



EXAMINING THE BANJUL CHARTER AS AN INSTRUMENT FOR THE REALIZATION OF ENVIRONMENTAL JUSTICE IN TRADE AND INVESTMENT AGREEMENTS

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The African Charter for Human and Peoples' Rights (Banjul Charter) in Article 24 provides something close to a right for environmental protection in Africa, thereby being interpreted to create the right to a safe and healthy environment for the indigenous African people. While Africa has been commended for its comprehensive human rights system, it is yet to advance in environmental protection, despite possessing some of the world's largest reserves of natural resources which has attracted a lot of inordinate economic interest in Africa. The right to a safe and healthy environment is still elusive in the Banjul Charter, as Article 24 is a vague, indecisive provision that has often been misconstrued as an express statement of that right. To properly frame the Banjul Charter as an instrument with the promise of achieving environmental justice for vulnerable communities in Africa, an exegetical approach would be engaged. Document analysis would be done on the Banjul Charter, and journal articles. It would be argued that despite the Banjul Charter's perceived intention to include a right to a safe and healthy environment, the drafting of Article 24 defeats that intention. It would be concluded that Banjul Charter offers Africa an opportunity to fulfill its environmental, economic and social needs, if only it can create a regional environmental protection regime on the perceived vision of Article 24.

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INTRODUCTION

The Banjul Charter, or African Charter on Human and Peoples Rights as it is referred to formally, is regarded as one of the significant instruments that engages environmental justice through trade and investment agreements in Africa. Article 24 of the Banjul Charter in particular, offers a way of dealing with the twin challenge of promotion of economic growth and environmental sustainability in the continent.¹ Nevertheless, this power is often times undermined by the ambiguity of its drafting, which has also caused the misunderstanding of its enforcement and scope. Although in principle, Article 24 articulates the right to an adequate environment, it invites fundamental concerns about how it can be implemented in trade and investment practices where environmental objectives are often neglected for other economic goals in the case of development. Since human rights, environmental protection, and economic activities are interrelated, it is necessary to examine how to apply the Charter to all three of them so that the people and the environment would be well taken care of in the process of development.

Even with having some of the richest deposits of natural resources around the world, Africa has not been able to progress much in terms of protection of the environment.² It is baffling, especially in light of the fact that Africa has enormous resource endowment in minerals, oil and biological diversity that has posed great economic interest among both domestic and foreign investors. Nevertheless, such an increase in economic activity contributes to the neglect of environmental sustainability.³ This in turn accelerates the degradation of ecosystems and the sources of income of poor people. The foremost contributing factor to this stagnation in the realm of environment conservation are governmental policies which aim towards instant economic benefits instead of

¹ *African Charter for Human and Peoples' Rights (Banjul Charter)* OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)

² Ibrahim Ayoade Adekunle, 'On the Search for Environmental Sustainability in Africa: The Role of Governance' (2020) 28 *Environmental Science and Pollution Research* 14607, 14620.

³ Kwaku Addai, Berna Serener, Dervis Kirikkaleli, 'Can Environmental Sustainability be decoupled from Economic Growth? Empirical Evidence from Eastern Europe Using the Common Correlated Effect Mean Group Test' (2023) 4(1) *Regional Sustainability* 68, 80.

environmental sustainability.⁴ Several African states have engaged in what can only be termed a resource extractive galore for further development, without regard for the damages that resource use would inflict on the environment.⁵ As a case in point, investments in mineral resources have created disastrous consequences for the environment.⁶ On the other hand, the depletion of natural resources such as oil and mineral products poses the threat to pollution and destruction of the resources upon which people depend. Furthermore, weak governance combined with ineffective regulation further worsen the situation. Many African countries have problems of good governance and lack of adequate enforcement of environmental laws and political will to give environmental issues prominent attention.⁷ This situation has the potential to allow companies to operate without or with very little supervision resulting in operations that jeopardize environmental protection efforts. However, with how there are currently ongoing efforts in strengthening global governance systems through multilateralism,⁸ and with environmental law's reliance on cooperation, environmental protection should best function when

⁴ Tuyeni H Mwampamba, Sylvia Herzog, Johanne Pelletier, Etienne Yusufu Kachaka, 'Are policies in Africa conducive to sustainability interventions in the charcoal sector? A preliminary assessment of 31 countries' (Forestry Working Paper No 36, Food and Agricultural Organization of the United Nations, Rome, 2023) <https://doi.org/10.4060/cc3413en>.

