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Gauging the jurisprudence of African regional courts in environmental rights protection: Purpose or pretence?

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Abstract
This paper traces the evolution of environmental rights adjudication in African regional courts with a view to determining its importance within the African human rights system. It looks at key provisions of the African Charter, particularly Article 24 which guarantees the right to a satisfactory environment for all citizens. It argues that while this provision is the first of its kind in regional human rights instruments, it has suffered from interpretational difficulties leading to under enforcement in courts. The article also looks at key decisions of regional courts and argues that some decisions of these courts give room for further improvement of the normative make-up of environmental rights from its anthropocentric origins to ecocentrism. It concluded that despite the vast array of constitutional provisions that guarantee environmental rights in African states, regional courts have operated with relative purpose so far to compensate for the cagey approach of national courts.

Keywords: environmental rights, African human rights system, regional courts, African charter, African commission, environmental adjudication

Introduction
As the objectives of African integration continue to be recalibrated, regional frameworks are expanding to meet the demands of complex common problems facing African Union (AU) Member States. The environment is one of such crucial areas that top the agenda in the African region as States attempt to balance developmental necessities with the rights of the individual and legitimacy of the State [1]. At the international level, the past few decades have been marked with heightened awareness on the need to effectively protect the environment. Consequently, States, multinational corporations and other non-state actors operate under greater moral scrutiny in ensuring a sustainable environment [2]. Taken as a whole, these cross-cutting relationships contribute to a complex body of laws under international environmental law which require timely generation of norms to guide governance.

The AU has been proactive in fashioning out autochthonous legal instruments to complement already existing ones such as the African Charter [3], all with a view to strengthening the normative dictates of the African human rights system. One such document of value is the AU's Agenda 2063, a new blueprint for the socio-economic transformation of the African region over the next 50 years. As part of its objectives, the Agenda 2063 aspires to a 'prosperous Africa based on inclusive growth and sustainable development'. The document agrees that meeting that particular goal requires that the 'environment [4] and ecosystems are healthy and preserved, and with climate resilient economies and communities' [5]. To move these lofty goals from mere rhetoric to reality, Member States must embark on concerted implementation of these standards at national and regional levels. At the heart of this drive for effective norm generation and application in environmental law are vibrant regional institutions [6].

African sub-regional courts have in recent years displayed a keen readiness to create robust jurisprudence for advancing regional integration particularly through human rights. Sub-regional courts such as the ECOWAS Community Court of Justice (ECCJ) [7], the East African Court of Justice (EACJ) [8] and their regional counterparts have contributed, albeit not without consequences [9], to shaping the normative content of the African human rights system. Along this line, the bulwark of environmental law at the regional level has revolved around environmental rights cases brought before regional courts [10]. This increase in environmental rights cases may be attributable to the tenuous nature of human rights in African States, the weak regulation of the activities of multinational corporations that adversely impact on the environment.

This paper interrogates the purpose behind the burgeoning jurisprudence of African regional courts on environmental rights. It weighs in on the direction of regional courts in the development of environmental rights protection as contributors to norm-generation in the African human rights system [11]. The first part of the paper identifies the meaning and context of the right to a satisfactory environment under the African human rights system. The second part of the paper examines the approach of sub-regional courts in protecting the right to a satisfactory environment. The third part of the paper attempts to unfurl the extent of the philosophical considerations of the courts decisions. The fourth part of the paper shines light on critical decisions of some national courts in environmental rights protection. The last part of the paper concludes.

2. Contextualizing Environmental Rights under the African Human Rights System.
The African Charter on Human and Peoples Rights (African Charter) [12] was intended as the highest standard for the rights, freedoms and ultimate development of the African individual [13]. On its own, the African Charter represents

the greatest single foundational instrument underpinning the African human rights system [14]. The African Charter is regarded as a distinct regional human rights instrument because it not only guarantees civil and political rights but also economic, social and cultural rights. The African charter is also the first international instrument to recognize third generation or solidarity rights [15]. This stands the African Charter out from the founding treaties of the European and Inter-American human rights systems [16].

Article 24 of the African Charter is particularly relevant in safeguarding the environment as it provides that 'all peoples shall have the right to a general satisfactory environment favourable to their development'. This provision marked the first time that the right to a satisfactory environment was recognized as binding in an international human rights instrument. Before the African Charter, the right to a satisfactory environment or any provision which linked the environment and natural resources to the rights of the individual found expression only in hortatory form [17].

Apart from declaring the right to a satisfactory environment in Article 24, the Charter fails to define the phrase "satisfactory environment' which has opened the provision up for debate. A negative or positive interpretation may be given to this right due to this gap. A negative approach may imply a narrow and more confined interpretation of the provision, not giving the right the recognition it deserves as a stand-alone right. A positive approach on the other hand suggests a category of right which is widely interpreted to accommodate various claims [18]. This dichotomy in interpretative approach may be of importance particularly as the anthropocentric versus ecocentric debate on environmental law rages on [19]. Would it be best to widely interpret Article 24 to include a nature-centred approach to protecting the environment, or is it best to continue on the assumption that it was the intention of the drafters that satisfactory environment is an exclusive right of the individual?

The African Commission came into operation in 1987 following the entry into force of the African Charter in 1986 [19]. The African Commission is the [20] anchor of the African human rights system. Its key functions include the promotion of human rights through research 'on African problems in the field of human and peoples' rights', dissemination of information, and co-operation with 'other African and international institutions concerned with the promotion and protection of human and peoples' rights [21]. It also functions to 'ensure the protection of human and peoples' rights under conditions laid down by the African Charter [22]. The Commission also has the mandate to 'interpret all the provisions of the African Charter at the request of a State party, an institution of the AU or an African Organisation recognised by the AU [23]. The Commission may consider inter-state communications (complaints) on violations of human rights by States [24]. The above powers of the Commission make its communications extremely valuable to human rights discourse in Africa [25].

The Commission in *Social and Economic Rights Action Center and the Center for Economic and Social Rights/ Nigeria* (Ogoni case) [26] ventured into uncharted territory when it had the opportunity to unpack the contents of Article 24. The African Commission gave its decision in a communication on the violation of human rights of the Ogoni people of the Niger delta region [27]. The facts of the complaint are important here. In March 1996, the Social and Economic Rights Action Centre (SERAC) a non-governmental organization headquartered in Nigeria, in conjunction with the Centre for Economic and Social Rights (CESR) a New York based organization filed a complaint before the commission. The communication alleged gross human rights violations of the Ogoni people. The Nigerian military government was accused of direct complicity in the exploitation of the Ogoni people by failing to check the reckless exploration activities of multinational corporations. The Nigerian National Petroleum Corporation (NNPC), the state-owned oil exploration company, entered a joint venture with Shell Petroleum Development Corporation (SPDC). SPDC was accused of causing environmental degradation and health hazards through their exploration activities under the joint venture. The complaint alleged widespread contamination of soil, water and air; the destruction of homes; the burning of crops and killing of farm animals; and the climate of terror the Ogoni communities were subjected to by the host military government. These activities amounted to the violation of Articles 2 (non-discriminatory enjoyment of rights), 4 (right to life), 14 (right to property), 16 (right to health), 18 (family rights), 21 (right of peoples to freely dispose of their wealth and natural resources) and 24 (right of peoples to a satisfactory environment)]28].

