environmental data on pollution, extractive licenses, environmental impact assessment, strategic environmental assessment, and climate risk. These are very important, especially in the context of climate change. These are very important because they serve as early warning to help communities to prepare in advance and in the case of extractive sectors, it helps communities to make informed consent. Without access to pollution data or projected environmental harms, decisions will have no basis. But then, states usually avoid this because of barriers such as across Africa, states sometimes have coding interests in extractive investment.

In Ghana, for every large-scale mining investment, the state has at least 10% interest, which makes the state a shareholder, therefore, they become very interested in protecting this kind of investment. And then there is also a global framework. That's the AHIMS Convention, which provides a global benchmark that, at the African level, we can also emulate.

So the General Comment should affirm a duty to disclose and an obligation to respond to requests for information.

And the next procedural element is public participation especially in environmental impact assessment or climate impact assessment, at the screening and vetting or review stage, the public is supposed to participate in these processes. But there are questions about whether they are meaningful or not. So states must ensure that participation must be meaningful. That is free, prior and informed consent, and they are able to influence decisions, not Post hoc, robust [*inaudible*]. Sometimes they make the decisions in the boardroom and send it to the community. Especially in the extractive sector, countries like Ghana, Kenya, South Africa they have what is called social licenses to operate. That is, mining companies will have to get the approval from communities where the project is going to take place before they can start the mining activity, but usually they are robust [*inaudible*]. And the Indigenous people also hold a distinct right to free, prior and informed consent under the ECOWAS Mining Directive and even at the African Union level and under the UNDRIP and African Charter. But its operationalization is very challenging because of the political environment. So FPIC is non-negotiable for projects on or affecting ancestral land, and this is something that the General Comment will have to clarify.

And the last procedural element is [*inaudible*] and vulnerable groups, especially women, children, youth, older people, persons with disabilities, indigenous people, forest-dependent communities, coastal-dependent communities face compounded barriers to environmental participation. Once again, because of costs, because of digital exclusion, people do not have access to internet. So it becomes very difficult for them to participate meaningfully in environmental decision-making. And also, disaggregated impact assessment and gender-responsive consultation processes are required. And this is something we must ensure, because states are likely to usually avoid them because of costs. So the General Comment must include explicit provisions for these groups, not merely a generic vulnerability clause, which makes it easy for states to avoid.

And the last issue is accountability and access to justice. I'll slightly also touch on environmental defenders. We must ensure that the General Comment clarifies access to justice and remedies in environmental matters or climate-related matters because judicial remedies remain inaccessible for most communities because of issue of cost, distance and judicial capacity, which persists. A whole climate change litigation before the Constitutional Court of Uganda has stalled because of technical barriers. A National Human Rights Institution's ombudspersons and administrative tribunals offer complementary routes, but vary widely in mandate and effectiveness.

And reparation frameworks must address both individual harm and collective harm as well as intergenerational ecological damage, because these are serious issues in Africa that need special attention. And also, corporate accountability, especially transnational corporations operating in Africa's explorative sector, frequently evade domestic accountability through various, contractual [*inaudible*] agreements between the hosting states.

But through the African Commission and African Court jurisprudence, there are various benchmark cases, or landmark cases, that the Commission can rely on, like the *SERAC v. Nigeria* case, *Sudan Human Rights Organization v. Sudan*, and the *Endorois* case.

And lastly, the General Comment should also clarify key issues involving the protection of environmental defenders and other vulnerable groups, including land defenders and the rest because environmental human rights defenders in Africa are facing persistent threats through criminalization.

Also, there are also strategic lawsuits by corporations and states against environmental defenders, and sometimes there are physical violence and forced disappearance and assassination in Kenya, Uganda, Zimbabwe, and Ghana, Nigeria, and African countries. And digital surveillance and harassment of online advocates is something that needs attention. So what might the General Comment include? One, a definition of environmental defenders under the African Charter and also, explicit duty on state to protect, not just refrain from harming defenders. And also, anti-SLAPP protection that aligns with the 2004 Declaration on Human Rights Defenders.