⁵ Hippolyte Fofack, 'Chief Economist and Director of Research and International Cooperation - African Export-Import Bank 'Overcoming the Colonial Development Model Of Resource Extraction for Sustainable Development in Africa' (Brookings Institute, 31 January, 2019) <<https://www.brookings.edu/articles/overcoming-the-colonial-development-model-of-resource-extraction-for-sustainable-development-in-africa/>> accessed 14 December, 2024

⁶ Junfeng Liu, Fei Shen, Jingru Zhang 'Economic and Environmental Effects of Mineral Resource Exploitation: Evidence from China' (2023) 86 Resources Policy 104063.

⁷ Anja Berretta, 'Environmental and Climate Policy in Africa: Regional Cohesion and National Challenges'(Konrad Adenaur Stiftung, International Reports, 13 June, 2022) <<https://www.kas.de/documents/259121/18783238/Umwelt-+und+Klimapolitik+in+Afrika.pdf/0e239ab7-21b8-d029-bfcd-501721abd34f?version=1.1&t=1655199901253>> accessed 12 December, 2024.

⁸ Abdessalam Jaldi, 'The Crisis of Multilateralism viewed from the Global South' (Policy Center for the New South, 2023) <https://www.policycenter.ma/sites/default/files/2023-04/PP_05-23%20%28Jaldi%20%29.pdf> accessed 12 December, 2024.

there are effective regional institutions and legal mechanisms dedicated to it.

The right to a safe and healthy environment, as articulated in Article 24 of the African Charter on Human and Peoples' Rights (commonly known as the Banjul Charter), remains a complex and often misunderstood provision. While it states that 'All peoples shall have the right to a general satisfactory environment favorable to their development,'⁹ its vagueness leads to various interpretations and challenges in enforcement. Many commentators have often assumed that Article 24 of the Banjul Charter supports the right to a safe and healthy environment, which is a right that has gained momentum in the attention it receives.¹⁰ In its very words, it provides that, 'All peoples shall have the right to a general satisfactory environment favorable to their development.'¹¹ This has been interpreted to mean that people, which includes the African people, should have the right to live and thrive in an environment that is safe and healthy, devoid of environmental pollution. Lumina has argued, for instance that Article 24 specifically provides for the right to a safe and healthy environment.¹² Ebeku also has argued that Article 24 guarantees the right to a safe and healthy environment.¹³ This position seems entrenched, not just amongst scholars who study the African human rights system, but also within the mechanisms of the African Union, dedicated to the monitoring and implementation of human rights in the region. For instance, a report of the African Commission on Human Rights and People's Rights have claimed that Article 24 of the Banjul Charter concerns the extractive industries in Africa, where these industries have been known for environmental

⁹ *African Charter for Human and Peoples' Rights (Banjul Charter)* OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)

¹⁰ Mulesa Lumina, 'The Right to a Clean, Safe and Healthy Environment Under the African Human Rights System' in Michael Addaney and Ademola Oluborode Jegede (eds) *Human Rights and the Environment under African Union Law* (Palgrave Macmillan 2020) 25.

¹¹ *African Charter for Human and Peoples' Rights (Banjul Charter)* OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)

¹² Mulesa Lumina, 'The Right to a Clean, Safe and Healthy Environment Under the African Human Rights System' in Michael Addaney and Ademola Oluborode Jegede (eds) *Human Rights and the Environment under African Union Law* (Palgrave Macmillan 2020) 25.

¹³ Kaniye SA Ebeku, 'The Right to a Satisfactory Environment and the African Commission' (2003) 1 *African Human Rights Law Journal* 149, 166.

pollution issues, and therefore implies the interpretation of a safeguard of the right to a safe and healthy environment.

Article 24 of the Banjul Charter, as it is currently framed presents a clue to what is wrong with the Banjul Charter and highlights its legal weaknesses, which starts with the tendency towards ambiguity. This ambiguity, especially in the context of Article 24, provides an opportunity towards the creation of an authoritative regime on the right to a safe and healthy environment, as the jurisprudence on the environmental rights of Africans cannot rely on legal inaccuracies for realization. African environmental protection system must reflect the robustness of its human rights systems, as these are essential for each other, and therefore must ensure a seamless synergy. The African environment has been under threat since colonial times from a global environmental system that favors Western environmental narratives.¹⁴ Even more because of the environmental opportunism created by the weak institutional responses that attend environmental protection in many African countries. Environmental pollution in Africa, generated by Western activities, demonstrate the power structures that define global environmental management systems.¹⁵ If Article 24 of the Banjul Charter was properly framed to address environmental rights, it would guarantee the right to a satisfactory environment, which has significant implications for trade and investment across Africa. This provision should emphasize the necessity of balancing economic development with environmental sustainability, thereby influencing how investments are approached within the continent.