The African Commission's recommendations centred predominantly on socio-economic rights - the rights to health, the right to housing and the right to education, although in the end it held that all rights challenged by SERAC were violated by the Nigerian government. The African Commission highlighted the link between the environment and the right to health [29]. The enjoyment of the right to a satisfactory environment as a stand-alone right may present certain problems because of a lack of definition and this manifested in the African Commission's approach of combining all the rights challenged by SERAC.

The African Commission considered the right to a satisfactory environment as the right that obliges a government to:

- Take reasonable measures to prevent pollution and ecological degradation; [29]
- Promote conservation and ensure ecological sustainable development and the use of natural resources; [30]
- Permit independent scientific monitoring of threatened environments; [31]
- Undertake environmental and social impact assessments prior to industrial development; [31]
- Provide access to information to communities involved; [32]
- Grant those affected an opportunity to be heard and participate in the development process [33].

It is somewhat underwhelming that the African Commission, in its analysis, was not bold enough to pronounce a 'core content and minimum obligation on Article 24' as the opportunity presented itself [34]. However, these obligations identified by the African Commission highlight the classical dual-faceted scope of environmental rights. The first step of the process would be procedural rights which include the right to information, the right to be informed of environmental risks, the right to legal redress upon violation of the right, the access to justice for environmental violations, the right to effective redress for

environmental violations and the right to participate in decision-making for environmental policies [35]. The procedural rights serve as the litmus test for determining if the right to a satisfactory environment has been violated, and also help to define the content of the right in each case. The second aspect is the substantive rights which denote the central part and meaning of this right [36].

The Commission has been hailed for its creative approach to treaty interpretation in the *SERAC case* [37]. The creativity of the Commission was evident in its 'violations approach' [38] to explaining the conduct of the Nigerian authorities. This approach has been described as an advantageous tool for protecting economic, social and cultural rights. Perhaps the most convincing aspect of this approach is its potential as an effective instrument to leverage the sensitivity of States to "violations language" [39]. Chapman identifies three types of violations: (1) violations resulting from actions and policies on the part of governments; (2) violations related to patterns of discrimination; (3) violations related to a state's failure to fulfil the minimum core obligations of rights [40].

The Commission adjudged Nigeria guilty of violating all of Articles 2, 4, 14, 16, 18(1), 21 and 24 of the African charter. It appealed to the Nigerian government to ensure that it protects the environment, health and livelihood of the Ogoni people. A particularly interesting observation is the fact that the Commission underemphasized the complicity of the Nigerian government in destroying the flora and fauna of Ogoniland. This is a far cry from the approach of sub-regional courts that have looked to directly finger states in human rights violations that result from the failure of states to regulate the activities of multinational corporations [41]. This may be attributable to the non-binding nature of the Commission's recommendations prompting it to merely issue guidelines for Member States to follow to remedy a wrong [42].

Notwithstanding its quasi-judicial capacity, the African Commission eventually settled for an umbrella approach for the violation of a group of rights. It also highlighted the link between environmental rights and human rights. The Commission advised that both international law and human rights must be "responsive to African circumstances" and that environmental rights formed an essential element of human rights law in Africa [43]. The decision of the Commission in this case marked a moment of reckoning for States' accountability in ensuring the right to a satisfactory environment for African peoples irrespective of the contested meaning of the right. From this moment on, the right to a satisfactory environment has earned greater enforceability under the African human rights system. The jurisprudence on this right in African regional courts has improved over the past few years. This demonstrates a wider understanding of the nexus between the fundamental freedoms and liberties of the individual and the environment.

3. Environmental rights adjudication in African Sub-regional Courts

It is widely acknowledged that international courts and tribunals do have important roles to play in developing international environmental law [44]. These courts have largely remained silent on environmental matters over the years due to the complex nature of environmental challenges. They do not possess the same powers as national courts that have taken years to develop and are also backed by national constitutions. However, one may hold certain expectations about the potential role of international courts in the environmental questions bordering humanity in current times [45]. The role of international courts include (1) to resolve a particular dispute, and/or (2) to contribute to the developments of the rules of international law, and (3) to raise consciousness on a particular matter. The third function of international courts helps us understand what needs to be done, or what is being done inadequately or not at all. It is perhaps in their function as purveyors of legitimacy that international courts are most valuable to the development of international environmental law [46].

In recent years, African courts have become strategically placed as forums for individuals to challenge violations of rights enshrined in the African Charter. This is perhaps the resultant effect severe limitations to access to justice and public interest litigation in environmental matters in African States [47]. Why this remains so is not completely clear [48], although it has been argued that African states are reluctant to grant concrete procedural rights to individuals because it may become an obstacle to foreign investments [49]. To fill the void of effective environmental rights protection in national courts, African regional courts have presented the opportunity for individuals and non-state actors to challenge some of these environmental rights violations. This has become possible not only due to the right to a satisfactory environment as enshrined in Article 24, but mainly because regional treaties make reference to the protection of the environment as a central objective of regional integration in Africa [50].

Professor Gathii encapsulates this awakening in environmental rights adjudication in regional courts in the expression "Judicial Environmentalism" [51]. He describes the concept as "characterized by expansive interpretation of environmental provisions in economic integration and regional human rights treaties" [52]. He further contends that Africa's international judicial environmentalism is a product of three major developments. Firstly, he adduces the decisions of African governments to pursue development projects such as superhighways, large extractive industry operations or hydro-electric dams, without regard to the environment or the interests of local populations as a major causative factor. Secondly, these mega projects have been met with stiff resistance from affected communities and their allies (global environment movements) leading to action in international courts. Thirdly, he pinpoints the repurposing of African regional courts towards enforcing environmental norms included in regional trade and human right instruments sparked by the number of environmental actions filed.

In *SERAP v.* Federal Republic of Nigeria [53] the plaintiff sued Nigeria at the ECOWAS Community Court of Justice (ECCJ) seeking the protection of the economic rights of the oil-rich Niger Delta region. The plaintiff, a non-governmental organization registered in Nigeria, alleged that the activities of multinational oil companies in the region led to massive oil spillage that had destroyed the flora and fauna of the region and denied the indigenes their means to livelihood which is fishing. The complaint filed by the plaintiff included the Attorney General of the Federation, the state-owned Nigerian National Petroleum Company (NNPC), Shell Petroleum Development Company, ELF Petroleum Nigeria Limited, AGIP Nigeria PLC, Chevron Oil Nigeria PLC, Total Nigeria PLC, and

Exxon Mobil [54].

SERAP claimed that the Niger Delta had witnessed severe environmental degradation due to oil spills in the region. The organisation cited various factors such as human error, vandalism or theft of oil, and poor maintenance of oil extraction infrastructure, as contributors to oil spills that caused significant harms to the inhabitants of region [55]. SERAP prayed for an award of a declaratory judgment on the grounds that Niger Delta region was entitled to "the international recognized human right to an adequate standard of living, including adequate access to food, to healthcare, to clean water, to a clean and healthy environment… and the right to life and human security and dignity [56]." The plaintiff also sought a declaratory judgment that Nigeria was in violation of her international human rights obligations as contained in the International Covenant on Economic, Social and Cultural Rights (ICESR), the International Covenant on Civil and Political Rights (ICCPR), and the African Charter on Human and People's Rights (ACHPR) [57] due to her "failure and/or complicity and negligence … to effectively and adequately clean up and remediate contaminated land and water" in the Niger Delta region [58].