They should also [*inaudible*] focus on civic space because civic space in most African countries keeps shrinking, and this limits environmental defenders and NGOs. And groups in vulnerable situations, such as women, children, and youth, indigenous people, persons with disabilities, are things that the General Comment should also consider. So, at this point I'll wait for the breakout rooms. These are the guiding questions for our breakout discussion. Thank you.

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Walda Shaka: Thank you. Thank you very much, Dr. Michael. Thank you to Angela, and thank you, Professor Angela. We'll be going straight into the breakout rooms. I'd like to invite back Fiona to guide us on the next steps.

Fiona Iliff: Thank you so much to the experts for your brilliant insights, which will inspire our discussions. We're now coming to probably the most important part of the meeting, which is when we hear from you. It also may be the most technically challenging, so bear with us. The principle is that we'll have a sort of World Cafe format. So, you will spend, 15 minutes talking about each of the three themes that were introduced by the experts. But, because of the technical challenges, actually, you will stay in one room and the experts and rapporteurs

will move between the rooms. So just the topic will change every 15 min. And because the breakout rooms don't have interpretation channels, we're going to put you with your interpreter. So if we can have the Arabic speakers in room one and the French speakers in room 2, and the Portuguese speakers in room 3, and I think the experts you all know which rooms to go to. It will be Angela van der Berg in room one to start with, and Angela Kariuki and Richard Ncube in room 2, and then in room 3 it will be Michael Addaney and Marystella. I hope that that's clear. If there's anything else that needs clarifying, maybe, my colleague Mike can come in, but I hope that that makes sense, if you can all choose your relevant breakout rooms now.

Mike Daines: Thanks, Fiona. As Fiona said, we're going to create three rooms, room one, Arabic, room two, French, and then room three is Portuguese and English. I'll set the breakout rooms to be about 45 minutes. And so each, and then, the relevant, thematic experts, will know their assigned rooms. And after, after about 10 to 12 minutes, we'll make a broadcast that, the first, thematic discussion is coming to end with about 60 seconds warning. And then, it'll end, and then just the, the thematic experts will switch rooms. Participants, will stay in the room, that they've self-selected right at the beginning here when I have [inaudible] when I create, the breakout rooms.

[Breakout rooms]

Mike Daines: We've got about 36 minutes remaining, so I think we can start the discussions in, let's say, about two minutes. That gives us about 12 minutes per thematic room.

Walda Shaka: So in the interest of time, we'll quickly go to the facilitators or rapporteurs of the different breakout rooms to very briefly, share highlights of what was discussed. This will be further be shared in a written version. So, all the input that you've made during these breakout rooms will be translated into, the report for this consultation. So, for the next session, it's just very briefly sharing the highlights and key outcomes of the discussion.

Walda Shaka: I'll invite Professor Angela if you're ready.

Angela van der Berg: Thank you. So our question was really about the normative content of Article 24, and Fiona and I visited all three groups. So overall, it was argued that Article 24 should be construed as a living autonomous right, [inaudible] as an evolving right capable of responding to contemporary environmental challenges and it should be recognized as an autonomous human right, while also being essential for other rights. So, it's a standalone right, but heavily linked to the enjoyment of socio-economic rights, such as housing, healthcare, food, water, education, and so forth. The [inaudible] further was that the General Comment should clarify the meaning of "satisfactory". What is a "satisfactory environment" in line with "favourable developments"? Participants said that these concepts seem to be contradicting, particularly where development projects are used to justify environmental degradation, and the Comment should provide guidance on how these are interpreted within the African contexts. Building on this also the final room noted that there seems to be different opinions of development, and that the *Endorois* and *Ogiek* cases, for instance, emphasized socioeconomic and cultural development but environment was left out. So the General Comment needs to add sort of the environment in. How do we conceptualize a satisfactory environment in the context of development?

Then further, the Comment should clarify the normative content, so exploring what exactly a satisfactory environment includes. Is it clean air and water, healthy ecosystems, but does it include ecosystem integrity? So going beyond pollution prevention, beyond biodiversity conservation, does it include climate stability? For instance some participants felt that it should [*inaudible*], the General Comment, should identify minimum conditions necessary for the enjoyment of this right, and then, there was strong support for ecological justice and ecological dignity, so perhaps defining ecological justice and recognizing that environmental protection extends beyond climate change and beyond humans, but touches on the justice elements of humans, and of nature and natural resources.