LEGAL INSTRUMENTS FOR ENVIRONMENTAL PROTECTION

There are regional legal instruments beyond the Banjul Charter specifically to protect the African environment, such as the African Convention on the Conservation of Nature and Natural Resources and

¹⁴ Olalekan Moyosore Lalude and Ayoyemi Lawal-Arowolo, 'Terra Nullius: Race and the Colonial Influence on International Environmental Law in Africa' in Olalekan Moyosore Lalude (ed) *Contemporary Legal Issues in Africa* (Sulis Academic Press 2024) 37.

¹⁵ Olalekan Moyosore Lalude and Ayoyemi Lawal-Arowolo, 'Africa in the Eye of the Storm: Navigating Law and Structural Inequality in Global Environmental Relations' (2022) 8(21) *Law and World* 8,26.

the Abidjan Convention. Analysis would be limited to these two instruments as they directly bear on the right to a safe and healthy environment in the context of trade and investment agreements. Bilateral agreements between some African states and external states would also be considered to see how they reflect state commitment to citizen's right to a safe and healthy environment in Africa. Trade and investment in Africa is expected to grow in the nearest future, with 53 billion-dollar worth of investment already added, and more to come partly because of the Africa Continental Free Trade Area.¹⁶ With these development, it is justified to wonder if Article 24 is robust a provision enough to protect the African environment, and not just about the robustness of this provision, and also if institutionally, regional mechanisms are ready to protect the African environment, and the people from exploitation. Following this environmental justice must be achieved in Africa while delivering on its economic development through trade and investment. Environmental justice therefore, in this context would be framed in Ekhatior's definition, that it is the achievement of healthy and sustainable environment or communities.¹⁷ This definition is helpful because it gives an insight to the purpose of the right to a safe and healthy environment.

Many scholars have conceptualized Article 24 of the Banjul Charter to mean that the right to a safe and healthy environment is guaranteed by the Banjul Charter.¹⁸ What this mean is that it can legally relied upon for the protection and the promotion of a right to a safe and healthy environment where such a right is threatened, especially in the context of trade and

¹⁶ Chido Munyati, 'A New Economic Partnership is Emerging Between Africa and the Gulf States' (World Economic Forum, 28 April, 2024) <<https://www.weforum.org/stories/2024/04/africa-gcc-gulf-economy-partnership-emerging/>> accessed 12 December, 2024.

¹⁷ Eghosa Ekhatior, 'Environmental Justice in the Global South: Overview of some Contemporary Developments' (A paper presented at the Human Rights Centre (HRC) Guest Speaker Series: Sustainability, Environment, Law, and Rights. Organised by the Human Rights Centre and University of Essex Law School, 2023) 40.

¹⁸ Manisuli Ssenyonjo, 'The Protection of Economic, Social and Cultural Rights under the African Charter' in

Danwood Mzikenge Chirwa and Lilian Chenwi (eds) *The Protection of Economic, Social and Cultural Rights in Africa: International, Regional and National Perspectives* (Cambridge University Press 2016) 91,120.

investment in Africa. African Commission on Human and Peoples' Rights, the quasi-judicial body of the African Union has further concretized this perception in the case of *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria*,¹⁹ where it was decided that Nigeria violated Articles 2, 4, 14, 16, 18(1), 21 and 24.²⁰ Interpreting these violations to mean an undermining of the right to a safe and healthy environment. However, while it is easy to interpret Article 24 of the Banjul Charter to mean the right to a safe and healthy environment, it also presents a problematic frame, where a general satisfactory environment could also be interpreted to mean the implementation of the barest minimum standards for the African environment, where there no references to any comparable standards. This makes for a more vulnerable African environment that would be less protected than it should. Unfortunately, this is the reality of the right to a safe and healthy environment. In the ideal sense, this right should be included in an independent instrument that allows for a proper evaluation of expected standards for protection.

ROLE OF THE BANJUL CHARTER IN PROMOTING ENVIRONMENTAL RIGHTS

The African Charter on Human and Peoples' Rights, often referred to as the Banjul Charter, is important for environmental rights in Africa. It was adopted in 1986 and includes various human rights, with some relating to the environment. Article 24 of the Banjul Charter is notable as it claims that all people have the right to a good environment that supports their growth.²¹ Nonetheless, this article is unclear and ambiguous, which can result in misunderstandings regarding its meaning as a strong statement of environmental rights. In the light of Africa's developmental needs, which require vast amount of trade and investment in the region, it is equally essential to protect the environment, to secure the livelihoods of

¹⁹ *Social and Economic Rights Action Center (SERAC) and Center for Economic and Social Rights (CESR) v Nigeria* 155/96 (ACHPR)

²⁰ Ibid.