The court ruled in favour of the plaintiff and based its decision on Articles 1 and 24 of the ACPHR, which collectively oblige African Union Member States to "take every measure to maintain the quality of the environment … such that the state of the environment may satisfy the human beings who live there, and enhance their sustainable development [59]." The court also held that the Federal Republic Nigeria was under strict obligation under both ACPHR articles and that it failed to adopt sufficient measures, as outlined in Article 1 of the Charter to ensure that her citizens enjoy the right to a general and satisfactory environment favourable to their development contained in Article 24 [60].

The ECCJ's activism in the *SERAP case* was a ground-breaking moment which has impacted [61] on the African human rights system. The court in its judgment laid emphasis on the fact that the right to a satisfactory environment is both "an obligation of attitude and obligation of result" [62]. By doing so the court detailed the procedural and substantive aspects of the right to a satisfactory environment. The court has therefore contributed to the jurisprudence on the meaning of the rights in Article 24 and also outlined the responsibility of ECOWAS Member States to protect the environment for the benefit of the individual. The decision of the ECCJ in SERAP v. Nigeria improves on the decision of the African Commission in SERAC because of the binding nature of the court's judgment. While the implementation of the court's decision has not been completely achieved as the environmental degradation in the Niger-Delta is still lingering [63], the case has arguably raised the bar on the obligations of ECOWAS Member States to protect the environment, further opening the door for environmental solidarity across the region through environmental adjudication [65].

4. Scope of Judicial Environmentalism in African Regional Courts: Balancing of Interests between anthropocentrism and ecocentrism?

It is not easily ascertainable if the African Commission in its *SERAC* communication was guided by any other philosophy than the protection of the individual's human rights as the moral base for its decisions. Only a marginal part of the Commission's communication touched on the flora and fauna of the Niger Delta or the earth. This is often the approach of courts generally, to focus on the enjoyment of rights by humans as principal actors in the environment. On face value, the content of the African Charter and regional treaties are clear on the fact that the African individual is the central focus of the rights contained in these instruments. In the *SERAP case*, the ECCJ while emphasizing the duty of African States under Article 24 of the African Charter laid out its understanding of the environment when it remarked thus:

"The environment, as emphasised by the International Court of Justice, *'is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn'* (Legality of the threat or use of nuclear arms, ICJ Advisory Opinion of 8 July 2006, paragraph 28). It must be considered as an indivisible whole, comprising the '*biotic and abiotic natural resources, notably air, water, land, fauna and flora and the interaction between these same factors'* (International Law Institute, Resolution of 4 September 1997, Article 1). The environment is essential to every human being. The quality of human life depends on the quality of the environment [66]."

Environmental law scholarship has continued to evolve, and there has been recognition for other forms of non-human centred rights such as the "right of environment" [67]. This right, despite its radical nature at the moment has some merits. The right to environment places higher value on the environment and sees the environment as a constellation of human and non-human rights and that it exists beyond mere human benefit. This right is founded on the argument that it is 'arbitrary to restrict justice and rights exclusively to inter-human relationships and to tolerate a situation in which interested parties are deprived of essential values in the distributive justice process' on the morally bankrupt ground of their not being human [68]. It can then be argued that there is a case to be made for other forms of environmental rights and international human rights courts will be ethically astute if they considered other forms of rights in order to arrive at just decisions.

In *T.N Godavarman Thirumulpad v. Union of India & Ors* [69] honourable justices of the Indian Supreme Court made an important pronouncement on the practice of environmental law and its inadequacies when it said thus:

"Environmental justice could be achieved if we drift away from the principle of anthropocentric to ecocentric. Most of our principles like sustainable development, polluter-pays principle, inter-generational equity have their roots in anthropocentric principles. Anthropocentrism is always human interest focused and non-human have only instrumental value to humans. In other words, humans take precedence and human responsibilities to non-human based benefits to humans. Ecocentrism is nature-centered where humans are part of nature and non-humans has intrinsic value. In other words, human interests do not take automatic precedence and humans have obligations to non-humans independently of human interest. Ecocentrism is therefore life-centered, nature-centered where nature includes both humans and non-humans...." [70].

The summation of the Indian supreme court above on the need to reshape the thinking of environmental law has found expression in the philosophical school of Earth

Jurisprudence. Earth jurisprudence is a philosophy that deemphasizes the long held belief that man remains the central focus of the environment [71].

In what is a departure from the human-centered foundations of extant environmental laws and policies, Earth Jurisprudence calls for a prioritization of the earth and nature. Advocates of the theory blame anthropocentrism for the devastation currently prevailing over the ecological system [72]. The ultimate aim of the School is to reverse the cycle of reliance only on humans by pushing for environmental laws and policies that are fashioned in a way which ensures that substantial degradation of the earth is halted. Earth Jurisprudence is based on a host of principles which include the principles that the universe is the highest authority for human society not human-centered laws; [73] "the earth community and all beings that constitute it have fundamental rights including the right to exist, to have a habitat, or a place to be, and to participate in the evolution of the community" [74]. At the core of Earth Jurisprudence is the positive requirement that "humans must adapt their legal, political, economic and social systems to be consistent with the fundamental laws or principles that govern how the universe functions and to guide humans to live in accordance with these" [75]. This entails that institutions and laws must be built to actively ensure that norms and rules are seamlessly aligned with protecting the earth first. Ecocentrism and its philosophical offshoots continue to manifest in the jurisprudence from national courts around the world. A couple of court decisions and legislations have upheld nature rights as a norm [76].

While it is difficult to pick out instances where African regional courts have deliberately adopted an ethnocentric approach to environmental protection, the purpose of the judgments in certain cases point towards Earth Jurisprudence. In *ANAW v Tanzania* [77], the East African Court of Justice (EACJ) arguably reflected this principle in its decision. In 2010, the Africa Network for Animal Welfare (ANAW) [78] an environment-centered NGO headquartered in Nairobi filed a claim against the government of Tanzania for a national policy that aimed to construct a 53-kilometer road across the Serengeti National Park. The plaintiff sought *inter alia* a permanent injunction to halt the government's plan to 'upgrade, tarmac, pave, realign, construct, create, and/or commission a trunk road across the northern wilderness of the [Serengeti] park [79]."

The remedies sought by the plaintiff include a request to permanently stop the Tanzanian authorities from "maintaining any road or highway across any part of the Serengeti National Park" [80]; a declaration by the court that Tanzania's construction of the road amounted to a breach of her obligations under the Treaty for the Establishment of the East African Community ("the EAC Establishment Treaty"). Finally, ANAW prayed the court to substantively find Tanzania accountable for violating her obligations under the EAC Establishment Treaty [81]. The Tanzanian government planned to completely upgrade the 239 – kilometre road to asphalt, but it was deterred by protests from local and international NGOs and the counsel of a government-hired consultant firm against paving the road [82]. Instead, the government opted to upgrade the 53-kilometre section through the Serengeti national park to gravel status [83]. The reversal of the government's original decision was based on professional advice it received that paving the road would likely lead to environmental degradation and disrupt the yearly wildebeest migration - a spectacular wildlife event enjoyed by many [84].