The concept of ecological dignity was also proposed as a complementary framework, recognizing the intrinsic value of ecosystems and the interdependence between human well-being and ecological integrity. To this same end, climate justice was also really emphasized, so looking at vulnerable groups, small-scale farmers, rural communities, and there was broad support for recognizing the rights of future generations, and that being included as all peoples. Finally, just that Article 24 should be able to correspond to a broad range of contemporary issues, and some of the participants noted the importance of clarifying state obligations for natural disasters, just natural disasters occurring on their own, not necessarily because of climate change, whilst acknowledging that climate change does worsen the impact or exacerbate the impact of naturally occurring hazards. Overall, though, participants agreed that the General cComment represents a historic opportunity to clarify the scope and content of Article 24, and that we need African-specific, clear, unambiguous definitions of the scope and content of the right. Thank you.

Walda Shaka: Thank you so much, Professor Angela.

Is Richard online, to take us very quickly through the outcomes for thematic breakout room 2.

Richard Ncube: Yes, thank you very much. So myself and Angela, we had an opportunity to join all three groups to discuss theme number two, state obligations for Environmental Protection and Sustainable Development.

We had very comprehensive discussions on state obligations for environmental protection and sustainable development. Key among the inputs made by colleagues is the issue of the General Comment having to clarify on the meaning of “development” in the context of Article 24, that development shouldn't only mean national development, but should also talk about human and people's development. So we found that to be quite profound.

The second major issue raised by the groups is also to say that we do have a lot of laws in Africa focusing on environmental protection, but it is important for the General Comment to clarify what is meant by “effective implementation” given the fact that we've seen a culture of impunity across the region.

Another important issue raised is that the General Comment should also look at the corresponding role of the African Commission and such other regional mechanisms to ensure the full realization of the right to a healthy environment. Other important issue raised is corporate responsibility. So the General Comment should clarify the special obligation that states have to regulate the activities of multinational corporations in addition to the regulation of the home countries.

Another important aspect raised is the importance of having laws that protect environmental human rights defenders, I think this was raised in almost all the groups. And then, of course, the issue of having anti-SLAPP legislation is also another issue that was raised. So in general, I think the participants agreed that it is very important to clarify all these grey areas, or areas that are not quite clear from Article 24 and its articulation through jurisprudence and other frameworks. Thank you.

Walda Shaka: Thank you very much, Richard. And I'd like to invite Dr. Michael or Marystella, if you could kindly share with us Team 3's feedback.

Marystella Simiyu: Thank you very much, Walda. We also did go to all the three groups looking for input around procedural rights, accountability and protection of rights holders. From the onset, there was a recognition first that, we do have, the recently adopted Resolution on Access to Information on Environmental Information, and it's important that, when we are coming up with a General Comment, there's a recognition for that the recommendations in this particular resolution to be adopted by states.

One, also a need for states to affirm access to information. It's not a privilege, but actually a right. There are some cross-cutting issues. Richard mentioned the issue of laws that was also mentioned in the groups, particularly around legal reform of laws that are used to impede on issues, access to information and also the civic space. So here, in particular laws that criminalize defamation, and also imagine laws around foreign agents, patriotic bills as patriotic laws that we have seen, for example, in Zimbabwe, there's a need for legal reform to ensure that we have an enabling space for environmental defenders. This is something that the General Comment needs to emphasize. Also, when we talk about access to information, there is recognition that this is an umbrella right. And in talking about access to information, you also have to talk about free expression and media freedom.

And so the General Comment in detail in procedural rights also has to look at how to ensure that states protect, promote, and fulfill not only access to information, but also freedom of expression and access to information.

There was a recommendation to draw comparative lessons from the advisory opinion, for the Inter-American Court that actually also has strong procedural safeguards that [*inaudible*] that can inform, can inform the procedures outlined in the General Comment for the African Commission on, on African and indigenous persons and their procedural rights, especially around a free prior and informed consent those that call for in terms of the terminology, recognizing that this goes beyond indigenous persons, but also include a broader framing around local communities which has the potential of actually expanding the scope to more vulnerable groups who it's important to ensure that they have their procedural rights and issues taken into account, issues on access to information. Their issues of participation are actually taken into consideration.