²¹ Morné van der Linde and Lirette 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 167,187

indigenous people and the ecosystem itself for the preservation of biodiversity. The uncertainties embedded in Article 24 of the Banjul Charter, raise serious doubts as far as its practical meaning as far as the preservation of the environment is concerned in Africa. The language of Article 24 of the Banjul Charter is too broad and vague, and thus, interpretation can take it up in various ways, and this in turn affects the uniformity in the application and enforcement of environmental laws.²² This vagueness may also bring an eventuality in which African governments may seem to accept the right to a satisfactory environment, but will not actually keep up its realization. It would seem that even though the Charter attempts to set the stage for the recognition of environmental rights, there are weaknesses in Article 24 regarding its effectiveness due to its ambiguous and weak language.

Furthermore, the interpretation that Article 24 of the Banjul Charter simply provides for environmental rights allows for a sense of complacency among the stakeholders. This is dangerous since investors and corporations are likely to view such a provision as something procedural, and not be given any responsibility which may cause them to conduct business in a way that threatens the environment and the local populace, as recent studies have shown that corporations engage unsustainable production practices in developing states where environmental laws are ineffective.²³ This misunderstanding stresses the need for more precise legal arrangements and policy directions able to make the aspirations of the Banjul Charter into practical policies. It is further problematic that the right to a safe and healthy environment has

²² Sunday Bontur Lugard, 'The Human Right to a Satisfactory Environment and the Role of the African Court on Human and Peoples' Rights' (2021) 8 KAS African Law Study Library – Librairie Africaine d'Etudes Juridiques 402,413.

²³ Mehmet Balcilar, Ojonugwa Usman, George N Ike 'Operational Behaviours of Multinational Corporations, Renewable Energy Transition, and Environmental Sustainability in Africa: Does the Level of Natural Resource Rents Matter?' (2023) 81 Resources Policy 103344.

often been engaged in connection with other human rights, such as the right to development, as would be seen in the Banjul Charter.²⁴

In light of such impediments, it becomes necessary to investigate why an independent instrument supporting the Banjul Charter should be provided, to enhance the Banjul Charter's enforcement of environmental rights.²⁵ In seeking to address the position of Article 24 on environmental issues and its application, African states would be able to build up a broader appreciation of protecting the environment at the same time trying to meet the requirements of development. This would not only increase the level of compliance by the states but also increase the ability of the communities to seek redress in respect of their environmental rights. Therefore, while the inclination of the Banjul Charter in the fight against environmental degradation is commendable, its effectiveness depends on articulating the loopholes found in Article 24 and ensuring that the envisaged rights are clearly defined and respected.

FAILURE OF THE BANJUL CHARTER OVER ENVIRONMENTAL RIGHTS

Achieving sustainable development goals cannot be envisioned without establishing a sound socio-economic strategy that is compatible with the right to a safe and healthy environment. Environmental rights define the parameters for the protection and the realization of healthy living conditions for both individuals and collectivities and their associated socio-economic determinants. The connection of these rights was established in the context of Article 24 of the African Charter on Human and Peoples' Rights (Banjul Charter) which provides that 'All peoples shall have the right to a general satisfactory environment favorable to their development.' However, this provision is often criticized for hampering the advancement of environmental rights and economic development

²⁴ Kariuki Muigua, 'Recognising a Human Right to Safe, Healthy and Sustainable Environment' (2021) 6(3) *Journal of Conflict Management and Sustainable Development* 1,16.

²⁵ International Service for Human Rights, 'ACHPR 77: Calling for the Development of an Environmental Rights Instrument in Africa' (International Service for Human Rights, 3 November, 2023) <<https://ishr.ch/latest-updates/achpr-77-calling-for-the-development-of-an-environmental-rights-instrument-in-africa/>> accessed 14 December, 2024.

because of its ambiguities and vague understandings. To begin with, the notion of environmental rights, encompasses the right to a clean, safe and sustainable environment, which is an essential requirement for the enjoyment of various socio-economic rights such as health, food security and adequate housing. Individuals provided with a satisfactory environment are more likely to have better health, more access to clean water and better opportunities. That link is clearly demonstrated by numerous studies that explain how environmental degradation impacts the poor to a greater degree and deepen their poverty while increasing scarcity.²⁶ Thus, the enjoyment of environmental rights might also improve the socio-economic conditions of these people.

In spite of this, Article 24 of the Banjul Charter remains problematic in its interpretation as well as in its comprehension due to the language used. The term ‘general satisfactory environment’ fails to provide details on such an environment and more importantly how it can be created. This vagueness raises concern about the expectations of states and institutions and the role of highly focused enforcement in achieving environmental purpose. Therefore, even though the article references the principles of the right to a healthy environment, its potential to translate these principles into effective protection of such rights if environmental rights are violated might be slim at best. To begin with, a clear lack of strong legal basis regarding the right to safe and healthy environment might limit investment and trade potential in the region.²⁷ This is because, the failure of the implementation of the right to a safe and healthy environment could prevent foreign investors oriented toward sustainability from their investing operations.²⁸ Environmental, social and governance (ESG)

²⁶ Edward B Barbier, ‘How Environmental Degradation Impoverishes the Poor’ (Oxford Research Encyclopedia of Environmental Science)

<<https://oxfordre.com/environmentalscience/view/10.1093/acrefore/9780199389414.001.0001/acrefore-9780199389414-e-403>> accessed 12 January, 2025; Lee Liu, ‘Environmental Poverty, A Decomposed Environmental Kuznets Curve, and Alternatives: Sustainability Lessons from China’ (2012) 73 Ecological Economics 86,92.