The Tanzanian government challenged the jurisdiction of court of first instance [85]. The court overruled the defendant's preliminary objection and held that it was duly vested with jurisdiction to entertain environmental cases brought citizens of EAC Member States, and that it could issue a permanent injunction preventing Member States from carrying out activities that "may affect the well-being of shared resource [86]." Tanzania subsequently appealed the decision of the EACJs First Instance Division in October 2011 insisting that the court was devoid of jurisdiction. Consequently, the suit was sent to the appellate division of the EACJ.

In response to the reference filed in the hearing on the merits of the first division of the EACJ, Tanzania argued that the road as it existed was being utilized without any adverse impact on the park, and that it was not the first road of its kind [87]. Tanzania sought the action to be dismissed on the ground that the Protocol on the Environment envisaged in the EAC Treaty was not yet law [88]. Tanzania further argued that the EACJ lacked jurisdiction to determine cases on violations of international instruments such as International Conventions and Declarations on Environment and Natural Resources [89]. The First Instance Division gave judgment for ANAW on June 20, 2014. The court was satisfied that ANAW had successfully proven that Tanzania intended to upgrade, tarmac, pave, realign, create and/or commission a trunk road across the northern wilderness of the Serengeti [90]. In addition the court ruled that the provisions relating to the environment in the EAC Establishment Treaty were indeed in force as they were duly ratified, irrespective of the fact that the law was yet to be fully enacted [91].

The appellate division of the EACJ held that Articles 111 – 114 of the EAC Establishment Treaty, relating to environmental obligations, responsibilities, and standards of EAC States, are self-executing and do not require a protocol or other special act before its enforcement [92]. More importantly, the appellate court affirmed that these provisions are not just obligations of EAC Member States, but also suffice as causes of action upon which an injured citizen may seek redress against the state for its violation without having to establish personal injury [93]. The court further held that the EAC Establishment Treaty does not mandate partner states' to ratify Protocol on the Management of the Environment and Natural Resources to trigger enforcement under Articles 111-114 [94].

The decision of the EACJ in this case is quite instructive and represents a very valuable contribution to Earth Jurisprudence if taken on its merits. For the first time States are being held to account for development projects that stand to endanger animal life and adversely impact the ecosystem. This is a welcome development in setting the agenda for ethnocentric laws and policies across the region in future. If other regional courts and national courts are attentive, then, this decision will form the basis for future environmental rights cases that may be brought solely for the purpose of animals as direct beneficiaries of environmental rights. ANAW by bringing this action has opened the floodgates for more environmental rights cases with the earth and nature as the primary complainants.

The ANAW case is an important one as it compels states to obey treaty provisions and protocols which place obligations

on them to protect the environment – a major coup as progress is slowly made towards ecocentrism. There was no real reliance on Article 24 of the African Charter, but the court here was able to rely on relevant portions of the EACJ Establishment treaty proving the advancement of sub-regional norms established in treaties. Overall, this case is a very important addition as the African human rights system solidifies its normative standards to meet current challenges.

5. Perspectives from National Courts

The constitutions of most African States are replete with environmental protection language in one form or another. Of the 159 States with constitutions that provide for environmental protection clauses, 43 are African States [96]. The rapid spread of environmental protection clauses in national constitutions across Africa was arguably influenced by acculturation. The provision of Article 24 of the African charter has been credited with spurring emulation in national constitutions [97]. In spite of these constitutional provisions, African States continue to wallow in conditions of severe pollution [98]. Exploitation of Africa's natural and mineral resources, population growth and urbanization due to development, and government inaction has contributed immensely to the pollution crises in Africa [99]. The activities of the extractive industry have contributed in no small measure to environmental pollution in Africa [100].

National courts have struggled to hold States and multinational corporations whose exploration activities could potentially impact or have impacted negatively on the ecosystem. The above notwithstanding, the wave of Judicial Environmentalism has also swept through national courts. The case of Zambia and Kenya offer important insight into this phenomenon at the national level. In *Appellants v. Zambian Government and Mwembeshi Resources Ltd* [101] the High Court of Zambia in Lusaka heard an appeal made by a collection of Zambian conservation groups against a government policy which permitted the Zambian corporation and Mwembeshi Resources Ltd to develop the Kangaluwi Copper Project inside the Lower Zambezi National Park in Zambia [102]. Mwembeshi Resources Ltd is a subsidiary of Zambezi Resources Ltd, an Australian natural copper exploration and development enterprise. In 2011, Zambezi Resources Ltd was granted a twenty-five year mining license by the Zambian government to operate the Kangaluwi Copper Project (an open-faced copper mine) [103].

A month after the appeal was heard in February 2014, the Lusaka High Court issued a stay of execution on the continued development of the Project which brought it to a halt. The stay of execution still remains in place, and the outcome of the appeal is pending [104]. The Kangaluwi Copper project covers copper deposits of Kangaluwi, Chisawa, and Kalulu an area which lies within the lower Zambezi National Park. The park surrounds 120 kilometers of the Zambezi Rover and is one of the most sought after parks in the country. The park is rich in biodiversity and is home to some large communities [105].

In a report [106], the appellant criticized Zambezi Resources Ltd's opacity in sharing information on the possible negative impacts of open-pit mining inside important protected areas such as the Lower Zambezi National Park [107]. Some of the adverse impacts revealed by the report include long term harm to the health of the Zambian people, wildlife, environment, and the tourism industry. This case, like the ANAW Case is largely premised on the adverse impacts of mega-development projects on the environment. In both cases a fragile ecosystem was argued to be under further decimation from a mega-development project [108].

In Friends of Lake Turkana Trust v. Honourable Attorney General of Kenya and Kenya Power & Lighting Company Ltd [109]. the hypothetical nature of claims brought by environmental litigants to prevent projects that potentially violate environmental rights was determined by the Environment and Land Court of Kenya. The suit was instituted by the Friends of Lake Turkana Trust, a registered trust that canvasses support for the protection and conservation of the waters of Lake Turkana in the arid northern region of Kenya [110]. It brought its action against the government of Kenya and the state-owned Kenya Power and Lighting Company which generates and distributes electricity nationally [111]. The action claimed that an alleged agreement between Kenya and Ethiopia to construct a series of dams would deprive the communities who reside in the Lake Turkana area of their rights to livelihood, lifestyle, and cultural heritage and attachment to the lake in breach of Articles 26 and 28 of the Kenyan constitution [112].

The plaintiffs also challenged the Kenyan government's failure to act as a public trustee of the land and conduct a full impact assessment on the potential side effects of the construction and operation of hydroelectric power-producing dams in violation of Articles 62 and 69 [113]. The plaintiff particularly challenged the Gilgel Gibe III Dam, a high roller-compacted concrete dam with a hydroelectric dam attached to it. Finally, the petition alleged that the agreement between the Kenyan and Ethiopian governments would jeopardize the environment and threaten the cultural heritage of the people of Lake Turkana [114].