There's also a recommendation that the General Comment should also affirm that with regards to the right to environment, this is a human right that protects people's health, it is not a privilege, so that should come out clearly. I think that also is cross-cutting, going to issues on, substantive aspects of this particular General Comment.

One of the last recommendations that we had was around the digital divide. When you talk about access to the information, we also have to consider that we are living in a digital age

and issues of access to the internet cannot be ignored. But as we talk about access to the internet, we also have to consider the justiciability of these rights. So issues around electricity, which goes into how states can actually implement certain social and economic rights. And so the recommendation here is that as States are obligated to ensure access to environmental information, they need to actually also clarify how this obligation will fit within the context that we live in, how to also ensure that, given the realities, how to ensure that there's access to the Internet and how to deal with the impediments to digital exclusion that actually lead to restrictions to access to information. So a better clarification in a General Comment about state responsibilities to ensure access to this information, particularly for the vulnerable affected people. And this should not only go, this discussion should not only be limited to national level, but it's something that should be included at the initial stages. So the project level, this is, these are aspects that need to be actually taken into consideration. I think I will leave it there. Thank you very much, Walda.

Fiona Iliff: Thanks, everyone. I'm going to jump straight in in the interest of time. I just want to comment that we are two hours in and that we still have 72 participants. So this has been an incredible meeting and really, really rich discussions. It's so much to cover. We really just wanted to get a sort of teaser of everyone's thoughts and inputs, but we would love for you all to also send in your, your inputs, written inputs, by the 20th of July direct to the Commission. Nompilo will share that link in the chat, and then also just to mention as ERA we have been recording this meeting, and we will write up a report and make sure that your submissions, your inputs during the meeting, are reflected and shared with the Commission. Finally, we are doing a joint submission, an ERA submission with partners. So anyone who would like to join that submission, there's a Google Drive document where you can comment and put any particular section that you might want to input into. Just 1-2 pages of inputs into, and then we will compile that. So the deadline for the ERA submission is quite soon. That's the 12th of July.

I'm sorry that there's not a lot of time, but if you do still want to add something, please feel free, and for those who've already committed, thank you so much. If we haven't yet received your inputs, we're looking forward to receiving them. The ones to the Commission, directly to the Commission, they are recommending up to about 5 pages, not more than 5 pages. For the joint submission, we will do a more detailed submission, as it's a joint one. So, you can see from the outline all the different issues that we hope to cover, but in reality, we'll probably just cover some of the key issues that are critical for communities and defenders. So, just, finally, just to thank you all, this has really been rich, and I just wanted to hand it over to the ERA chairperson to do the closing remarks. Thank you.

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Ahmad Abdallah: Thanks, Fiona, and actually, as we draw this extraordinary Pan-African consultation to close. I'm filled with an overwhelming sense of pride and shared purpose with everyone. I think what we have accomplished here in the last two hours is a testament to the power of the collective and the cross-regional coordination. So I want to extend my deepest gratitude to our exceptional expert facilitators who guided our technical streams with such rigorous precision, Professor Angela van der Berg, Angela Kariuki, our colleague Richard Ncupe, Doctor Michael Addaney, and Marystella.

I also thank Fiona and Keza Walda for their steady moderation and tireless coordination. Also thanking our regional and global partners, the Africa Climate Platform, the UNEP, the OHCHR, and of course, the American Bar Association, Fiona, and Defend Defenders. Thank you for standing shoulder to shoulder, with ERA to anchor this critical platform. And most

importantly, we owe our deepest appreciation to Commissioner Dersso and the ACHPR Working Group, because by opening this transparent consultative window, I think the Commission has shown a profound commitment to ensuring that the draft General Comment is not just an academic exercise, but a living instrument shaped by the frontline realities of the African people. I think Africa, we pioneered the environmental rights actually in our Charter in 1981, and now through our unity, we're ensuring that Africa secures the gold standard for its enforcement through the General Comment on Article 24. Thank you for your resilience. Thank you for your brilliance and for your unwavering commitment to our peoples and our land. Thank you so much.