²⁷ Thanh Nam Vu, Heikki Lehtonen, Juha-Pekka Junttila, Brian Lucey, ‘ESG Investment Performance and Global Attention to Sustainability’ (2025) 75 The North American Journal of Economics and Finance 102287.

²⁸ Organisation for Economic Co-operation and Development, ‘Foreign Direct Investment and the Environment’ (Organisation for Economic Co-operation and Development, Centre

consideration in investments increasingly plays an important role. Investors are likely to be active in the markets where environmental rights are well secured and the environment is well protected. If Article 24 of the Banjul Charter does not guarantee these conditions, investors in other regions may consider African markets as high risk which leads to a fall in the amount of foreign direct investment (FDI) in the region. This drop in investment can negatively affect developmental processes and lead to many entrepreneurs in the region, missing out on business opportunities especially those that are based on foreign investment and patronage. Furthermore, neglecting to ensure adequate regional environmental safeguards could lead to overexploitation and unsustainable use of natural resources in the region.²⁹ Without the Banjul Charter's capability to induce legal commitment to the right to a safe and healthy environment, firms are likely to show an orientation to short-term profits rather than long-term viability, prompting strategies and actions that undermine the very ecosystems and communities in which they operate. As an example, industries such as mining and agriculture could grow without control, thus triggering pollution, deforestation and loss of biological diversity. Such destruction of the environment threatens not only the existence of communities that depend on these resources but, on the future economic development as well. It is crucial to manage the resources in a way that ensures trade and investment are a net benefit to society.

ENVIRONMENTAL JUSTICE AND SOCIO-ECONOMIC DEVELOPMENT

Trade and investment are essential towards socio-economic development.³⁰ In African states like Nigeria and Ghana, there are deficits

for Co-Operation with Non-Members, 1999) https://www.oecd.org/content/dam/oecd/en/publications/reports/1999/10/foreign-direct-investment-and-the-environment_g1gh2835/9789264266315-en.pdf accessed 12 January, 2025.

²⁹ Simachew Bantigegn Wassie, 'Natural Resource Degradation Tendencies in Ethiopia: A Review' (2020) 9 Environmental Systems Research 33.

³⁰ Organisation for Economic Co-operation and Development, 'Investment for Trade and Economic Development' (Organisation for Economic Co-operation and Development, Compendium of Good Practices on Quality Infrastructure 2024) <https://www.oecd.org/en/topics/sub-issues/investment-for-trade-and-economic->

in trade and development which is needed to boost socioeconomic development.³¹ However, the environmental rights and environmental justice in vulnerable communities cannot be jeopardized for profit, especially in the context of the extractive industries. The extractive industries have been one of Africa's weakest environmental risks where trade and investment is concerned. This is because weak institutions and corruption have endangered the right to a safe and healthy environment in many African communities where natural resources such as gold and oil are being exploited. The endangerment to the right to a safe and healthy environment and in extension, environmental justice is amplified by the helplessness of the people in communities which are host to these natural resources.

Environmental justice should be a pertinent item in the socio-economic development plan of Ghana and Nigeria as these states aspire towards economic and social progress. Environmental justice includes the realization of the right to a clean environment, and is increasingly understood as vital to achieving other human rights, such as socio-economic rights. This recognition and protection of these rights could improve governance, engender better community engagement and, in the end, economic development in both states. Certain activities in Ghana expose environmental injustices, as issues like electronic waste (e-waste) disposal in the country have a disproportionate impact on low-income communities. Places like Agbogbloshie are infamous for how they deal with e-waste, allowing residents to be exposed to toxic pollutants with little protective measures. In this context, e-waste is treated with chemical processes that endanger the environmental rights of the affected communities which in return calls for comprehensive policies that not just manage e-waste but also maintains assembly of high environmental rights

development.html#:~:text=Trade%20and%20investment%20are%20mainstays,pathways%20towards%20sustainable%20economic%20growth.> accessed 14 January, 2024.