The plaintiff sought an order of mandamus that would compel the Kenyan government and the state-owned electricity company to make "full and complete disclosures of each and every agreement or arrangement entered into or made" with the Ethiopian government relating to the proposed purchase of 500 megawatts from the Gibe III dam. It also prayed the court to grant an order prohibiting the defendants from entering into further agreements with Ethiopia relating to the purchase of 500 megawatts until a "full and thorough independent environmental impact assessment (EIA) on the potential effects of the Gibe III project on Lake Turkana and the affected communities has been undertaken" [115].

The court examined the claim for violation of fundamental rights by the plaintiff and whether the defendants had obligations to remedy the alleged violations. Regarding the violations of the right to life and dignity as enumerated under Articles 26 and 28 of the Kenyan Constitution, the court considered two documents: a commentary by the Africa Resources Working Group and a report published by International Rivers [116]. The reports revealed that the water resource scheme project scheduled to be built along the Ethiopian Omo River would significantly reduce the downstream of the river thus affecting the level of the Lake Turkana as the river contributes almost 80% of the waters in Lake Turkana [117]. The study also linked the reduction in the level of the lake to the possible destruction of the agropastoral systems, livestock herding and fishing around the delta and along the northeast of Lake Turkana [118]. Consequently, this would cause more pressure on the fewer remaining resources in the region around the Kenya-

Ethiopian border, as the approximately 300,000 people around the Lake Turkana would have to find alternative ways to earn a living [119]. The studies also alleged that the devastating impacts of these projects on Lake Turkana were barely considered in the project's EIA and that the customary Kenyan downstream water rights in the shared river basin were ignored [120]. After considering the report and the allegations contained in it, the court held that there was not sufficient facts to show that any rights had been violated and thus it could not make a finding that the plaintiff's right to dignity, life, livelihood, and cultural and environmental heritage has been violated [121].

The plaintiffs alleged that its right to information as enshrined in Articles 10, 35, and 69 of the Kenyan constitution, had been violated on the ground of the Kenyan government's refusal to disclose the nature of the details of the alleged agreement between the Ethiopian and Kenyan governments [122]. Article 10 of the 2010 Kenyan constitution provides that the Kenyan government, including the state and all its public officers, must act with a high standard of integrity, transparency, and accountability. Article 35 of the Kenyan constitution guarantees the right of every citizen to access to information held by the state or held by another person and required for the exercise of the protection of any right or fundamental freedom. In this wise, the court held that the respondents had a duty to provide the petitioners with all information relevant to the purchase and transmission of electric power from Ethiopia, but denied the petitioner the right to information relating to the exact term of the agreement between the two governments concerning the purchase of electricity [123].

The court held that the respondents ultimately had a duty to establish that no environmental harm would arise from the agreements and projects even if the agreements to purchase power were yet to be executed and no concrete evidence of harm has been suffered by the plaintiffs [124]. It further held that the government and the power companies were under obligation to the Lake Turkana communities to ensure that the resources in the lake are sustainably managed, utilized and conserved, and that the necessary precautions must be exercised to prevent environmental harm that may arise from the agreements and projects entered into with the Ethiopian government [125].

The decision of the Kenyan Environment and Land court demonstrates how mega-developments that have an international dimension can come within the jurisdiction of a national court. It also demonstrates the authority a national court can wield to hold a government and corporations to make a full and complete disclosure to the potential victims regarding any arrangement that might adversely affect their rights, including the right to a clean and healthy environment [126]. The case is an important precedent in the promotion of solidarity rights. By providing that the petitioners had a right to information as enshrined in the Kenyan constitution the court underscored the importance of community participation in solving environmental issues.

Environmental solidarity is an important parallel that can be drawn between the above case and the *ANAW case.* Both judgments establish the centrality of protecting the right of communities to demand information on developmental projects that can potentially violate their rights. Since the decision of the Kenyan Environment and Land court predates that of the EACJ in the *ANAW case* it is difficult to point to concerted judicial efforts to cross-fertilize norms in the region. Additionally, there is no information that suggests that the EACJ relied on the approach of the Kenyan Environment and Land court. However, both judgments are crucial contributions to regional standards on environmental rights.

One practice worthy of emulation by national courts in Africa is the creation of the Kenyan Environment and Land court as a distinct superior court of record to try environmental cases [127]. The establishment of specialist courts to entertain environmental cases indicate a real commitment to ensure the enforcement of national environmental laws and policies. Furthermore, the creation of special environmental courts may encourage the emergence of a cadre of judges with the requisite training, knowledge and experience in environmental law and related issues.

6. Conclusion

As can be seen from case law discussed above, environmental rights adjudication in regional courts does offer some benefits for the African human rights system. In Africa, the practice of judicial environmentalism in regional courts is going a long way in developing environmental rights in various ways. First, regional courts have contributed to the creation of a regional standard on environmental rights mostly by treating the right to a satisfactory environment as derivative environmental rights [128]. This arguably implies that environmental rights in Africa consist of the procedural, substantive as well as solidarity rights. The greater benefit here is the guarantee of the right of participation of African citizens, irrespective of their background, in the development process by regional courts and their national counterparts.

Secondly, environmental adjudication in regional courts has functioned as backup to national systems where they have failed to be effective protectors of human rights. The *SERAC* and *SERAP* decisions momentarily filled the gap where Nigerian courts have been unable to function effectively, at least by bringing the burning issues in the Niger-Delta to the fore and causing the Nigerian government to act. Thirdly, these decisions of regional courts have the potential to contribute to the normative and sociological legitimacy of African States [129]. By helping to ensure that a state does respect and protect the environmental rights of its citizens, regional courts can increase the normative legitimacy of African States. On the other hand, they have impacted the sociological legitimacy of African States as private litigants and their collaborators have realized that the State will not be the final arbiter in its own case when environmental rights claims are brought against it.

Environmental adjudication at international level continues to gain in significance. The International Court of Justice (ICJ) most recent decision in *Costa Rica v. Nicaragua* [130] is perhaps testament to the growing robustness of environmental adjudication in international courts. In its February 2018 judgment, the ICJ ordered Nicaragua to pay Costa Rica the sum of US$378,890 for the environmental damages arising from Nicaragua's military activities in the northern part of Isla Portillos. This is the first case in which the ICJ has awarded compensation for environmental harm. This is a welcome development when it is considered that the creation of an environmental chamber in the ICJ did not turn out a success [131]. It could be argued that this decision

will pull other international courts along and also send a clear message to States on their environmental obligations under international law. While environmental adjudication continues to expand generally , African regional courts have shown so far, that they are indeed operating with some purpose in contributing, even if modestly, to the protection of environmental rights.