³¹ Samuel Yeboah, 'Unravelling the Tapestry: Understanding the Factors Shaping Current Account Imbalances in Ghana' (MPRA Paper No. 117638, 2024) 1.28; Victor U Ijirshar, Isa J Okpe and Jerome T Andohol, 'Impact of Exchange Rate on Trade Flow in Nigeria' (2022) 13(2) CBN Journal of Applied Statistics 185, 222.

for the community.³² On the other hand, In Nigeria, environmental injustice is clearly expressed through the suffering and neglect faced by ethnic minorities in oil-rich regions such as the Niger delta and other parts of the country. This oil production and extraction process does more damage than good since it results in environmental damage without providing a means to live for these marginalized people. Ogoni people, for example, continue to be politically suppressed and economically deprived even after their land has been nourished with oil. The oil spills, resulting gas flares and pollution caused by oil extraction activities has been detrimental to their cause.³³

The fact that local communities have to engage multinational corporations is another stark sign of environmental injustice. Legal battles between companies like Shell and host communities, illustrate the ongoing disagreements surrounding environmental damages and compensation claims. An example is Shell's recent divestment in its onshore operations, which local communities have accused Shell of abandoning them while they continue to suffer from pollution.³⁴ The legal battles show how corporate interests are put ahead of community rights, leaving local populations to fight for recognition and remediation. Environmental injustice is further evident in the lack of adequate response by the Nigerian government to environmental problems. Despite several promises to clean up polluted areas in the country, including the oft-promised Ogoni clean-up exercise, little has been done. Since the initiative was launched, reports suggested little had been done, leaving communities to grapple with the lingering damage of decades of

³² Anuli Njoku, Martin Agbalenyo, Janaya Laude, Taiwo Folake Ajibola, Mavis Asiwome Attah, Samuel Bruce Sarko, 'Environmental Injustice and Electronic Waste in Ghana: Challenges and Recommendations' (2023) 21(1) *International Journal of Environmental Research and Public Health* 25.

³³ Mengistu Alamineh Mazengia, 'Environmental Injustice and Its Manifestations in Africa and Its Relation to Race, Class, Marginalization and Poverty' (2019) 7(1&2) *Environmental Policy: Issues and Prospects at the Global Level* 26,40.

³⁴ Loes van Dijk, 'Shell Faces Legal Challenge for Environmental Injustice in Niger Delta' (Climate Court, 20 September, 2024) <<https://www.climate-court.com/post/shell-faces-legal-challenge-for-environmental-injustice-in-niger-delta>> accessed 13 January, 2025.

pollution.³⁵ In Nigeria, regions such as the Niger Delta expose the urgent need for equitable environmental policies prioritising human rights alongside economic development. It is important to not only take immediate actions to rectify these injustices but also provide a framework to prevent them in the future so that all communities can benefit equitably from their natural resources.

Sustainable environmental practices can help Nigeria reach socio-economic empowerment by ensuring trade and investment practices integrate social and environmental justice. If Nigeria strives to redistribute environmental risks and the benefits, then it can channel more investment, create more social and economic inclusion and build a strong economy.³⁶ Fighting climate change and creating economic development are two agendas that can co-exist, whilst Nigeria will ensure that the resources available for the future generations will be there while the living standards of the people today become better. Nigeria is able to engage environmental justice in a number of contexts, one of them being promoting a new paradigm of sustainable investment practices. In recent years more and more investors and corporations have begun to incorporate environmental sustainability considerations in their investment calculations. Adopting environmental justice principles will allow Nigeria to enhance its reputation as a competitor in green investments particularly in renewable energy, sustainable agriculture and ecofriendly manufacturing. This way Nigeria could also diversify its economy, begin creating green jobs and help in the creation of innovation that are helpful for a stable economy and environment in the long run.

³⁵ Okhumode H Yakubu, 'Addressing Environmental Health Problems in Ogoniland through Implementation of United Nations Environment Program Recommendations: Environmental Management Strategies' (2017) 4(7) *Environments* 28.

³⁶ Eghosa O Ekhatior and Edward O Okumagba, '11: Climate Change and Multinationals in Nigeria: A Case for Climate Justice' in Kim Bouwer, Uzuazo Ememire, Tracy-Lynn Field, and Ademola Oluborode Jegede (eds) *Climate Litigation and Justice in Africa* (Bristol University Press 2024).