References

1. The battle to balance socio-economic development with human rights obligations of states continues to rage in Africa. In this guise, the relationship between the post-colonial African state and indigenous people particularly over the use of their ancestral land for economic expansion remains a touchy subject. For further insight into this topic see, J. Gilbert & V. Couillard, 'International Law and Land Rights in Africa: The Shift from State Territorial possession to Indigenous Peoples' ownership rights' in R. Home, Essays in African Land Law (2011, Pretoria University Law Press) at pp. 47 – 66.
2. The recent draft on a Legal Binding Instrument to regulate, in International Human Rights Law, the activities of Transnational Corporations and other Business Enterprises is an important document in the quest to hold transnational corporations more accountable under international human rights law. The key purpose of the draft is to ensure effective access to justice and remedy to victims of human rights violations in the context of business activities of transnational character and to prevent the reoccurrence of such violations. While the document lacks any force of law, when negotiations are completed, it could lay the foundations for holding transnational corporations responsible for business activities that violate human rights. The document is available at corporations reoccurrence of such violations. While the document lacks any force of law, when negotiations are completed, it could lay the foundations for holding transnational corporations responsible for business activities that violate human rights. The document is available at https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/DraftLBI.pdf last accessed 26 July 2018.
3. African Charter on Human and Peoples' Rights (Banjul Charter) 27 June 1981 CAB/LEG/67/3 rev. 5, 21 ILM 58 (1982).
4. 'Agenda 2063: The Africa We Want' available at https://au.int/en/agenda2063 last accessed 10 January 2018.
5. Other goals listed in the document include; I) An integrated continent, politically united and based on the ideals of Pan-Africanism and the vision of Africa's Renaissance; (II) An Africa of good governance, democracy, respect for human rights, justice and the rule of law; (III) A peaceful and secure Africa; (IV) An Africa with strong cultural identity, common heritage, values and ethics; (V) An Africa where development is people driven, unleashing the potential of its women and youth; (VI) Africa as a strong, united and influential global player and partner.
6. Environmental problems challenge the legislative, administrative and adjudicative functions of international law and this has warranted the reorganization of legal and institutional mechanisms by international organizations. See P. Sands, Principles of International Environmental Law, 2nd Edition (Cambridge University Press, 2007) at pp.11-17.
7. The ECOWAS Court has been celebrated as a vibrant human rights court that has greatly impacted on human rights protection within the community. See, H. S Adjolohoun, 'The ECOWAS Court as a Human Rights Promoter? Assessing Five years' Impact of the Koraou Slavery Judgement', (2013) 31 Netherlands Quarterly of Human Rights 342; S.T Ebobrah, 'Critical Issues in the Human Rights Mandate of the ECOWAS Court of Justice' (2010) 54 Journal of African Law, 1; K..J. Alter, L.R. Helfer & J. R. McAllister, 'A New International Human Rights Court for West Africa: The ECOWAS Community Court of Justice' (2013) 107 American Journal of International Law 737.
8. The East African Court of Justice is another regional court that has worked its way upwards to becoming a vibrant regional human rights court. See, J.T Gathii, 'Mission Creep or Search for Relevance: The East African Court of Justice's Human Rights Strategy', (2013) 24 Duke Journal of Comparative and International Law, 249.
9. Attempts by sub-regional courts to purposively interpret treaties and expand their original jurisdictions into human rights have been met with heavy punishment from States. After several judgments ruling against Zimbabwe in the Mike Campbell case, the SADC Tribunal was suspended in 2010. It is yet to be reconstituted. See, L. Nathan, 'The Disbounding of the SADC Tribunal: A Cautionary Tale', (2013) 35 Human Rights Quarterly 870; K.J Alter, J.T Gathii, L.R Helfer, 'Backlash against International Courts in West, East and Southern Africa: Causes and Consequences', (2016) 27 European Journal of International Law 293.
10. With growing business operations and globalization, environmental laws and policies are becoming highly stringent in order to curb the scramble for natural resources and halt the adverse impact created on biodiversity. In recent years, more number of cases has been filed in relation to environmental and procedural obligations. Writing on current development of case law see, T. Okonkwo, 'Adjudicating International Environmental Law Litigation: Recent Development of Case Law', (2017) 8 Beijing Law Review 239.
11. Regional courts are 'legal guardians of an economic integration process, enforcers of the benefits it brings, agents who decide when a breach has occurred and the remedy for it'. See, R. F. Oppong, Legal Aspects of Economic Integration in Africa, (Cambridge University Press, 2011) at p.117.
12. African Charter on Human and Peoples' Rights, OAU/CAB/LEG/67/3 rev.5, 21 ILM 58 (1982). The African Charter was adopted by the Assembly of Heads of State and Government of the OAU in June 1981 and entered into force on 21 October 1986.
13. The African Charter has been labeled as the embodiment of African values because it reflects the region's 'colonial history, philosophy of law and conception of man'. See, B.O Okere, 'The Protection of Human Rights in Africa and the African Charter on Human and Peoples' Rights: A Comparative Analysis

with the European and American Systems' (1984) 6(2) Human Rights Quarterly at p.141.

14. M.Mutua, 'The African Human Rights System: A Critical Evaluation', available at http://hdr.undp.org/sites/default/files/mutua.pdf last accessed 18 July 2018.
15. Articles 19 to 24 of the African Charter introduced the rights of peoples to existence, equality, self-determination, sovereignty over natural resources, peace, development and environment. Writing on the historical and philosophical factors undergirding the provision of solidarity rights in the African Charter see, B. E Winks, ' A Covenant of Compassion: African Humanism and the Rights of Solidarity in the African Charter on Human and Peoples' Rights', (2011) 11 African Human Rights Law Journal 447.
16. See T. Burgenthal, International Human Rights in a Nutshell, (West Publishing Company, 1995) at p.229.
17. Soft law instruments recognizing the right to a satisfactory environment before the establishment of the African Charter include the United Nations General Assembly resolution recognizing the relationship between the quality of the environment and the enjoyment of human rights (UNGA Res 2398 XXII of 1968); the 1972 Declaration of the United Nations on the Human Environment which recognized the fundamental right to freedom, equality and adequate conditions of life in an environment of equality that permits dignity and well being.
18. M. van der Linde & L. Louw, 'Considering the Interpretation and Implementation of Article 24 of the African Charter on Human and Peoples' Rights in light of the SERAC Communication' (2003) 2 African Human Rights Law Journal at p.174.
19. Proponents of Earth Jurisprudence are at the forefront of the debate. They mainly canvass a paradigm shift from humans as the central focus guiding environmental law and policy to animals and nature as the primary objects. By protecting animals and other inhabitants of the wild, nature will be better nurtured for the good of man. For a compendium on this school of thought of environmental law, see P. Burdon (ed), Exploring Wild Law: The Philosophy of Earth Jurisprudence (Wakefield Press, 2011).
20. African Charter, n 3, Articles 30 – 44.
21. The recommendations of the African Commission do not bind a state. The African Commission merely considers inter-state and other communications as judicial functions. Nevertheless, it has been argued that it is not fatal that the African Commission may only give 'recommendations' to Member States but that 'what is relevant is the moral and legal authority which governments and other members of the international community attach to published reports and conclusions of the organs concerned'. M. Tardu, 'The protocol to the United Nations Covenant on Civil and Political Rights and the Inter-American System: A study of coexisting petition procedures' (1976) 70 American Journal of International Law 784 at p.789.
22. African Charter, n 3, Article 45(1).
23. Ibid., 45(2).
24. Ibid., 45(3).
25. Ibid., Articles 47 – 59.
26. The non-binding recommendations of the African Commission have rendered it less effective than regional courts. Nevertheless its pronouncements have a strong normative value for the African human rights system.
27. (Communication 155/96) available at http://www.achpr.org/communications/decision/155.96.
28. Nigeria's oil rich Niger Delta region is a densely populated area surrounding the delta of the River Niger at the Gulf of Guinea on the Atlantic Ocean. The region accounts for roughly 12% of Nigeria's population and contributes nearly 80% to Nigeria's national foreign exchange through crude oil exports. See further at 'The Niger Delta Region: Land and People', available at www.nddc.gov.ng/NDRMP%20Chapter%201.pdf last accessed 30 August 2017.
29. F. Coomans, 'The Ogoni Case before the African Commission on Human and Peoples' Rights' (2003) 52 International and Comparative Law Quarterly at p.749.
30. Communication 155/96, Report of the Commission, para 51.
31. Ibid., para 52.
32. Ibid.
33. Ibid., para 53.
34. Ibid.
35. Ibid.
36. Ibid.
37. van der Linde & Louw n.18 above, p.179
38. Idem, p.175.
39. Ibid.
40. Coomans, n 29, pp.751 – 753.
41. This approach was introduced by Audrey Chapman in her seminal paper on the applicability of the ICESR. See A. Chapman, 'A "Violations Approach" for Monitoring the International Covenant on Economic, Social and Cultural Rights' (1996) 18 Human Rights Quarterly 23.
42. Idem, 38
43. Idem, 43.
44. See, for instance SERAP v. Federal Republic of Nigeria below.
45. The African Commission recommended (1) the stopping of all attacks on Ogoni communities and leaders by the Rivers State Internal Security Task Force and permitting citizens and independent investigators free access to the territory; (2) conducting an investigation into the human rights violations described above and prosecuting officials of the security forces, NNPC and relevant agencies involved in human rights violations; (3) ensuring adequate compensation to victims of human rights violations, including relief and resettlement assistance to victims of government sponsored raids, and undertaking comprehensive cleanup of lands and rivers damaged by oil operations; (4) ensuring that appropriate environmental and social impact assessments are prepared for any further oil development and that the safe operation of any further oil development is guaranteed through effective and independent oversight bodies for the petroleum industry; and (5) providing information on health and environmental risks and meaningful access to regulatory and decision-making bodies to communities likely to be affected by oil operations.
46. Communication 155/96, Report of the Commission, para 68.

47. T. Treves, 'Disputes in International Environmental Law: Judicial Settlement and Alternative Methods' in Y. Kerbrat and S. Maljean-Dubois (eds), The Transformation of International Environmental Law (Pedone/Hart 2011) at pp, 285 – 286.
48. P. Sands, 'Adjudicating Climate Change in International Law, (2016) 28 Journal of Environmental Law, at p.23.
49. Idem, at p.24.
50. M.T Ladan, 'Access to Environmental Justice in Oil Pollution and Gas Flaring Cases as a Human Rights issue in Nigeria', paper presented at Workshop for Federal Ministry of Justice Lawyers, 28 – 30 November 2011, p.6.
51. In Nigeria, the obstacles to access to justice in environmental matters range from jurisdictional issues such as locus standi, pre-action notice, and limitation of action, to insufficiency of national legislation and the political will to implement national environmental policies. See, Ladan n. 49 above.
52. I.L Worika, Environmental Law and Policy of Petroleum Development in Africa, 1st Edition (Apnez Centre for Environment and Development, 2002) at pp. 233 – 253.
53. Article 3(2) (b) of the Revised treaty of ECOWAS states that Member States agree to the ' harmonization and co-ordination of policies for the protection of the environment; Article 5 of the SADC treaty, states as part of its objectives, the 'sustainable utilization of natural resources and effective protection of the environment'.
54. J.T Gathii, 'Saving the Serengeti: Africa's New International Judicial Environmentalism', (2016) 16 Chicago Journal of International Law 386 at p.388.
55. Ibid.
56. Registered Trustees of Socio-Economic Rights and Accountability Projects v. Federal Republic of Nigeria [Suit No: ECW/CCJ/APP/08/09].
57. Ibid., paras 1 – 2.
58. Ibid.
59. Ibid.,para 19 (a).
60. SERAP alleged numerous violations from international human rights instruments. They relied on Articles 1-5, 9, 14 – 17, and 21-24 of the ACPHR; Articles 1, 2, 6, 9-11, and 12.1 12.2(b) of the ICESR; Articles 1, 2, 6, 7, and 26 of the ICCPR; and Article 15 of the Universal Declaration of Human Rights (UDHR). Ibid.,paras. 63 – 72.
61. SERAP vs Nigeria, n.56 above ,para 19 (a).
62. Ibid.,para 101.
63. Ibid.,para 98.
64. Impact in this context refers to the effect or influence of these judgments on national and regional systems. One way influence refers to actions by national institutions to adjust national policy, legislation or adjudication with the findings of these regional courts; or where the jurisprudence of the courts spark an increase on litigations stemming from the same issues. Two-way influence on the other hand concerns cases in which there is evidence of domestic practices or decisions enlightening or shaping arguments in regional courts. Finally, 'spill over' influence refers to situations where domestic systems are directly impacted by jurisprudence of regional courts which in turn 'irradiates' to other member states within the same community and beyond. See further, Adjolohoun n.7 above, pp.342 – 347.
65. Para 100.
66. In 2016 the Nigerian government launched the clean-up project for the Ogoni, one of the most affected Niger Delta communities from oil spillage over the years. The government commissioned the Hydrocarbon Pollution Remediation Project (HYPREP) to implement the 2011 United Nations Environment Programme (UNEP) report on the pollution in the Niger-Delta. However, two years down the line the Ogoni community and the Rivers state government have lamented severe delays in the clean-up process. See, 'Ogoni cleanup: MOSOP laments delay, says land, water still contaminated', Vanguard News Nigeria, October 10 2017, available at https://www.vanguardngr.com/2017/10/ogoni-cleanup-mosop-laments-delay-says-land-water-still-contaminated/ last accessed 10 January 2018.
67. Environmental solidarity refers to community participation and action in solving environmental issues. Solidarity rights are now considered a third form of environmental rights. S. A Pratisi & S. Wibawa, 'Defending Environmental Rights: An Ecological Democracy Perspective' (2017) 1 Journal of Southeast Asian Human Rights 147 at p.150.
68. SERAP v Nigeria,n. 56 above, para 100.
69. Rodriguez-Rivera asserts that environmental rights consist of (i) environmental procedural rights; (ii) the right of environment; and (iii) the right to environment. L. Rodriguez-Rivera, 'Is the Human Right to Environment Recognized under International Law? It Depends on the Source' (2001) 12 Colorado Journal of International Environmental Law & Policy 1, pp. 9 – 16.
70. J. Nash, 'The Case for Biotic Rights', (1993) 18 Yale Journal of International Law at p.238.
71. 13 February 2012, [I.A Nos 1433 and 1477 of 2005].
72. Section 14, T.N Godavarman Thirumulpad v Union of India & Ors, 2012.
73. The term Earth Jurisprudence was coined by Thomas Berry a Catholic priest and historian.
74. C. Cullinan, 'A History of Wild Law' in P. Burdon, Exploring Wild Law , n.19 above, p.13.
75. C. Cullinan, 'Earth Jurisprudence: From Colonization to Particpation' in L. Starke & L. Mastny, State of the World – Transforming Cultures – From Consumerism to Sustainability, (Norton & Company, 2010) at p.144.
76. Ibid.
77. Ibid.
78. See, D.R Boyd, 'Recognizing the Rights of Nature: Lofty Rhetoric or Legal Revolution?' (2018) 32 Natural Resources and Environment, at pp. 13 – 17.
79. African Network for Animal Welfare (ANAW) v. The Attorney General of the United Republic of Tanzania, Ref. No. 9 of 2010, Judgment, East African court of Justice at Arusha First Instance Division (Jun, 20, 2014), http://eacj.org/wp-content/uploads/2014/06/Judgment-Ref-No.9-of-2010-Final.pdf.
80. Founded in 2006, the organization is dedicated to promoting the humane treatment of wild, farm, working, and companion animals and the well-being of communities that live in proximity to such animals. See