ENVIRONMENTAL JUSTICE FOR VULNERABLE COMMUNITIES

One typical case that illustrates the impact of environmental degradation on indigenous populations is that of the Maasai people in East Africa. Traditionally semi-nomadic pastoralists, the Maasai have depended for generations on natural springs and land for grazing for their cattle. But in recent years, rapid deforestation, desertification and altered patterns of rainfall as a result of climate change have drastically reduced the amount of viable land. Overgrazing, agricultural activity, and urbanization, has led to decreased biodiversity and the need for the Maasai to give up their pastoralist lifestyle or live in growing poverty.³⁷ Furthermore the San indigenous peoples of southern Africa faced great difficulties which coincided with the destruction of the environment of their homelands. The San people are specialists in hunter-gathering in the dry areas of Botswana, Namibia and South Africa. Such communities depend on a highly intricate network of interrelated biological systems. Nevertheless, in these areas, the diversity of life has been impacted by excessive use of water resources, overgrazing of animals, and commercial agriculture. The diminished availability of wild foods coupled with habitat destruction has severely affected the San's sustenance practices which were followed for years. In some instances, they have been concentrated in disadvantaged regions or made to practice farming which is not part of their cultural practices and therefore not practiced in an economically useful way.³⁸

Despite the issues with Article 24 of the Banjul Charter, it is a good starting point for an environmental justice framework in Africa, and it is possible to harness it for the purpose of advocating for vulnerable communities and protecting them against the environmental impacts of trade and investment in the region. The flexibility in the wording of Article 24 gives

³⁷ Associated Press, 'Drought Forces Kenya's Maasai, Other Cattle Herders To Consider Fish, Camels' (*Voice of America*, 8 September, 2024) <<https://www.voanews.com/a/drought-forces-kenya-s-maasai-other-cattle-herders-to-consider-fish-camels/7771187.html>> accessed 13 January 2025.

³⁸ Robert K Hitchcock and Diana Vinding (eds) *Indigenous People's Rights in Southern Africa* (International Work Group for Indigenous Affairs 2004) 247, 273.

room for certain interpretations, such as an environment that might be expected to be kept according to international standards, especially in the case of businesses in the extractive sector. To begin with, Article 24 can be used in opposition against trade and investment that affects the environment and its impact on indigenous peoples, rural inhabitants and other disadvantaged groups. In the case of infrastructure projects, extractive industries, or agricultural trade, this article could be used to argue that the projects must adhere to and protect the environmental rights of local people.³⁹ Non-governmental Organizations can, on behalf of vulnerable communities, especially those whose livelihoods and cultural practices depend on healthy ecosystems, use Article 24 to call for environmental safeguards in trade agreements and investment contracts. For instance, if a foreign investor's activity causes deforestation, pollution, or loss of biodiversity in a way that disrupts the local population's way of life, these communities can invoke the right to a 'satisfactory environment' as a legal basis to demand accountability and corrective measures.

Besides, although Article 24 does not compel states to ensure the protection of some specific degree of environmental quality, the article guarantees an opportunity for the protection of a collective right to a safe and healthy environment through the realization of sustainable development principles.⁴⁰ Those speaking for marginalized populations can further say that proposed trade and investment policies in African states should include sustainability considerations that would view ecological systems as essential to human health for the communities residing in resource-rich areas. This would include calling for very strict impact assessments on extractive projects, and also requiring the use of mitigation measures as well as the assessment of issues that are potentially affect environmental justice in existing trade negotiations. Through the application of Article 24, vulnerable groups can be part of policies that

³⁹ Morne van der Linde and Lirette 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) 3 African Human Rights Law Journal 167,187.

⁴⁰ Erika de Wet and 'Anél du Plessis, 'The Meaning of Certain Substantive Obligations Distilled from International Human Rights Instruments for Constitutional Environmental Rights in South Africa' Communication' (2010) 10(2) African Human Rights Law Journal 345, 376.

prioritize the sustenance of both community and natural resources for the development of the community. Without doubt, realizing environmental justice through the Banjul Charter remains a challenge on the African continent. There is still much to be done in practice especially in African states like Nigeria and Ghana. In Nigeria, action on environmental issues is impeded by various socio-economic problems such as political corruption and a lack of good horizontal environmental accountability mechanisms.⁴¹ Nigeria is known to have serious environmental degradation, but this is exacerbated by the pollution caused by the oil and gas industry, caused by international oil corporations and in collusion with the Nigerian government.⁴² These issues were also raised in the case of *SERAC v Nigeria*, where the Nigerian government was accused of enabling its oil companies to demolish villages, wreaking havoc to the local economy and inflicting pain and suffering on its citizens. On the other hand, the absence of strong legal frameworks to bring corporations to justice makes the situation worse for those communities, which are already faced with barriers like costly legal fees, lack of competent representatives and administrative red tape to seek justice from the courts.