website at http://www.anaw.org/index.php/about-us/who-we-are last accessed 25 May 2017.
81. ANAW v. Tanzania (First Instance) n.79 above, para 10 - 17.
82. Ibid.
83. Ibid.
84. For a narration of the opposition that marked the government's decision to build a road through the Serengeti, see Gathii n.54 above, pp.404 – 406.
85. ANAW v. Tanzania (First Instance) n.101 above, para 28.
86. Ibid., para56.
87. Ibid., para 6.
88. Save the serengeti, Chronology of ANAW Lawsuit to Block the Highway, FACEBOOK (Feb, 2, 2012) cited in Gathii, n.54 above, p.407.
89. ANAW V. Tanzania (First Instance) n.79 above, para19.
90. Ibid., para29.
91. Ibid., para44.
92. Attorney General of the United Republic of Tanzania v. African Network for Animal Welfare (ANAW), Appeal No. 3 of 2014, Judgment, East African Court of Justice at Arusha Appellate Division (July 29, 2015) available at http://eacj.og/?cases=the-attorney-general-of-the-united-republic-of-tanzania-vs-african-network-for-animal-welfare.
93. Ibid.,paras 22-29.
94. Ibid.,para 25.
95. Ibid.
96. Ibid.
97. See up-to-date data and analysis on national constitutions at the Constitute Project website https://constituteproject.org/ last accessed 20 January 2018.
98. The direct influence of Article 24 can be seen in the constitutions of Benin, Cameroon and the Democratic Republic of Congo all of which include identical or similar wording to the provision. R.O Gorman, 'Environmental Constitutionalism: A Comparative Study' (2017) 6 Transnational Environmental Law 435, p.449.
99. Environmental pollution in Africa continues to worsen at great speed. From air pollutants that contaminate water and soil through atmospheric deposition, urban and industrial discharges of unrelated effluents into water, to soil pollution through agricultural activities, mining, and roadside emissions the chasm of environmental sustainability is expanding meteorically. Writing on the current state of environmental pollution in Africa, see A. O Fayiga, M.O Ipinmoroti & T. Chirenje, 'Environmental Pollution in Africa' (2018) 20 Environment, Development and Sustainability at pp. 41 – 73. For a recent take on the legal and policy questions surrounding the extractives industry in Africa, see, D. S Olawuyi, Extractives Industry Law in Africa, (Switzerland: Springer, 2018).
100. Ibid.,p.41.
101. See the recent African Commission State Reporting Guidelines and Principles on Articles 21 and 24 of the African Charter Relating to the operations of Extractive Industries and the Environment available at http://extractives-baraza.com/assets/content/documents/AU/state_reporting_guidelines_and_principles_on_articles_21_and_24.pdf.
102. Discussed in Zambezi Resources Limited, June 2015 Quaterly Operations Report (July 3, 2015) cited in Gatthi n.54 above, p.427.
103. Ibid., para 1.
104. Ibid., para 2.
105. Ibid., para 1 -2.
106. Steyn P. Lower Zambezi National Park Mining Project is Fatally Flawed, National Geographic, November 14, 2014, available at https://voices.nationalgeographic.org/2014/11/14/lower-zambezi-national-park-mining-project-is-fatally-flawed-says-report/ last accessed September 15, 2017.
107. The Appellant's case was based on a report entitled "Kangaluwi Open-pit Copper Mine in the Lower Zambezi National Park".
108. K. Leigh, 'Evaluation Report: Kangaluwi Open-pit Copper Mine in the Lower Zambezi National Park', Lower Zambezi Tourism Association, November, 2014, available at https://voices.nationalgeographic.org/files/2014/11/Evaluation-Report_-Mining-Lower-Zambezi_LZNP_Nov2014.pdf last accessed September 15, 2017.
109. Gatthi, n.54 above, p.430.
110. ELC Suit No. 825 of 2012, Judgment, Environment and Land Court at Nairobi (19 May, 2014) available at http://kenyalaw.org/caselaw/cases/view/97700/ last accessed 20 January 2018.
111. See Friends of Lake Turkana profile at https://www.facebook.com/FoLTurkana/ last accessed 27 January 2018.
112. Friends of Lake Turkana Trust v. Honorable Attorney General of Kenya, n.110, 252 at 1 – 2.
113. Ibid.
114. Ibid., para 3.
115. Ibid.
116. Ibid.
117. Ibid., para 11 – 12.
118. Ibid., para 11.
119. Ibid.
120. Ibid.
121. Ibid.
122. Ibid., para 13.
123. Ibid.
124. Ibid., para 15.
125. Ibid., para 16.
126. Ibid., para 17.
127. Gathii, n.54 above, p.427.
128. The Kenya Environment and Land court is established under section 4 of the Environment and Land Court Act No. 19 of 2011. It has jurisdiction to hear any dispute relating to environment and Land. The court has original and appellate jurisdiction and has powers to deal with disputes relating to land administration and management. The court is also empowered to hear cases relating to private and community land and contracts, choses in action or other instruments granting any enforceable interests in land.
129. There are four basic approaches of judicial interpretation of environmental rights around the world. Firstly, some courts interpret the right to environment as 'independent rights' where they do not rely upon

other constitutional provisions. A second group refers to these rights as 'dependent rights' where it is seen as an adjunct of other constitutional provisions. The third group recognizes environmental rights as 'derivative rights' that are implicitly incorporated into other substantive, enforceable constitutional rights, including the right to life, family or dignity. The final group engage environmental rights sporadically causing them to be 'dormant rights' See, J.R May & E. Daly, Judicial Handbook on Environmental Constitutionalism, (UNEP, 2017) pp. 166 – 167.

130. Normative Legitimacy refers to the right of a State to rule, and involves the public standing that warrants its command of certain types of respect. Sociological legitimacy refers to the wide held belief in the right of a State to rule which can be decisive when it comes to the ability of an institution to properly function. See, A. Buchanan, The Heart of Human Rights, (Oxford University Press, 2013) at p.112.
131. Certain Activities carried out by Nicaragua in the Border Area, Judgment of 2nd February, 2018 available at http://www.icj-cij.org/files/case-related/150/150-2018 0202-JUD-01-00-EN.pdf last accessed 3 February, 2018.
132. The Environmental Chamber of the ICJ was created in 1993, but remained inoperative due to the unwillingness of states to bring disputes before it. As a result of its inactivity, the court decided in, not to hold elections for a bench for the Chamber, 2006.