⁴¹ Horizontal environmental accountability mechanisms are essential frameworks that enable state institutions to monitor and hold each other accountable for their environmental responsibilities. These mechanisms function through a system of mutual oversight among various branches of government, such as the executive, legislative, and judicial branches, as well as independent regulatory bodies. The aim is to ensure compliance with environmental laws and promote sustainable practices by engaging a culture of accountability within the governance structure. One of the main features of horizontal accountability is the ability of different state entities to engage in mutual scrutiny. For instance, judicial institutions can review executive decisions related to environmental policies, ensuring that these decisions align with existing laws aimed at protecting ecosystems. Additionally, legislative bodies can conduct oversight through committees that assess governmental actions and policies, while independent agencies may audit public spending and investigate complaints related to environmental issues. This interconnectedness allows for a more robust enforcement of environmental standards, as institutions leverage each other's expertise and authority to address potential abuses or non-compliance.

⁴² Abosede Omowumi Babatunde, 'How the Oil Industry is Damaging Food Production in Nigeria's Niger Delta' (LSE Blogs, 12 January, 2023) <<https://blogs.lse.ac.uk/businessreview/2024/01/12/how-the-oil-industry-is-damaging-food-production-in-nigerias-niger-delta/>> accessed 14 January, 2024.

RECOMMENDATIONS FOR A REGIONAL ENVIRONMENTAL PROTECTION REGIME

The drafting of a regional framework for the protection of the environment in Africa is a unique possibility to meet the environmental, economic, and social needs of the continent. Article 24 of the African Charter on Human and Peoples Rights is a primary legal provision that guarantees and protects the right to a clean and living healthy environment in Africa, and to achieve this, African states must collectively work through their respective regional structures to enforce the right to a safe and healthy environment and work towards their operational enforcement even on an international level. Through the creation of a strong structure of environmental governance at the regional level, African states will be able to better fulfill environmental obligations towards vulnerable communities while engaging sustainable development and economic advancement.

Strengthening collaboration among African Union (AU) member states is one of the main recommendations for the development of this regional environmental protection regime. Implementing Multilateral Environmental Agreements (MEAs), which promote cooperative approaches to common environmental concerns, can help achieve this, however, environmental Non-Governmental Organizations are crucially essential towards ensuring the implementation of AU's MEAs. To improve accountability and transparency, African states should, for instance, set up cooperative monitoring and enforcement systems to guarantee adherence to environmental norms. Furthermore, in addressing transboundary environmental challenges, this cooperative endeavor would encourage a sense of shared responsibility among African states in safeguarding their natural resources.

Furthermore, a regional environmental protection regime cannot be effective without capacity building. Training programs should be funded by member countries to enhance the capacity of environmental negotiators and policymakers to engage in global discussions and implement regional agreements. Enforcement of environmental laws and regulations is also made easier by the establishment of specialized agencies

at the national and regional levels. To monitor and ensure that policies align with sustainable practices, for instance, independent environmental monitoring commissions could be set up. The regional framework for environmental protection should also include public participation as an essential component. Participating in decision-making processes with local communities and civil society organizations may lead to more inclusive policies that reflect the interests and objectives of the general public.⁴³

CONCLUSION

A fundamental chance to promote environmental protection in Africa is provided by the African Charter for Human and Peoples' Rights, especially through Article 24. A clear right to a safe and healthy environment has not been realized because of Article 24's ambiguity, despite the Charter's recognition for its complete human rights framework. Because vulnerable people are disproportionately impacted by environmental deterioration, this uncertainty has frequently resulted in misunderstandings that lessen its potential impact. If the Charter is to be a useful instrument for advancing environmental justice throughout the continent, it must have a clearer statement of environmental rights.

Furthermore, a regional environmental protection regime cannot function effectively without capacity building. To improve the ability of environmental negotiators and policymakers to participate in international negotiations and carry out regional accords, member nations ought to fund training initiatives. Additionally, the creation of specialized organizations at the regional and national levels helps facilitate the enforcement of environmental laws and regulations. Independent environmental commissions, for instance, might be established to oversee and guarantee that policies are in line with sustainable practices. Another

⁴³ US Environmental Protection Agency, 'Public Participation Guide: Introduction to Public Participation' (US Environmental Protection Agency, 9 February, 2024) <<https://www.epa.gov/international-cooperation/public-participation-guide-introduction-public-participation#:~:text=Public%20participation%20contributes%20to%20better,bear%20on%20the%20decision%20process.>> accessed 14 January, 2025.

crucial element that ought to be incorporated into the regional framework for environmental protection is public participation. More inclusive policies that represent the interests and goals of the populace might result from involving civil society organizations and local communities in decision-making processes.

In the end, establishing a regional environmental protection system based on Article 24's vision might satisfy Africa's social, economic, and environmental demands. It would make it possible for member nations to work together productively to solve common ecological issues, promoting sustainable development while guaranteeing the protection of everyone's rights, particularly those of the most vulnerable. Therefore, the Banjul Charter has great potential to be a change agent, so long as its provisions are interpreted and applied with dedication and clarity. By seizing this chance, Africa can set the path for a future where all of its peoples live in equity and sustainability.